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Conflict of interests in commercial and civil law

Конфлікт інтересів у господарському і цивільному праві

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Abstract

The modern specifics of the development of social relations are due to new phenomena that require research and regulation. One of these is the issue of conflict of interest settlement in the business sphere. Given this, it is critical to analyze the causes of conflicts of interest in the system of management and production of public goods, which will contribute to the acceleration of the improvement of the management system and the transformation of the economy of Ukraine. The work aims to identify the conflict of interests in the business sphere and to determine the methods of their settlement. The research methodology consists of: the dialectic method, the abstraction method, the analysis and synthesis method, the logical-semantic method, the classification and grouping method, the system-structural method, the functional method, the sociological method, the statistical method, the formal-legal method, the synergistic method, the historical-legal method, comparative-legal method, method of interpretation and hermeneutics, analytical method and logical-legal method. As a result of the research, it is noted that the conflict of interests is a generally accepted term denoting a contradiction between the interests that are protected by law and must be satisfied by the actions of another authorized

Анотація

Сучасна специфіка розвитку суспільних відносин обумовлена новими явищами, що потребують дослідження та врегулювання. Одним із таких є питання врегулювання конфлікту інтересів у сфері бізнесу. З огляду на це, важливо проаналізувати причини виникнення конфліктів інтересів у системі управління та вироблення суспільних благ, що сприятиме прискоренню вдосконалення управлінської системи та трансформації економіки України. Метою роботи є ідентифікація конфлікту інтересів у сфері господарювання та визначення способів їх врегулювання. Методологію дослідження складають: метод діалектики, метод абстрагування, метод аналізу та синтезу, логіко-семантичний метод, метод класифікації та групування, системно-структурний метод, функціональний метод, соціологічний метод, статистичний метод, формально-юридичний метод, синергетичний метод, історико-правовий метод, порівняльно-правовий метод, метод тлумачення та герменевтики, аналітичний метод та логіко-юридичний метод. У результаті дослідження зауважено, що конфлікт інтересів є загальноприйнятим терміном, що позначає протиріччя між інтересами, які захищені правом і повинні бути

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person and the personal interests of this authorized person. In particular, the essence, peculiarities of passage, and consequences of the conflict of interests in the field of management were investigated. Attention is drawn to the fact that the conflict of interests in the field of management is considered as a potential threat to the implementation of entrepreneurial activity.

Keywords: Conflict of interests, economic interest, protection of rights, economic subjects, market legal relations.

задоволені діями іншої уповноваженої особи і особистими інтересами цієї уповноваженої особи. Зокрема, досліджено сутність, особливості проходження та наслідки конфлікту інтересів у сфері господарювання. Звернено увагу, що конфлікт інтересів у сфері господарювання розглядається як потенційна загроза здійсненню підприємницької діяльності.

Ключові слова: конфлікт інтересів, економічний інтерес, захист прав, суб'єкти господарювання, ринкові правовідносини.

Introduction

For modern Ukrainian society, the issue of conflict of interest is extremely relevant. For the effective development of the economy of Ukraine, business, and the production sphere of services, it is important to take measures to eliminate problematic issues and threats. One of these threats is a clash of interest, and therefore the state aims to find optimal mechanisms for preventing and resolving such conflicts.

Given that business entities naturally seek to monopolize the market, the state and society aim to limit such monopolization and prevent the harm that businesses can do for the sake of enrichment. In this context, measures are created to regulate, identify and avoid conflicts of interest both among the state and business and among subjects of entrepreneurial activity.

In general, a conflict of interests can also be characterized as a difference in the values of each of the parties to the partnership. However, clash may arise when market participants will present business as a kind of game in which some win at the expense of others, or the state's victory in disputes will mean the firm's loss and vice versa. On the one hand, entrepreneurs are interested in deregulation as non-interference of the state in the economy, on the other hand, the business itself seeks to obtain the protection of its interests from the state, which can perform the function of an arbiter that will punish the violator of certain rules.

Conflicts of interest are often based on imperfection and gaps in legal regulation, lack of legal mechanisms for resolving disputes, and historical traditions. However, the analysis and understanding of the clash of interests both at the legislative level and in the doctrinal sense allow us to better cope with this threat and take preventive measures on time.

