ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.40

Nº 73
Julio
Diciembre
2022

Cuestiones Políticas Vol. 40, Nº 73 (2022), 633-654
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Specific characteristics of corporate rights under Ukrainian legislation

DOI: https://doi.org/10.46398/cuestpol.4073.36

Volodymyr Tsikalo *

Abstract

The article is devoted to the study of the peculiarities of the exercise of corporate rights under the civil law of Ukraine in order to identify their specific characteristics. Through a documentary methodology, close to legal hermeneutics, it was concluded that the participant of a legal entity (company) may have not only corporate rights but also other rights over this legal entity (company). Therefore, it is not enough to say that the rights of a person whose participation is defined in the authorized capital are corporate. It is important that the content of these rights is due to the ownership share (share, number of shares) in the authorized capital of the legal person (company). It was also found that intangible corporate rights must be distinguished from the personal intangible rights of the individual. The concepts of "non-economic rights" and "non-economic personal rights" are not identical. In relation to a person, intangible rights should be divided into two types: non-economic rights that are not closely related to a person (e.g., non-economic corporate rights); intangible rights that are closely related to a person and are inseparable from a person (personal intangible rights).

Keywords: corporate rights; economic rights; non-economic rights; public limited company; limited liability company.

* Associate Professor of the Civil and Civil Procedural Department of the Ivan Franko National University of Lviv, PhD in law, Associate Professor, Lviv, Ukraine. ORCID ID: https://orcid.org/0000-0002-6174-6928

Recibido el 14/04/2022 Aceptado el 26/06/2022

Características específicas de los derechos corporativos bajo la legislación ucraniana

Resumen

El artículo está dedicado al estudio de las peculiaridades del ejercicio de los derechos corporativos bajo la legislación civil de Ucrania para identificar sus características específicas. Mediante una metodología documental, próxima a la hermenéutica jurídica, se llegó a la conclusión de que el participante de una entidad legal (empresa) puede tener no solo derechos corporativos sino también otros derechos sobre esta entidad legal (empresa). Por lo tanto, no basta con decir que los derechos de una persona cuya participación se define en el capital autorizado son corporativos. Es importante que el contenido de estos derechos se deba a la participación de la propiedad (acción, número de acciones) en el capital autorizado de la persona jurídica (empresa). También se encontró que los derechos corporativos intangibles deben distinguirse de los derechos intangibles personales del individuo. Los conceptos de "derechos no patrimoniales" y "derechos personales no patrimoniales" no son idénticos. En relación con una persona, los derechos intangibles deben dividirse en dos tipos: derechos no patrimoniales que no están estrechamente relacionados con una persona (por ejemplo, derechos corporativos no patrimoniales); derechos intangibles que están estrechamente relacionados con una persona y son inseparables de una persona (derechos intangibles personales).

Palabras clave: derechos corporativos; derechos patrimoniales; derechos no patrimoniales; sociedad anónima; sociedad de responsabilidad limitada.

Introduction

Subjective corporate rights are characterized by certain features of implementation, which give grounds to distinguish them from other civil rights. These features of the exercise of corporate rights should be called essential because they reflect their legal nature. The essential features of the exercise of corporate rights, at present, include legal definitions of this concept, as well as legal norms that determine the status of their subjects.

However, the signs of the exercise of corporate rights are not sufficiently studied in modern theory of civil law. Judicial practice raises a number of questions to which there is no unambiguous answer either in law or scientific literature. A unified approach to the signs of exercising corporate rights has not yet been developed.

Acts of the legislation of Ukraine contain different definitions of corporate rights, which complicates the study of the signs of their implementation. These shortcomings can be eliminated by identifying and clarifying the essence of the principles of exercising the subjective rights of members of companies.

Thus, domestic special legal acts regulating the exercise of corporate rights in various organizational and legal forms of companies, separately provide for rights that do not belong to each (any) participant (shareholder), but only to those who have the necessary, the size of the share (number of shares) in the authorized capital established by law, for example: 5, 10, 95, etc. percent. These corporate rights have a number of features of their implementation compared to the rights granted to all other participants (shareholders).

