LEGAL GROUNDS FOR FUNCTIONING ASSOCIATION OF CO-OWNERS AN APARTMENT BUILDING

Abstract. The article was prepared with the aim of systematically understanding the basis of the functioning of the association of co-owners of an apartment building. The author determines three groups of circumstances that form such grounds. The first group is the norms of positive law; the second - the principles of building and functioning of associations; the third - organizational institutes of associations.

The listed groups of grounds are in an integrative interaction, form a specific management system and provide the association with integrity, diversity of internal and external connections, historicity and self-development. The reification of this system takes place in the subjects of management of an apartment building; objects of management; controlling influence; reverse ties.

The purpose of the article is to obtain new knowledge about administrative and legal relations that arise as a result of the creation, functioning, reorganization and liquidation of associations of co-owners of an apartment building on the above grounds.

Given the above, the main subject of the study is: a) the subject of management of an apartment building; b) the object of management; c) management influence; d) feedback.

The research methodology is based on the interpretation of theoretical achievements in the field of social management. Specifically, it is based on the concept of dividing social management into state management, where the subject is the state in the form of relevant structures, and public management, where the subjects are non-state entities.

Understanding the correlation of this concept with the results of empirical studies of the activity of condominiums proved the presence of a specific separate
part in public administration - management carried out by bodies of territorial self-organization of the population, as well as the direct involvement of condominiums in such bodies.

Establishing the legal nature of condominiums took a special place in the work. In this regard, it is proved that the genetic, legal, ontological and epistemological properties of associations have a self-organizing and self-regulating (synergistic) nature.

On the basis of the analysis of the functions of condominiums, the direct bearers of competences regarding the management of an apartment building, which function at three organizational and legal levels, are determined. At the first level, management is carried out directly by the association of co-owners of an apartment building through decision-making by general meetings; on the second - by the board of the association and the audit commission; on the third - by the bodies (persons) to which the relevant management functions are delegated.

The concept of an object of condominium management, which is represented by a system of legal relations a) between owners (co-owners) of the relevant premises, b) tenants, lessees and other users of objects belonging to the multi-apartment building system, c) persons who are involved in ensuring livelihoods, is revealed multi-apartment building.

Separate parts of the article are devoted to the study of managerial influence and feedback in the field of management of an apartment building.

**Keywords:** board of condominiums; legal nature of condominiums; management of an apartment building; meetings of condominium association members; owners of the premises of an apartment building; public administration; territorial self-organization of the population.

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**Анотація.** Стаття підготовлена з метою системного осмислення підстав функціонування об'єднання співвласників багатоквартирного будинку. Автор детермінує три групи обставин, які утворюють такі підстави. Перша група - це норми позитивного права; друга - принципи побудови і функціонування об'єднань; третя - організаційні інститути об'єднань.

Перелічені групи підстав знаходяться в інтеграційній взаємодії, утворюють специфічну управленську систему і забезпечують об'єднанню цілісність, різноманіття внутрішніх і зовнішніх зв'язків, історичність і саморозвиток. Реіфікація
цієї системи відбувається у суб’єктах управління багатоквартирним будинком; об’єктах управління; керуючому впливі; зворотних зав'язках.

Метою статті є отримання нових знань щодо адміністративно-правових відносин, які виникають внаслідок створення, функціонування, реорганізації і ліквідації об’єднань співвласників багатоквартирного будинку на вищезазначених підставах.

З огляду на зазначене, безпосередній предмет дослідження утворили: а) суб’єкт управління багатоквартирним будинком; б) об’єкт управління; в) керуючий вплив; г) зворотні зав’язки.

Методологія дослідження базується на інтерпретації теоретичних здобутків в сфері соціального управління, зокрема на концепції його поділу на державне (суб’єктом виступає держава в особі відповідних структур), і громадське (суб’єктами виступають недержавні утворення) управління.

Осмислення її кореляції з результатами емпіричних досліджень діяльності ОСББ, довело наявність у громадському управлінні специфічної окремої частки — управління, що здійснюється органами територіальної самоорганізації населення, а також пряму причетність ОСББ до таких органів.