In addition, in connection with the conflict of interests, a derivative problem arises - prosecution. At the same time, questions arise regarding the introduction of liability for conflict of interests and the consequences caused by the clash of interests. Therefore, the legislator's task is to completely exclude the occurrence of a conflict of interest and limit the impact of a clash of interest and minimize negative consequences. This task is achieved by various legal and organizational measures, and therefore, to take such measures in the future, it is necessary to first analyze the concept of conflict of interests and pay attention to its peculiarities in the field of management.

Thus, the goal of the authors of this article was a detailed analysis of the causes and consequences of various conflicts in the economic sphere, as a result of which a search was made for effective ways of their settlement.

Theoretical Framework or Literature Review

In the work of Bilyak (2017), the specifics of the conflict of interests are considered. The author notes that conflicts of interests are expected in any social structure and are a necessary condition for social development, and the problem of responsibility arises in connection with a conflict of interests. That is, a conflict of interests leads to the violation of rights and the occurrence of negative consequences.

In the article by Bogush (2013) it is noted that today there is no single, universally accepted definition of the category "interest" since each science considers the latter through the prism of its subject, subject, object, methodology, goals, and task. Attention is drawn to the fact that in the corporation there is a single interconnected system of interests of its shareholders/participants, namely: common

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interest, the essence of which is to improve the economic indicators of the corporation's activity; the interests of certain groups and the individual interests of shareholders/participants of the corporation, the main of which is to obtain the maximum, fairly distributed profit of the corporation (dividends).

Vinnyk (2012) considered the issue of corporate conflicts. The researcher determined that a corporate conflict of interest arises between the subjects of corporate relations regarding corporate goods, causing negative consequences for them (some of the participants in the relations) or creating a real threat of their occurrence.

Problematic issues of legal regulation of agreements with interests in the practice of joint-stock companies are considered in the work of Gabov (2005). Interest as a sociological category is considered in the work of Glezerman (1966). The issue of interest in civil law was investigated by Grybanov (2000). Hudkov (2014) analyzed the general principles of the conflict of interests and the ways of its settlement in national legislation. Dmitriev, Kudryavtsev & Kudryavtsev (1993) devoted to the study an introduction to the general theory of conflicts. The sociology of conflicts was studied by Zdravomyslov (1996). Peculiarities of legal regulation of conflicts are defined in the general theoretical textbook of Ioffe (2000). Ekimov (1984) studied interests and rights in a socialist society.

Kosenyuk (2016) analyzed the peculiarities of the settlement of conflicts of interest in the partnership between businesses and the state. The author notes that conflicts can stimulate both sides to improve, and in the case of deepening or neglect, lead to the collapse of the coalition. The prevention of conflicts, as well as their successful settlement, will be facilitated by setting up a dialogue between all interested parties, increasing efficiency in the fight against corruption in the center and cities. The phenomenon of lobbying interests of corporations and associations of entrepreneurs remains an understudied phenomenon in economic science. The interests of the public must be taken into account in the partnership between the state and business both at the stage of preparation (substantiation) of the partnership and at the stage of implementation. This will allow not only reduce the costs of investment projects but also improve the investment climate. Problematic issues of regulation of interests in a socialist society were considered by Kuliev (1967). Matuzov (1972) examined personality from the point of view of conflict theory. Mykhaylov (2002) devoted more detailed attention to highlighting the category of interest. The issue of non-property interest in civil law was analyzed by Pasek (2003). Pakhomov (1974) considered interests through the prism of economic relations of socialism. Also, Sinaisky (2002) and Tarikanov (2006) investigated the general principles of the category of interest in civil law.

The article by Sobol (2016) examines the essence, peculiarities of the passage, and consequences of the conflict of interests in the sphere of control. Conflict of interests in the field of control is considered by the author as a potential threat to the quality of control procedures, completeness, and relevance of results. The author formed a conflict of interest matrix based on the professional nature of the conflict on the part of the subject of control and revealed the content of the conflict of interests in the case of the prevailing personal interest of the subject of control in the results of the inspection, which contradicts his professional duties.

