

ГОСПОДАРСЬКЕ ПРАВО І ГОСПОДАРСЬКИЙ ПРОЦЕС

Bodnarchuk O.H.,*Doctor of Law, Associate Professor,
Professor at the Department of Commercial Law and Procedure
University of State Fiscal Service of Ukraine***Pochynok K.B.,***Candidate of Juridical Sciences (Ph.D.)
Associate Professor at the Department of Commercial Law and Procedure
University of State Fiscal Service of Ukraine*

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TO THE ISSUE OF JURISDICTION OVER CORPORATE DISPUTES IN UKRAINE

In Ukraine, the traditional solution of corporate disputes is the appeal to the commercial court. Many cases are considered over the years, which ultimately leads to numerous mistakes and unequal practices by commercial courts of substantive and procedural law when considering corporate cases that violate the rights of the parties to the dispute. Therefore, recently in Ukraine, one of the most important and most problematic topics, which became the subject of discussion at international and Ukrainian conferences, round tables and seminars in the field of corporate relations – the resolution of corporate disputes.

The peculiarities of corporate relations, the legal nature of disputes arising from corporate relations, certain problems in solving these disputes were investigated by such scholars as V.S. Shcherbyna, who in his article analyzed the legal nature of corporate relations [16], O.V. Bryntsev disclosed the essence of legal disputes (corporate) in the field of entrepreneurship and determined the ways to solve them [3], N. Kuznetsova while investigating corporate disputes, brings the concept of such a dispute, its features, classification, emphasizes the need to delineate corporate disputes and other «tangent», close to them [7], O.R. Kovalyshyn in his study compares the views of various scholars on the peculiarities and classification of corporate disputes, and also gives his own classification of such disputes [6]. F.S. Dzhemilova investigated the problem of improving the legal regulation of corporate disputes resolution [5].

It should be noted that the term «corporate dispute» in the domestic legislation was not used. In particular, N. Kuznetsova asserts that «the term» corporate disputes «has been used in judicial practice for a long time, while the content of the concept itself and the limits of its application are not clearly defined either in the legislation or in the legal doctrine» [7].

O.R. Kovalyshyn defines a corporate dispute as a dispute arising out of the material legal relationship between legally equal participants in corporate relationships in acquiring, implementing and terminating their corporate rights and interests [6]. However, the scientist analyzing the norms of the Commercial Procedural Code of Ukraine concluded that the corporate dispute is

a dispute that arises between an economic partnership and its participant, including the participant who left, as well as between the members of the business associations, With the creation of this economic partnership. That is, according to O.R. Kovalyshyn, the legislator defines the subject of a corporate dispute, based on a narrow understanding of corporate legal relationships [6].

Consequently, a corporate dispute is a corporate conflict that arose between an economic society and its participant (founder, shareholder), including the participant who left, as well as between the participants (founders, shareholders) of the business associations that are connected with the creation, activity, management and termination of an economic partnership that leads or may lead to the following circumstances: violation of the rules of the current legislation, the statute or internal documents of the companies, the rights of the shareholder or a group of shareholders, according to call on the company, its management bodies or their decisions in essence, the early termination of the powers of the governing bodies, significant changes in the composition of shareholders, etc.

Corporate disputes include, in particular, a dispute over a claim of a participant (shareholder) of an economic partnership (hereinafter – the EP) regarding the invalidation of an agreement entered into by a company, the terms in which, in the opinion of the plaintiff, deprive the company of the possibility of obtaining additional income; Cases on the invalidation of contracts of sale and purchase of property of EP, concluded on the basis of decisions of the general meeting of a joint-stock company (hereinafter – JSC); A claim of an individual member of the supervisory board of the JSC on the invalidation of an agreement entered into by the chief executive officer in the absence of the decision (agreement) of the supervisory board, which is obligatory for the conclusion of such an agreement; Disputes concerning termination of a legal entity – EP (cancellation of state registration); Any dispute regarding the invalidation of the provisions of constituent documents or constituent documents of the EP as a whole; Dispute about the right of the shareholder to be elected to the supervisory board of the JSC; Dispute over abuse of the right in corporate legal relations.

Thus, corporate disputes can be divided into the following categories: disputes arise about corporate property rights and disputes arising on the organization of corporate rights.

