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PROPRIETARY COMPLEXES: THEORETICAL ASPECTS

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Abstract. *In a legal sense, a proprietary complex is comprehended as a totality of the objects of civil rights having common purpose which is referred to as a self-sufficient object having separate monetary value. In contemporary doctrine of private law, wherein the pluralistic theory of civil relationship is prevalent, the object of the civil relationship as well as the object of civil rights is considered the values regarding which of the civil relationship emerged. Proprietary complexes as the multipartite objects of civil rights are comprised of various units of asset. In a legal sense, assets are considered as the objects of civil rights having economic value and capacity to participate in civil turnover, i.e. the owner is able to transfer such object to another person. While forming proprietary complexes, different units of assets (tangible and intangible) are united into a totality which is considered as one object of civil rights. So, if the positive law constitutes a possibility to form proprietary complexes and to participate in civil turnover, it becomes possible to capitalize assets, whereas proprietary complexes are formed in order to gain additional monetary value. Therefore, the purpose of this research is to analyse the formation of proprietary complexes, the genesis and theoretical grounding of proprietary complexes and different kinds of proprietary complexes. The subject matter of the research is the analysis of the concept of proprietary complex, the identification of the features of proprietary complexes and the analysis of particular proprietary complexes. The main methods used*

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in this research are document (content of source), linguistic, systematic and critical analyses as well as historical, comparative and teleological analyses.

Keywords: *object of civil rights, proprietary complex, enterprise, inheritance.*

Introduction

Civil Code of Lithuania (1964)[1], which was in power until the year 2000, did not regulate the objects of civil rights, thus Chapter V of Part III of Book I of the Civil Code of Lithuania[2] (hereinafter referred to as – LCC) is a significant novelty. Nevertheless, proprietary complexes have always been a part of legal theory and practice. In a legal sense, a proprietary complex is comprehended as a totality of the objects of civil rights having common purpose which is referred to as a self-sufficient object having separate monetary value. In contemporary doctrine of private law, wherein the pluralistic theory of civil relationship is prevalent, the object of the civil relationship as well as the object of civil rights is considered the values regarding which of the civil relationship emerged. Proprietary complexes as the multipartite objects of civil rights are comprised of various units of assets. In a legal sense, assets are considered as the objects of civil rights having economic value and capacity to participate in civil turnover, i.e. the owner is able to transfer such object to another person. While forming proprietary complexes, different units of assets (tangible and intangible) are united into a totality which is considered as one object of civil rights. So, if the positive law constitutes a possibility to form proprietary complexes and to participate in civil turnover, it becomes possible to capitalize assets, whereas proprietary complexes are formed in order to gain additional monetary value.

Therefore, the purpose of this research is to analyse the formation of proprietary complexes, the genesis and theoretical grounding of proprietary complexes and different kinds of proprietary complexes. The subject matter of the research is the analysis of the concept of proprietary complex, the identification of the features of proprietary complexes and the analysis of concrete proprietary complexes. The main methods used in this research are document (content of source), linguistic, systematic and critical analyses as well as historical, comparative, and teleological analyses.

Due to the scarcity of the national law doctrine on the subject matter, this research is based on the foreign scientific literature and researches. This research was performed using the sources of Russian legal doctrine, for instance, *V. A. Belov*[3] has performed a research regarding the concept of proprietary complexes, their features, ability to participate in civil turnover and the purpose of proprietary complexes. Also, works

1 Civil Code of the Republic of Lithuania. *Official Gazette*. 1964, No. 19–138.

2 Civil Code of the Republic of Lithuania. *Official Gazette*. 2000, No. 74–2262.

3 Belov, V. A. *Imushhestvennye Kompleksy* [*Proprietary Complexes*]. Moskva: Centr JurInfoR, 2004.

of O. *E. Romanov*[4] and others were used. The problems analysed in this research are compared to the legal systems and legal doctrines of foreign countries, e.g., proprietary complex such as inheritance has been known since the Roman law and it exists in all legal systems, thus historical overview and comparison with other legal systems is presented in this research. The French legal system on the subject matter was analysed using the works of *G. A. Bermann* and *E. Picard*[5] and others.

