ПРИВАТНЕ МІЖНАРОДНЕ ПРАВО І ТРАНСКОРДОННЕ РЕГУЛЮВАННЯ

UDC 341.96
DOI: https://doi.org/10.31861/jiel.2026.2.46-55

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LEGAL PERSONALITY AND ASSOCIATIONAL AUTONOMY IN POLISH AND UKRAINIAN PRIVATE LAW

An association originates in the exercise of individual autonomy, yet its institutionalization inevitably raises questions concerning collective legal identity, organizational independence, representation, patrimonial autonomy and participation in legal relations. Legal personality is traditionally regarded as the principal juridical mechanism through which such collective autonomy acquires an independent legal form. This article argues, however, that legal personality should not be equated with the entirety of an association's legal existence. Rather, it represents one, albeit particularly developed, manifestation of a broader phenomenon which may be designated as associational autonomy.

The article undertakes a comparative analysis of Polish and Ukrainian private law, focusing on the legal status of associations operating with and without legal personality and on the manner in which these organizational forms are accommodated within private international law. Particular attention is devoted to the Polish distinction between registered and ordinary associations and to the Ukrainian statutory possibility for public associations to operate either with or without legal-person status. The analysis further examines the respective conflict-of-laws rules concerning the personal law, capacity and representation of legal persons, with particular emphasis on the Ukrainian regulation of foreign organisations lacking legal personality.

The article advances the proposition that contemporary private law should move beyond the rigid binary opposition between legal persons and legally irrelevant collectives. A functional conception of organizational subjectivity offers a more adequate analytical framework, particularly for cross-border relations in which the legal order of the forum is confronted with organisational forms originating in another jurisdiction. Such an approach reconciles organisational autonomy with third-party protection and territorial regulatory interests and may contribute to the further Europeanisation of Ukrainian private law.

ISSN 3083-7979

Keywords: *legal personality; legal services; associational autonomy; organizational subjectivity; legal person; private law; private international law.*

Кучук Світлана, Кіріяк Оксана. Юридична правосуб'єктність та автономія об'єднань у польському та українському приватному праві.

Об'єднання виникає внаслідок реалізації індивідуальної автономії, проте його інституалізація неминуче порушує питання, що стосуються колективної правової ідентичності, організаційної незалежності, представництва, майнової відокремленості та участі у правовідносинах. Правосуб'єктність традиційно розглядається як основний юридичний механізм, за допомогою якого така колективна автономія набуває самостійної правової форми. У статті, однак, стверджується, що правосуб'єктність не слід ототожнювати з усім правовим буттям об'єднання. Натомість вона є одним із проявів - хоча й особливо розвиненим - ширшого явища, яке можна визначити як «автономію об'єднань».

У статті здійснюється порівняльний аналіз міжнародного приватного права Польщі та України; основна увага приділяється правовому статусу об'єднань, що діють як із набуттям правосуб'єктності, так і без неї, а також тому, як ці організаційні форми інтегруються в систему міжнародного приватного права. Зокрема, розглядається польський підхід, що розрізняє зареєстровані об'єднання та «звичайні» (незареєстровані) об'єднання, а також передбачена українським законодавством можливість для громадських об'єднань діяти як зі статусом юридичної особи, так і без нього. Крім того, аналізуються відповідні колізійні норми, що стосуються особистого закону, правоздатності та представництва юридичних осіб; особливий акцент зроблено на українському регулюванні діяльності іноземних організацій, які не мають статусу юридичної особи.

У статті стверджується, що сучасне приватне право повинно вийти за межі жорсткої бінарної опозиції між юридичними особами та юридично нерелевантними колективами. Функціональна концепція організаційної суб'єктності пропонує більш адекватну аналітичну основу, зокрема для транскордонних відносин, у яких правовий порядок країни суду конфліктує з організаційними формами, що походять з іншої юрисдикції. Такий підхід узгоджує організаційну автономію із захистом третіх сторін та територіальними регуляторними інтересами і може сприяти подальшій європеїзації українського приватного права.

