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ПІДСТАВИ ВИНИКНЕННЯ, ЗМІНИ ТА ПРИПИНЕННЯ КОРПОРАТИВНИХ ПРАВОВІДНОСИН

Анотація. *Корпоративні правовідносини досить швидко розвиваються, тим самим ускладнюються, і відповідно потребують належного врегулювання. Тому основна мета роботи полягає у визначенні кола підстав виникнення, зміни та припинення корпоративних правовідносин. Методологічно дослідження юридичних фактів у механізмі правового регулювання корпоративних правовідносин умовно поділено на три частини: правопороджуючі, правозмінюючі та правоприпиняючі підстави. Окремо виділено юридичний склад. У якості основного методу обрано метод дедукції. В роботі звертається увага, що останні зміни законодавства та судової практики, а разом з ними і доктрини права залишають без відповіді низку питань, одне з яких – окреслення кола підстав виникнення, зміни та припинення корпоративних правових зв'язків. Доведено, що такі підстави, у діяльності корпорацій за своїм складом і якістю можуть бути простими й складними. До перших віднесено підстави, що породжують правові наслідки лише при наявності одного юридичного факту, тоді як до других – підстави, в основі яких знаходяться кілька взаємозалежних юридичних фактів, а відповідно юридичні факти, що мають множинну правову спрямованість. Юридичні факти у механізмі правового регулювання корпоративних правовідносин мають усі ознаки традиційних видових диференціацій юридичних фактів, що існують у сучасній правовій доктрині та правозастосовній практиці цивільного права. Разом з тим вони мають і властиві їм особливості, характерні лише для корпоративних правових зв'язків. Проведений аналіз має теоретичне значення для подальших досліджень механізму правового регулювання корпоративних відносин, оскільки дозволяє за допомогою дедуктивного методу розширити уявлення про підстави виникнення, зміни та припинення корпоративних правовідносин. Це, у свою чергу, сприятиме формуванню чіткої та несуперечливої судової практики.*

Ключові слова: юридичний факт, корпорація, товариство, корпоративні правовідносини, учасник.

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REASONS FOR THE EMERGENCE, CHANGE AND TERMINATION OF CORPORATE LEGAL RELATIONS

Abstract. *Corporate relations are developing quite quickly, thus becoming more complicated and, accordingly, in need of proper settlement. Therefore, the main purpose of the work is to determine the range of grounds for the emergence, change and termination of corporate relations. Methodologically, the study of legal facts in the mechanism of legal regulation of corporate relations is conditionally divided into three parts: law-generating, enforcing and terminating grounds. The legal structure is singled out. The deduction method was chosen as the main method. The paper draws attention to the fact that recent changes in law and jurisprudence, as well as the doctrines of law, leave unanswered a number of questions, one of which is to define the circle of grounds for the emergence, change and termination of corporate legal relations. It is proved that such bases in the activities of corporations in their composition and quality can be simple and complex. The first are the grounds giving rise to legal consequences only in the presence of one legal fact, while the second is the basis on which there are several interrelated legal facts, and, accordingly, legal facts having multiple legal directions. Legal facts in the mechanism of legal regulation of corporate legal relations have all the signs of the traditional specific differentiation of legal facts that exist in the current legal doctrine and applicable law of civil law. At the same time, they have their own peculiarities, which are characteristic only of corporate legal relations. The conducted analysis is of theoretical importance for further research of the mechanism of legal regulation of corporate relations, as it allows to expand with the help of deductive method the idea of the grounds for the emergence, change and termination of corporate legal relations. This, in turn, will facilitate the formation of clear and consistent case law.*

Keywords: legal fact, corporation, partnership, corporate relation, party.

INTRODUCTION

The main purpose of law is to effectively regulate the most significant social relations, which undoubtedly include corporate ones. The normative regulation of social relations is achieved by the functioning of a certain instrumental system that embodies the rule of law in life, transforming it from the sphere of the proper into the sphere of being [1]. The rule of law is implemented through a mechanism of legal regulation, an element of which is

legal facts. It is from the latter that law from the sphere of the proper turns into the sphere of real. Therefore, their definition creates an opportunity not only to determine the moment from which the dynamics of corporate relations begin, but also the types of such dynamic processes.