1. Features of Proprietary Complexes

Part 2 of Article 1.110 of LCC provides that a proprietary complex as an object of civil rights is a totality of things united by the common commercial purpose. Commenting the concept of the proprietary complex established in Part 2 of Article 1.110 of LCC, *D. Ambrasienė et al.*[6] state that only things can be a part of the proprietary complex. Such explanation of proprietary complex should be considered too narrow because the intangible objects of civil rights also dominate in the modern world, e.g., the securities. Thus, if the proprietary complex is comprehended too narrowly, it would preclude from creating the complexes consisting not only of things, but also of immaterial objects.

However, not every totality of objects of civil rights can be referred to as the proprietary complex because such totality must distinguish by the common purpose and legal destiny. The totality of objects can be considered as the proprietary complex only when the elements including the complex are selected and joined not randomly, but are provided by the law or originate from the factual or legal purpose. As it was mentioned, the proprietary complex is one of the possibilities to capitalize the assets because when the separate units of assets are joined into a complex, it gives a possibility to create the additional value. Thus, in a legal sense, a proprietary complex is a totality of objects of civil rights which have common purpose and which are referred to as a self-sufficient object having separate monetary value.

In the legal literature[7], such features of the proprietary complexes are distinguished:

1. *Complexity*, i.e. the proprietary complex always consists of more than one object of civil rights.
2. *Proprietary character,* i.e. the proprietary complex consists of separate units of assets. Any value which is not an asset cannot be a part of the proprietary complex (e.g. personal non-property values which cannot be distinguished from a person).

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4 Romanov, O. E. *Predprijatie i Inye Imushhestvennye Kompleksy Kak Obekty Grazhdanskikh Prav*. [*Enterprise and Other Proprietary Complexes as Objects of Civil Rights*]. Sankt-Peterburg: Juridicheskij Centr Press, 2004.

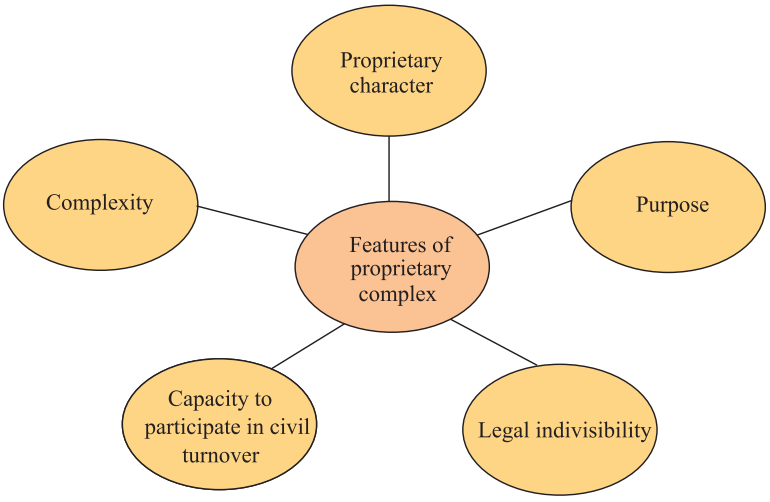
5 Bermann, G. A.; Picard, E. *Introduction to French Law.* Alphen aan den Rijn: Kluwer Law International, 2008.

6 Ambrasienė, D., *et al*. *Civilinė teisė. Prievolių teisė* [*Civil Law. The Law of Obligations: Textbook*]. Vilnius: LTU Leidybos centras, 2004, p. 340.