Note that the jurisdiction of corporate disputes cases plays an important role in the administration of justice [13], as it is an element of a system that ensures the right of a person to apply to a competent court.

K.V. Bilyk believes that jurisdiction is a property of a legal matter. Depending on the material nature of the legal dispute specifies the specifics of the bodies that resolve the dispute, and those or other procedural features of the resolution of the dispute [1].

As noted by I.G. Pobirchenko, the jurisdiction acts as an inter-branch institute of law, which serves as a mechanism for the distribution of legal disputes between different bodies [12, p. 9].

It should be noted that the problems of the legal nature of corporate disputes for a long time remained uncertain of their jurisdiction to various courts, since they depended on secondary factors, in particular, if at least one individual was found to be among the defendants – a corporate dispute was considered by the general court in accordance with the Civil Procedural Code of Ukraine (Further – CPC of Ukraine) [15], when the claim is filed in court by a legal entity – economic court in accordance with the Commercial Procedural Code of Ukraine (hereinafter – CPC) [4].

S.V. Tomchyshena, V.V. Soloviov argue that conflicts also arise from the use of too general phrases «business arising from corporate relations», as well as «associated with the creation, operation, management and termination of this society» [14, p. 73]. Of these legislative formulations, it is not always clear what disputes will be resolved in local commercial courts.

V. Moskalenko believes that the differences between the commercial and civil procedural legislation, as well as the fact that the decisions of commercial courts are neglected by the general courts, not only hinder the formation of a single law enforcement practice in corporate disputes, but also promote the abuse of rights by the shareholders (shareholders), which deserves attention to the idea of the need to clearly delineate the jurisdiction of cases of corporate disputes between general and commercial courts [10, p. 88].

It should be noted that the jurisdiction of any litigation is determined by certain criteria. The need to apply criteria of jurisdiction is conditioned by the fact that it is impossible to establish in the legislation an exhaustive list of corporate disputes that will be resolved by a specific court. The law establishes only general rules for bringing a dispute about a right to a particular court, as well as certain exceptions to it, which the legislator deems necessary to establish for one or another reason.

Therefore, when determining the jurisdiction of corporate disputes, the following criteria are important:

– the subjective criterion of jurisdiction lies in the fact that the subjects of corporate disputes may be members of business associations (including those who left) the same company. But this criterion is not

enough, because the range of disputes that may arise between a participant and an economic society is quite broad. Not always such disputes are corporate in nature, that is, associated with participation in a business community. For example, if only this criterion is applied, in commercial courts, a labor dispute about the dismissal of the general director of a joint-stock company, which at the same time is a shareholder of this company, would be considered in commercial courts. Similarly, without clarifying the content of the legal relationship, the dispute over the inheritance of corporate rights could also be considered in the economic court, although such relationships are not corporate;

– the substantive criterion of jurisdiction lies in the fact that the jurisdiction of economic courts include only those disputes subject to which corporate relations. The subject criterion reflects the nature of the controversial relationship. It is inherent in all categories of cases that are considered in commercial courts.

According to Art. 12 of the CPC of Ukraine [4] subordinate to economic courts, in particular, cases arising out of corporate relations in disputes between an economic society and its participant (founder, shareholder), including the withdrawing participant, as well as between the participants (founders, shareholders) Business associations associated with the creation, operation, management and termination of the activities of this company, except for labor disputes.

Contents of Art. 12 of the CPC of Ukraine [4] allows to distinguish between two groups of corporate disputes subordinated to the economic court:

1) disputes between an economic partnership and its participant, including the former (who left). It is necessary to draw attention to the fact that business associations are not all legal entities, but only their separate group. Commercial, in particular, belong to JSC, limited liability company (hereinafter referred to as LLC), partnership with additional liability (hereinafter – PAL), full partnerships (hereinafter – FP) and limited partnerships (hereinafter – LP). Types such as PAL, FP and LP are not popular, so a significant part of «corporate affairs» is the participation of JSC and LLC;

2) disputes between the parties (founders, shareholders) of business associations related to the creation, operation, management and termination of the activity of this company, except for labor disputes (hiring, dismissal, remuneration, material liability), which falls within the competence of general courts .

Note that Part 4 of Art. 12 of the Commercial Procedure Code of Ukraine [4] attributes a wide range of corporate disputes to the jurisdiction of commercial courts. However, some important disputes remain outside the jurisdiction of the jurisdiction.