From the analysis of the provisions of the acts of civil legislation of Ukraine, which contain the concept of subjective "corporate rights", as well as establish the features of the legal status of their subjects, we can identify a number of signs of such rights. These features reveal the essence of corporate rights; in this sense, they are constitutive because they reflect the content of corporate rights. Based on the analysis of legal provisions and own scientific position, we can identify the following signs of the exercise of subjective corporate rights:

1) Conditionality of the exercise of corporate rights by property participation in the authorized capital of a legal entity.
2) Exercise of corporate rights in relation to joint-stock companies, limited and additional liability companies.
3) Exercise of non-property and property corporate rights.

1. Methodological Framework

The normative and legal basis of this article was the provisions of the Civil Code of Ukraine and special legislative acts governing the exercise of corporate rights. The empirical basis of the study is the materials of the practice of litigation on the protection of corporate rights by the courts of Ukraine. The dialectical method of cognition accompanied the whole process of scientific research and allowed us to consider trends in the development of legislation on the exercise of corporate rights in the context of European integration.

The formal-legal method was used in the analysis of legal norms governing certain features of the exercise of corporate rights and the practice of their application. Sociological methods of cognition were used

in the analysis of regulations, court decisions and other documents. The hermeneutic-legal method was used in the process of interpreting the rules that determine the characteristics of the exercise of corporate rights.

Techniques of legal analysis was used in the study of the signs of the exercise of corporate rights with the help of legal techniques. Some methods of comparative law were used for comparative analysis of signs of corporate rights with other civil rights that may have participants (shareholders) of companies in relation to these legal entities.

2. Results and discussion

2.1. Conditionality of the exercise of corporate rights by property participation in the authorized capital of a legal entity (close connection with the size of the share (number of shares)

Only entities whose share is defined in the authorized (composed) capital of a legal entity have corporate rights. Moreover, a person who is the sole member of the company owns one share in the authorized capital, the amount of which is one hundred percent. The authorized capital of a legal entity does not have to have several shares.

The certainty of the share in the authorized capital means that corporate rights can be exercised only in relation to legal entities that: 1) have authorized capital; 2) there are shares of participants (participants) in their authorized capital (Zikalo, 2013).

These features of corporate rights U. Yarymovych consider to be characteristics of "corporate legal entities": the presence of authorized (composed) capital; determination in the authorized (composed) capital (property) of the participant's share, which gives him or her corporate rights (Yarymovych, 2012: 31). As points out I. Lukach a participant's share in the authorized capital makes it possible to distinguish corporations from other legal entities where there is no authorized capital divided into shares (Lukach, 2016).

Some scholars question this legislative provision. Thus, according to the authors of the textbook "Economic Law of Ukraine", such an approach is impractical, because regardless of the type of enterprise (unitary or corporate) the essence of the relationship between the founder (participant) and the enterprise is the same and corporate enterprises are the same.

The only difference is the presence of not one, but two or more owners of corporate rights in corporate enterprises, but this limit is actually erased with the introduction of the possibility of creating sole proprietorships (Gaivoronsky and Zhushman, 2005). A similar position is supported by O.

Kibenko on the example of the legal conclusions of the Grand Chamber of the Supreme Court: corporate law is a right that arises from participation in the capital of a legal entity. It does not matter whether such capital is divided into shares or not, the legal entity has one or more participants (Kibenko, 2019).

It is difficult to agree with this interpretation of corporate rights in relation to the relevant legal entities. The difference between corporate and unitary legal entities is not in the number of their founders (participants), but in the nature of the legal relationship between them and the legal entity.

As rightly points out Yu. Beck, the creation of an enterprise by one founder is not the only criterion for determining the unitary type of enterprise, other criteria must be taken into account, including the distribution of authorized capital, enterprise management, income distribution, etc. (Beck, 2013). Legal entities are divided into unitary and corporate, including depending on the method of establishment and formation of authorized capital (fund) (Tsikalo, 2008).

A unitary legal entity is not the owner of the property assigned to it, but acts on other legal regimes of property, for example, on the right of trust property and the right to manage someone else's property (fiduciary fund), etc. The owner of the property of a unitary legal entity is its founder, who should be held civilly liable for the obligations of the legal entity created by him. A corporate legal entity always acts on the right of ownership, and its founder (founders) acquires (acquire) corporate rights over it (Tsikalo, 2010). As a general rule, a corporate legal entity and its founder (s) cannot be held civilly liable for each other's obligations.

Representatives of legal science emphasize the different legal regimes of property of unitary and corporate legal entities in the context of possible corporatization of state and municipal unitary enterprises. Thus, O. Belyanevich and O. Podtserkovny drew attention to the fact that the transformation of unitary state and municipal enterprises and organizations into companies will change the legal regime of property of these legal entities to property rights, as corporate enterprises are given ownership of their assigned property (Belyanevych and Podtserkovny, 2019).