7 Belov, V. A. *Imushhestvennye Kompleksy [Proprietary Complexes*]. Moskva: Centr JurInfoR, 2004, p. 27–49.

3. *Purpose,* i.e. the separate units of the assets are joined into the integral mass for the certain legal or factual purpose, e.g. for the conduct of the commercial activity. In other words, the self-sufficient objects of civil rights become a proprietary complex only when the purpose unites these objects and they become a system. The inner system of the proprietary complex determines the most relevant feature of the complex – the bigger economic value than just a mere sum of the value of the separate objects.
4. *Legal indivisibility* – although every proprietary complex consists of self-sufficient objects of civil rights, i.e. the complex is divisible by its nature, however, due to its peculiarities, the complex is indivisible in the legal sense. In other words, when one element of the complex is transferred to another person, the same destiny strikes all other elements of the complex. Of course, this feature does not preclude the possibility to distinguish some elements from the content of the complex. But in such case, the previous proprietary complex seizes to exist. One or several self-sufficient objects, which were distinguished, replace it and the decreased totality of the objects may become a new proprietary complex, if it is united by the common purpose.
5. *Capacity to participate in the civil turnover*, i.e. the proprietary complex can participate in the civil turnover as a self-sufficient object of the transactions. The civil turnover of the proprietary complexes is regulated by the special rules because the legislator referring to the proprietary complex as a self-sufficient and peculiar object creates a legal fiction. Thus, to such complexes as to all other legal fictions, e.g. the intangible assets, the special rules of turnover are applied which are determined by the specific nature of these objects.

Figure 1. Features of proprietary complexes



It should be emphasized that the Russian scientists, including *V.A. Belov*[8], think, having in mind that the proprietary complex is a peculiar object existing only as a legal fiction, that the presumption of the capacity to participate in the civil turnover is not applicable, i.e. the proprietary complexes are referred to as the objects of limited civil turnover. In order to validate such approach, they state that the legislator establishes in detail what transactions can be concluded regarding the proprietary complexes. However, it may be stated that such qualification of the proprietary complexes (as the objects of limited civil turnover) is incoherent.

According to the Roman classification of things into the things of unlimited civil turnover and limited civil turnover (lat. – *res in commercio* and *res extra commercio*), the core criterion to distinguish things (objects) is whether the thing can be the object of private property right. Usually, the capacity to participate in the civil turnover is limited due to the significance or hazardness of an object. Thus, such object cannot be an object of private property right (e.g. huge lakes, useful excavations, etc.) or it can participate in the civil turnover only to the limited (e.g. guns, liquor, drugs)[9] extent.

A lot of artificial objects of civil rights exist in the modern world which can participate in the civil turnover just as the legal fictions, e.g. all intangible assets. It is obvious that due to the peculiarities of the intangible objects, i.e. they do not have any physical form, their capacity to be the object of the transactions differs, e.g. a transaction of lease of securities cannot be concluded. However, just because of it, the intangible objects of civil rights do not become the objects of limited civil turnover or objects of forbidden civil turnover. Only special rules are applied to the civil turnover of such objects. However, due to this fact (the application of special rules), these objects do not stop being the objects of private property right. Thus, it may be stated that the capacity of the proprietary complexes should be explained in analogy, i.e. the proprietary complexes must be referred to as objects of unlimited civil turnover, unless the imperative legal norms provide otherwise.

2. The Historical Background of Proprietary Complexes

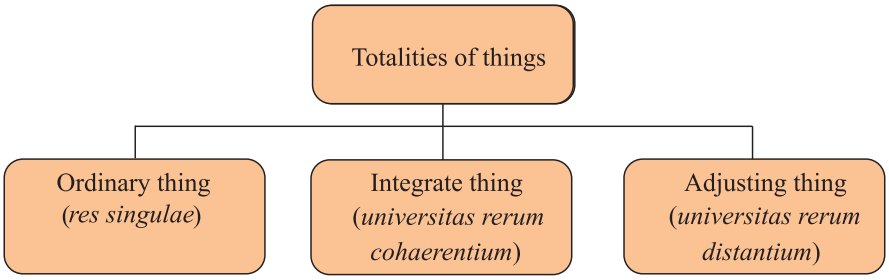
It should be noted that the totalities of things have already existed in ancient Rome, wherein the Romans classified these totalities into three types. The first totality of things was called an ordinary thing (lat. – *res singulae*), which was understood as one ordinary thing, the parts of which were naturally connected and could not be divided neither factually nor legally, e.g. slaves or cattle. The second totality of things was called *universitas rerum cohaerentium,* in other words, the integrate thing. It was a proprietary complex consisting of separate self-sufficient things which were constantly connected, serving a common purpose and performing one function, e.g. building, ship, etc. These connected things became one self-sufficient thing and the things it consisted