Ключові слова: *правосуб'єктність; юридичні послуги; автономія асоціацій; організаційна правосуб'єктність; юридична особа; приватне право; міжнародне приватне право.*

1. INTRODUCTION

Associations constitute one of the most enduring legal forms through which individuals transform private autonomy into collective action. Their legal significance, however, extends considerably beyond the constitutional recognition of freedom of association. Once a collective acquires a stable organisational structure, it inevitably enters the domain of private law: it may acquire property, conclude contracts, employ persons, incur liabilities, appoint representatives and, in appropriate circumstances, participate independently in judicial proceedings. The law must therefore determine at what point a collective cease to be merely an aggregation of individuals and acquires an autonomous juridical identity [1; 2].

The conventional response is the institution of legal personality. A legal person is distinguished from its members; rights and obligations are attributed to the entity itself; its patrimony is separated from that of its participants; and its legal existence ordinarily survives changes in membership. Legal personality thus performs an essential function of juridical individuation [3].

Yet this traditional model conceals an important conceptual difficulty. Associations may be legally recognized and organizationally autonomous even where they do not possess full legal-person status. The absence of legal personality does not necessarily transform an organized collective into a legally invisible phenomenon. It may instead indicate a different degree or mode of juridical autonomy [4].

This problem is particularly apparent in Polish and Ukrainian law. Both systems recognize associations as legally protected forms of collective organization and both permit forms of association which do not possess full legal personality. Nevertheless, they employ different legislative techniques to articulate the relationship between organisational form and juridical status [1; 2].

Polish law distinguishes principally between registered associations, which acquire legal personality through registration, and ordinary associations (*stowarzyszenia zwykłe*), which constitute a simplified organizational form without legal personality. Ukrainian legislation adopts a different but conceptually comparable approach by expressly permitting public associations to operate either with or without legal-person status [1; 2].

The issue acquires an additional dimension when an association crosses a national border. Private international law must then determine not merely whether an organization exists, but which law governs its status, whether its organizational capacity will be recognized, how its representatives may act and to what extent the forum may impose its own mandatory rules [5; 6].

The present article therefore addresses the following questions: (1) What is the relationship between legal personality and associational autonomy in Polish and Ukrainian private law? (2) Does the absence of legal personality necessarily entail the absence of independent organizational subjectivity? (3) How should organisations lacking legal personality be accommodated within Polish and Ukrainian private international law?

The central thesis is that legal personality should be understood as an institutional form of associational autonomy rather than as its necessary precondition. From this perspective, the more fundamental category is not the legal person as such, but the legally recognized capacity of an organized collective to generate juridical effects independently, or partially independently, of the individual legal positions of its members [4; 7].

2. ASSOCIATIONAL AUTONOMY BEYOND LEGAL PERSONALITY

The legal regulation of associations is founded upon a structural paradox. The association derives its existence from the autonomy of its members, yet its very purpose is to transform that individual autonomy into a collective institutional form capable of enduring beyond particular acts of individual participation [8].

This transformation gives rise to what may be termed associational autonomy: the legally protected capacity of an organized collective to determine its objectives, internal structure, membership, governance and modes of external representation [1; 2; 8].

Such autonomy is conceptually broader than legal personality. Legal personality primarily answers the question who is the bearer of rights and obligations? Associational autonomy, by contrast, addresses the prior institutional question who is entitled to determine the existence, structure and functioning of the collective through which those rights and interests are pursued?

ISSN 3083-7979

This distinction is not merely terminological. An association may possess considerable internal autonomy without having an independent patrimony or complete civil capacity. Conversely, legal personality may institutionalize autonomy but does not itself exhaust the normative content of the freedom of association [7; 8].

The European human-rights framework reinforces this distinction. Article 11 of the European Convention on Human Rights protects freedom of association not as a purely abstract entitlement to assemble, but as a condition of effective collective participation in a pluralistic society. The European Court of Human Rights has consequently treated the legal ability of an association to organise and function as an important dimension of effective associational freedom. The refusal or excessive difficulty of obtaining legal personality may, in appropriate circumstances, impair the practical exercise of that freedom [9].

Accordingly, legal personality should be approached functionally. Its importance lies not in the formal label attached to an organization, but in the juridical capacities which that status makes possible: autonomous ownership, contractual capacity, procedural standing, representation, continuity and allocation of liability [3; 9].

This functional perspective is particularly important for organisations which deliberately operate without legal personality. Their members may require an institutional framework for collective action without necessarily seeking the complete patrimonial and organizational separation associated with incorporation [4].