Ethical aspects regarding the conflict of interests in public service were assessed by Vasylevska (2014). Mykolenko (2019) investigated general ideas about the conflict of interests in the national consciousness. The author's work reveals the peculiarities of the legal support mechanism for the prevention and settlement of conflicts of interest in the sphere of activity of public administration bodies. Attention is drawn to the fact that the conflict of interests significantly increases the risk of committing corrupt acts, and therefore is only a prerequisite for corruption in public administration bodies.

Karpova (2020) notes that the definition of the concept of conflict of interest in Ukrainian legislation can be found in several normative legal acts, such as the Law of Ukraine "On Prevention of Corruption" (Law 1700-VII, 2014) and the Law of Ukraine "On Advocacy" (Law 5076-VI, 2012) and even though the effect of the specified acts applies to certain spheres of activity, however, the provided definitions can be used by enterprises of any form of ownership and direction during their activities to identify potential or real conflicts.

The institution of conflict of interests in judicial activity was analyzed by Chorna (2015). The judge drew attention to the fact that the institution of conflict of interests in judicial activity requires urgent decisions from both the

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legislator and the Council of Judges. Delaying these issues may threaten the independence of judges and lead to an expanded interpretation by interested parties of the grounds for applying the provisions of the law "On Prevention of Corruption" to "unwilling" judges.

The problematic issues of the occurrence and resolution of conflicts of interest are considered in the work of Moroz (2017). A detailed analysis of the conflict of interests in the context of a national audit was carried out by Nazarova (2016). Shalimova (2012) also chose the causes and fundamental principles of auditing from the perspective of the human model and the problem of conflict of interests as the object of her research.

Polishchuk (2018) examined the conflict of interest in detail and analyzed what you need to know in order not to commit an offense. In particular, it was determined that a conflict of interests is a destructive phenomenon for any corporate environment and society as a whole. Conflicts of interest create a favorable environment for the growth of corruption and cause property damage to the state, and third parties, including as a result of the creation of unilateral advantages, violation of equal conditions of competition, or access to administrative services. In the workforce, the conflict of interests is the biggest demotivating mechanism for employees, and, therefore, it is very critical that such situations do not arise, as they significantly affect the effectiveness of the staff. Therefore, according to the author, prevention, timely detection, and settlement of conflicts of interest are one of the ways to overcome and prevent corruption.

Despite the interest among scientists in the category of conflict, the issue of conflict of interests in the field of management is insufficiently researched. This makes it necessary to pay more attention to this topic.

Methodology

The use of the dialectical method made it possible to compare the concepts and content of such categories as "conflict", "conflict of subjects", "conflict of economic goals", etc. Dialectic, studying not specific forms and types of development, but general points, connections, and regularities, has become a universal method for learning the object of research in its development.

The application of the abstraction method made it possible to determine the place of measures for the prevention and settlement of conflicts of interest in the field of market relations, including the identification of signs and features of conflicts of interests.

Methods of analysis and synthesis were used in the study of the procedure for identifying and resolving conflicts of interest. Thus, the analysis and research method contributed to the imaginary dismemberment of the whole phenomenon into its parts – simpler properties and connections regarding the conflict of interests of business entities. At the same time, the synthesis made it possible to imaginatively connect the separate sides of the issue of conflict of interest settlement and understand the general problematic issues in their unity.

Using the logical-semantic method, definitions of the concepts of interest, economic interest, and conflict of interest are provided, which collectively help to reveal the essence of the researched topic, identify controversial issues, and propose ways to resolve them.

Methods of classification and grouping were used to study known and distinguish types of conflicts of interest. Thus, thanks to the use of these methods, it became possible to distinguish classifications and realize the difference between various manifestations of the conflict.

Systemic-structural and functional methods made it possible to establish the place and role of state authorities, business entities, and other persons in the system of entities entrusted with the responsibilities of preventing and resolving conflicts of interest.

Sociological and statistical methods were used to substantiate the research results. The specified methods in their entirety made it possible to expand the empirical base of research on conflicts of interest in the field of entrepreneurial activity and the scope of their application.