8 Belov, V. A. *Imushhestvennye Kompleksy* [*Proprietary Complexes*]. Moskva: Centr JurInfoR, 2004.

9 Sherman, C. P. *Roman Law in the Modern World*. Vol. II. Boston: 1917, p. 140.

of would lose their self-sufficiency, thus could not be distinguished neither factually nor legally without destroying the integrate thing. The owner of such totality of things had no self-sufficient property rights to the separate parts of the integrate thing. Instead, he had rights only to the integrate thing as a whole. The third totality of things, which was called *universitas rerum distantium* – the adjusting thing, was alike the second totality but had a relevant difference – it was a totality of self-sufficient things which was referred to as the totality only in the economic and legal senses, e.g. library, herd of cattle, etc. The parts of such adjusting thing could always be separated and the owner could have self-sufficient property rights to separate parts[10]. It may be stated that namely the Roman adjusting thing (lat. – *universitas rerum distantium*) is the analogue of the modern proprietary complex.

Figure 2. Types of totalities of things



The Roman law knew not only the transfer of ordinary things (lat. – *res singulae*), but also the transfer of totalities (lat. – *acquisitio per universitatem*)[11]. It allows to conclude that in the Roman law the totalities of things had a self-sufficient capacity to participate in the civil turnover.

It should be noted that the modern legal literature[12] often states that the proprietary complex which existed in the Roman law was called *universitas rerum*, however one should have in mind that the real analogue of the modern proprietary complex was not the integrate thing (lat. – *universitas rerum cohaerentium*), but the adjusting thing (lat. – *universitas rerum distantium*).

3. The Peculiarities of Particular Proprietary Complexes

Since the Roman times all legal traditions have been familiar with the proprietary complex – inheritance[13], which by the universal transition of rights is inherited by the heirs. Inheritance includes not only the tangible assets, but also the property rights

10 Nekrošius I.; Nekrošius V.; Vėlyvis S. *Romėnų teisė* [Roman Law]. Vilnius: Justitia, 1999, p. 105–106.

11 Sherman, C. P. *Roman Law in the Modern World*. Vol. II. Boston: 1917,p. 233.

12 Allen, C. K. Things. *California Law Review*. 1940, 4: 429.

13 *Ibid.*, p. 430.

and obligations and debts of the deceased, if they can be distinguished from a person. Inheritance as a proprietary complex exists from the moment of death until it is accepted by the heirs. It should be noted that the separate units of inheritance are united to the proprietary complex not for the factual, but for the legal purpose due to the possibility to transfer all assets (the active and the passive of assets) of the deceased to the heirs[14]. In other words, the separate units of asset of the deviser are united to a proprietary complex so that all assets had the same legal destiny and the creditors of the deviser would be protected. In order to achieve this goal, the legal norms of succession provide an imperative rule that the inheritance is transferred to the heirs as a whole, thus it is impossible to accept or decline only a part of the inheritance. Of course, such proprietary complex can participate in the civil turnover very limitedly because such complex can be transferred only by several transactions (e.g. will[15]).

Since the 19th century, in the French law an approach that every person's (natural or juristic) all assets consisting of property and obligations during one's existence has been referred to as a proprietary complex (fr. – *patrimoine*). The content of such complex can alter in time, however one person can possess only one proprietary complex. In certain cases provided by the law, such proprietary complex can be divided, e.g. by setting up a trust (fr. – *fiducie*). Personal non-property rights and other values without economic value do not include this complex (fr. – *patrimoine*)[16]. A part of *patrimoine* can be a separate complex for the commercial activity, which is the so called commercial funds (fr. – *fonds de commerce*). Such proprietary complex is partly alike to the inheritance in cases when we talk about the asset of the natural person.

