



Wydawnictwo Wyższej Szkoły Gospodarki Krajowej w Kutnie

NR 2 GRUDZIEŃ 2014

PÓŁROCZNIK

STUDIUM EUROPY ŚRODKOWEJ I WSCHODNIEJ

ISSN 2353-8392

KUTNO 2014



Wydawnictwo Wyższej Szkoły Gospodarki Krajowej w Kutnie Wydział Studiów Europejskich

Rada Programowo-Naukowa

Przewodniczący Rady:

prof. dr hab. Anatolij Romanyuk, Uniwersytet Narodowy im. I. Franko we Lwowie

Zastępca Przewodniczącego:

prof. nadzw. dr Zbigniew Białobłocki, Wyższa Szkoła Gospodarki Krajowej w Kutnie

prof. zw. dr hab. Edward Olszewski, Wyższą Szkołą Gospodarki Krajowej w Kutnie

Członkowie:

prof. dr hab. Wiera Burdiak, Uniwersytet Narodowy im. Jurija Fedkowycza w Czerniowcach

prof. dr hab. Walerij Bebyk, Narodowy Uniwersytet Kijowski im. Tarasa Szewczenki

prof. dr hab. Markijan Malski, Uniwersytet Narodowy im. I. Franko we Lwowie

prof. dr hab. Ihor Cependa, Narodowy Uniwersytet Przykarpicki im. Wasyla Stefanyka w Iwano-Frankowsku

prof. dr hab. Waldemar Woźniak, Wyższa Szkoła Gospodarki Krajowej w Kutnie

prof. zw. dr hab. Lucjan Ciągaga, Wyższa Szkoła Gospodarki Krajowej w Kutnie

prof. zw. dr hab. Mieczysław Tąty

dr hab. Tomasz Hoffmann, Wyższa Szkoła Gospodarki Krajowej w Kutnie

dr hab. Krzysztof Hajder, Uniwersytet im. A. Mickiewicza w Poznaniu

prof. nadzw. dr hab. Zbigniew Mazur, Instytut Zachodni w Poznaniu

prof. dr hab. Walenty Baluk, Uniwersytet Marii Curie-Skłodowskiej w Lublinie

prof. nadzw. dr hab. Piotr Korzeniowski, Uniwersytet Łódzki

dr Radosław Grodzki, Uniwersytet Szczeciński

dr Jurij Szveda, Uniwersytet Narodowy im. I. Franko we Lwowie

Recenzenci zewnętrzni:

prof. dr hab. Nataliya Antonyuk, Uniwersytet Opolski

prof. dr hab. Walerij Denisenko, Uniwersytet Narodowy im. I. Franko we Lwowie

prof. zw. dr hab. Bogdan Koszel, Uniwersytet im. A. Mickiewicza w Poznaniu

prof. dr hab. Janusz Soboń, Akademia Morska w Szczecinie

prof. dr hab. Jerzy Lewandowski, Politechnika Łódzka

prof. dr hab. Wasyl Klimonczuk, Narodowy Uniwersytet Przykarpicki im. Wasyla Stefanyka w Iwano-Frankowsku

prof. dr hab. Swietłana Naumkina, Narodowy Jużnoukraiński Uniwersytet Pedagogiczny im. K. D. Uszynskiego w Odessie

prof. dr hab. Galina Zelenjo, Instytut Etnopolitologii im. I. Kurasa w Kijowie

prof. Galya Gercheva, D.Sc., Rektor Wolnego Uniwersytetu Warnieńskiego

prof. Pavel Pavlov, PhD, Prorektor ds. Badań i Nauki Wolnego Uniwersytetu Warnieńskiego

Redaktor naczelny:

prof. nadzw. dr Zbigniew Białobłocki

Redaktor tematyczny:

dr Nadia Pariczak-Białobłocka

Sekretarz redakcji:

Katarzyna Stęпка

Redakcja techniczna:

Łukasz Różyński

Projekt okładki i opracowanie techniczne:

Łukasz Różyński

Adres Wydawcy:

99-300 Kutno, ul. Lelewela 7,

tel. 24 355 83 40, e-mail: wydawnictwo@wsgk.com.pl

Druk i oprawa:

Mazowieckie Centrum Poligrafii

Nakład: 250 egz.

Contents

<i>Wstęp</i>	5
<i>Magdalena Bewicz</i> Great Britain's Attitude Towards the Ukrainian Crisis	7
<i>Biłobłocki Tomasz</i> The phenomenon, history of formation and resources "eastern" regionalism and separatism in the context of politicization of russian identity in ukrainian donbas (1991–2014)	18
<i>Zbigniew Białobłocki</i> Parliamentary support as indicator of cabinet stability in Eastern European Countries (1991–2014)	34
<i>Burdiak Oleg Myroslavovych</i> Current economic crisis: new dimensions and challenges	48
<i>Burdiak Vira I.</i> Activities of the National Assembly for democratization of the Bulgarian society	59
<i>Butyrska Iryna. A.</i> The legal status of the arbitration manager in bankruptcy case in Ukraine	70
<i>Butyrska Iryna Valentynivna</i> The Interaction of a State, Social Partnership and Responsible Business in Realization of Social Policy	76
<i>Butyrskiy Andrii Anatoliyovych</i> Models of economic disputes resolution in Eastern Europe Countries	86
<i>Jurij Szweda, Witalij Djakiw</i> Euromajdan: jako fenomen socjopolityczny	93
<i>Andrzej Dubicki</i> Warianty rumuńskiego nacjonalizmu	101
<i>Fedorchak Tetiana</i> Democratic transformation in new CEE Countries	123

Правовий статус арбітражного керуючого у справі про банкрутство в Україні

Проаналізовано існуючі погляди щодо природи правового статусу арбітражного керуючого в Україні. Охарактеризовано загальний, спеціальний та індивідуальний правовий статус арбітражного керуючого у справі про банкрутство. Встановлено, що арбітражний керуючий є специфічним учасником справи про банкрутство, що володіє особливим публічно-правовим статусом, зумовленим особливостями справ про банкрутство.

Ключові слова: арбітражний керуючий, банкрутство, неплатоспроможність, справа про банкрутство.

The legal status of the arbitration manager in bankruptcy case in Ukraine

The existing views on the nature of the legal status of the arbitration manager in Ukraine are analyzed. The characteristic of the general, special and individual legal status of the arbitration manager in bankruptcy case is made. It is established that the trustee in bankruptcy is a specific participant of the bankruptcy case that has a specific public law status, due to the peculiarities of bankruptcy cases.

Keywords: arbitration manager, bankruptcy, insolvency, bankruptcy case.

Implementation of insolvency proceedings in accordance with the Law of Ukraine “On Restoring Debtor Solvency or Declaring a Debtor Bankrupt” (hereinafter – the Bankruptcy Law) assigned to a particular participant of a bankruptcy case – arbitration manager. This notion can be used in two ways: as a representative of the profession – that person who, in accordance with the law, received a certificate to act as the arbitration administrator, and as a general name of property managers, rehabilitation managers and liquidators. However, despite a number of legal norms to regulate the activity of arbitration manager, the question of the legal status of him remains to be controversial.

In legal theory the concept of “legal status of person” is commonly understood as a system of enshrined in legal instruments and state-guaranteed rights, freedoms, duties, responsibilities, according to which the individual as a legal subject (i.e. having a personality) coordinate his behavior in society¹. Common is the separation of legal person statuses into three categories:

1. general, which refers to the status of a person as a citizen of the state, enshrined in the Constitution and other legislation;
2. special, which arises from the special features of certain groups of citizens, separated by a certain legal and important principle (occupation, age, etc.). The status of such categories of persons includes special additional rights and obligations pursuant to special legislation;
3. individual, which is a whole set of personalized rights and duties of the individual.

The Russian scholar N. Zahorolnyh considers it appropriate to distribute presented above theoretical construction gradation legal status into three main types (general, generic and individual) with respect to the arbitration manager². The general legal status of the arbitration manager means the sum of the basic rights and obligations of the arbitration manager, a set of legal requirements to this subject, the system of responsibility measures of this subject. The special status of the arbitration manager should be understood as the features of his legal status at various stages of proceedings in bankruptcy case – a legal status of property manager, rehabilitation manager and liquidator. Individual status of the arbitration manager is a personalized set of rights and obligations of this subject in a particular bankruptcy case.

The general legal status of the arbitration manager reveals through his set of common rights and obligations, the requirements raised to him, the order of appointment and removal of the arbitration administrator in bankruptcy case, fees and responsibilities. Arbitration manager – the key person in a case of insolvency, during legal proceedings has influence on the efficiency of legal proceedings of bankruptcy and, ultimately, the efficiency of satisfaction of creditor's claims³.

To obtain the License for the activity of arbitration manager, a person must meet certain requirements. In particular, the arbitration administrator must be a citizen of Ukraine who has completed higher legal or economic education and professional experience for not less than three years or one year in senior positions after receiving a complete higher education, trained for six months in the manner prescribed by state authority on bankruptcy, owns national language and has passed the qualifying examination. In the enterprises that are engaged in activities related to state secrets, trustee in bankruptcy must have an access to state secrets,

¹ Скакун О. Ф. Теорія держави і права : Підручник / О. Ф. Скакун / Пер. з рос. – Харків : Консум, 2006. – р. 377.

² Захорольных Н. В. Особенности административно-правового статуса арбитражного управляющего / Наталья Вадимовна Захорольных // Юридическая наука. – 2012. – № 4. – р. 70.

³ Pokotilo A. Legal regulation of Insolvency (Bankruptcy) in Ukrainian Legislation // Ukrainian Law Firms 2005: A Handbook for Foreign Clients – Uridicheskaya prakticka publishing, 2005. – p. 23.

and in his absence – to get this admission by procedure established by law (Art. 97 of the Bankruptcy Law).

In the event of damage to the debtor or creditors activities, the arbitration manager's activity is subject to compulsory insurance. The procedure of compulsory insurance of the arbitration manager's activity is determined by the law.

The candidature of the arbitration manager (property manager, rehabilitation manager and liquidator) to fulfill the duties of a property manager is determined by the court using the automated system from among the persons listed in the Unified Register of arbitration managers (property managers, rehabilitation managers and liquidators) of Ukraine.

Automated procedure for selection of candidates for the appointment of court-appointed trustees in bankruptcy cases thoroughly covered by the Provision of an automated system for the selection of candidates for the appointment of the arbitration administrator in bankruptcy cases, approved by the Plenum of the Supreme Commercial Court of Ukraine on the 16th of January, 2013⁴.

By a decision of acceptance of the application for bankruptcy proceedings Commercial Court defines an arbitration manager, required by automated system, to apply for participation in the relevant case within the prescribed term of this definition. Arbitration manager appointed by the automated system within three days of receipt of the decision on approval of the application for bankruptcy proceedings is obliged to provide to the commercial court his involvement in the case with the message that he does not belong to any of the categories of persons referred to in ch. 2, Art. 114 of the Bankruptcy Law, in hard copy and/or to provide his consent electronically to the email address from which he received the appropriate decision. If the arbitration manager didn't give the consent to the Commercial Court to become the property manager in this case, the property manager is appointed by the court without using the automated system from a number of persons listed in the Unified Register of arbitration managers of Ukraine.

Property manager is appointed for the entire period of the management of debtor's property procedure, i.e. for one hundred and fifteen days and this period may be extended by the Commercial Court in the case of extension procedures disposition of property of the debtor for not more than two months.

The candidature of the arbitration manager to fulfill the duties of the rehabilitation manager or liquidator is determined by the court at the request of the creditors' committee, and in the absence of such a request – on the initiative of the court, except as provided by law on bankruptcy. However, during the appointment of the arbitration manager (rehabilitation managers

⁴ Положення про автоматизовану систему з відбору кандидатів на призначення арбітражного керуючого у справах про банкрутство, затверджене Постановою Пленуму Вищого господарського суду України від 16 січня 2013 р. № 1 // Вісник господарського судочинства. – 2013. – № 1. – Ст. 7.

and liquidators) Commercial Court is not associated with court-appointed trustees candidates proposed by the creditors committee and may appoint arbitration manager by himself.

Payment for the services of a property manager is done by advancing the remuneration of property manager by the applicant (creditor or debtor). The amount of the down payment is paid to the escrow account of the notary and the bankruptcy administrator shall be paid for each month of the performance of the powers of a property manager. Monetary compensation for the arbitration manager for the performance of the powers of managers and liquidators consists of primary and additional gratuities. Basic remuneration for the performance of the arbitration administrator powers managers and liquidators determined in the amount of two average monthly salaries of managers of the debtor in the last twelve months of his work for the introduction of commercial court procedures for readjustment of the debtor or the opening of the liquidation procedure of bankrupt each month implementation arbitration administrator powers rehabilitation manager or liquidator . Additional remuneration for the performance of the arbitration administrator powers rehabilitation manager is determined in the amount of 5 percent of the amount collected for the benefit of the debtor's assets (cash refund, property, property rights) that on the day of commencement of proceedings in bankruptcy were from third parties, and 3 percent on the amount of canceled claims bankruptcy creditors.

Commercial Court in bankruptcy has the wide range of powers that allow him to control and coordinate the activities of all participants in bankruptcy proceedings, particularly arbitration manager. The new version of the Bankruptcy Law further expanded court opportunities to influence the activity of the arbitration manager. In particular, now the court may exempt the arbitration administrator from executing the duties of property manager, rehabilitation manager and liquidator even on court's own initiative, without waiting for the receipt of complaints about his actions.

The special legal status of the arbitration manager appears in separation of the profession arbitration manager for three distinct types – property managers, rehabilitation managers and liquidators. This division is of practical importance because allows to consider the features of the arbitration manager's activity at corresponding stage of the proceedings in the bankruptcy case.

Property manager – an individual acting under the ruling of the commercial court or by the appointment of the government authority on bankruptcy, who according to this Law has authority for supervision and control over the management and disposal of debtor's property during the proceedings in the bankruptcy case in the manner prescribed by this Law.

Rehabilitation manager – an individual who, under the decision of the commercial court or by the appointment of the government authority on bankruptcy, organizes readjustment of the debtor.

Liquidator – a person who, under the decision of the commercial court or by the appointment of the government authority on bankruptcy organizes the liquidation procedure for the

debtor, declared bankrupt, and provides for fulfillment of creditors' claims, confirmed by the court in the manner established by the Bankruptcy Law.

Individual legal status of arbitration manager is caused by the merits of the case, especially the kind of judicial procedures applicable to the insolvent debtor and the general focus of the proceedings in the bankruptcy case.

In certain aspects, the arbitration manager in bankruptcy case can be considered as a subject of employment relationships. This is most clearly manifested in the process of readjustment when rehabilitation manager replaces the head of the debtor. In this case, in relation to the employees of the debtor arbitration manager in bankruptcy case acts as employer, entering into or breaking labor contracts. These actions of the arbitration manager are governed by labor law. In addition, the relationships between the arbitration administrator and the debtor at first glance may seem to be labor because rehabilitation manager actually performs the functions of the head of labor and receives money for this activity, which essentially are the wages. On the other hand, there are no employment relationships between rehabilitation manager and the debtor, because firstly, the company doesn't represent the will to conclude the contract with the arbitration administrator, and secondly, the arbitration administrator is appointed by the Commercial Court.

However, in any case, the arbitration manager in bankruptcy case remains to be the subject of independent professional activity who works primarily for himself, hoping to receive appropriate remuneration for his activity. The assignment of arbitration managers to subjects of independent professional activity is a novel in Ukrainian law. Before the arbitration administrator could only be a natural person – a business entity, but now the requirement of registration as entrepreneur is canceled. This change in the legal status of arbitration managers to some extent equates them to judges, lawyers and notaries, which certainly enhances the credibility and value of this profession in society.

The arbitration manager can't be attributed to the bodies of a legal entity – debtor because his activities are not provided by statutory documents and the arbitration manager is appointed by Commercial Court, but not by the general meeting of the participants of a legal entity – debtor.

Russian scientist V. Salata, exploring the legal status of the arbitration manager in the process of external control, correctly notes that the external manager is neither a body of the debtor nor the head of the company-debtor. Combining the elements of legal statuses of each of them, the external manager is the subject of competitive relationships, has a special labor-law status, defined by aims and objectives of external control procedures⁵.

Quite common in the literature is the view that the arbitration manager is regarded as a public authority. G. Shershenevich considered bankruptcy trustee (bankruptcy

⁵ Салата Н. В. Трудовой статус арбитражного управляющего / Н. В. Салата // Вестник Томского государственного университета. – 2007. – № 296. – с. 224.

administration) as a public authority, designed to perform a public function, the aim of which is to protect the public interest (the State). In this regard, the pre-revolutionary scientist said: "Indeed, bankruptcy administration is obliged to fulfill his task of possible complete satisfaction of creditors, trying if it is possible to keep the interests of the debtor. But this phenomenon is not entirely consistent with the concept at a particular party. Obviously, competitive trustee may not be the representative of the debtor or its creditors. This by itself conclude that competition trustee or bankruptcy management is a public authority – authority acting under the direct supervision of the court, like the bailiffs"⁶. Modern Russian scientist V. Popondopulo has similar views on the nature of the legal status of the arbitration manager, and indicates that the trustee in bankruptcy substantially participates in enforcement proceedings – body arbitration and enforcement of judicial decisions in the relevant enforcement procedures (procedures, supervision, external management, bankruptcy proceedings)⁷.

Another Russian scientist A. Larin, exploring the legal nature of the action arbitration administrator in the bankruptcy case, said: "If you do agree that arbitration manager as part of the insolvency representative functions are missing, it can be concluded that it is in bankruptcy pursue their own interests, especially since the law itself encourages such an interpretation"⁸.

The arbitration manager in bankruptcy case must act in the interests of the debtor, creditors and society simultaneously. But it doesn't mean that he is a representative of anyone of these subjects because representative can act only in the interests of the parties in the case. Given this, it must be noted that the arbitration manager is the bearer of his own rights, duties and interests, and has a special public status.

Arbitration manager is one of the key figures in bankruptcy case, which significantly affects the fate of the debtor and his property. In bankruptcy case, according to court procedure applicable to the debtor, arbitration manager may act as property manager, rehabilitation manager or liquidator. Arbitration manager has a specific legal status which depends on specific features of the proceedings applicable to the debtor in bankruptcy case.

Thus, the arbitration manager is a special entity, appointed under the Bankruptcy Law. Trustee in bankruptcy has specific tasks for which he granted specific powers due to the nature and direction of the bankruptcy proceedings. Arbitration manager is neither a a body of the debt nor the head of the company-debt. Arbitration manager is a specific member of the bankruptcy case, which has a special public law status, due to the peculiarities of the bankruptcy cases.

⁶ Шершеневич Г. Ф. Конкурсный процесс / Г. Ф. Шершеневич. – М. : «Статут», 2000. – р. 324.

⁷ Попондопуло В. Ф. Конкурсное право / В. Ф. Попондопуло. – С. : Юристъ, 2001. – р. 143.

⁸ Ларин А. М. Юридическая природа действий арбитражного управляющего в деле о банкротстве de lege lata / А. М. Ларин // Известия Юго-Западного государственного университета. Серия История и право. – 2012. – № 2. – Ч. 2. – р. 36.