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LEGAL PROBLEMS IN THE CLASSIFICATION OF LEGAL ENTITIES OF PUBLIC LAW: A COMPARATIVE STUDY

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Abstract. Since the institution of public legal entities plays an important role in contemporary society, both in the state and in the economic development of countries, there is a need to clear up its legal status and specifics. The lack of a clear, universally accepted classification criterion for distinguishing between legal entities under public law and legal entities under private law leads to difficulties in determining their legal status and resolving civil disputes involving public law entities. An evaluation of the current theoretical provisions regarding legal entities is required for the development of their further improvement, as well as for their adaptation to market relations and free entrepreneurship. This study aims to identify: the specific features of legal entities in public law; the main peculiarities that can be used to distinguish legal entities established under public law from legal entities established under private law; the criteria underlying the selection of legal entities; as well as the status of research on the institution of public law legal entities in France, Germany and Ukraine. The result of this scientific paper is elucidation of the significance of the classification of legal entities under public law as participants in civil legal relations. This research highlights the importance of clearly defining and consolidating legal entities under public law in regulatory documents to streamline litigation processes, using the notion of their purpose as a comprehensive classification criterion and drawing on the benefits observed in the exhaustive lists of public-law entities in France and Germany.

Keywords: public legal entities, state institutions, classification of legal entities, legal doctrine, territorial communities, state.

Introduction

As the present issue has not been sufficiently studied, it is necessary to draw attention to the experience of other European countries in dealing with the classification of public law legal entities to consider the legal doctrine and to identify a more appropriate criterion that will form the basis for dividing legal entities into types. The category of a legal entity occupies a prominent place in civil law and in the legal doctrine in general (Andreev, 2018). There are many views on the concept, legal nature and content of a legal entity that are enshrined in the laws developed by states, in social norms, as well as in legal and political systems. Under the conditions of a modern market

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economy, a legal entity is an active participant in civil law relations (Chochowski, 2019). It has therefore become necessary to develop a new approach to defining the nature of a legal entity and dividing it into types.

Particular attention should be paid to the category of a legal entity under public law. Determining the place and role of a legal entity under public law is relevant today, since in both Ukrainian and Western European literature there is an insufficient number of scientific papers which fully and reasonably define the legal status of a legal entity under public law. The purpose of this study is therefore to identify the characteristics that legal entities under public law have, and to clearly distinguish them from legal entities under private law. There will also be a discussion of what subjects of civil law are considered to be legal entities under public law in Ukraine, France and Germany. In order to gain a better understanding, examples of representatives of public law and areas where legal entities under public law play the most significant role will be given. Furthermore, the purpose of the study is to define the specifics of the liability of legal entities under public law as participants in civil relations. The object of the study is the investigation and analysis of a legal entity of public law as a category of civil law. The relevance of the problem of defining the concept and legal status of legal entities under public law is stipulated by their strategic significance in state development, since it is they who direct their activities to ensure comfortable living conditions for the population. The literature on this issue does not provide an unambiguous solution to the issue of the classification of legal entities. Nor does it address the definition of the criterion that should be the basis of this division – legal status – which causes difficulties in practice. It is therefore necessary to develop new approaches to addressing this issue and to review and investigate the experience of France and Germany.

This study is based on theoretical methods, chiefly the study of the scientific literature of global authors and regulatory legal documents. In particular, the civil codes of Ukraine, France and Germany and the charters of organisations, partnerships and enterprises were considered in order to understand the status of the investigated problem and the gaps that need to be addressed. Among the basic theoretical methods that were used, the most significant were analysis, comparison and modelling. These techniques enabled the characterisation of: the conceptual and terminological apparatus; the peculiarities of determining the essence of legal entities under public law in Western European countries and in Ukraine; and the features that help to distinguish legal entities under public law from private ones. Synthesis was used to summarise the state of the problem in Ukraine, France and Germany. Equally important was the systemic method, which was used to conduct a full analysis of the terminology of the topic. Finally, the method of historical analysis and the dialectic method were used when examining regulatory legal acts and statutory documents which reflect how the status of public law legal entities has changed in different countries.

Special methods were also used, including the following:
1) the method of legal interpretation, which was employed when revealing the content of the regulatory legal and statutory documents that stipulate the status of a legal entity under public law as a participant in civil legal relations and determine its place in the system of civil law;
2) the method of legal prediction, by which it was possible to predict the consequences of implementing the experience of France and Germany in regulating the status of legal entities under public law in the civil law of Ukraine.