Probably the most intricate proprietary complex is the enterprise. Interestingly, in the Roman law when the concept of the juristic person has just started to develop, the artificial legal formation called „*universitas*" (company, group) was understood as a totality of various assets of several people, i.e. the proprietary complex[17]. Only later, when the juristic persons were given self-sufficient legal subjectivity and its assets were distinguished from the other ones, such artificial legal formations were started to be called „*societas*" or „*corporatio*" and became parties of the legal relationships[18]. The concept of the modern enterprise as a proprietary complex derives from the German law tradition, wherein the understanding of means of commercial activity originated from the economic reality[19]. This concept of the enterprise was taken by Russia, then by the civil law of Lithuania. According to Part 1 of 1.110 of LCC, the enterprise as an object of civil rights consists of things, financial and other intangible assets, rights and

14 Belov, V. A. *Imushhestvennye Kompleksy* [*Proprietary Complexes*]. Moskva: Centr. JurInfoR, 2004, p. 68.

15 *Ibid*., p. 71.

16 Bermann, G. A.; Picard, E. *Introduction to French Law*. Alphen aan den Rijn: Kluwer Law International, 2008, p. 471.

17 Sherman, C. P. *Roman Law in the Modern World*. Vol. II. Boston: 191 p. 124.

18 *Ibid.*, p. 126–127.

19 Romanov, O. E. *Predprijatie i Inye Imushhestvennye Kompleksy Kak Obekty Grazhdanskikh Prav* [*Enterprise and Other Proprietary Complexes as Objects of Civil Rights*]. Sankt-Peterburg: Juridicheskij Centr Press, 2004 , p. 44 – 45.

obligations. Therefore, the enterprise as proprietary complex, according to the character and continuity of its conduct and other circumstances, can consist of various tangible and intangible assets.[20].

In the legal literature[21] it is emphasized that the peculiarity of the enterprise as a proprietary complex is that it is always ongoing. Because of this reason, the enterprise as a proprietary complex consists not only of tangible assets, but also of property rights, exclusive rights and debts, because only such full content of proprietary complex allows to efficiently implement commercial activity. It should be noted that due to the fact that the enterprise as a proprietary complex is peculiar and always ongoing, this complex is multipartite and cannot be referred to as real property.

In the Russian legal doctrine[22], apart from the inheritance and enterprise, there are more proprietary complexes, e.g. the common property of an apartment building, condominiums, complexes of cultural heritage, the assets of the liquidated juristic persons, etc. *Condominium* (rus. – *комдоминиум*) is a complex of real property consisting of a land plot, one or several buildings and other objects of the real property. No movable things or property rights are included in this complex. The purpose of condominium is to satisfy the needs of its owner connected with the exploitation of the complex. The legislators of neither Lithuania nor other European countries[23] do not establish a proprietary complex analogue to the Russian condominium. Of course, this does not mean that such proprietary complex cannot exist. If all features of the proprietary complexes shall be satisfied, the totality of the assets can become the proprietary complex alike to the Russian condominium.

The common property of an apartment building is qualified as proprietary complex in Russia because various units of assets are united into one object – the apartment building – in order to achieve a common purpose, i.e. to satisfy the needs of all owners of the apartment building while using the common property[24]. Referring to an integrate thing such as a proprietary complex is doubtful. First of all, this is because the apartment building is one immovable thing consisting of the separate movable things which are the parts of the immovable building, e.g. roof, stair cases, windows, etc. These objects cannot be distinguished from the apartment building itself without destroying it or decreasing its value. In other words, the apartment building is an example of the immobilization of movable things, i.e. the situation when movable things are joined with the immovable

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20 Kiršienė, J.; Kerutis, K. Verslo perleidimas akcijų ir įmonės pardavimo būdu: teisinio reglamentavimo ir praktikos lyginamoji analizė [Transfer of Business by Share Deal or Asset Deal: Comparative Analysis of Legal Regulation and Practice]. *Jurisprudencija*. 2006, 3 (81): 61.

21 Belov, V. A., *supra* note 3, p. 48.; Romanov, O. E., *supra* note 4, s. 71.; Bermann, G. A.; Picard, E., *supra* note 5, p. 151.

22 Belov, V. A. *Imushhestvennye Kompleksy* [*Proprietary Complexes*]. Moskva: Centr. JurInfoR, 2004, p. 74 – 142.

23 In the common law countries, espacially in the USA and Canada, the term „*comdominium*" is used while talking about the common property in the apartment buildings.