Окреме місце у роботі зайняло встановлення правової природи ОСББ. З цього приводу доведено, що генетичні, правові, онтологічні і гносеологічні властивості об’єднань мають самоорганізуючу і саморегулюючу (синергетичну) природу.

На підставі аналізу функцій ОСББ детерміновані безпосередні носії компетенцій щодо управління багатоквартирним будинком, які функціонують на трьох організаційно-правових рівнях. На першому рівні управління здійснюється безпосередньо об’єднаннями співвласників багатоквартирного будинку шляхом прийняття рішень загальними зборами; на другому — правлінням об’єднання і ревізійною комісією; на третьому — органами (особами) яким відповідні управлінські функції делеговані.

Розкрито поняття об’єкту управління ОСББ, який представлений системою правовідносин а) між власниками (співвласниками) відповідних приміщень, б) орендарями, наймачами та іншими користувачами об’єктя, які належать до системи багатоквартирного будинку, в) особами, які залучаються для забезпечення життєдіяльності багатоквартирного будинку.

Окремі частки статті присвячені дослідженню керуючого впливу і зворотних зв’язків в сфері управління багатоквартирним будинком.

Ключові слова: власники приміщень багатоквартирного будинку, громадське управління, збори членів ОСББ, правління ОСББ, правова природа ОСББ, територіальна samoorganizatsiya населення, управління багатоквартирним будинком.

The problems of the article are the immanent part of the discourse on the creation, functioning and liquidation of associations of owners of residential and
non-residential premises of an apartment building (condominiums). In its context, the subject of the study was, firstly, the question of the belonging of condominiums to the bodies of self-organization of the population. After all, the relevant Laws of Ukraine "On the bodies of self-organization of the population" (2001) and "On the association of co-owners of an apartment building" (2001) do not contain indications of their involvement in the system of bodies of self-organization of the population; secondly, on the legal identification of associations that are considered, in one case, independent organizational and legal components of the local self-government system, in the other - a specific form of local self-government; thirdly, on the legal certainty of the ratio of the available associations a) the features of a public authority and b) the features of a public organization. Thus, their powers arise in accordance with Art. 25 of the Law of Ukraine "On the association of co-owners of an apartment building," and the activities are carried out exclusively on a voluntary basis (Article 6 of the same Law); fourthly, on the theoretical and normative provision of organizational subordination within the boundaries of condominiums of the competencies of legal entities and individuals who, by their will, became subjects of associations of co-owners of an apartment building.

These problems are concentrated in the phenomenon of the legal status of condominiums, whose share of relations belong to the administrative and legal segment of the management space and became the subject of research interest in this publication.

**Analysis of sources and recent research.** A. Bilan, M. Voynovskiyi, M. Yeremenko, G. Moskalyuk, O. Fenchuk and other experts highlighted the actual aspects of the creation, functioning and liquidation of associations of owners of residential and non-residential premises of an apartment building in their works.

Thus, the possibilities of condominiums to solve social issues within their jurisdiction regarding the interaction of associations with services for children, family and youth, health care institutions regarding the provision of educational services were investigated (Bilan A. Strategic directions of socio-economic development of the educational sphere, 2023); the mechanisms of the functioning of condominiums, which are based on the combination of elements of direct and representative democracy and the distribution of powers (M. Voynovskiyi. Strengthening the institutional capacity of the local self-government system through the development of associations of co-owners of apartment buildings, 2019); peculiarities of the formation and functioning of self-organization bodies of the population regarding the community's protection of its rights (Yeremenko M. Bodies of self-organization of the population as a modern form of community cohesion of Ukrainian citizens, 2011); problematic issues of managing the common property of apartment buildings through the creation of an association of co-owners of apartment buildings (G. Moskalyuk. Problematic issues of managing the common property of an apartment building through condominiums, 2023); approaches to the formation
of housing policy in European countries (Fenchuk O. Housing policy of European countries, 2023) and others.