The above disputes do not arise from corporate legal relations, since their participants are not business partnerships, but their participants, and therefore they are not corporate in its pure form. Disputes related to the creation, operation, management and termination of the business community cover virtually all the relations that may exist between the participants in relation to their participation in the company.

According to Art. 16 of the Commercial Procedure Code of Ukraine [4], such cases are considered exclusively by the economic court at the location of the company, which allows the consideration of all corporate disputes in one specialized court and should help to prevent the abuse of procedural rights.

L.V. Melekh, O.V. Viznyak believe that corporate relations by its legal nature and is a specific kind of economic relationship that has become an argument for withdrawal of the so-called corporate disputes of administrative jurisdiction and refer them to the jurisdiction of commercial courts [9, p. 146].

It should be noted that there are two ways of resolving corporate disputes: 1) judicial; 2) out of court with the help of mediators.

In particular, EU countries have found an alternative to litigation over corporate disputes involving mediators and arbitrators. At the same time, in accordance with Part 2 of Art. 12 of the Code of Commercial Procedure Code of Ukraine, corporate disputes cannot be submitted to arbitration courts.

Therefore, F.S. Dzhemilova considers it appropriate for commercial jurisdiction of Ukraine to be included in the procedural legislation of mediation norms, which is effectively applied in international practice, along with other alternative methods of resolving disputes. Legal forms of consolidation of the results of the relevant procedure may be, in particular, the waiver of the claim, the recognition of the claim, the withdrawal of a complaint, the conclusion of a peace agreement [5, p. 352].

However, S.O. Yuldashev emphasizes that a non-state judicial process in the resolution of corporate disputes could play a particularly important role, since it is the arbitration form for the resolution of corporate disputes that is most appropriate to the nature of corporate relations. That is why corporate disputes should be dealt with by alternative arbitration methods involving two types of intermediaries, in particular arbitration courts or mediators. For the successful application of the mediation procedure in the system of economic courts of Ukraine, appropriate changes should be made to the economic procedural legislation, as well as to develop a comprehensive program for the implementation of mediation and to ensure the implementation of this program [17, p. 522].

In addition, O. Bobak points out that the advantages of mediation are: simplicity, time saving, reduction of the cost of resolving a dispute, the ability to influence its outcome, the confidentiality of the procedure, the possibility of maintaining or restoring business relationships with partners, influence on the outcome of the decision, prevention of the emergence of such conflicts in the future [2].

I.V. Lukach notes that the existing procedure can only be justified in the context of discrediting the work of arbitration courts in Ukraine. However, this does not solve the problem, because foreign experience shows that alternative ways of resolving corporate disputes are prevalent. In view of this, it is necessary to reform arbitration proceedings and at the proper level to attend the work of mediators, and not to prohibit alternative ways of resolving corporate disputes [8, p. 74].

Therefore, in our opinion, such resolution of disputes, firstly, will free the state courts from small, lengthy cases, and secondly, legal and natural persons will find protection of their legitimate interests in alternative ways of resolving corporate disputes.

Note that the other thought K.V. Bilyk, who believes that the changes of 15.12.2006 on exclusive jurisdiction of corporate disputes to economic courts are correct for a number of reasons. First, the existence of an alternative jurisdiction of this category of disputes, due to their subjective plurality, is inadmissible, since it results from the emergence of parallel processes, may give rise to competition in court acts, and as a result, the lack of real judicial protection. Secondly, corporate disputes in most cases are of an economic nature and their consideration by economic courts is appropriate in terms of specialization of courts [1].

V.T. Pirogovsky emphasizes that the exclusive competence of commercial courts to review corporate disputes positively affected both the stability of procedural legal relationships, and the harmony of material norms of economic legislation [11, p. 406].

Thus, today it is necessary to reform the system of jurisdiction of corporate disputes, based on the nature of corporate relations, and correctly identify the subject-object composition in their interaction [8, p. 74].

Consequently, since corporate disputes are a kind of economic disputes, in our opinion, they must be brought to a logical conclusion regarding jurisdiction, namely, the delimitation of material corporate legal relations from related civil, labor relations, as well as public-law disputes subject to consideration by rules Code of Administrative Procedure of Ukraine, taking into account their essential features, and not proceeding from purely formal criteria, which are defined in the procedural law.