The result of this scientific paper is the elucidation of the significance of the classification of legal entities under public law as participants in civil legal relations. The theoretical significance of the paper lies in the fact that a clear distinction between the types of legal entities enables a deeper understanding of the essence of the category of a legal entity under public law. Thus, it will be easy for a public law legal entity to identify special features, the specifics of liability, the extent of rights, as well as the differences from a legal entity of private law. The practical significance of this work lies in facilitating the determination of the legal status of legal entities, and in resolving civil disputes that arise with the participation of a legal entity under public law in an unproblematic and comprehensive manner.

1. Theoretical Background

There are many different views of scientists regarding the definition of the principal criterion that should be the basis of division in this area, as well as regarding the justification of the need for such a classification. Scholars from all over the world define several classification criteria: according to the nature of the legal act which is the

basis for the formation of a legal entity; according to the method of formation; according to the legal personality; and according to the specific features of the legal systems of different countries (Joy, 2018; Buell, 2018). The most common classification of legal entities, which is used in Ukraine and in many other countries of the world, is their division into two large groups: 1) legal entities under public law; and 2) legal entities under private law (Gahdoun, 2018; Masalab, 2020). Article 81 part 2 of The Civil Code of Ukraine (2003) stipulates that the criterion for the classification of legal entities is the order of their creation. There are differing views among scholars on this issue. Some believe that enshrining a single classification criterion is not sufficient to fully understand the nature of legal entities' activity, legal regime and status (Lerner, 2017). Scholars reinforce this opinion by pointing to the fact that legal entities of private law, as well as legal entities of public law, can be established by administrative means – i.e., by the state or local authorities (Hannigan, 2016). It is argued that such a criterion for dividing legal entities is unable to clarify the difference between the two types of legal entities comprehensively and reasonably (Viagem, 2019). Some note that it is not necessary to define a specific criterion because legal entities under public and private law have much in common (Oglezneva, 2019).

There are three approaches to defining the type of legal entity in Western literature:
1) it is determined by which regulations the emergence of a legal entity is governed by;
2) it is determined by whether the entity of public law to be created belongs to an organisation established by public authorities;
3) it is determined by what purposes a legal entity of public law has and what functions it performs (Arimbi, 2020).

The regulatory legal framework of this study covers legal acts that enshrine the main attributes of a legal entity under public law as a participant in civil relations, and the status and scope of its legal personality. Thus, the authors analysed such legal documents as the French Constitution (Constitution du 4 octobre 1958, 2008), the Civil Code of Ukraine (2003), the French Civil Code (1804), the German Civil Code (1900), the Ukrainian Law on Public Private Partnership (2010), the Charter of Ukrposhta (2021), the Charter of Ukrzaliznytsia (2015), the Charter of Ukroboronprom (2011) and the German Act Against Restraints of Competition (1998). The papers of many academics were also analysed. Thus, Abuselidze and Katamadze (2018) underlined the importance of the existence of the institute of legal entities, including legal entities under public law, as participants in civil legal relations. Akhundov (2020), Ashtaeva et al. (2015) and Matsopoulou (2002) indicated that all legal entities, including legal entities under public law, are civilly liable for breaches of statutory provisions, which have rather specific characteristics. Andreev (2018) and Joy (2018) explored in their works the structure of legal entities of public law, which is important in understanding the essence of the legal nature of their activities. Barlaug and Atle Gulla (2020) noted that there should be a partnership between legal entities of public and private law, as it helps to achieve goals in a certain field of activity. Chochowski (2019) explored the concept of the term *legal entities of public law* and explained the reasons for the origin and spread of this institution. De Lamy and Segonds (2018) explained the specific features of the liability of legal entities under public law in France. Dluzik (2019) examined the types of legal entities of public law in Germany, characterising them and identifying their most important features. Gahdoun (2018) analysed the ramified system of legal entities under public law in France as participants in civil relations.