The Commercial Code of Ukraine emphasizes that a corporate is a legal entity formed, as a rule, by two or more founders. The caveat "usually" means that it may have one founder; not always two or more founders take part in the creation of a society. Therefore, the basis for the division of legal entities into corporate and unitary should be taken not the quantitative criterion of the founders (participants), but the nature of the legal relationship between them and the legal entity.

Determining the share of the founder (participant) in the authorized capital of a legal entity means that the content of its rights is in connection

with the property participation in the authorized capital, i.e., due to the size of the share. In the absence of division of the authorized capital of the enterprise into shares, its founders (participants) have no corporate rights. As a result, there can be no corporate rights in unitary enterprises (Kravchenko, 2009).

Even those authors who see the similarity of relations in unitary legal entities with corporate legal entities, do not call these relations actually corporate. According to A. Smityukh, the relationship between a unitary enterprise and the same person who already acts as the sole participant of the enterprise in relation to the activities of the unitary enterprise are different from property relations, the rights of this person to the enterprise are not real, they are inherent with the corporate rights of the participant of a corporate enterprise in relation to such an enterprise are not exclusive rights to property, but exclusive rights to a person (Smityukh, 2018).

It is worth agreeing with those scholars who propose to establish a closed list of organizational and legal forms of legal entities in the Civil Code of Ukraine, including corporate ones. It will be useful to define an exhaustive list of organizational and legal forms of legal entities. It should take into account world experience and practice, such as: EU law, English law and US law, which are world leaders and landmarks for many countries and strategic partners for Ukraine in particular (Ilchenko, 2021).

It should also be borne in mind that a person whose share is determined in the authorized capital of a legal entity may have not only corporate but also other rights to this legal entity, which are not related to property participation in its activities.

Other rights of a participant of a legal entity include, for example, labor rights, the content of which does not depend on property participation in the authorized capital. Labor rights are exercised outside the corporate relationship. This is expressly provided in paragraph 3 Part 1 of Art. 20 of the Commercial Procedural Code of Ukraine, according to which, the jurisdiction of commercial courts includes cases in disputes arising from corporate relations, except for labor disputes. The difference between corporate and labor relations is also noted in the scientific literature: that is, labor participation in the LLC is not part of the rights of its members (Spasybo-Fateeva, 2012).

Thus, a member of a legal entity (company) may have not only corporate but also other rights to this legal entity (company). Therefore, it is not enough to say that the rights of a person whose share is defined in the authorized capital are corporate. It is important that the content of these rights is due to property participation (share, number of shares) in the authorized capital of the legal entity (company). In the Law of Ukraine "On Joint Stock Companies" this feature is highlighted by the phrase: "rights

arising from the right of ownership of shares" paragraph 8 Part 1 of Art. 2 of the law (Verkhovna Rada, 2008).

Given such a feature of the exercise of corporate rights as the conditionality of their content by property participation in the authorized capital, the provisions of Part 1 of Art. 14 of the Law of Ukraine "On Limited and Additional Liability Companies" can be estimated critically (Verkhovna Rada, 2018). According to this legislative provision, the members of the company have the right to make their contributions to its authorized capital not in full immediately, but within six months from the date of state registration of the company.

Hence, at least six months after the establishment of a limited liability company (additional) liability, its members may not participate in the activities of the company, having, at the same time, certain shares in the share capital.

The existence of the said legislative provision could be justified only in combination with another requirement of the law, namely the minimum size of the authorized capital of a limited or additional liability company. As the current Law "On Limited and Additional Liability Companies" does not set requirements for the minimum amount of authorized capital of the company, it is impractical to postpone its payment in full. As noted by I. Spasybo-Fateeva, the authorized capital of the LLC no longer performs the guarantee function, but is only intended to certify the scope of corporate rights of its members and determine the amount of those claims that they (or their heirs or creditors) may make to the company (Spasybo-Fateeva, 2012).

Ukrainian legislator has abandoned the "pro-creditor concept" of authorized capital, the main purpose of which is to protect the interests of creditors; for which norms are set regarding the minimum amount of authorized capital (Hort, 2009). The main function of the authorized capital should be to protect the interests of creditors (Kibenko, 2006).