At the same time, the problems of the organization and activities of associations of owners of residential and non-residential premises of an apartment building did not find a place adequate to its social significance in scientific investigations in the field of administrative and legal segment of the administrative space.

The purpose of the study is to obtain new knowledge about management relations that arise as a result of the creation, functioning, reorganization and liquidation of such associations and their statutory bodies.

Presentation of the main material. Associations of co-owners of multi-apartment buildings (hereinafter - condominiums) are formed for the purpose of effective use of housing stock and ensuring the rights of co-owners of premises in accordance with the legislation of Ukraine[1].

The idea of their creation arose in the 1990s of the last century in the context of the transition to a market economy and housing privatization. The first initiatives regarding the regulatory regulation of the relevant relations belong to the same period.

One of the debatable issues that arose in the process of implementing theoretical concepts into the practical plane was the idea to cover all multi-apartment buildings in the country with the organizational outline of condominiums. But they did not receive the support of specialists and disappeared from the agenda. However, the idea itself remained in "dormant mode" and is permanently activated by various actors at various social and organizational levels.

Even now, when the issue of repairing multi-apartment buildings damaged under martial law is pressing, it has reached the level of public discussions (https://proosbb.info/node/1013).

In our opinion, the search for objectively substantiated hypotheses on this issue is correlated with the systematic understanding of the grounds for the functioning of associations of co-owners of multi-apartment buildings.

The analysis of the current legislation, the draft Law of Ukraine "On the Basic Principles of Housing Policy" (https://mtu.gov.ua/news/35482.html), as well as the judgments of representatives of the expert community and the public, allowed us to come to the conclusion that such grounds are divided into three groups. The first group is the norms of positive law; the second - the principles of building and functioning of associations; the third - organizational institutes of associations.

The listed groups of grounds are in an integrative interaction, form a specific management system and provide the association with integrity, a variety of internal and external connections, historicity and self-development. The reification of this system takes place in the subjects of management of an apartment building; objects of management; controlling influence; reverse ties.
In administrative and legal sources, management refers to the power, purposeful, organizing, imperative influence of the management subject on the management object, in order to bring the latter to the desired state for the subject.

From this definition, the presence of four main organizational components in management systems is deduced: 1) the subject of management, that is, the source of managerial influence. The one who manages, performs leadership functions and influences the object in order to transfer it to a new state; 2) object of management – the addressee of management influence, which functions in accordance with the will of the subject of management; 3) managerial influence, i.e. a complex of powerful, purposeful, organizing and imperative commands, measures, methods, methods by means of which influence is exerted on the object and real changes are achieved in it; 4) feedback links, i.e. information channels adapted to transfer data to the subject about the effectiveness of management influence and changes in the object.

Understanding the management of an apartment building is based on the doctrine, concepts, concepts and concepts of social management. Social management (which by its genetics is the management of an apartment building) is traditionally structured: a) into state management, where the subject is the state in the form of relevant structures; b) public administration, where the subjects are non-state entities.

As a special type of public administration, the administration carried out by self-organization bodies of the population stands out. Subjects, objects, forms, methods, tasks and principles, as well as other legal characteristics of this administration are defined by the Law of Ukraine "On Bodies of Self-Organization of the Population" [2].

The law establishes that bodies of self-organization of the population are representative bodies created by residents who legally live on the territory of a village, town, city or their parts, to solve tasks provided for by law. They are created on a territorial basis.

The territory within which the body of self-organization of the population operates can be a part of the territory of a village, town, city, district within the city, within which the residents who elected this body live, and in that case the territory of a house or several houses. The Law directly includes house, street, quarter committees, micro district committees, district committees in cities, village, settlement committees to such structures.

It should be noted that the current Ukrainian legislation does not contain a normative fixation of the concept of "territorial self-organization of the population". Adopted in 1990, the Law "On Local Councils of People's Deputies and Local and Regional Self-Government" (lost its validity on the basis of Law No. 280/97-VR dated 05.21.97, VVR, 1997, No. 24, Article 170) in the first edition defined the status bodies of "territorial public self-government", which included committees and
councils of micro districts, residential complexes, house, street, quarter, precinct, settlement, village committees and other bodies.