Grundmann and Rathner (2021) and Schild and Schultz (2017) determined that the State Bank of Germany is also a legal entity under public law, as this institution has inherently public (state) functions. Hannigan (2016) emphasised the need for close cooperation between groups of legal entities, as he observed that this is the only way to achieve maximum efficiency in any area of activity. Kirste (2017) examined the types of German corporations as representatives of legal entities under public law, along with their specificities, essence and place in the ramified system of legal entities. Lerner (2017) analysed the doctrine of the liability of legal entities under public law, which is widely used in German civil law. Masalab (2020) examined an important civil law issue: the ability for self-regulatory organisations to act as representatives of legal entities under public law. Oglezneva (2019) drew attention to the fact that in modern national law the status of the state as a subject of civil law is not yet fully consistent with the equality of participants in these relations, which is a feature of the method of civil law regulation. Quard (2018) analysed the liability of organisations as one of the main subjects of civil law, paying particular attention to public organisations, the legal status of which currently remains controversial. Saenger (2020) took a more in-depth look at such aspects as forms of public companies, organisations, corporations, foundations, and the need for partnerships between representatives of legal entities. Skoropysova (2021) analysed

the peculiarities that legal entities under public law possess in Ukraine, considering their types, the elements that make up entities, as well as the responsibility that can be incurred by legal entities under public law. Tjio (2021) considered legal entities under public law and their impact on the financial sector, in particular analysing how public entities contribute to the social and economic situation of the country. Finally, Viagem (2019) analysed the causes and consequences of violations of legal provisions by legal entities of public law.

Distinguishing between public law legal entities and private law legal entities is imperative due to a number of significant aspects. Firstly, both types of legal entities pursue different objectives and purposes, where public law legal entities focus on public functions and securing the interests of the state or local government while private law legal entities aim to satisfy individual or corporate interests and promote entrepreneurial activity. Secondly, they are subject to different legal regulators: public law legal entities are governed by public law, which encompasses relations between the state, its institutions, and citizens; while private law legal entities are subject to private law, which establishes the rights and obligations of parties in relation with one another. The third aspect is the difference in sources of funding, as public law legal entities typically receive funding from state or local budgets, whereas private law legal entities meet their financial needs through their own funds, loans, and investments (Olkina, 2014; Karnitis et al., 2022). The fourth aspect is the distinction in management structures. Public law legal entities are characterised by a specific management structure that involves subordination to higher state or local authorities, whereas private law legal entities have a more autonomous management structure, dependent on the owner or shareholders of the company. The fifth aspect is the differences in liability regulation. Public law legal entities are subject to special regulation regarding liability for violations of legislation and administrative and criminal offenses (Kanatay et al., 2019). In the context of private law legal entities, liability is determined according to the norms of civil, commercial, and other branches of law. Finally, public and private law legal entities have different procedures for their establishment and termination. The process of creating and terminating public law legal entities is carried out under special rules, often associated with state regulation and control, while the process of creating and terminating private law legal entities follows other rules, with less state intervention (Yurkevich, 2016).

Differentiating between public and private law legal entities allows for the optimization of the regulation of relations between them, ensures the proper execution of their functions in society, and promotes the protection of the rights and interests of citizens, the state, and other subjects of legal relations. Adequate delineation is a key element for the stability and effectiveness of a legal system that caters to the needs of various sectors of society (Chochowski, 2019; Kostruba et al., 2020).

2. The definition of the concept of legal entities under public law in Ukrainian legislation

The literature on the subject of this study contains a variety of scholars' opinions on the characteristics and features of such a specific institute of civil law as a legal entity of public law. First and foremost, it should be noted that a legal entity under public law has all of the attributes of a legal entity (2018). The first characteristic feature is property separateness. This means that a legal entity owns the property belonging to it, which it disposes of by right of ownership at its own will and within the framework of the regulatory legal acts (2019). The second feature that characterises entities is a clearly established structure that is inseparable and singular. The structure of an organisation/corporation is usually set out in its founding documents (the articles of association or a memorandum of association). Even if a legal entity has branches or representative offices, a clear organisational structure remains, as branches and representative offices are not independent subjects of civil law. Instead, their management is entrusted to managers appointed by the legal entity itself, who act on behalf of and solely in the interests of the entity, but in no way as an independent branch or representative office (Andreev, 2018; Kostruba, 2021). The third specific characteristic of this institution is independent property liability. This means that a legal entity under public law uses only its own assets, being responsible for actions that violate the law. It is only to this entity that creditors can assert their claims (Akhundov, 2020). The fourth key feature is the ability to act in civil law on one's own behalf. Any legal entity must have a name, indicating its organisational and legal form and the nature of its activities, along with its stamps, seals and signatures (Barlaug and Atle Gulla, 2020).