The authorized capital of limited and additional liability companies consists of contributions from its founders (participants). As it (authorized capital) does not have to be paid during the first six months, the members of the company are not obliged to make their contributions until this period expires. Until the expiration of the six-month period from the date of state registration of limited and additional liability companies, its members may not make contributions to the authorized capital (Gabov, 2019).

As a result, the participant's share during this period may not correspond to the actual contribution specified in the state register. This may lead to a lack of property participation of the person in the authorized capital of the company of which he is a member.

From the above legislative provision, it is concluded that the exercise of corporate rights by members of limited and additional liability companies during the first six months of its existence depends not on property participation in the authorized capital of the company, but on the size of the share specified in the state register.

In accordance with Part 2 of Art. 15 of the Law of Ukraine "On Limited and Additional Liability Companies" if the participants have not made (not fully made) their contributions to repay the debt, the general meeting of participants may take one of the following decisions:

1) On the exclusion of a member of the company who has arrears of contributions.
2) On the reduction of the authorized capital of the company by the amount of the unpaid part of the share of the participant of the company.
3) On the redistribution of the unpaid share (part of the share) among other participants of the company without changing the amount of the authorized capital of the company and the payment of such debt by the relevant participants.
4) On the liquidation of the company.

At the same time, the Law of Ukraine "On Limited and Additional Liability Companies" does not establish the legal consequences of non-adoption of such decisions by the general meeting of the company. In essence, making such a decision is a right of the company, not its duty. In this regard, there may be a situation when a limited liability company, the authorized capital of which is not fully paid, will continue to operate after the expiration of six months from the date of its establishment.

Even with the adoption of the Law of Ukraine "On Limited and Additional Liability Companies", the question of the impact of the value of the participant's share in the authorized capital of a limited and additional liability company on the exercise of its corporate rights after the deadline for full contribution remains unsolved.

Analysis of other provisions of the Law of Ukraine "On Limited and Additional Liability Companies" makes it possible to question the position on possible non-consideration of property participation (payment of shares) in the authorized capital of the company in determining the voting results at the general meeting.

Thus, according to Art. 2 of the Law of Ukraine "On Limited and Additional Liability Companies" members of the company who have not fully contributed, are jointly and severally liable for its obligations within the value of the unpaid part of the contribution of each of the participants.

This means that the amount of liability of the company's members for its obligations is determined by the real monetary value of the share, and not just in percentage terms. In accordance with Part 1 of Art. 12 of this law, the size of the authorized capital of the company consists of the nominal value of shares of its members, expressed in the national currency of Ukraine. Thus, the authorized capital of a limited and additional liability company expresses the amount of actually made contributions of participants.

The share of a participant of a limited (additional) liability company may be alienated until its full payment only in the part in which it is paid (Part 3 of Article 21 of the Law of Ukraine "On Limited and Additional Liability Companies"). Therefore, the unpaid part of the share in the authorized capital cannot be the object of civil turnover.

According to Part 10 of Art. 24 of the law, the company pays to the participant who left the company, the value of his share or transfers the property only in proportion to the amount of the paid part of the share of such participant. Hence, certain provisions of the Law of Ukraine "On Limited and Additional Liability Companies" directly indicate the legal (practical) importance of property participation in the formation of the authorized capital of limited and additional liability companies, i.e. the actual payment of shares.

Such position is supported in the scientific literature. Thus, O. Yankova proved economic conditionality of the participant's right to lead and receive dividends by fulfilling the obligation to pay for purchased shares or corporate rights (Yankova, 2000). According to I. Spasybo-Fateeva, a person cannot have corporate rights if he or she has not made a property share in the company (Spasybo-Fateeva, 2012). N. Slipenchuk considers that the acquisition of subjective corporate rights should be associated with property participation in the formation of authorized capital (Slipenchuk, 2014).

In order to regulate relations regarding the exercise of corporate rights of members of limited and additional liability companies, as well as to eliminate contradictions between certain provisions of civil law, it is necessary to exclude from the Law of Ukraine "On Limited and Additional Liability Companies" additional liability until the end of six months from the date of state registration of the company. The founders of the company must be obliged to make their full contributions by the day of state registration. Such a change will result in the formation of the authorized capital of a limited and additional liability company in full at the time of its establishment, as provided for in the establishment of joint stock companies (paragraph 7 of Part 5 of Article 9 of the Law of Ukraine "On Joint Stock Companies").