It is obvious that European integration processes in Ukraine indicate the relevance of checking existing legal knowledge regarding their compliance with current trends in society, including knowledge about legal facts in the mechanism of legal regulation of corporate relations. However, domestic legal science, in authors' opinion, has not yet fully formed a unified view of the mechanism of legal regulation of corporate relations, and in particular, of such an element as a legal fact. As a result, domestic corporate legislation remains imperfect and haphazard, complicating the implementation of a nationwide program in terms of its adaptation to European Union law. Therefore, such adaptation occurs, in some places, haphazardly. This is indicated by the constant accumulation of the legislative array, the almost continuous introduction of changes, additions to existing regulations, the introduction of new legal concepts, which, sometimes, are not characteristic of the domestic legal system and traditions of constructing legal structures, etc. At the same time, the recodification of civil law has again raised the question of determining the place of corporate law in the civil law system of Ukraine. Some scholars believe that a separate area of corporate law should be formed, while others believe that it is only a civil law institute. In this regard, it justifies the feasibility or inappropriateness of allocating legal facts (legal sets of facts) into a separate group (special kind) – corporate legal facts. The lack of determination as to the existence of corporate facts, as a separate group, make the legislator face the problem of forming legislation designed to regulate corporate relations.

It should be noted that the grounds for the emergence, change and termination of corporate relations were the subject of scientific interest of such scientists as N.V. Kozlova [2], A.V. Kostruba [3], V.M. Kravchuk [4], D. V. Lomakin [5], M.D. Plenyuk [6], I.V. Spasibo-Fateeva [7] and others. At the same time, recent changes in law and case law (first and foremost the positions of the Supreme Court), and with them the doctrines of law, leave unanswered a number of questions related to the definition of: 1) the very subjective composition of corporate legal relations (through it expansion) and 2) the grounds for the emergence, change and termination of corporate relations.

Moreover, the resolution of corporate disputes in the courts is somehow related to the establishment of certain legal facts. After all, the emergence, change and termination of corporate rights, the conclusion about their violation or the existence of the threat of their violation, etc. depend on their existence. At the same time, the establishment of legal facts that give rise to corporate relations (rights and obligations) makes it possible to determine the jurisdiction of disputes between their parties. Therefore, determining the grounds for the emergence, change and termination of corporate relations allows to resolve the issue of jurisdiction of disputes between the parties to such relations, to choose the appropriate method of protection.

Given that these issues require separate study, the purpose of this study is a number of grounds that can be recognised as the basis for the emergence, change and termination of corporate relations.

1. MATERIALS AND METHODS

Legal facts as a scientific problem are sufficiently researched and developed in legal doctrine [3; 8]. Therefore, using the deductive method of research, it becomes possible to determine the number of grounds for the emergence, change and termination of corporate relations. Moreover, the concept of the latter is included in the concept of legal facts, which is why this method of logical thinking makes it possible to move from the general to the specific in the process of reasoning. So specific is not only the types (classification) of the grounds for the emergence, change and termination of corporate legal relations, but also the conditions of their validity, commission (occurrence), possible consequences, etc. It is known that methodology (Greek. methodos – the way of research, logos – doctrine) – the doctrine of general provisions, structure, logical organisation, forms and methods of scientific and cognitive activity that determine the best result of solving a chosen problem. The basis of any methodology is not only the choice of a method(s) of achieving a goal, but also following a chosen path of research.

Methodologically, the study of legal facts in the mechanism of legal regulation of corporate relations should be divided into three parts. Such division is based on their classification into law-generating, enforcing and terminating. At the same time, within each part, the classification of legal facts according to the will characteristics be used, proposed by O.A. Krasavchikov [9]. Such a combination is caused by the capacity and versatility of law itself as a phenomenon. And any one-factor legal model only partially reflects one or the other side of it [10]. The same applies to legal facts. Each of their classifications reflects only part of the essential features of the phenomenon being classified (part of the truth). Using the theory of additionality proposed by N. Bohr, and combining different classifications, it becomes possible to identify the specificity of such an element of a mechanism of legal regulation of corporate relations as a legal fact. At the same time, using the method of getting from general to specific, it is necessary to clarify the question of what life situations can be directed to one or another legal basis. Their purpose is to create legal consequences in the field of corporate relations. In order to achieve this goal, it is necessary to first create an abstract representation of the interests of the participants in corporate legal relations on the basis of generalising empirical material on legal facts, and then turn it into a conscious concrete one through its theoretical awareness.