In subsequent revisions, the terms "territorial self-organization of citizens" as well as "forms of territorial self-organization of citizens" and "bodies of territorial self-organization of citizens" appear as parts of the local self-government system.

Further improvement of the regulation of self-organization of the population is connected with the laws "On local self-government in Ukraine" (1997) and "On bodies of self-organization of the population" (2001). Let us emphasize that these acts refer to the bodies of the population, not citizens.

Thus, Article 14 of the Law of Ukraine "On Local Self-Government in Ukraine" establishes that village, village, city, district councils in the city (if they are created) may allow, on the initiative of residents, to create house, street, neighborhood and other bodies of self-organization of the population and grant their part of their own competence, finances, property.

Article 3 of the Law of Ukraine "On Bodies of Self-Organization of the Population" defined: a) that such bodies are house, street, neighborhood committees, micro district committees, district committees in cities, village and settlement committees, and b) that their tasks are to create conditions for the participation of residents in solving issues of local importance; satisfaction of social, cultural, household and other needs of residents by assisting in providing them with appropriate services; participation in the implementation of socio-economic, cultural development of the relevant territory, other local programs.

A separate place in the field of territorial self-organization of the population is occupied by the Law of Ukraine of 2002 "On Association of Co-Owners of Apartment Buildings". The law does not fix the self-organizing nature of condominiums (but does not directly deny this) and does not apply the term "self-organization" in relation to the creation, functioning, liquidation of these associations[3].

At the same time, it contains a number of provisions relating to the status of the subject of management of an apartment building. According to its norms, condominiums, firstly, can be created only by owners of apartments and non-residential premises in an apartment building (apartment buildings); secondly, the constituent assembly is convened to create the association; thirdly, the initiator of the constituent assembly is an initiative group consisting of at least three owners of apartments or non-residential premises; fourthly, the constituent assembly makes a decision to create an association, determine the person authorized to sign and submit documents for state registration of the association as a legal entity, and approve its charter; fifth, the first members of the board and the chairman of the board are elected by the decision of the constituent assembly; sixth, the change and recall of members and the chairman of the board are carried out in accordance with the procedure provided for by the association's charter; seventh, the decision of the
The constituent assembly is formalized in the protocol; eighth, the initiator of the constituent assembly provides each co-owner with a notice of the decisions taken by the constituent assembly; ninth, the governing bodies of the association are: a) the general meeting of the association, b) the board of the association, c) the audit commission of the association; tenth, the highest governing body of the association is the general meeting; eleventh, the executive body of the association is the board, which is accountable to the general assembly; twelfth, the management of the multi-apartment building is carried out by the association through its management bodies; thirteenth, according to the decision of the general meeting, the functions of managing an apartment building can be transferred (in whole or in part) to a manager or an association; fourteenth, the association independently determines the procedure for managing an apartment building and can change it in accordance with the procedure established by legislation and the association's charter.

The above characteristics of a condominium are correlated with its functions, which ensure: realization of the rights of co-owners to own and use the joint property of co-owners; proper maintenance of the apartment building and the surrounding area; assistance to co-owners in obtaining housing and communal services and other services of appropriate quality; their fulfillment of their obligations related to the activities of the association; management of an apartment building.

The analysis of the listed legal properties of condominiums convincingly testifies to their self-organizing and self-regulating (synergistic) nature, because already Art. 4 of the Law of Ukraine "On the association of co-owners of an apartment building" regulates an alternative regarding their creation: "In ... an apartment building ... an association can be created." Such a linguistic construction allows us to reasonably recognize that from the legislator's point of view, the creation of a condominium is not mandatory for the residents of the corresponding building. Article 6 gives the right to create condominiums to owners of apartments and non-residential premises: "An association can be created only by owners of apartments and non-residential premises in an apartment building (apartment buildings)." Therefore, the creation of condominiums is a matter for the owners and depends solely on their wishes, because the law does not establish any conditions regarding the obligation to organize condominiums.