In this regard, it is necessary to set out Part 1 of Art. 14 of the Law of Ukraine "On Limited and Additional Liability Companies" as follows: "Each founder of the company must fully contribute to the authorized (composed) capital before the date of state registration of the company".

As a result, Article 15 of this law should be deleted from it. In addition, the first part of Article 17 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations" should be supplemented with a new paragraph "5-1" as follows: "a document confirming the contribution to the share capital". In the absence of such a document, the state registrar will have the right to refuse state registration of a limited liability company (additional) liability (paragraph 7 of Part 1 of Art. 28 of the Law).

In modern conditions, the founders of the company at the time of its state registration can form the authorized capital in any amount that will meet their economic capabilities. After the establishment of the company, the size of its authorized capital is subject to increase an unlimited number of times. Such changes will result in exclusion from Art. 21 of the Law of Ukraine "On Limited and Additional Liability Companies" of the third part on incomplete alienation of shares.

Given the content of corporate rights, such a feature as the definition of share, includes the connection with the property share in the authorized capital of the legal entity. In other words, the rights of a person, the share of which is determined in the authorized capital of a legal entity (company), are corporate not only because they belong to such a person, but because their content is related to property participation in the authorized capital; due to it.

This feature of corporate rights indicates that there is no need to indicate an exhaustive list of specific subjective corporate rights in the definition of this concept. It is impossible to specify all corporate rights in the definition, at least because they can be established not only by law but also by local legal acts of the company. The incompleteness of the list of corporate rights, which contains the definition set out in the law, indicate I. Spasybo-Fateeva and T. Dudenko, who believe that it is obvious the need to supplement non-property rights with the right to information, and property rights – with the right to demand payment when leaving the company or, in certain cases, the payment of the value of shares (Spasybo-Fateeva and Dudenko, 2005).

Thus, the nature of the legal relationship between a unitary or corporate legal entity and its founder (participant) is not identical and depends on whether the share of the founder (participant) in its authorized capital is determined and whether the size of this share affects effective rights of the founder (participant). A corporate entity is a legal entity with the authorized capital divided into shares (share) of its participants (participants), the

amount of which determines the exercise of subjective rights of participants (participants).

2.2. Exercise of corporate rights in relation to joint-stock companies, limited and additional liability companies

The conclusion that corporate rights exist only in business companies can be drawn from the list of rights that are defined as corporate. In particular, the mandatory corporate rights established by law (Civil Code of Ukraine, Laws of Ukraine "On Joint Stock Companies" and "On Limited and Additional Liability Companies") include the right to dividends.

This right is the corporate right for the exercise of which, the participants in civil relations participate in the activities of the company. It is for the purpose of receiving dividends that a person acquires corporate rights. The main feature of corporate rights is that their implementation is aimed at satisfying property interests and obtaining property benefits by participants in corporate relations (Shevchuk and Beaver, 2018).

Fundamental to the characterization of corporate rights is their property nature (Kravchenko, 2010). Therefore, the rights of a participant of a legal entity that do not provide for the possibility of receiving income, in particular, dividends, do not belong to the corporate. All, without exception, corporate rights entities should have the right to receive dividends (Ovchinnikov *et al*., 2019).

In turn, a person (participant, shareholder) can receive income from participation in the activities of only a business entity. According to I. Spasybo-Fateeva, the meaning of shares is the benefits they provide: income, participation in management. The second seems to be a means to achieve the first, but for large investors. Small and medium-sized investors cannot count on the return on participation in management.

They do not set this goal. They have one goal left - earnings from shares. Their sources are dividends, exchange rate differences (Spasybo-Fateeva, 2005). Corporations will be those companies in which the authorized capital is divided into shares, the participants have the right to a part of the company's profit and to participate in its management. If some of these rights are absent from the members of the companies, such companies cannot be recognized as corporations. Thus, members of non-profit companies do not have property rights to participate in the distribution of profits (dividends), because they are non-profit. And even if they make a profit from a certain activity, it is not distributed among the participants (Spasybo-Fateeva, 2014).

As noted by M. Sokolovsky, subjective corporate law is a separate type of subjective civil rights of a person as a member of a business partnership

(Sokolovsky, 2017). According to the authors of educational sources on corporate law, the basis for the distinction between business and non-business organizations is the category of subjective corporate law, which is owned only by members of business organizations (Luts, 2007).