During the study of regulatory legal acts in the field of business, which determine the powers of economic entities to settle disputed aspects of activity and generally determine what constitutes a conflict of interests, a formal legal method was used.

The synergistic method is used in characterizing the system of conflict of interest regulation as one that enhances the effect of the interaction of measures of forecasting, prevention, settlement,

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conflicts, control over their implementation, and the use of coercive measures.

Thanks to the research using the historical-legal method, the genesis of the research and legal regulation of the prevention and settlement of conflicts of interest in the field of business were traced.

Comparing the foreign experience of legal regulation of the conflict of interests and the national experience on this issue, the comparative legal method was used. The use of this method made it possible to compare, apply and show similarities and differences in the definition, regulation, and resolution of the conflict of interests by different states.

The method of interpretation and hermeneutics was used to determine the conceptual apparatus related to the conflict of interests. The analytical method made it possible to justify the need to eliminate gaps and conflicts in the legislation in the field of economy, and the logical-legal method – to develop proposals and recommendations for its improvement.

Results and Discussion

The results of the research, which the authors of the article achieved during their work, can be displayed as follows:

Well-known trends underlying various interests of all subjects of legal relations in society, for the most part, arise, exist, and cease at those moments when economic and legal changes are the most relevant and determined by social needs. At this time, the most pronounced contradictions in the interests of legal entities can arise, which in turn creates conflicts of interests in the effective provision of economic law and order.

Considering that a feature of economic and legal relations is usually the desire to obtain profit by all parties that are participants in such legal relations, the conflicts of interests that arise as a result of contradictions in relations acquire special importance, which affects the stability and development of legal relations between sub-objects of management.

The relationship to the understanding of market legal relations and the market as a generalizing concept can be mediated by several interrelated, but in some cases, such that contradict each other interpretations: on the one hand, market legal relations can be understood as a logical, from the standpoint of entrepreneurial risk, a mutual desire of the parties to receive property profit, and on the other hand, it can be imagined as a conflict of interests, as a result of essentially opposite directions, which involve optimization (the lowest possible costs) to achieve the greatest property profit.

In part, this position is expressed by A.G. Zdravomyslov (1996).

In the context of the above, it is interesting that the provision of both the first and the second understanding is the basis of identical legal mechanisms that are currently relevant in the current legislation of Ukraine. First of all, we mean such mechanisms of economic and legal influence on the regulation of the relations of subjects, which can be attributed to the category of private-law measures of influence (purchase and sale contracts, mines, and the like), as well as measures of public-law influence, which are reflected in Article 12 of the Economic Code of Ukraine (Law 436-IV, 2003) "Means of state regulation of economic activity" (state order, licensing, patenting, quotas, etc.). However, what we mentioned does not exclude the search for and legal justification of other effective mechanisms for regulating the above-mentioned interests of business entities, because no matter which of the above-mentioned positions we would not adhere to, the interest of the business entity is natural, and does not contradict the current norms.

The above-mentioned hypothesis regarding the interrelated two views on the mechanisms of legal regulation of the conflict of opposing economic interests of business entities is confirmed by O.S. Ioffe, who considered one of the main tasks of the civil-legal doctrine to invent the most perfect legal forms to mediate normal economic processes (Ioffe, 2000). Such a position does not contradict, and, moreover, confirms another thesis expressed to us above regarding the "naturalness" of the desire of any economic entity to find the maximum economic profit from any economic-legal relationship.

The logical solution to the question is the need for a terminological study of the concepts that justify the existence and underlie the clash of opposing economic aspirations and can be defined as "economic interest" and "conflict of economic goal". It should be agreed in advance that the study of these terms in the context of their content load and, perhaps, their generic characteristics, may be on the border of many

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social sciences, which should be reflected in their definitions.

Thus, consideration of the concepts of "economic interest" and "conflict of economic purpose" is expedient to be studied from the existing economic and legal definitions that take place in the doctrine.