The well-known Ukrainian search platform "LIGA 360" in response to an inquiry regarding the presence of the term "territorial self-organization of the population" in the legislation offered the following understanding of it, generated on the basis of the practice of using terms, words and phrases in Ukrainian jurisprudence: "... territorial self-organization of citizens is the activity of citizens, united by common interests regarding the resolution of local life issues directly or through the bodies they form within the limits of the Constitution of Ukraine and the laws of Ukraine. "(https://ips.ligazakon.net/document/TS002215?q)."
In view of the above, it is appropriate to turn to the general philosophical concept of "self-organization". As a rule, it is understood as an active process of formation, reproduction, preservation or improvement of the organization of a complex dynamic system, which ensures its normal existence and functioning as a whole entity. Self-organization is the immanent ability of a dynamic system to independently maintain, reproduce, or improve the level of its organization when the external or internal conditions of its existence and functioning change, aimed at increasing its stability, preservation of integrity, ensuring effective actions or development (Philosophical encyclopedic dictionary. K.: Abris, 2002. 744 p. 563).

The extrapolation of the philosophical vision of the phenomenon of "self-organization" to the properties of condominiums formulated above also confirms the synergistic nature of these associations.

In addition, it makes sense to refer to the discussion materials in the Verkhovna Rada of Ukraine of draft law No. 6319 dated 18.11.2021 "On Amendments to the Law of Ukraine "On Bodies of Self-Organization of the Population" regarding the improvement of the order of organization, activity and termination of the body of self-organization of the population." In particular, for the expert assessment of this document by the Center for Political and Legal Reforms. The center's experts concluded that it is appropriate to include associations of co-owners of apartment buildings in the system of self-organization bodies of the population (along with house committees and committees of residential complexes) (https://pravo.org.ua/blogs).

Case studies show that condominiums can and do solve some social issues within their jurisdiction. Thus, the interaction of associations with services for children, family and youth affairs, health care institutions regarding the provision of educational services was recorded and investigated [4, p.147, 159].

Thus, there are enough reasons to believe that the association of co-owners of an apartment building has a synergistic nature and is an organic part of the system of self-organization bodies of the population.

According to statistics authorities (https://www.ukrstat.gov.ua), as of January 1, 2023, the number of associations of co-owners of apartment buildings (hereinafter - condominiums) in Ukraine amounted to 38,606 associations, or approximately 20% of all apartment buildings. For comparison, we note that this indicator exceeds the data of the same period in 2022 by 911 associations (an increase of 2.4%).

According to experts, this is a positive trend (as of January 1, 2013, 15,018 associations were registered), which indicates the trust of homeowners in this organizational and legal form of managing an apartment building.

Sociological studies of the population regarding the creation and functioning of condominiums showed the following: 48% of respondents would like to create a condominium in their house against 33%; 43% of people stop the passivity of the residents of the house and unfriendly atmosphere; 24% – poor technical condition.
of the house; 22% – a small number of apartments. On the question of what can motivate the creation of condominiums, 50% of respondents noted the improvement of the technical condition of the building; 44% – improving the quality of housing and communal services; 29% – the possibility of using funds for your own house; 27% hope for a decrease in utility costs; 25% – expect effective energy-saving measures; 19% – count on more transparent management of the house [5, p.125].

According to the Law of Ukraine "On Association of Co-Owners of an Apartment Building", the management of an apartment building at the level of territorial self-organization of the population has a two-level structure. First, management functions are carried out by the association through its bodies; secondly, they can be transferred to: a) the manager, b) the association.

The law recognizes its statutory bodies as the governing bodies of the condominium. Articles 10 "Statutory bodies of the association" and 12 "Management of an apartment building" directly indicate their identity. In its text, Article 10 clearly states that the association's governing bodies are: a) the association's general meeting, b) the association's board, c) the association's audit commission. Article 12 established that the management of the multi-apartment building is carried out by the association through its management bodies.