And in the case of non-profit organizations, the legal relationship of its members with the established legal entity is fully covered by the category of membership. V. Sazonov singles out one of the signs of corporate relations as their emergence between subjects endowed with corporate legal personality as an element of civil legal personality; on the one hand, a business legal entity of private law (business organization), and on the other - its members (Sazonov, 2020).

However, this position does not have unequivocal support in the legal literature. Thus, S. Rabovska draws a different conclusion. According to her, since the ownership of corporate rights is not considered entrepreneurship, the definition of corporate law should not be about the right to receive a certain share of profits, but - the income of the organization.

The author explains this by the fact that the goal - to make a profit is a necessary feature of entrepreneurial activity (Rabovska, 2005). Since the ownership of corporate rights is not considered business, the legal entity in which the corporate rights arise, does not aim to make a profit. This, in turn, according to the scientist, may mean that corporate rights are not always related to the company.

The fact that a person who is a subject of corporate rights has the purpose of making a profit does not mean that this person (directly) engages in entrepreneurial activity. In addition to the special purpose - to make a profit, business activity is also characterized by other features, in particular, the presence of state registration as a business entity (Syvyy, 2017).

As for the persons who have a share in the authorized capital of the company, they are not required to state registration as business entities. Only the presence of all signs of entrepreneurship in the aggregate, indicates the relevant type of activity. The goal is to make a profit, just one of the signs of entrepreneurial activity, which is not enough to recognize a certain activity as entrepreneurship. In addition, the entrepreneurial goal cannot be reduced to profit.

A necessary feature of the business goal is the statutory ability to distribute (withdraw) this profit among the members of the company (Chechovskaya, 2016). If the law does not provide for the distribution of profits between the participants of the legal entity, the fact of its receipt may not be a sufficient sign of entrepreneurial activity. In other words, the entrepreneurial goal has two elements:

1) The fact of receipt of profit (income) by the company.

2) The possibility of its distribution (withdrawal) between the members of the company.

Although a person's corporate rights are not a business for which a corporate legal entity arises, it is always a business entity, as only a business entity can pay a dividend. A corporate partnership can only act as a business partnership, i.e., one that aims to make a profit and then distribute it among the participants (Tsikalo, 2007).

In Art. 84 of the Civil Code of Ukraine, legal entities that have the purpose of making a profit and its subsequent distribution among the participants were called business associations. Business associations, in turn, include business associations or production cooperatives. In their capital (statutory, compound, share) the founders determine their shares. However, the size of the share affects the exercise of the rights of participants, determines them only in a joint stock company, as well as in limited and additional liability companies. In the legal literature, they are called associations of property (Kharytonov and Saniahmetova, 2003), or capital (Yurkevych, 2016).

And although the names used are conditional, as such companies can be created by one person who becomes their sole participant (Part 2 of Article 114 of the Civil Code of Ukraine), they reflect the legal relationship of the rights of participants (shareholders) with the size of the share (number of shares) in the authorized capital.

For example, the number of votes of the members of these companies during the decision-making of the general meeting, the amount of dividends, the value of assets in case of liquidation, etc., determines the size of the share (number of shares) in the share capital. Members of associations of property (capital) exercise the right to vote, dividends, to participate in the distribution of assets in liquidation, etc., respectively (in proportion) to the size of their share (number of shares).

The exercise of the rights of members of general and limited partnerships, as well as members of production cooperatives, does not depend on the size of the share in their capital (composed or share). Thus, corporate rights belong only to shareholders, as well as members of limited and additional liability companies.

This position is supported in the science of civil law, but it is based on other arguments. Thus, taking into account the legal nature of the memorandum of association, V. Kossak does not include the corporate rights of participants in general and limited partnerships Asin the absence of a status that defines the relationship between the company and its members, the relationship between the parties (the founding agreement on the establishment of general and limited partnerships) is not corporate. This is a relationship of a civil nature, to the regulation of which can also be applied the general provisions of contract law.

Accordingly, the conclusion of a memorandum of association for activities within a general or limited partnership is the emergence of civil rights and obligations between the parties to the agreement. The latter is the main document designed to regulate the relationship between the parties. Therefore, there is no need to grant full and limited partnerships the status of a legal entity (Kossak, 2016).

According to I. Spasybo-Fateeva, in order to resolve the issue of what a Ukrainian corporation is, a certain criterion should be chosen for classifying legal entities as corporations (Spasybo-Fateeva, 2021). Obviously, this criterion should be the presence of the division of authorized capital into shares that determine corporate rights.