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Bodnarchuk O.H., Pochynok K.B. TO THE ISSUE OF JURISDICTION OVER CORPORATE DISPUTES IN UKRAINE

The article covers concepts and types of corporate disputes. It has been determined that corporate disputes can be divided into the following categories: disputes arising out of property corporate rights and disputes arising out of corporate corporate rights. The problems of corporate disputes jurisdiction and ways of their solution are investigated. It has been established that the jurisdiction of any court case is determined by certain criteria. The need to apply criteria of jurisdiction is conditioned by the impossibility of establishing in the legislation an exhaustive list of corporate disputes that will be resolved by a specific court. The law establishes only general rules for bringing a dispute about a right to a particular court, as well as certain exceptions to it, which the legislator deems necessary to establish for one or another reason. In determining the jurisdiction of corporate disputes, the following criteria are important: the subjective criterion of jurisdiction lies in the fact that the subjects of corporate disputes may be participants in business associations (including those who left) the same company. But this criterion is not enough, because the range of disputes that may arise between a participant and an economic society is quite wide. Not always such disputes are corporate in nature, that is, associated with participation in a business community; the objective criterion of jurisdiction lies in the fact that the jurisdiction of commercial courts include only those disputes subject to which corporate relations. The subject criterion reflects the nature of the controversial relationship. It is inherent in all categories of cases that are considered in commercial courts. It should be noted that there are two ways of resolving corporate disputes: judicial; out of court through mediators. The emphasis is placed on the alternative to litigation in corporate disputes involving mediators and arbitrators. In particular, EU countries have found an alternative to litigation in corporate disputes involving mediators and arbitrators. For the successful application of the mediation procedure in the system of commercial courts of Ukraine, appropriate changes should be made to the economic procedural legislation, as well as to develop a comprehensive program for the implementation of mediation and to ensure the implementation of this program. Such a settlement of disputes, firstly, will free state courts from small, lengthy cases of consideration, and secondly, legal entities and individuals will find protection of their legitimate interests in alternative ways of resolving corporate disputes.

Consequently, since corporate disputes are a kind of economic disputes, in our opinion, they must be brought to a logical conclusion regarding jurisdiction, namely, the delimitation of material corporate legal relationships from related civil, labor relations, as well as public-law disputes subject to consideration by rules The Code of Administrative Justice of Ukraine, taking into account their essential features, and not proceeding from purely formal criteria defined in the procedural law.

Key words: commercial courts, corporate relations, corporate disputes, jurisdiction of corporate disputes, non-state legal proceedings in resolving corporate disputes, mediation, arbitration courts.

Боднарчук О.Г., Починюк К.Б. ДО ПИТАННЯ ПІДВІДОМЧОСТІ ВИРІШЕННЯ КОРПОРАТИВНИХ СПОРІВ В УКРАЇНІ

У статті висвітлюються поняття та види корпоративних спорів. Визначено, що корпоративні спори можна поділити на такі категорії: спори, які виникають із приводу майнових корпоративних прав, та спори, які виникають із приводу організаційних корпоративних прав. Досліджено проблеми підвідомчості корпоративних спорів та шляхи їх вирішення. Акцентовано увагу на альтернативу судовому розгляду корпоративних спорів – залученні медіаторів і третейських суддів.

Ключові слова: господарські суди, корпоративні відносини, корпоративні спори, підвідомчість корпоративних спорів, недержавне судочинство в розв'язанні корпоративних спорів, медіація, третейські суди.

Боднарчук О.Г., Починок К.Б. К ВОПРОСУ ПОДВЕДОМСТВЕННОСТИ РЕШЕНИЯ КОРПОРАТИВНЫХ СПОРОВ В УКРАИНЕ

В статье освещаются понятие и виды корпоративных споров. Определено, что корпоративные споры можно разделить на следующие категории: споры, возникающие по поводу имущественных корпоративных прав, и споры, возникающие по поводу организационных корпоративных прав. Исследованы проблемы подведомственности корпоративных споров и пути их решения. Акцентируется внимание на альтернативе судебному разбирательству корпоративных споров – привлечении медиаторов и третейских судей.

Ключевые слова: хозяйственные суды, корпоративные отношения, корпоративные споры, подведомственность корпоративных споров, негосударственное судопроизводство в решении корпоративных споров, медиация, третейские суды.