It should be noted that both of the concepts studied by us in the field of economic-legal relations have not only a close economic and legal connection with each other but also in most cases should be perceived in a logical sequence as a complex legal structure. Economic interest usually generates a certain opposite in the positions of the subjects of relative (and in some cases absolute) legal relations, which underlie the achievement of an economic goal and is a consequence of the emergence of a conflict of interests as a conflict of economic goals.

Agreeing with the fact of the primacy of economic interest in the event of a conflict, we cannot avoid stating that the phenomenon of interest is not only in the field of economics and law, but also psychology and sociology.

From the point of view of economic science, interest is a direct relationship between a person, a collective or society, which arises in connection with the reproduction of a product in order to satisfy economic needs (Pakhomov, 1974).

From the point of view of sociology, interest is that which is objectively necessary, important, significant and useful both for one individual and for society as a whole (Matuzov, 1972).

From the point of view of psychology, interest is a category that characterizes the subject's mental disposition to commit certain actions, as well as his internal emotional relationship as his assessment of the actions he has taken (Matuzov, 1972).

The last caveat is extremely important in the context of a generalized understanding of interest as a category from the standpoint of legal science. After all, as is known, economic and legal responsibility can arise without the presence of such a basis as guilt, which can be an internal emotional relationship to one's own assessment of the committed actions.

All this gives us a basis for focusing attention on certain ways of researching economic interest as a legal category.

First of all, we consider it expedient to focus on the achievements initiated by Rudolf von Jhering, who drew attention to the special role of interest in the context of satisfying the interest of the subject of law by obtaining the appropriate equivalent. Thus, the outstanding German jurist concluded that the provision of the equivalent of property and (or) non-property nature is at the basis of the valid and (or) hidden needs of the subject of law, through which subjective private rights can be ensured. The above can be laid as the basis of modern stereotypes of understanding the essence of relations between business entities. This can be justified by the fact that Jhering's views on the law as a protected interest refer to doctrinal provisions (Jhering, 1865), which were reflected in such categories as "free law movement", "conflict of interests", "weighing of interests" and "assessment of interests".

Yering's views, mentioned by us, allow us to consider the law in the general sense and individual interconnected norms as a system for balancing public needs and interests by ensuring the normalized behavior of subjects who want to achieve an expected economic goal. Thus, economic interest can be mediated by objective reasons, but be satisfied by subjective ways of achieving it.

All of the above is the basis of modern legal interpretations explaining the legal nature of economic interest.

Primarily, it should be remarked that the differences in modern views regarding economic interest consist exclusively in positioning it with a phenomenon that has a subjective or objective nature in the subject that produces it. In this way, economic interest can be considered as a subjective phenomenon (it exists only in the mind of the subject) and is realized according to the will of this subject (Sinaisky, 2002).

Another modern view of economic interest reveals it as an objective category that does not require the necessity of existence in the pursuit of the subject, but is determined by the social need to implement social relations as a priority (Mykhaylov, 2002) through the objective manifestation of a conscious attitude, and must be implemented through appropriate own actions (Glezerman, 1966). In addition, material interest is objective both in form and in content (Kuliev, 1967), which can hardly be criticized, because any person, as a material being, always strives for a material result, which is absolutely natural. The latter is reflected in the results of the joint will of

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the participants in the actions of the business entity.

The next, from the widespread modern positions regarding the legal nature of economic interest, is an assumption that allows a combination of objective and subjective principles. This is justified by the presence of a close connection between objective social conditions and the behavior of subjects of economic interest, which include individuals, social groups, classes, and society (Grybanov, 2000).

The question is quite interesting: "Can conflict exist without interest?" And can interest exist without conflict?”

In our opinion, the answers to these questions are obvious. After all, any economic interest, if it is agreed upon between the parties, should not lead to a conflict of interests. In the opposite case - in the absence of compromises regarding economic interest, a conflict will arise. Therefore, in our opinion, it is absolutely logical and consistent to move to the next category, which is "conflict".

Even though conflict as a category has a sufficiently large number of definitions proposed by Ukrainian and foreign scientists of different times, which are justified by the types of phases of the existence of the conflict, we do not consider it necessary, for now, to dwell on these phases. After all, the possibility of conflict in the future (potential conflict), which can be considered a latent phase, as well as any active phase (actual, existing conflict) for the purpose of our task is identical because they are included in the existing typology of legal conflicts (law-making, law-implementation, general law, inter-industry, industry, etc.) (Tikhomirov, 2017).