In turn, the existence of corporate rights indicates that these rights belong to the members of the corporation (because it is logical that the members of the corporation have corporate rights, and the founders, members of other legal entities other than corporations do not have corporate rights). K. Leonov came to the conclusion that corporate rights arise only in certain business companies - limited liability companies and joint stock companies, whose capital is divided into shares between the participants (Leonov, 2021).

To conclude the analysis of this feature of corporate rights, it remains to add that they arise in relation to joint stock companies, limited and additional liability companies not only because the authorized capital of these companies determines the size of shares of participants (shareholders), but because these shares (number of shares) affect the exercise of corporate rights; determines their volume.

2.3. Exercise of non-property and property corporate rights

There are two types of corporate rights: non-property and property. This feature has repeatedly been noted in the scientific literature on civil law. For example, I. Spasybo-Fateeva believes that corporate rights are a combination of property (the right to receive a certain share of profits (dividends) of a legal entity and assets in the event of its liquidation) and non-property rights (the right to participate in its management) (Spasybo-Fateeva, 2004).

However, not all authors see corporate rights as intangible. For example, O. Velykoroda came to the conclusion that corporate rights, including the right to participate in management as one of the powers of corporate rights, do not belong to personal non-property rights (Velykoroda, 2010). The scholar made this conclusion on two grounds: the management of the company is carried out for profit; the right to govern may be alienated.

However, other non-property rights of a member of the company, as well as the right to participate in management, such as the right to audit the company, the right to obtain information about the company, the right to withdraw from the company are also exercised, usually for further profit. In addition, such types of shareholders' rights as non-property rights are directly reflected in the definition of corporate rights contained in Art. 2 of the Law of Ukraine "On Joint Stock Companies". It seems that the arguments presented by the author are not enough to draw a conclusion about the purely property nature (absence of non-property features) of corporate rights.

Non-property corporate rights should be distinguished from personal non-property rights of a person (Book Two of the Civil Code of Ukraine). The concepts of "non-property rights" and "personal non-property rights" are not identical. In relation to the person, non-property rights should be divided into two types:

- Intangible rights that are not closely related to the person ("impersonal" intangible rights, which include corporate intangible rights).
- Intangible rights that are closely related to the person and are inseparable from a person (personal intangible rights).

One of the features of personal non-property rights is the impossibility of their transfer by succession, including the transfer on the basis of the transaction to other persons. For example, in accordance with paragraph 1 of Part 1 of Art. 1219 of the Civil Code of Ukraine personal intangible rights are not part of the inheritance, i. e. cannot be transferred. This feature distinguishes personal non-property rights from other non-property rights that can be transferred by succession.

At the same time, in the field of corporate legal relations, non-property rights are subject to transfer from their subjects to other persons. Thus, according to Part 1, 2 and 7 of Art. 7 of the Law of Ukraine "On Joint Stock Companies" shares of a joint stock company may be alienated, inherited or transferred to the successor of the legal entity.

In accordance with Part 1 of Art. 21 and part 1 of Art. 23 of the Law of Ukraine "On Limited and Additional Liability Companies" the participant of the company has the right to alienate his share; in case of death or termination of a member of the company, his or her share passes to his or her heir or successor without the consent of the members of the company.

Such features as: lack of economic content (monetary value), close connection with the person, the impossibility of abandoning them, the inadmissibility of their deprivation, as well as lifelong action (parts 3 and 4 of Article 269 of the Civil Code of Ukraine) are characteristic only of personal non-property right.

Some scholars do not consider non-property corporate rights to be personal non-property rights of an individual. Thus, according to I. Sarakun allocation of personal non-property rights to a separate group is debatable, as the powers of the participants constitute the content of the right to participate in the management of the company, and it can be exercised through an authorized representative. Therefore, it is not inseparable from a member of the company (Sarakun, 2007).

As for the non-property nature of corporate rights, it should be noted that the term "non-property" is used as the antithesis of "property" rights, i.e., non-property rights are rights that have no property content (Kravchenko, 2010). As for the non-property component of corporate rights, they are guided by property corporate rights. At the same time, its intangible component can hardly be described as a personal intangible right in its sustainable sense (Jornokuy, 2011).