Concepts and features of legal facts that create consequences in the field of corporate law will enable them to establish their place in the general system of legal facts and test the concepts through definitions. The latter problem will be solved by logical operations such as definition and division. For this purpose it will be necessary to bring the deduced notion of the bases of origin, change and termination of corporate legal relations to the closest generic concept to it and to establish speciation features. On the basis of synthesis, that is, the integration of related elements of the characteristics of these bases into one, it is necessary to describe their properties, to give a general description. Moreover, the use of such a method as synthesis creates the conditions for the identification of a group of law-makers, law-changers and law-enforcers. This will allow to check one of the opinions expressed in the legal literature, namely: the expediency of allocating legal facts (set of legal facts) into a separate group (a special kind) – corporate legal facts.

Using a systematic approach, the integrity of the legal facts in the mechanism of legal regulation of corporate relations will be disclosed, the multifaceted nature of their relations will be revealed and will be reduced to a common element of such mechanism. This will make it possible to determine the emergence, change and termination of rights and obligations between participants in the corporate relation, and between participants and a corporation itself.

The methods of analysis, induction, dialectics, formal logic, interpretation of legal norms by logical transformation, simplification of concept, teleological method, "golden rule", etc. will be used in the study of the grounds for the emergence, change and termination of corporate legal relations. In characterising legal facts and legal structures, in addition to the above methods, there is a need to apply the rules of dichotomy and tetratomy, categorical syllogism, hypothetical method, logical law of contradiction and logical interpretation by deriving the rule of law from the rule of law, etc.

2. RESULTS AND DISCUSSION

2.1 Characterisation of the grounds for the emergence of corporate legal relations

Considering the legal facts that mediate the dynamics (emergence, change, termination) of corporate relations it should be noted that they are not homogeneous. In this context, it is worth agreeing with the opinion of D.V. Lomakin, who states that their characteristics are determined by several basic circumstances:

1) the legal result that occurs due to legal facts (some legal facts lead to the emergence of corporate relations, others – are the basis of their movement);

2) the legal facts differ depending on the type of corporation and its legal status (some legal facts involve the emergence of corporate relations within the created legal entity, and others – in the already existing corporations);

3) the legal status of entities that acquire corporate rights (it is obvious that the grounds for acquiring such rights may be different for certain categories of individuals, legal entities and public entities);

4) the type of corporate legal relations (thus, one set of legal facts is required for the legal relation of participation; instead, the appearance of subordinated (dependent) corporate legal relations is conditioned by a complex legal structure, the main element of which will be legal relations of participation);

5) the legal facts will be affected by the manner of acquiring corporate rights (for example, the initial issue of shares can only be considered as the initial way of acquiring corporate rights, while the acquisition of already placed shares as a result of ordinary civil legal transactions can be attributed to derivative ways of acquiring corporate rights) [5].

Exploring the grounds for the emergence, change and termination of corporate legal relations, D.V. Lomakin argues that it is appropriate to distinguish them and even entire legal structures into a special form – corporate legal facts. Such isolation, in his opinion, is caused by the peculiarities of the corporate relations that are generated, changed and terminated by them [5]. Indeed, there is a whole group of reasons that causes dynamic processes of corporate relations. At the same time, it seems unconvincing to say that it is advisable to separate legal facts into a separate group (special kind) – corporate legal facts, because it is not entirely clear what manifests such a special kind.