24 Belov, V. A. *Imushhestvennye Kompleksy* [*Proprietary Complexes*]. Moskva: Centr. JurInfoR, 2004, p. 64 – 65.

thing and become its parts and obey its legal status[25]. As it was mentioned, the modern proprietary complex is not an integrate thing (lat. – *universitas rerum cohaerentium*), but the adjusting thing (lat. – *universitas rerum distantium*), the parts of which can be distinguished without physically destroying the main thing. Therefore, it should be concluded that the apartment building matches the features of the integrate, but not the adjusting thing and, thus, cannot be qualified as the proprietary complex.

In the national legal literature of Lithuania[26] it is stated that other legal instruments such as the investment funds are created according to the model of the proprietary complex. According to the provisions of Part 11 of Article 2 of the Law on Collective Investment Undertakings[27], the investment fund is defined as a type of activity, whereby the assets are managed by the legal or natural persons by the right of common partial ownership under the trust right in accordance with the procedure and under the conditions established in this law and the rules of the investment fund. According to this definition, the statement that the investment fund itself is a proprietary complex[28] is incorrect. The assets of the investment fund can be referred to as proprietary complex which, at the moment of setting up, is made up of the funds of the investors (natural and juristic persons) who afterwards are paid for various assets, including the asset of the investment fund[29]. The peculiarity of the assets of the investment fund is that the owners of it are all investors (the participants of the investment fund) who own it by the common partial ownership right but they do not manage it directly because the assets are transferred to a management undertaking by setting up a trust. The civil turnover of the assets of the investment fund is regulated by the Law on Collective Investment Undertakings and the rules of the investment fund which are evaluated by the Commission of Securities. The participant of the investment fund is entitled *inter alia* to receive a portion of income of the investment fund and the remaining portion of the investment fund, which is being divided[30].

According to the provisions of the legal norms regulating the rights of the participants of the investment fund, it may be stated that the investment fund is partially alike to the company of share capital because the participants of the investment fund as well as the shareholders of the company receive a portion of the income, but do not manage the fund or the company directly. But differently from the company of share capital, which can manage its assets freely, the manager of the assets of the investment fund (the management undertaking) or the co-owners can manage the assets only according to the provisions of the rules of the fund and the applicable laws. Moreover,

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25 Lapach, V. A. *Sistema Obektov Grazhdanskikh Prav: Teorija i Sudebnaja Praktika.* [*The System of Objects of Civil Rights: Theory and Judicial Practice*]. Sankt-Peterburg: Juridicheskij Centr Press, 2004, p. 234.

26 Juzikienė, R.; Mizaras, V.; Smaliukas, A. Civilinių teisių objektai. *Civilinė teisė. Bendroji dalis*. Moksl. red. V. Mizaras. [*The Objects of Civil Rights* in *Civil Law. Common Part: Textbook*]. Vilnius: Justitia, 2009, p. 486.

27 Law on Collective Investment Undertakings. *Official Gazette*, 2003, No. 74–3424.

28 Juzikienė, R.; Mizaras, V.; Smaliukas, A., *op. cit*., p. 486.

29 Articles 45-46 of the Law on Collective Investment Undertakings.

30 Article 47 of the Law on Collective Investment Undertakings.

the shareholders of the share capital company are not referred to as the co-owners of the company's assets because they have the right of the ownership to the shares of the company. While analysing the possibility to qualify the assets of the investment fund as a proprietary complex, it must be determined if during the transfer of the part of the assets of the investment fund the same destiny strikes the rest of the assets or not, i.e. if it is the feature of legal indivisibility characteristic to the assets of the investment fund or not. The legal acts regulating the activity of the investment funds do not mention such possibility, thus it can be concluded that *the assets of the investment fund cannot be referred to as the proprietary complex.*

Talking about other totalities of assets like the complex of cultural heritage, attention should be drawn to the fact if such totality corresponds with the features of the proprietary complexes or not. If the unification of the separate things is justified by the legal or factual purpose and such totality is more economically valuable than separate things, it may be stated that it is a proprietary complex. Part 14 of Article 2 of the Law on the Protection of Real Cultural Heritage[31] provides that the objects of the cultural heritage are not only the separate objects, but also objects included into complexes and registered as values of the cultural heritage, i.e. the buildings on land, water or forest plots or other immovable things having valuable features and being the self-sufficient objects of property right. According to Paragraph 2 of Part 2 of Article 3 of the aforementioned law, the objects significant as a totality are referred to as complex objects.