Association management bodies (or statutory bodies) have a hierarchical structure. A higher organ is distinguished in their system. General meetings have this status. The order of their holding is determined at the legislative level, their convening is the competence of: a) the board, b) the initiative group. Such a group consists of at least three owners of apartments or non-residential premises. General meetings are convened at least once a year.

The executive body of the association is the board. The board is accountable to the general meeting. It manages the current activities of the association and has the right to make decisions, which are defined by the association's charter. The procedure for electing and recalling members of the board, their quantitative composition and terms of election are established by the general meeting.

In order to control the financial and economic activities of the board of the association, at the general meeting, an audit commission (auditor) is elected from among the co-owners or a decision is made to engage an auditor. The procedure of the audit commission and its quantitative composition are approved by the general meeting.

If necessary, determined by the general meeting, the management functions of the multi-apartment building can be transferred to the manager. The relationship between the condominium and the manager is regulated by the contract. The law clearly states that the terms of such a contract must correspond to the terms of a standard contract approved by the central executive body, which ensures the formation of state housing policy and policy in the field of housing and communal services.
Thus, the subject (subjects) of managing an apartment building should be recognized as: a) the association itself as a legal entity; b) statutory bodies of condominiums; c) bodies (persons) to which relevant management functions are delegated[6, p.77].

The next issue in the field of management of an apartment building is the establishment of the object of management, that is, the addressee (or addressees) of management influence. In our opinion, such addressees (or object of management) are relations: a) between owners (co-owners) of the relevant premises, b) tenants, lessees and other users of facilities belonging to the multi-apartment building system, c) persons who are involved to ensure the livelihood of the multi-apartment building. Such relations are regulated by relevant documents and have the status of legal relations or legal relations. They can be classified according to different criteria. For example, according to the status of their participants; by terms of validity; according to the specifics of the parties' liability; by the forms of expression of the norms that regulate them; hierarchy; features of emergence and termination, etc.

Controlling influence, i.e. a complex of powerful, purposeful, organizing and imperative commands, measures, techniques, methods by means of which the subject exerts influence on the object and achieves real changes in it, is carried out by making legally significant decisions. These are, as a rule, decisions on the formation of management bodies and determination of conditions and amounts of fees for their activities; about receipts and expenses of association funds; the procedure for using common property in accordance with the statute of the association; on concluding contracts; payment procedure, list and amounts of contributions and payments of co-owners, including deductions to reserve and repair funds; fulfillment of statutory tasks; economic support of the association's activities in accordance with the procedure established by law; control over timely payment of contributions and payments; protection of the rights of co-owners in courts, state authorities, local self-government bodies, enterprises, institutions and organizations regardless of the form of ownership; use of auxiliary premises in an apartment building for the needs of association management bodies and others.

Feedback, i.e. data on the effectiveness of management influence and changes in the object reaches the subject of management in the form of information on the implementation of decisions, conclusions and recommendations of the audit commission, appeals (suggestions, comments, statements, petitions, complaints) from participants legal relations formed during the management of an apartment building and other persons.

Conclusions. Thus, firstly, the grounds for the functioning of associations of co-owners of apartment buildings are divided into three groups: a) norms of positive law; b) principles of building and functioning of associations; c) organizational institutes of associations. Secondly, the functioning of associations is characterized by a synergistic legal nature. Thirdly, it is carried out on the basis of laws and
bylaws. Fourthly, the management of an apartment building is an organic part of the territorial self-organization of the population. Fifth, in the segment of territorial self-organization of the population, such management is implemented at three organizational and legal levels: a) directly by the association of co-owners of an apartment building through decision-making by general meetings, b) by the board of the association of co-owners of an apartment building and the audit commission, in ) by bodies (persons) to which the relevant management functions are delegated. Sixth, the management bodies of the association have a hierarchical structure with a normatively defined higher management body, which is the general assembly of co-owners of an apartment building.

References:
