

## **NATURE OF CORPORATE RAIDS AND REASONS FOR THEIR SPREADING IN UKRAINE**

Within the last years the problem of corporate raids in Ukraine became extremely actual since the influence of this phenomenon on the economic development and social stability is immense. Although corporate raids came to Ukraine from abroad, there are few (if any) similarities between their Ukrainian and European appearance.

The article of Croci E. (2007) [1] conducted a thorough study of the influence of corporate raiders to the effectiveness of businesses in 7 economically developed countries of Europe (France, Germany, Italy, The UK, etc.) for the period from 1990 to 2001. The results clearly suggest that corporate raids have a positive impact on company's value directly during the takeover, on enterprise's efficiency growth (with some specifications) and long-term growth of the company's value in the future. Calculations prove that in case of corporate raid the company's value increases by on average of 2-12% (compared to similar companies that were not the subject of corporate raids).

Hence, corporate raids in European countries provide more efficient control over the firm's management, increase its efficiency and quality of decision-making, optimize the structure of a company, strengthen the protection of minority shareholders' interests and increase the market value of a company.

At the same time, under corporate raids in Ukraine one should understand the process of gaining control over a company (or its assets) against the will of the rightful owner by committing illegal acts with following quick resale of the captured assets or operating them. Among the methods of Ukrainian corporate raids may be blackmail, forgery of official documents, destabilization of the target-company, unfair competition, threats, initiation of a criminal proceeding against the owners of a target JSC, etc.

According to official data, the victims of corporate raids are often industrial enterprises (50% of all cases) and real estate assets – ca. 30% [2]. During the 2010-2013 an amount of corporate raids came to about 1300 per year [3], [4]. Profitability in this sphere usually reaches 80-90%. Taking into account the data of NGOs and Ukrainian Government, due to existing of corporate raids in Ukraine only direct losses can reach UAH 20-60 billion annually (approx. USD 1,5-4 bn.).

Among the companies, which became victims of corporate raids are such industrial giants as OJSC «Turboatom», PJSC «Quasar», National JSC «Naftogaz

of Ukraine», «IDS Group Ukraine», «London and Regional Properties» (Shopping Mall «Globus»), «Swissport International, Ltd», Sea Commercial Port «Yuzhniy» and others.

With full confidence we can allege the presence of at least one improper judicial decision in case of all corporate raids. Sometimes, the number of court decisions (which are usually deliberately unlawful) can reach 30-50 [5].

In our opinion, one of the key reasons of such immense spreading of corporate raids in Ukraine is the high level of corruption. Ability to commit acts of corruption by public officials, judges, law enforcement officers, impunity of crimes and violations of human rights open up opportunities to realize raider attacks.

To characterize the reasons and therefore the opportunities for counteraction to corporate raids, we turn to the data of the international non-governmental organization “Transparency International”, which publishes an annual global ranking of corruption’s perception in most states of the world. Due to the Corruption Perceptions Index 2013, Ukraine took the 144th place of corruption perception among 177 surveyed countries (the lower the place – the less corruption penetration). According to published data, many African countries (Kenya, Ghana, Uganda) as well as neighbors such as Russia (127 place), Belarus (123 pl.) and Moldova (102 pl.) are fighting corruption more effectively [6]. It is a disturbing and negative trend of gradual decrease in the overall rating of Ukraine in this list in recent years (Corruption Perceptions Index 2010/2011, 2012). It indicates discredit of government institutions, further spread of corruption in the administrative, political and economic spheres, as well as ineffective government policies in this area.

We consider it for logical that in process of resistance to corporate raids in Ukraine the most important objective is impartial functioning of the judicial system. Unfortunately, further spreading of corporate raids in Ukraine are confirmed by statistical data: the judicial system of Ukraine is considered as the most corrupt among all major public institutions of society (comparing to political parties, educational system, health-care system, police, public officials, etc.). And this negative evaluation is true for Ukraine from 2007 to 2013 in the annual Global Corruption Barometer researches [7]. None of the developed countries of the European Union has the following indices for the given years.

Thus, corporate raids in Ukraine have completely different nature as those in the European Union, the UK or other developed countries. Among peculiarities of corporate raids in Ukraine are usage of forged executive documents, blackmail, threats, action of the criminal proceeding against the owners of target JSC, numerous ungrounded inspections by controlling authorities (initiated by raiders), etc. Among reasons of such state of things could be named imperfect legislation,

initial defects of public property privatization, ineffective functioning of public administration, and unwillingness of authorities to protect enterprises' rights and interests and so on. But the most important origin of corporate raids' extension is the immense penetration of corruption both into judicial as well as law-enforcing systems, allowing raiders to receive false enforcement orders (judicial decision), escape liability for committed crimes and use public authorities in raid schemes. Reports of international organizations and opinions of experts confirm this statement and therefore indicate the most important directions of legislation and public policy improvement in the way of corporate raids resistance.

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**Kazarenko M. C.**, PhD, USA

**Berlach N. A.**, Doctor of Law, Professor, Ukraine

### **THE CURRENT STATE OF EUROPEAN ADMINISTRATIVE LAW**

In countries of the EU, for an extensive period of time, research has been conducted regarding the general principles and standards of general-European administrative law. Recommendations for countries-candidates to the European administrative space (EAS), including Ukraine, were created in light of this scientific research. European Administrative Law was established in the 1980's regulating the activities of the bodies of power in the countries - member of the