First, if a feature is manifested in the construction of a legal fact, then there is probably no such feature. After all, any legal fact is a circumstance of reality, which the rule of law relates to the emergence, change or termination of civil rights and obligations. And if corporate relations are civil, there are no peculiarities in the design of the foundation itself. Only certain circumstances of reality differ, but they must not coincide or be only one such circumstance. Secondly, if the peculiarity manifests itself in the consequences they give rise to, then absolutely all legal facts constitute special varieties. For example, family, hereditary, binding legal facts, copyright law, property rights, and more. Determining the possibility of such a classification of the bases of the dynamics of civil legal relations, the selection of a special kind – corporate legal facts – appears to have poor decisive power. Moreover, there are a number of legal facts that can simultaneously produce a number of consequences. For example, the registration (creation) of a company, in addition to corporate legal relations, may give rise to ownership right, the right to a corporate name (intellectual property right) of a legal entity, the obligation of a participant to pay an acquired share in an unpaid part [4]. Another example, as a result of liquidation of a legal entity, not only corporate, but also personal non-property, obligations, property relations, etc. are terminated. In this regard, the attribution of the same legal fact to one particular variety becomes problematic. Accordingly, the question arises: Is it corporate, binding, real or intellectual property? Separation into a special group of corporate legal facts becomes even more problematic. For example, the conclusion of a contract of sale and purchase of shares (transaction) does not yet indicate the occurrence between their acquirer and a company of corporate legal relations, since action is needed to enter a record in the register of shareholders. Accordingly, both the fact of purchase and sale of shares and the fact of entry in the register of shareholders should be legal and only collectively they will form the basis for the emergence of corporate legal relations. But, in itself, the contract of sale and purchase of shares, in accordance with the proposed by D.V. Lomakin special kind, is not a corporate legal fact. So the logical question is, can corporate law be attributed to such a legal structure?

It is considered that a classification which is not capable of solving specific practical or even purely theoretical problems, not aimed at solving them is not only superfluous but also harmful, since according to the "Occam's razor" principle one should not multiply the essence unnecessarily. The classification proposed for the sake of classification itself, the creation of an artificial "special kind" will only create confusion in understanding the essence of legal facts, complicate law enforcement, legal implementation and law-making.

Among all the legal facts, a special place belongs to the facts that cause the relation. From the law-enforcement facts, so to speak, "it all starts": individuals are recognised as carriers of subjective rights and obligations, and this indicates that the mechanism of legal regulation has been put into effect. That is why the science of law, in the analysis of legal facts, pays particular attention to the "grounds for the emergence of legal relations", that is, to the generating legal facts [11]. The emergence of any subjective corporate law or obligation is impossible without the occurrence of such legal fact. O.O. Krasavchykov argued that law-creative legal facts is customary to be understood as the circumstances of the real reality with which the rules of law associate the emergence of a particular right in a particular entity [9]. Considering this concept as basic, it should be clarified that the emergence of a specific (subjective) right in one person necessarily gives rise to another

(others) correspondent to it obligation. Given that the rights and obligations that correspond to them constitute the content of any legal relation and cannot exist outside the latter, the concept is understood as follows. Law-creating legal facts are those circumstances of reality, with which the rules of law associate the emergence of a particular legal relation. This understanding of law-making grounds is nowadays generally accepted in the science of civil law, and on the basis of it, existing points of view regarding the range of law-making legal facts in the mechanism of legal regulation of corporate relations will be considered. Obviously, corporate relations arise from the moment of creation of the corporation (more precisely, from the moment of its state registration). And as noted in the legal literature, the legal fact of establishing a corporation through its foundation or as a result of reorganisation is the basis for the emergence of corporate relations [12]. From that moment on, the respective rights and obligations appear in the companies, the participants (shareholders) – the right to participate, the right to receive information about the activity of an organisation, the right to convene meetings, participate in them, etc. Thus, the state registration of a corporation is a law-creating fact. There is no doubt that this legal fact is a legitimate action, because it is done within the law, in accordance with the requirements of the legislation. Considering that all legitimate actions are divided into legal actions and legal acts, and legal actions are those actions of civil legal entities with which the law links the occurrence of certain legal consequences, regardless of whether the will of these subjects is aimed at achieving such legal consequences, and sometimes even contrary to an intent of persons, therefore, the state registration of a corporation should be referred to as legal acts. The registration bodies and persons who initiate the legalisation of a company seek certain legal consequences, expect them, which indicates the wilful action of the state registration. And, as rightly stated in the legal literature, it is not any legal act, but its kind as an administrative act [13; 14].