3. THE POLISH MODEL: DIFFERENTIATED ORGANISATIONAL SUBJECTIVITY

Polish law provides a particularly instructive example of differentiated associational autonomy. Under the Polish Law on Associations of 7 April 1989, an association is founded upon voluntariness, self-government, permanence and a non-profit character [10]. It independently determines its objectives, programmes of activity and organisational structure. The statutory emphasis on self-government is significant: organisational autonomy is not created by registration; rather, registration provides the institutional mechanism through which that autonomy may acquire full juridical expression.

The Polish system consequently recognises different organisational levels. A registered association acquires legal personality upon entry into the National Court Register. It becomes an autonomous legal person capable of participating in private-law relations in its own name.

An ordinary association (*stowarzyszenie zwykłe*), by contrast, does not possess legal personality. Nevertheless, it is not simply an informal gathering devoid of legal relevance. It is a legally regulated organisational form whose internal structure, representation and activity are subject to statutory rules [1].

This distinction is doctrinally important because it demonstrates that Polish law does not identify "*association*" and "*legal person*" as synonymous categories. The registered assoc iation may be described as possessing full organisational subjectivity, whereas the ordinary association represents a more limited form of functional organisational subjectivity. The difference is particularly visible in the sphere of property and representation. The legal person possesses a distinct patrimonial sphere and acts through legally established organs or representatives. The ordinary association operates within a more restricted framework, with legal consequences more closely connected to its members and designated representatives [11].

The Polish model therefore suggests that juridical autonomy is not necessarily binary [4]. It may be graduated according to the organisational form chosen by the participants. Such differentiation is of considerable relevance to comparative private law because it

prevents the category of "non-legal person" from becoming analytically synonymous with "non-entity".

4. THE UKRAINIAN MODEL: ASSOCIATION WITH OR WITHOUT LEGAL-PERSON STATUS

Ukrainian legislation adopts an equally significant, although structurally different, approach. The Law of Ukraine "On Public Associations" expressly permits a public association to operate with or without legal-person status [2]. A public association with legal personality constitutes a non-entrepreneurial company and may independently participate in civil-law relations, acquire property and non-property rights and exercise legally recognised powers.

The statutory distinction is therefore not between "association" and "non-association", but between different juridical modes of existence of an association. This is particularly important from the perspective of private law. The existence of an association without legal personality demonstrates that the legislature recognises a legally meaningful organisational structure even where the collective has not acquired complete juridical separation from its members [4].

The difference may be conceptualized through the following sequence: *collective association → organisational autonomy → legal recognition → functional capacity → legal personality.*

Legal personality represents the most developed form of this progression, but it should not retrospectively be treated as the source of every preceding form of organisational autonomy. The Ukrainian model is therefore potentially more receptive to a functional understanding of organisational subjectivity [2]. Its legal architecture allows the association to exist as an organisational phenomenon while leaving the participants to determine whether the additional status of legal personality is necessary for their purposes.

The significance of this approach becomes especially apparent in private international law, where Ukrainian legislation contains a provision expressly addressing foreign organisations which do not possess legal-person status under the law of their state of creation.

5. LEGAL PERSONALITY AND PRIVATE INTERNATIONAL LAW

Cross-border activity exposes the limitations of a purely domestic understanding of legal personality. A legal person created under the law of State A may conclude contracts, acquire property or establish organisational relationships in State B. The forum must therefore determine whether the entity's status is recognised, which law governs its internal organisation, and which restrictions may be imposed upon its capacity or representation.

Both Polish and Ukrainian private international law principally resolve these questions through the concept of the personal law (*lex societatis*) [1; 10].

Article 17 of the Polish Act of 4 February 2011 on Private International Law generally subjects a legal person to the law of the state in which it has its seat. This law governs a broad spectrum of matters, including the creation, transformation and termination of the legal person, its legal nature, capacity, organs, representation and membership [6].

Ukrainian law adopts a substantially comparable structure. Article 25 of the Law of Ukraine "On Private International Law" designates the law of the state in which the legal entity is situated as its personal law, while Article 26 subjects the civil capacity of the legal entity to that personal law [5]. The convergence is significant. Both legal systems recognise that organisational identity cannot be reconstructed independently in every jurisdiction in which the entity happens to operate. The personal law provides continuity and predictability.