According to Part 4 of Article 10 of the Law on Protected Areas[32], the immovable cultural values are the residential and non-residential buildings recognised as significant. These include parts thereof and fixtures, complexes and clusters of buildings, manor parks, other groups and locations of structures and other works linked by an integral architectural composition, also the engineering technical structures recognised as significant: bridges, tunnels, dams, mills, land reclamation installations, equipment for mills or another industrial or technological equipment. According to this, it may be stated that the complex of cultural heritage, when separate things having the status of cultural heritage are united into a complex, allows managing or transferring such objects easier and probably has bigger economic value. Therefore, such totality of things may be qualified as a proprietary complex.

It is obvious that it is impossible to provide a comprehensive list of the proprietary complexes and, moreover, it is purposeless. After all, if the owner of the separate things or the legislator thinks that the totality of the objects would better achieve the desirable goal and have the bigger economic value, whatever objects can be united into various proprietary complexes, e.g. collections of art, books, commodities, totalities of movable or immovable things, etc. Most importantly, such totality of assets must correspond to the necessary features of the proprietary complexes. Moreover, it may be concluded that the establishment of the institute of proprietary complexes in the positive law is

31 Law on Protected Areas of Republic of Lithuania. *Official Gazette*, 2004, No. 153–5571.

32 *Ibid*., 2001, No. 108–3902.

a positive thing, showing the adjustment of the legal system to the various needs and providing more possibilities to use the economic potential of the assets.

Conclusions

1. When the positive law regulates the institute of proprietary complexes, it allows to use the economic potential of assets more effectively by capitalizing such assets, because only when separate units of assets are joined into the integral mass for the certain legal or factual purpose, these separate units become a uniform system having bigger economic value than just a mere sum of the value of the separate objects.

2. Proprietary complexes should be referred to as the objects of unlimited civil turnover, unless the imperative legal norms provide otherwise.

3. The core feature of any proprietary complex is its purpose, because only when separate units of assets are joined into the integral mass for the certain legal or factual purpose, these separate units become a uniform system having bigger economic value than just a mere sum of the value of the separate objects.

4. All legal traditions are familiar with the proprietary complex – inheritance, wherein the separate units of assets are united to the proprietary complex not for the factual, but for the legal purpose – so that all assets had the same legal destiny and the creditors of the deviser would be protected.

5. The most intricate proprietary complex is the enterprise, which is always ongoing. Therefore, enterprise as a proprietary complex consists not only of tangible assets, but also of property rights, exclusive rights and debts because only such full content of proprietary complex allows to efficiently implement commercial activity.

6. Talking about other totalities of assets, attention should be drawn to the fact if such totality corresponds with the features of the proprietary complexes or not. If the unification of the separate things is justified by the legal or factual purpose and such totality is more economically valuable than separate things, it may be stated that it is a proprietary complex.

7. The assets of the investment fund cannot be referred to as the proprietary complex because the feature of legal indivisibility is not characteristic to the assets of the investment fund.

8. The complex of cultural heritage, when separate things having the status of cultural heritage are united into a complex, may be qualified as a proprietary complex because it allows managing or transferring such objects easier and probably has bigger economic value.

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TURTINIAI KOMPLEKSAI: TEORINIAI ASPEKTAI

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Santrauka*. Lietuvoje iki 2000 m. Civilinio kodekso priėmimo ir įsigaliojimo galiojęs 1964 m.CK išvis nereglamentavo civilinių teisių objektų, todėl 2000 m. CK I knygos III dalies V skyrius laikytina viena iš reikšmingesnių naujovių. Teisėje turtinis kompleksas suprantamas kaip visuma bendra paskirtimi pasižyminčių civilinių teisių objektų, kurie laikomi vientisu objektu ir turi turtinę vertę. Šiuolaikinėje privatinės teisės doktrinoje vyraujant pliuralistinei civilinio teisinio santykio objekto teorijai, tiek civilinio teisinio santykio,*