By analysing the regulatory legal acts and the studies of academics, it can be concluded that, apart from its general characteristics, a legal entity of public law also has other specific characteristics that are unique to it. Firstly, a legal entity under public law is formed in a dispositive manner, i.e., by the will of the state or a territorial

community. It is up to these actors to issue a law, decree, order or other administrative act evidencing the need for the establishment of a public entity. Secondly, legal entities perform specific functions. In contrast to legal entities under private law, which function to fully satisfy their own interests and needs – usually to make a profit – legal entities under public law function to satisfy state or public needs. Thirdly, the liability of legal entities under public law has certain specific features. Thus, the responsibility for the unlawful activities of a legal entity under public law lies with public authorities, territorial communities and local governments (Ashtaeva et al. 2015). This is confirmed by the content of Article 96 of the Civil Code of Ukraine (2003), which stipulates that a legal entity is liable for its unlawful acts with all that it possesses. Fourth, legal entities under public law are not owners of the property they possess. In accordance with Articles 136–137 of the Civil Code of Ukraine, legal entities of public law possess their property via limited ownership rights: the right of operational management and the right of economic management. Fifth, a legal entity under public law actively participates in civil law relations. The activities of the latter are subject to the provisions of the civil law of the particular country.

Legal entities of public law in Ukraine, according to the Civil Code of Ukraine, include those institutions, enterprises, and organisations that are established by the state, territorial communities, and local authorities. The state can initiate the establishment of state-owned enterprises or educational and charitable institutions. The territorial community, in turn, has the right to establish communal enterprises as well as various types of institutions: educational, sports, charitable and so on. In particular, this is stated in Articles 167–168 of the Civil Code of Ukraine. In addition to the above-mentioned bodies, legal entities of public law are also central executive authorities, whose legal personality, i.e., the scope of their rights and obligations, is enshrined in the regulatory legal documents (Skoropysova, 2021). A clear and exhaustive list of legal entities under public law should be enshrined in the Civil Code of Ukraine. This would contribute to the normalisation of relations involving legal entities under public law by clearly defining the legal nature of such participants in civil relations. As for state and municipal enterprises, there are diverging opinions among scholars when it comes to recognising them as legal entities of public law. Thus, according to most scholars, state and municipal enterprises can be classified as legal entities under private law, since their activities are aimed at achieving the more traditional objective of civil law – making a profit. Thus, most state enterprises seek to satisfy personal rather than public interests (Oglezneva, 2019; Bielov et al., 2019). In support of this, attention should be drawn to the interpretation of public interest in the civil law doctrine. Thus, public interest is considered as: 1) compliance with the needs and goals of the entire society and the state, including protection by specialised entities (state and public associations) (Tjio, 2021); 2) legitimacy, as the public interest is enshrined in the legislation and corresponds to it (Stonebraker & Ilyas, 2018); and 3) the inadmissibility of the limitation of public interests (Chochowski, 2019). The definition of legal entities under public law may therefore be based on the fact that these participants in civil legal relations are dependent on their founders, which are the state or local government, and the property of these entities is state or municipal property (Kostruba & Hyliaka, 2020).

To better understand the differences between legal entities under public law and legal entities under private law, it is useful to consider a few examples of organisations/societies in Ukraine, namely: the Ukrposhta and Ukrzaliznytsia joint-stock companies (JSCs) and the Ukroboronprom state-owned concern. Thus, the Ukrposhta statutory organisation is a private legal entity, even though it has some features characteristic of a legal entity under public law. For example, one specific characteristic is that the Ukrposhta JSC was founded by the Ministry of Infrastructure of Ukraine. As noted above, legal entities under public law are established by the state, territorial communities and local authorities. However, in this case there are several other features to pay attention to – firstly, the purpose of the association's activities. While analysing the functions of the organisation, it seems that its main activity is aimed at satisfying the needs of society in providing reliable and fast postal services. However, the association's statutory document states that the main purpose of Ukrposhta is to generate income from the performance of the functions stipulated within that document (Charter of the joint-stock company Ukrposhta, 2021). The purpose of a legal entity under public law, on the contrary, is to satisfy public or state interests. Secondly, the Charter of Ukrposhta explicitly states that the company is private, and that all shares belong to the state as a subject of civil law. Thirdly, the company has a certain amount of specific rights and obligations – e.g., it has the right to enter into contracts and to enter into transactions without violating the rules of the legal provisions. Fourthly, a JSC has its own bank account and its own name, seal, stamps and other designations that allow for the identification of a legal entity. Fourth, Ukrposhta has assets in its ownership that it can manage in its interests. Fifth, Ukrposhta is not liable for the unlawful acts of Ukraine, and Ukraine is not responsible for the activities of Ukrposhta. Moreover, the company is responsible for all available property in its possession (Charter

of the joint-stock company Ukrposhta, 2021). Thus, it can be reasonably concluded that Ukrposhta JSC is a legal entity under private law.