ISSN 3083-7979

Yet the Ukrainian system contains an especially important refinement. Article 27 of the Ukrainian Law on Private International Law specifically regulates a foreign organisation which does not possess legal-person status under the law of the state in which it was created [5]. The provision thereby expressly acknowledges a category situated outside the classical binary of legal person/non-person.

This rule deserves particular doctrinal attention. It demonstrates that the Ukrainian legislator does not treat absence of legal personality as equivalent to absence of legal existence for conflict-of-laws purposes. The implication is profound: an organisation may remain legally relevant across borders even when it cannot be characterised as a legal person in the traditional sense.

6. FROM LEGAL PERSONALITY TO ORGANISATIONAL SUBJECTIVITY

The comparative analysis suggests the necessity of distinguishing three analytically separate categories: (1) legal personality, (2) legal capacity, and (3) organisational subjectivity.

Legal personality concerns the juridical status of an entity as an autonomous bearer of rights and obligations. Legal capacity concerns the range of rights and obligations which the entity may acquire. Organisational subjectivity concerns the prior and broader question of whether the legal order recognises the collective as an organised structure capable of producing legally relevant effects [3; 4; 7].

This distinction is especially useful in private international law. Consider an association created in State A without legal personality which subsequently operates in State B. A rigid territorial approach might conclude that, because the organisation is not a legal person under State A's law, there is nothing for State B to recognise. A functional approach produces a different result.

The relevant questions become:

- Does the organisation legally exist under the law of its state of origin?
- What degree of organisational autonomy does that law confer?
- Who is entitled to represent it?
- Can it possess or administer assets?
- Can it enter legal relations?
- Which consequences should the forum recognise?
- Which mandatory rules of the forum should nevertheless apply?

This methodology avoids both extremes: the automatic denial of foreign organisational identity and the uncritical transplantation of foreign legal status [4; 8]. It also offers a more coherent solution to what comparative private international law has historically described as the problem of "*apatride associations*": organisational structures whose legal status does not correspond neatly to the categories recognised by another legal system. The appropriate response is therefore neither complete equivalence nor complete exclusion, but functional recognition subject to legitimate interests of the forum and protection of third parties.

7. REPRESENTATION AND THIRD-PARTY PROTECTION

Associational autonomy reaches its practical culmination in representation. An organisation can participate in legal relations only through persons whose acts are legally attributable to it [3; 5; 8]. Consequently, the law governing representation forms an indispensable component of organisational autonomy. Both Polish and Ukrainian private international law recognize the importance of protecting third parties from undisclosed internal limitations upon the authority of representatives. Polish law expressly incorporates representation into the sphere of the *lex societatis*, while simultaneously limiting the

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possibility of invoking certain internal restrictions against third parties acting in circumstances protected by the statute [6]. Ukrainian law follows a comparable protective rationale. Restrictions on the powers of an organ or representative cannot, under the statutory conditions, automatically be invoked against a counterparty who could not reasonably be expected to know of those restrictions [5].

The underlying principle may be formulated as follows: associational autonomy is internally extensive but externally relational. An association must retain sufficient freedom to determine its own institutional structure; however, its internal autonomy cannot operate as an instrument for defeating legitimate expectations of third parties [12].

This principle provides a necessary bridge between organisational autonomy and private international law. The *lex societatis* protects continuity of organisational identity, while the law of the forum may legitimately intervene where necessary to protect transactional security, public policy or other mandatory interests.

8. A COMPARATIVE ASSESSMENT

The Polish and Ukrainian models reveal substantial conceptual convergence. Both systems: (1) recognize associations as legally protected forms of collective organisation; (2) acknowledge organisational self-government; (3) distinguish association from legal personality; (4) permit forms of association without full legal-person status; (5) associate legal personality with enhanced patrimonial and representational autonomy; (6) protect third parties in the context of representation; and (7) employ personal-law mechanisms for determining the status of legal persons.

The principal difference lies in legislative architecture. Polish law expresses differentiation primarily through distinct organisational forms: the registered association and the ordinary association. Ukrainian law expresses it more directly through different juridical statuses of the public association itself: with or without legal-person status.