One of the types of non-property right, which is inextricably linked to its subject, and can be transferred from one person to another not only under the contract, but also on the basis of a unilateral transaction (e.g., will), is the right to participate in the company. According to V. Kravchuk in case of death of the participant the object of inheritance can include: 1) a share in the authorized capital; 2) the right to participate in the company, if it is expressly provided in the charter (Article 1219 of the Civil Code of Ukraine).

Thus, there may be cases where only the share is inherited, and cases when the share is inherited alongside with the right to participate in the company. As a result of inheritance, corporate rights may arise in full (both in terms of share and in terms of participation) or incomplete (only in respect of shares in the share capital) (Kravchuk, 2009).

O. Hnativ believes that the right to participate in governance is an intangible right. It may not be alienated or transferred to another person separately from other rights or in isolation from a share security, but it does not belong to the personal non-property rights of an individual under Book II of the Civil Code of Ukraine (Hnativ, 2016).

Another position is held by V. Vasilieva, who believes that corporate law should be considered as a complex aggregate object of civil rights, consisting of independent subjective rights, which constitute the content of corporate law. These include non-property rights and property rights. It is the existence of property rights that allows the introduction of corporate law into civil circulation as an independent object (Nekit, 2021). Therefore, corporate rights are part of the estate and can be acquired as a result of inheritance (Vasilieva, 2007).

Some researchers of personal non-property rights of legal entities express the opinion about the possibility of transferring these rights (personal non-property) to successors, in particular, in the process of termination of the

legal entity. Thus, according to S. Popova, personal non-property rights of a legal entity are terminated with its termination or are inherited by a successor. Regardless of the termination of a legal entity, its individual rights (including personal non-property) continue to exist in those cases that were initiated and not completed by it (Popova, 2018).

Personal non-property rights of an individual are a type of non-property civil rights, which include, but are not limited to, corporate rights.

Conclusions

The exercise of corporate rights has certain features that allow to distinguish them from other civil rights: the conditionality of the exercise of corporate rights by property participation in the authorized capital of a legal entity; exercise of corporate rights in relation to joint-stock companies, limited and additional liability companies; exercise of non-property and property corporate rights.

A member of a legal entity (company) may have not only corporate but also other rights concerning this legal entity (company). Therefore, it is not enough to say that the rights of a person whose share is defined in the authorized capital are corporate.

It is important that the content of these rights is due to property participation (share, number of shares) in the authorized capital of the legal entity (company). In the Law of Ukraine "On Joint Stock Companies" this feature is highlighted by the phrase: "rights arising from the right of ownership of shares" (paragraph 8 of Part 1 of Art. 2 of the Law).

The nature of the legal relationship between a unitary or corporate legal entity and its founder (participant) is not identical and depends on whether the share of the founder (participant) in its authorized capital is determined, and how the size of this share affects the implementation of the rights of the founder (participant). A corporate entity is a legal entity with the authorized capital divided into shares of its participants (shareholders), the size of which proportionally determines the exercise of subjective corporate rights.

In Art. 84 of the Civil Code of Ukraine, legal entities that have the purpose of making a profit and its subsequent distribution among the participants were called business associations. Business associations, in turn, include business associations or production cooperatives. In their capital (statutory, compound, share) the founders determine their shares. However, the size of the share affects the exercise of the rights of participants, determines them only in a joint stock company, as well as in limited and additional liability companies.

For example, the number of votes of the members of these companies during the decision-making of the general meeting, the amount of dividends, the value of assets in case of liquidation, etc. determines the size of the share (number of shares) in the share capital. Participants of property associations (capital) exercise the right to vote, to dividends, to participate in the distribution of assets in liquidation, etc. in proportion to the size of their share (number of shares).

Thus, corporate rights belong only to shareholders, as well as members of limited and additional liability companies. Corporate rights arise in relation to joint stock companies, limited and additional liability companies not only because the authorized capital of these companies determines the size of shares (number of shares) of participants (shareholders), but because the size of these shares (number of shares) affects the implementation of corporate rights; determines their volume.

Non-property corporate rights should be distinguished from personal non-property rights of a person (Book Two of the Civil Code of Ukraine). The concepts of "non-property rights" and "personal non-property rights" are not identical. In relation to the person, non-property rights should be divided into two types:

- Non-property rights that are not closely related to the person (for example, corporate non-property rights);
- Intangible rights that are closely related to the person and are inseparable from a person (personal intangible rights).

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DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 Nº 73

Esta revista fue editada en formato digital y publicada en julio de 2022, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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