However, it is worth noting that in March 2017 the Ukrposhta JSC was recognised as a public joint-stock company. According to Order of the Ministry of Infrastructure of Ukraine No. 611 of December 14, 2018, however, the Ukrposhta public joint-stock company was transformed back into a private company as early as 2018. As for the Ukrzaliznytsia statutory association, it, like Ukrposhta, has the status of a legal entity of private law, although it is owned by the state. Having analysed the Charter of Ukrzaliznytsia (2015), it is possible to identify certain attributes that provide full confidence in the private status of the organisation. Firstly, the main purpose of the enterprise's activity is to meet the needs of the state, individuals and legal entities in providing efficient and safe transportation for both the population of Ukraine and foreigners, as well as generating income from its activities. Secondly, the organisation has its own bank accounts and its own balance sheet, which it can manage for its own purposes and interests. Thirdly, the association can form departments at its own will, including branches, representative offices, associations and various entities, in order to give them functional responsibilities. Fourthly, the company is solely responsible for its actions with all of its assets. Fifth, Ukrzaliznytsia can enter into transactions of its own volition, dispose of its rights, and participate in litigation to resolve disputes. Sixth, the organisation has certain assets granted to it on behalf of the state. It has to dispose of them without violating the provisions of law. Even though the founder of the Ukrzaliznytsia JSC is a state body, the Cabinet of Ministers of Ukraine, this is not a sufficient reason to classify Ukrzaliznytsia as a legal entity under public law.

The state-owned concern Ukroboronprom, unlike Ukrposhta and Ukrzaliznytsia, is an example of a legal entity under public law. This statement is supported by several pieces of evidence. Firstly, as is typical of a legal entity under public law, the concern was created by the state, represented by the Cabinet of Ministers of Ukraine. Secondly, the purpose of the concern is to ensure efficient ownership and management of the economic sphere, which entails the creation of weapons, military supplies and military equipment. Making a profit is not the concern's objective, which is not characteristic of a legal entity under private law. Thirdly, attention should also be paid to the content of Charter of the State Concern Ukroboronprom (2011), which clearly states the type of organisation as being state-owned. Therefore, the Ukroboronprom state-owned concern is a key representative of a legal entity under public law. The main difference with a legal entity under private law is that its purpose is to satisfy the military needs of the state. The concern does not conduct business activities and therefore does not make a profit. However, Ukroboronprom, like Ukrposhta and Ukrzaliznytsia, can open, manage and control accounts to maintain its own balance sheet properly, which it can dispose of, own rights to, and enter into transactions with in accordance with legal regulations. Furthermore, the concern is not responsible for the actions of Ukraine which violate the law to a specific extent, and Ukraine is not responsible for Ukroboronprom's unlawful actions. The concern is in line with the existing assets in its possession. In analysing all of the above attributes, the issue of the concern's legal status cannot be resolved unambiguously.

3. The classification of a legal entity under public and private law in French civil law

The theory of a legal entity under public law originated in French administrative law, which is considered to be based on three pillars: legal entities under public law, public services and administrative justice (Quard, 2018). Under the French Constitution, as well as under the doctrine of French law, all legal entities are divided into public (*personnes morales de droit publique*) and private (*personnes morales de droit privé*) (Constitution du 4 octobre 1958, 2008). In France, it is also not uncommon to find synonyms for the term *legal entity of public law*, such as *administrative legal entity* (Matsopoulou, 2002). This name emerged primarily due to the fact that legal entities under public law are formed on the basis of an administrative act and are subject to administrative law. Public legal entities in France include the state, public institutions, collective governments of regions, departments, communities, communes, public educational institutions, chambers of commerce, charitable and sports organisations, as well as trade unions (Civil Code of France, 1804). They are separated from public administration institutions by their legal regime. Thus, public administration institutions are mainly subject to administrative law rules and their employees usually have the same status as civil servants. These institutions perform the traditional management tasks of ensuring the functional independence of the agencies, regulating their activities, ensuring law and order, etc. At the same time, legal entities under public law are engaged in economic production (De Lamy and Segonds, 2018). In their functioning, they rely mainly on private law, and their personnel are subject to the provisions of the Labour Code and are equivalent to wage earners in the private sector (Code du Travail of

France, 1910). These institutions carry out commercial activities. Furthermore, French scholars note that "local authorities act as legal entities of public law", carrying out activities aimed at ensuring a safe and comfortable life for the population (Gahdoun, 2018).