Obviously, the fact of registration should be preceded by an agreement of founders, if there are several, the drafting of constituent documents, the submission to a relevant body of an application for state registration, etc. Accordingly, in this case, it is necessary to talk about the legal structure, where a state registration of a company is the final circumstance and indicates at the time of a corporation occurrence [2]. In the domestic legal literature it is noted that at the stage of a corporation creation such "incomprehensible" corporate relations, such as founding, arise [15]. At the same time, if to take this position and acknowledge such relations, although not "understandable" but corporate, then it is necessary to give them participants and corporate rights. However, the scientist, who points to the existence of "confusing" corporate relations, itself denies the existence of the latter. Therefore, the authors believe that at the stage of creation of a legal entity and up to the moment of its state registration no corporate legal relations exist, and founders of a corporation acquire only rights of obligations. The acquiring by founders of corporate rights (responsibilities) artificially raises the question: what if they were denied state registration of a corporation? Corporate relations do not arise, corporations do not exist, and individuals (founders) are already vested with corporate rights. The answer to this question remains logically open.

In support of this, I.B. Sarakun is of the opinion that founders and members of companies are direct subjects of corporate relations [16]. After all, participants of companies are persons (natural or legal, other entities of civil law) who own corporate

rights in a company, including the right to a share or share in its authorised capital, as evidenced by the relevant documents. Founders should be considered those persons (natural or legal, other subjects of civil law) who carry out joint activity on creation of a business company and have made a decision on approval of its constituent documents, and also transferred certain property (property rights) to its authorised fund [16]. It should be noted that the legal status of founders and participants is different. The founders are the persons involved in the creation of a corporation, while members are persons involved in a management of a corporation. It is worth noting that not every founder can be a participant, and vice versa – not every participant was a founder of the corporation.

Attention should also be paid to the right to claim payment of a dividend (arising from the moment of its announcement). This makes it possible to attribute a declaration of a dividend to the law-creating facts. However, it should be noted that for the right to dividends to occur, there must be a number of prerequisites. In particular, a decision to hold a meeting, a convening of a general meeting of participants, notifying participants about a general meeting, a decision to declare a dividend. Each of these prerequisites is an independent legal fact and creates certain legal consequences, but only in their totality can they generate the right to pay dividends. Therefore, in this case, it is necessary to talk about the law-creating structure, not the legal fact. Moreover, each of the elements of the composition can be attributed to one or another group of legal facts. For example, a decision to hold a general meeting of a company board is an administrative act. It gives rise to the right to convene such meetings with an appropriate agenda and the obligation of a company to inform all participants (shareholders) of a place and date of a meeting, of issues to be discussed. Notifying participants about a general meeting is a factual wilful act, a fulfilment of obligations by a company and may be considered as a transaction.

Separate attention will be given to decisions of a general meeting and review of the points of view regarding their legal characteristics. The importance of corporate legal relations, which are the legal acts of the collegial governing bodies of a corporate organisation (first of all, it is a matter of resolving the general meeting and the supervisory board), draws attention. For more than ten years, the question of their nature and place in the system of legal facts and, in the context of the correlation of individual corporate acts with transactions, has remained debatable. This is dictated by the fact that these corporate acts, falling under a concept of a transaction (legitimate wilful actions of citizens and legal entities aimed at establishing, changing or termination of civil rights and obligations), have a serious specificity, compared to the "classic" understanding of the transaction, serious specificity mediated by the will-forming processes in a legal entity (a decision of collegial bodies is, first of all, an act of conciliation of wills of persons who are members of corporations) [17].

The number of views on this issue can be reduced to three main approaches:

1) all acts of corporations have the nature of a transaction (For example, N.V. Kozlova considers that an act… of one or more persons performing the functions of a sole or a member of a collegial body of a legal entity… aimed at establishing, changing or terminating corporate relations can be qualified as a one-sided or multilateral corporate transaction [2]);

2) not all, but only some decisions of corporations have transaction character (For example, G.V. Tsepov divides all decisions of the general meeting into decisions-

transactions (decisions on change of authorised capital, etc., which have independent legal force and do not require additional expression of will "outside" by other bodies) and decisions-non-transactions (decision approving annual reports) [18].);

3) acts of bodies of a legal entity are not transactions [19; 20].