For the purpose of our research, it is noteworthy to understand that a conflict in any of its phases is a clash of positions of subjects regarding the goal of interests or motives (Dmitriev et al., 1993). At the same time, it should be commented that the aforementioned typology of legal conflicts can include both conflicts based on the clash of incompatible ideas, which is a manifestation of human cognitive psychology, and a conflict of interests, which is the basis of the subject's desire to take possession of material resources, which are in the opponent's area of responsibility (Dmitriev et al., 1993). This type of conflict has a fully materialized manifestation and, for the most part, is the subject of our research.

Quite interesting from the point of view of practical application is the determination of the existence of the emergence and (or) change of legal relations between subjects, which is determined by the presence of the conflict itself because we can assume that a legal conflict has differences from a conflict of interests.

Such a difference may consist in the existence of at least three characteristic features of the latter.

First, the conflict of interests initiates the very basis for the emergence or change of the legal relations of the participants, through the acquisition of one of them (or several) legal statuses, which allows qualifying its presence (Gabov, 2005).

Secondly, the conflict of interests in the form of a legal status that allows qualifying its presence" is absolutely not identified with the definition of one or another interest in particular, but only indicates the fact of the existence of contradictions of several conflicting interests.

Thirdly, the conflict of interests, as a phenomenon, does not depend on which of the subjects of legal relations will make a choice in favor of another of them, or refuse it.

So, from the above, the logical conclusion is that the conflict of interests can be characterized as a certain psychological state of the subject, which "belongs" to such an interest for its further implementation in the emergence, change, or termination of certain legal relations, as a confirmation of the existence of a legal fact.

Further, we consider it expedient to distinguish between the conflict of interests and the conflict of subjects, as well as the situation of conflict of interests.

An important feature of such a category as a conflict of interests should be considered the complexity of its legal regulation due to the multiplicity of facts that can mediate a certain psychological state of the subject who “belongs” to such an interest for its further implementation in the emergence, change or termination of legal relations, not to mention the fact that, usually, norms dedicated to conflict of interests in the business sphere are initiated "late", leaving such disputes unsettled. Thus, the study of the conflict should be considered in at least three areas, which can be connected with each other in sequence, and also act as a separate set of legal facts, which, as a result of the subsequent agreement between the subjects, did not lead to

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the emergence, change or termination of legal relations. We consider these areas to be: conflict of interests; conflict of subjects; conflict of interest situations.

Let's consider their connection.

The conflict of interests should be considered an objective manifestation of conflicting visions in the assessment priority and ways of implementing decisions in the broadest possible sense. Thus, a conflict of interests can be manifested both in relations that arise in direct dependence on the will of the subjects who are participants in such relations and in situations where the subject's will does not affect the justification of the position taken due to the imperative existing in the legislation.

An example of the latter can be situations when the imperative norm is aimed at ensuring restraint of the functional powers of various management bodies (requirements for the composition of management bodies or requirements for ensuring the fulfillment of fiduciary duties). Thus, the members of the audit commission cannot simultaneously perform the functions entrusted to the members of the supervisory board or the functions entrusted to the persons of the executive body. Similarly, a person who is entrusted with the performance of the functions of an executive body alone cannot at the same time ensure the performance of the functions of the chairman of the board of directors or the chairman of the supervisory board. The above confirms the fact that a conflict of interests can appear both in relations that arise in direct dependence on the will of subjects who are participants in such relations, and in situations where the subject's will does not affect the justification of the position taken due to the imperative that exists in the legislation, which proves that a conflict of interest is not always a legal conflict. After all, as we mentioned above, it can be determined as a direct state of the will of the subject of initiation of such interest, and not depend on the will of the subject of initiation of interest.

The above gives reasons to qualify the situation as a conflict of interests because it is possible to talk about the contradiction of possible interest and need, which is determined by the imperative component. Thus, the stated contradiction is at the basis of the need to share legal consequences that may be caused by economic interest and need (in the broad sense of the factors generating such need). The above fully confirms the indisputable existence of the fact of a close relationship between economic interest and the need to apply the selected levers of influence, as concepts that have a close legal nature, but cannot be identified.