Having analysed French civil law, one can conclude that a legal entity under public law in France, just like a legal entity under private law, is endowed with its own name, has a certain location, and has a certain scope of legal personality. It is worth noting that a legal entity under public law has in their possession and at their disposal their property and budget, as well as their authorised bodies. State ownership is subject to a specific administrative and legal regime of public property, as there are only two criteria for classifying assets as public property: firstly, their ownership by a public legal entity; and secondly, their public purpose. State-owned property is the basis for the activities of various public services, and is the material basis of public administration. In order to better understand the nature of the subjects of French public law, it is necessary to examine them in more detail. Thus, a state is a legal entity under public law that exercises legislative, executive and judicial power over a defined territory and in the interests of its population. The state is a special legal entity under public law; it has its own sphere of competence which cannot be transferred to other bodies, including local ones. In particular, this is explicitly stated in Article 73 of the French Constitution (Constitution du 4 octobre 1958, 2008). The quality of life of the population depends on the state, which can be defined as a set of institutions that regulate the rules of social life. In particular, the state: establishes a monopoly on the supremacy of statute law; uses public force; makes and repeals laws; and has the power to establish public enterprises, institutions and organisations (Dragos & Przybytniowski, 2022).

Pursuant to Article 72 of the French Constitution, local authorities are also legal entities under public law. Their purpose is to manage and administer the territory allocated to them in accordance with the powers conferred on them by law. The Constitution notes that these communities are responsible for making decisions that can be implemented locally (Constitution du 4 octobre 1958, 2008). Moreover, the state representative is responsible for national interests, administrative control, and law enforcement agencies, and no local authority can supervise or control another one (Matsopoulou, 2002). However, they can coordinate their actions and cooperate with each other when the implementation of a jurisdiction requires the cooperation of several local authorities. In France, local authorities exist in cities, regions, territories with a special status, and overseas communities – such as French Polynesia and New Caledonia (Masalab, 2020). A public institution in France is a legal entity governed by public law with administrative and financial autonomy; its activities are aimed at carrying out tasks in the general or public interest. A special feature of a public institution is that its tasks are carried out under the supervision of an oversight body. A public entity is characterised by specific peculiarities, such as: a) the founder defines and enshrines in a specially created charter the grounds for establishment, the purpose of operation and the functions of the institution. Furthermore, the founder has the right to allocate property that will contribute to the activities of the entity; b) the employees working in the institution receive no profit from the entity and are not in a relationship with it; c) it has no economic purpose and is engaged in charitable, cultural, educational, scientific and other activities; d) the organisation is a civil law participant; and e) it may have certain tax exemptions (Quard, 2018). In France, a public institution has the status of a legal entity, has a specific object, and is subject to comprehensive control and supervision. According to the Civil Code of France (1804), such institutions include public administration institutions (*établissements publics à caractère administratif* – EPA) and public industrial and commercial enterprises (*établissement public à caractère industriel et commercial* – EPIC).

The formation of public interest groups is a very common phenomenon in France. A public interest group is a partnership of several legal entities, one of which is a legal entity under public law, which carries out activities of common (public) interest. The purpose of public interest groups is to promote cooperation between public and private persons to manage activities of common interest. Sometimes, they compete with public institutions (Gahdoun, 2018). Examples of public interest groups in France are regional hospital institutions. The State Bank of France is also a legal entity under public law, as the purpose of the bank's functioning is to provide timely and high-quality financial services to its customers. The bank does not make a profit and does not engage in commercial or entrepreneurial activities. In no case may a public entity grant a loan or earn income through interest. Central banks are therefore legal entities under public law (Duchaussoy, 2016).

4. The experience of distinguishing legal entities in German legislation

Germany also follows the approach of dividing legal entities into two types: legal entities under private law and legal entities under public law. According to the doctrine of German law, legal entities under public law should include the state institutions of the Federal Republic of Germany (*Bundesbehurden*, *Bundesoberbehuxden*, *Zentrale Bundesbehurden*), government bodies, federal banking institutions, the State Audit Office, the Patent Office, the Federal Post Office, the Ministry of Foreign Affairs, other federal ministries and departments, as well as lands, communes, societies, foundations and other entities the activities of which are aimed at meeting public needs and interests rather than making profit (Kirste, 2017). It should be noted that the listed legal entities of public law in Germany are also legally capable: they can dispose of their rights at will, draw up contracts, sign agreements and contract documents, appear as a party in court, and file, plead in and object to lawsuits (Dluzik, 2019). When summarising the system of legal entities under public law, three main types of public legal entities can be distinguished: corporations, institutions, and foundations. This analysis starts by considering corporations. Public law corporations are organisations set up to carry out public tasks. Unlike private law corporations, they cannot arise solely from the decision of individuals to jointly establish a corporation and register it: this requires an act from public authorities. Like legal entities under private law, they must set up a charter and are allowed to run their own business (the so-called right of self-government). In turn, unlike legal entities of private law, they are subject to state supervision (Konecny, 2015).