tiek civilinių teisių objektu pripažįstama tai (tos gėrybės), dėl ko atsiranda teisinis santykis. Turtiniai kompleksai kaip daugialypiai civilinių teisių objektai yra sudaryti iš įvairiausių turto vienetų. Teisine prasme turtu yra laikomi tie civilinių teisių objektai, kurie turi ekonominę (objektyvią) vertę ir civilinio apyvartumo savybę, t. y. tokį objektą jo savininkas turi galimybę perleisti kitam asmeniui. Formuojant turtinius kompleksus į vieną visumą sujungiami skirtingi turto (tiek materialaus, tiek nematerialaus) vienetai, ir toks turtinių vienetų junginys yra laikomas vienu civilių teisių objektu. Tokiu būdu pozityvioji teisė, nustatanti galimybę formuoti turtinius kompleksus ir tokiems objektams dalyvauti civilinėje apyvartoje, sudaro prielaidas turto kapitalizacijai, nes turtiniai kompleksai suformuojami siekiant pridėtinės vertės.

Atsižvelgiant į tai šiame straipsnyje, siekiant atskleisti turtinių kompleksų savitumą, nagrinėjamos turtinių kompleksų atsiradimo priežastys, šio instituto genezė, egzistavimo teorinis pagrindimas bei atskiros rūšys. Dėl to šio straipsnio tyrimo objektas yra turtinių kompleksų sąvokos, juos identifikuojančių požymių ir atskirų turtinių kompleksų ypatumų analizė.

Straipsnio pabaigoje pateikiamos šios išvados: (i) turtinių kompleksų instituto įtvirtinimas pozityviojoje teisėje suteikia daugiau galimybių išnaudoti turto ekonominį potencialą kapitalizuojant turtą, nes vieno tikslo sujungti atskiri civilinių teisių objektai tampa vientisa sistema, turinčia didesnę ekonominę vertę nei šių objektų verčių paprasta aritmetinė suma; (ii) turtiniai kompleksai turi būti traktuojami kaip neribotos civilinės apyvartos objektai, nebent imperatyviosios teisės normos nurodo priešingai; (iii) esminis turtinio komplekso požymis yra tikslas, nes tik vieno tikslo sujungti atskiri civilinių teisių objektai tampa vientisa sistema, turinčia didesnę ekonominę vertę; (iv) visos teisės sistemos prie turtinių kompleksų priskiria paveldimo turto masę (palikimą), į kurią atskiri turto vienetai sujungiami tik dėl teisinio tikslo – kad visas mirusiojo fizinio asmens turtas turėtų vienodą teisinį likimą, ir jo kreditoriai taip būtų apsaugoti; (v) sudėtingiausias turtinis kompleksas yra įmonė, kuri yra „nuolat veikiantis“ turtinis kompleksas. Dėl šios priežasties į įmonės kaip turtinio komplekso sudėtį patenka ne tik materialusis turtas, bet ir turtinės teisės, išimtinės teisės bei skolos, nes tik su tokios pilnos sudėties turtiniu kompleksu galima efektyviai vykdyti ūkinę-komercinę veiklą; (vi) kalbant apie kitokių turto vienetų samplaikų priskyrimą prie turtinių kompleksų, reikia atkreipti dėmesį į tai, ar tokia daiktų visuma atitinka turtinio komplekso požymius. Jei atskirų daiktų sujungimas į visumą yra pateisinamas faktinio ar teisinio tikslo, ir tokia daiktų visuma yra ekonomiškai vertingesnė nei atskiri daiktai, tuomet galima teigti, kad tai yra turtinis kompleksas; (vii) turtiniu kompleksu negali būti pripažįstamas investicinio fondo turtas, nes jam nebūdingas teisinio nedalumo požymis; (viii) kultūrinio paveldo kompleksą, kai į visumą yra sujungiami atskiri daiktai, turintys kultūros paveldo statusą, galima kvalifikuoti kaip turtinį kompleksą, nes toks sujungimas leidžia efektyviau valdyti ar perleisti tokius objektus bei turi didesnę ekonominę vertę.

Reikšminiai žodžiai: *civilinių teisių objektas, turtinis kompleksas, paveldimas turtas, įmonė.*

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