These concepts can exist and, accordingly, be considered as:

a) those that are in a close relationship and exist at the same time;
b) those that are in a close relationship, but do not encourage the use of levers to achieve economic consequences;
c) those that are in a close relationship, where the need itself generates interest, the need itself produces the emergence of economic interest and the appropriate application of those levers of influence that should ensure economic interest.

The next relevant question is whether we can say that the conscious understanding of the need gives rise to the emergence of economic interest? We do not see an unequivocal answer to this question. After all, the realization of the need (need) may not cause economic interest as a result of the special (specific) state of the subject's status and his social-psychological, moral-ethical, and individual qualities. The above may be determined both by the presence of certain personal non-property rights of a natural person - an entrepreneur and by personal non-property rights of a legal entity - a business entity, which is reflected in Article 94 of the Civil Code of Ukraine (hereinafter - the Civil Code of Ukraine) (Law 435-IV, 2003).

The opinion expressed by us brings us closer to the understanding of the separation of economic interest from a broader, but not emphasized, a concept such as "economic interest". In this way, economic interest can be underlying as a form of expression. This confirms the opinion of A.I. Ekimov, who says about interest as "a form of expression, subjective perception of interest... interest can exist without being expressed in interest, but in this case, it does not play the role of a conscious motivating factor" (Ekimov, 1984).

So, as we proved above, the socioeconomic position of the business entity, and the stability of its economic condition affects the realization of economic interest and forms a complex of legally significant actions that precede the embodiment of economic interest in the objective consequences of its realization. This not only determines a certain legal composition of objective facts characterizing the achievement of

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economic interest but also objectively affects the very essence of the conflict of interests when determining motivational decisions of a wide range of their origin. Such decisions may be based on the legal nature of the specifics of certain types of contracts and be the basis of concluded agreements. Also, such decisions can be based on the peculiarities of the organizational and legal form of the business entity and be taken by the relevant management apparatus within the existing powers.

As we can see, the position expressed by us cannot always determine the economic and legal nature of the proximity of economic interest and conflict of interests as a possible derived legal state.

As D.V. Tarikanov rightly claims, the conflict of interests should be considered as a special case of a more general phenomenon - the problem of inconsistency of legal form and material content, which manifests itself in the fact that legal personality is split between several carriers due to the inability of one of them to form a will from an objective or subjective reason (Tarikanov, 2006). In judicial practice, there are also conceptually correct attempts to define a conflict of interest, although through the definition of an agreement with an interest.

At the same time, assessing the legal nature of the conflict of interests in the context of ensuring the existing norms of different branches, it should be noted that the subject and method of legal regulation are different depending on branch affiliation. Such features are determined by codified laws related to the sphere of both private and public law. If one analyzes the norms contained in the civil, economic, labor, administrative, and criminal codifications, as well as the Code of Ukraine on bankruptcy procedures, one should note the relationship and mutual influence of the norms of inter-sectoral direction and the objective influence of convergent processes on the legislative initiative.

Conclusions

1. The conflict of interests was analyzed from the point of view of economic science, sociology, and psychology, and it was deduced that today there is no single, universally accepted definition of the category "interest", since each science considers the latter through the prism of its own subject, object, methodology, goals, and tasks.
2. It is summarized that the socio-economic situation of the business entity and the stability of its economic condition affects the realization of economic interest and forms a complex of legally significant actions that precede the embodiment of economic interest in the objective consequences of its realization, which determines a certain legal composition of the object objective facts that characterize the achievement of economic interest and objectively affect the very essence of the conflict of interests when determining motivational decisions of a wide range of their origin.
3. It is summarized that the conflict of interests can be characterized as a certain psychological state of the subject who "belongs" to such an interest for its further implementation in the emergence, change, or termination of certain legal relations, as a confirmation of the existence of a legal fact.

As for further directions of research, it is important to analyze the foreign experience of legal regulation of conflict of interests in the field of business.

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