There are four types of corporations according to the criterion of affiliation:
a) public – such as universities, lawyers' and doctors' associations, churches and parishes;
b) private – membership is defined by certain individual characteristics. Examples include the chambers of lawyers, pharmacists, doctors or craftsmen, and local health insurance foundations;
c) real – ownership or possession of property is decisive for membership of a real corporation. Examples of this include hunting cooperatives;
d) associations – only legal entities may be members. Examples include municipal specialised associations (e.g., waste management associations) (Grundmann & Rathner, 2021; Pētersone et al., 2020).

Furthermore, in Germany, railway companies are also considered to be legal entities under public law. They cannot go bankrupt, as the transportation of passengers within the country is of a vital nature and the railways have to operate in any case. Therefore, the state has taken this over, and since it is not a management function but an economic one, the railway companies have been granted the status of legal entities under public law (Kirste, 2017). Equally important as legal entities under public law are public law institutions, which, according to German legal doctrine, are state administrative institutions and authorities provided with human and material resources. The activities of public legal entities involve performing specific tasks aimed at satisfying general state and public needs. Each institution must draw up its own charter, which sets out the internal structure of the entity. Subjects of public administration are proposed to include organisations that were formed by the state or local authorities or that are empowered to perform public functions in various spheres of society's functioning. Accordingly, the system of public administration includes executive power bodies, local self-government bodies, public law institutions and public law funds, as well as subjects of delegated powers (Pētersone et al., 2021). Public law institutions include state and communal medical institutions, educational institutions, research institutes, state libraries, state and communal enterprises, etc. Examples of public law institutions are the German National Library, the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – BaFin), broadcasting companies, and public television channels (Saenger, 2020). It is also worth noting that public law foundations in Germany are organisations in which the founder transfers assets to carry out certain public tasks. There are no members, users or beneficiaries in such foundations. Public law foundations are similar to private law foundations, but a public law foundation is established by the government sector rather than a private individual. These foundations are usually established for the following purposes: educational, care for the elderly or to assist in the development of the country. Foundations are set up by the government sector through a law, regulation, or administrative act (Caspari et al. 2021).

There are two types of foundations: legally capable and legally incapable. Legally capable public law foundations are established on the basis of a sovereign act, such as a law, and mainly pursue charitable purposes. Public foundations are also public law institutions that govern themselves, but do not have legal capacity. Examples of such foundations are the Berlin Philharmonic, the Berlin Wall Foundation, or charitable universities such as the

European Viadrina University in Frankfurt (Oder) and the Prussian Cultural Heritage Foundation (Caspari et al. 2021). Furthermore, in Germany, the Deutsche Bundesbank (State Bank), municipal savings banks, institutions of public law and religious communities are also considered to be legal entities under public law. They perform public tasks, such as enabling citizens to use accounts and financial services or to have access to places of worship (Schild & Schultz, 2017).

5. Legal entities under public law in entrepreneurial activity

The provisions of the Civil Codes of Ukraine, France and Germany are also applicable to legal entities under public law if they act in civil transactions. Like legal entities under private law, legal entities under public law in Western European countries are generally engaged in entrepreneurial activities. They are not considered entrepreneurs only if they carry out activities solely for the benefit of the state. In the case of commercial activities, they should be considered as commercial enterprises for tax purposes. In such a case, there is an obligation, for instance, to pay sales tax to the tax office. They must also comply with the law on public procurement when conducting government tenders (Tjio, 2021). Moreover, it is worth noting that legal entities under public law are actively involved in the development of sectors of the economy, among which the agricultural sector stands out the most. Currently, agribusiness in Ukraine has a significant natural competitive advantage and is rapidly gaining momentum. First and foremost, the subjects of agribusiness are legal entities under private law. However, public law entities are also of some importance in the development of agribusiness. Among them, the most important are the Ministry of Agrarian Policy and Food of Ukraine, the National Academy of Agrarian Sciences of Ukraine, and the State Service of Ukraine for Food Safety and Consumer Protection, which control the activity of legal entities under private law. Since agribusiness is of strategic importance to the functioning of both the economic and social system of any country, the importance of the interaction between private law entities and public law entities should be clearly defined. Cooperation within the framework of public-private partnership contributes to the further effective development of agribusiness in Ukraine in accordance with the content of the Law of Ukraine "On Public-Private Partnership" (2010). Thus, cooperation is reflected in the fact that the National Academy of Agrarian Sciences of Ukraine is interested in implementing its agro-innovations, and agribusiness is interested in applying the latest developments in production. In the agricultural sector of the Ukrainian economy, the main public legal entities are the Ministry of Agrarian Policy and Food of Ukraine, the National Academy of Agrarian Sciences of Ukraine, and the State Service of Ukraine for Food Safety and Consumer Protection. It should be noted that these public legal entities are not subjects of agribusiness, but they are actively involved in its development.