From a theoretical perspective, however, both systems support the same broader conclusion: legal personality is a variable of organisational autonomy rather than its conceptual equivalent [13]. The Ukrainian conflict-of-laws regulation of foreign organisations lacking legal personality provides an especially clear statutory manifestation of this proposition. The Polish model, with its sophisticated differentiation between registered and ordinary associations and its detailed *lex societatis* rules, offers a complementary illustration of graduated organisational subjectivity. The comparative convergence is therefore stronger at the conceptual level than the differences in legislative technique might initially suggest.

9. EUROPEANISATION AND CROSS-BORDER POLISH-UKRAINIAN RELATIONS

The issue has particular relevance for the contemporary Europeanisation of Ukrainian private law. European legal development does not establish a single uniform model of associational organisation. Instead, European standards emphasize effective freedom of association, organisational independence, proportionality of state intervention and adequate legal mechanisms enabling associations to function.

The European Court of Human Rights has repeatedly emphasized that the effectiveness of freedom of association depends upon the practical ability of associations to organise and pursue their legitimate objectives. The Venice Commission has similarly treated legal status, registration and internal organisational autonomy as interconnected but distinguishable elements of the legal framework governing associations [9; 12].

This context supports a functional approach to legal personality. For Ukraine, such an approach is particularly valuable in cross-border relations with Poland. The increasing

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movement of individuals, institutions and civil-society organisations between the two jurisdictions generates situations in which organisational forms created under one legal system must operate within the other.

The legal order should therefore distinguish between: (1) recognition of an organisation's existence; (2) recognition of its legal personality; (3) recognition of its functional capacity; (4) recognition of its representatives; and (5) application of mandatory rules of the forum. These questions need not receive identical answers. Such differentiation enables the forum to recognize organisational diversity without surrendering the regulatory interests of the host state. It also reflects the broader trajectory of European private law: legal certainty is increasingly pursued through functional coordination of legal systems rather than through the forced uniformity of their domestic categories.

CONCLUSIONS. The comparative examination of Polish and Ukrainian private law demonstrates that legal personality cannot adequately serve as the sole conceptual criterion for determining whether an association possesses juridical significance.

Both legal systems recognize forms of association operating without full legal-person status. Polish law does so through the institution of the ordinary association, while Ukrainian legislation expressly permits public associations to function either with or without legal personality. These constructions demonstrate that organisational autonomy may precede and exceed juridical personality.

The article therefore proposes the concept of organisational subjectivity as a broader analytical category. It encompasses the legally recognised capacity of an organized collective to maintain an autonomous institutional structure and to produce legal effects independently, or partially independently, of the individual legal positions of its members.

Legal personality should consequently be regarded as the most developed institutional form of such subjectivity, rather than as its exclusive source. This proposition acquires particular importance in private international law. The traditional binary classification of organisations as either legal persons or non-persons is inadequate when legal systems encounter foreign organisational forms that do not correspond precisely to domestic categories. The Ukrainian statutory regulation of foreign organisations lacking legal personality provides an especially valuable example of a more functional approach.

The comparative analysis ultimately supports a model of functional recognition of associational autonomy. Under this model, the forum should first identify the organisational status created by the personal law of the association, determine the functional capacities attached to that status and subsequently establish which of those capacities may be recognised within the forum, subject to mandatory rules, public policy and the legitimate expectations of third parties. Such an approach reconciles three fundamental interests: the autonomy of the organisation, the regulatory authority of the forum and the protection of persons entering into legal relations with the organisation.

For Ukrainian private law, the model offers a potentially significant direction of further Europeanisation. Rather than assimilating Ukrainian organisational law mechanically to any single European model, doctrinal development should concentrate upon the compatibility of its underlying concepts with the European principles of organisational autonomy, effective freedom of association and cross-border legal cooperation.

The Polish-Ukrainian comparison demonstrates that the future of the law of associations lies not in a rigid choice between personality and non-personality, but in the construction of a sufficiently nuanced legal architecture capable of recognising different degrees and manifestations of collective juridical autonomy.

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In this perspective, the association emerges not merely as a legal form and the legal person not merely as a statutory status. Both are manifestations of a deeper legal phenomenon: the capacity of private law to transform individual freedom into durable collective agency.

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Дата першого надходження/Date of first submission: 31.08.2026
Прийнято до друку/Accepted: 30.09.2026
Опубліковано/Published: 01.11.2026

ISSN 3083-7979