The definition in the legal literature of many corporate acts as actions aimed at establishing, changing or terminating civil rights and obligations is not unreasonable. For example, a decision of a general meeting of shareholders to declare dividends undoubtedly has such a direction. Moreover, it is a sufficient legal fact for a shareholder to be able to claim payment of a dividend and corresponding to this right obligation of a company to pay the dividend; thus, the general meeting of shareholders in this case carries out not only the will-creation, but also the will expression (commitment of other actions by an executive body for development of legal relations is not required unlike, for example, from a situation of committing a significant transaction, which is pre-approved by a general meeting or a supervisory board [21]), and as a consequence, it is impossible to accept as universal an argument in favour of the position of unconditional denial of a character of a transaction by corporate acts [17].

Nowadays, it is noted that a decision of a meeting is not an unconditional legal fact that leads to a dynamic relation. If for a purpose of a transaction it is sufficient only not to be contrary to the law, then a decision of a meeting can give rise to civil rights and obligations only when it is expressly provided by law [22]. It is stated that the direction not characteristic of the dispositive method of civil law stems, first of all, from the fact that decisions of a meeting are on the border of civil law and branches of public law. The legislator is obviously very cautious and reserved about decisions of a meeting as legal facts. It is stated that now the legislation is undergoing a transitional phase, which will ultimately be completed by the fact that all decisions of a meeting, which are not contrary to the law, but not directly provided by the law, will be recognised as legal facts [23]. Sometimes the decisions of the general meeting of participants (shareholders) are regarded as a local normative act, since such decisions are binding on members of a company in which they are made. Duty and a wide range of actions allow people to attribute a decision of a meeting to local acts.

In authors' view, the complexity of assigning decisions of general meetings to a particular group of legal facts lies in the multiple character of a general meeting itself. The following is the explanation for this. First, since the participants (shareholders) are legally equal and property-independent among themselves, their decision-making at general meetings has all the characteristics of a transaction for them. These are both the lawfulness of actions, and the wilful orientation to the emergence of certain legal consequences for them, and the dispositiveness of a decision choice within given powers. Hence the obligation of this decision for all members (shareholders) of a company. Moreover, the fact that it is adopted by a majority of votes and is binding even for those who voted against such a decision does not at all refute signs of a transaction. After joining a circle of participants (shareholders), a person voluntarily agrees that a resolution of cases at a general meeting will be done in this way – by a majority vote. Therefore, a vote against does not indicate that a transaction is concluded (decided) at a will of a subject, since the latter voluntarily adopted such "rules of a game". By becoming a participant (shareholder), a person voluntarily undertakes to obey a majority's decision and there is nothing

extraordinary for civil law. For example, by granting an exclusive licence, an author voluntarily restricted his legal capacity regarding a work; by leasing a thing a landlord (an owner of a thing), within the scope of a contract, could not use it or take it away; having accepted a legacy burdened by a will, a heir is obliged to take certain actions in benefits of a transferee, even if he does not want it, that is, is obliged to obey a will of a testator. And there are many examples of such examples.

Secondly, since participants (shareholders) make decisions at general meetings and the latter is the highest body in a company, such decision for all other bodies and employees of the corporation is, in fact, a local regulatory act, that is, has all features of a local administrative act. This is a lawfulness, if they are done within the powers of a general meeting, and wilfulness, and the emergence of legal consequences provided by law, and the obligation to perform by subordinate bodies and persons. Third, general meetings is a corporation body, part of an organisation, part of whole. This body usually provides will-forming, and it forms the will to commit certain actions, both inside and outside an organisation. That is, essentially, the will of a legal entity is formed. Therefore, an internal corporate decision of a meeting has a quality that leads to the emergence of legal relations between a legal entity (forming its will) and its participants [23] or other persons. For example, a decision to pay dividends gives rise to a relation between participants and a corporation; instead, a decision to introduce the deceased participant's heir to the participants constitutes the basis for such heirs (third parties) to have corporate rights (obligations).