Thus, public-private partnership in the sphere of agribusiness is one of the key types of interaction between the subjects of public and private law. This form of partnership is fostered in order to implement socially significant long-term projects in the agricultural sector, share risks, obtain productive growth, and implement social responsibility (Borisova et al. 2021; Kostruba and Kulynych, 2020). A clear consolidation of the list of legal entities under public law in the regulatory legal documents will facilitate and expedite litigation where one of the parties is a legal entity under public law. When analysing the attributes of the division of legal entities into types and considering the examples of organisations that cause controversy in defining their type of legal entity, it should be noted that purpose as a criterion for classification is more complete and comprehensible. This study examined the state of the problem in France and Germany, where it is clear that legal entities under public law in both countries include the state as a specific subject of public law. It should be noted that local authorities, public-law entities, foundations, associations, groups, corporations, and state banks all act as participants in civil legal relations, have the right to litigate, have specific rights and obligations, and are responsible for actions that violate state law. Furthermore, it is worth noting that the civil law systems of both France and Germany contain an exhaustive list of legal entities under public law, which harmonises the judicial system.

The distinction between legal entities under public law and legal entities under private law is vital for understanding the legal systems in both France and Germany. Both countries classify legal entities based on their purposes, structures, and the extent of state involvement in their activities. In French civil law, legal entities under public law include the state, local authorities, public institutions, and public interest groups. They often carry out activities aimed at ensuring public welfare, and their employees are usually subject to specific legal provisions. Similarly, in German legislation, legal entities under public law encompass state institutions, local government bodies, and various public organizations such as railway companies, public law institutions, and public law

foundations. These entities are typically established for public purposes and are subject to state supervision. The analysis of both the French and German legal systems reveals that the distinction between public and private law legal entities is crucial for the proper functioning and organization of the legal systems in these countries. This differentiation enables the effective regulation of relationships between various entities and ensures the protection of the rights and interests of the state, its citizens, and other subjects of legal relations.

Conclusions

On the basis of the civil law analysis of the theoretical issues of legal entities, the following conclusions and judgements were made. Firstly, it should be noted that, in today's world, it is necessary to distinguish between important civil law categories such as a legal entity of public law and a legal entity of private law. This is of fundamental importance in determining the legal status of a legal entity, the scope of its rights and obligations, and its activities. Secondly, the specific characteristics of a legal entity under public law should be clearly distinguished. Thus, the most important features of a legal entity under public law are that it: is formed by state bodies, territorial communities, and local authorities; is aimed at meeting national (public) needs; has organisational and legal unity and property separateness; is independently liable for unlawful actions; and has its own name, seal, stamps and other attributes. Thirdly, it is necessary to analyse global experience, where the problem of defining the legal status of a legal entity is more comprehensively studied and explored.

As for Ukraine, the legislation does not currently define a list of legal entities under public law, which makes it difficult to define the type of entity in question. Therefore, the improvement of the legal framework, primarily the Civil Code of Ukraine, is urgent for the country. It is advisable to add a separate chapter to the legislation that would cover the main issues relating to the definition of the legal status of a legal entity. First of all, it is necessary: to establish types of legal entities under public law; to make a clear distinction between legal entities under public law and legal entities under private law; to determine the legal personality of legal entities of public law; as well as to determine the range of actions that the activities of a legal entity under public law may be aimed at. Legal clarity will also be useful for improving public-private partnerships, especially in the agribusiness sector, which is developing rapidly in Ukraine. Thus, in order to fill gaps in the legislation governing the category of a legal entity of public law, it is necessary to supplement the regulatory legal acts, since it is legal entities under public law – the state, local authorities, and various other entities – that can ensure safe and comfortable life for the population of a particular country.

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