Fourth, a decision of a general meeting may, in certain circumstances, be considered a prerequisite for other future legally significant actions. For example, the decision to re-elect a chairman of a board is ground for termination of a contract with one person and conclusion with the other. Thus, termination of employment with one subject and occurrence with another will take place. Approving the possibility of entering into a significant transaction or transaction interest in commitment of which creates an opportunity for a company to conclude such transactions.

Thus, the decision of a general meeting of participants is a multidimensional phenomenon. Depending on its direction, it acquires a different legal meaning. As a legal phenomenon, a decision of a general meeting may acquire a legal regime of a transaction, an administrative act, an act of willing, prerequisites for committing other legally significant actions. However, different legal regimes, depending on a focus, can produce different legal consequences. It is not only the emergence, alteration or termination of corporate relations only, but also of administrative, binding, labour, etc. Accordingly, when different legal consequences arise, it is necessary to talk about different subject composition. For corporate relations, these are participants themselves and participants and a corporation, for the administrative entities –authorities and subordinate entities, for obligations – a creditor and a debtor, for labour – an employer and an employee. Moreover, in addition to corporate, on each of the parties of given and not given legal relations there may be persons who are at the same time are or are not parties to corporate legal relations, but their status (participant, non-participant) has no legal significance.

Given that the authors of this work distinguish protective (defence) legal relations, along with regulatory, into a separate independent group of civil relations [24-26], it is logical to attribute the violation of corporate rights (creating a threat of such violation) to

law-creating legal facts. In this case, violation (threat of violation) of subjective corporate law is the basis for a person to have the right to protection (elimination of a threat). The other party to the corporate relation, therefore, has an obligation to restore the infringed right (for example, to provide information (in the case of its failure to provide or provide incomplete, unreliable), termination of unlawful behaviour, elimination of threats, etc.) And if to proceed from a two-member structure of subjective law, then the right to protection and an obligation that corresponds to it, which constitutes the content of the protective legal relation, arise from the moment of an offence committed by a party of corporate legal relations. And the above applies to both individuals and legal entities.

This position is fully in line with the general doctrine of civil law. For example, there is no doubt that a breach of property right can give rise to obligations in tort. Obviously, the latter is independent civil relations and, since a moment of an offence, arise for the first time. A similar situation arises in case of violation of intellectual property rights, personal non-property rights, etc. At the same time, this approach does not at all reject the point of view on which the same violation is capable of being considered simultaneously and as a factual fact, since the violated right is in a state of violation. Another example is that a threat to a life, health or property of a natural or legal person gives rise to a certain group of non-contractual obligations. The latter also occurs for the first time. Regarding the sphere of corporate legal relations, for example, a decision of a governing body, made in violation of requirements of the law, actions of members of a supervisory board, sole executive body, members of a collegial executive body that harmed a company [17] or its members can be considered such illegal actions. Periodically in the legal literature, the issue of recognition of the next issue of shares, acquisition of shares, purchase and sale of shares is actualised.

First, the authors believe that the next issue of shares, their acquisition and terms of payment are conditioned by purchase and sale agreements, and therefore the payment of shares is a proper performance not of a corporate duty, but of an obligation that is included in the content of the legal relation. Instead, each participant of a limited liability company (hereinafter referred to as LLC) must fully contribute within six months from a date of state registration of a company, unless otherwise provided by a charter (Article 14 of the Law of Ukraine "On Limited and Additional Liability Companies")[1]. The relevant provisions may be added to a charter, amended or removed from it by unanimous decision of a general meeting of participants, in which all members of the company participated.

Secondly, the authors believe that the next issue, the acquisition of shares, the fulfilment of terms of a contract of sale, a decision of a general meeting, after an occurrence of certain conditions, although they give rise to corporate rights that acquire new members of a corporation, but should be attributed to changing legal facts. However, such a statement requires some clarification of the very concept of the law-changing fact.

2.2 Features of the grounds for change and termination of corporate relations

The authors of this article assume that the law-changing legal facts are understood as such circumstances of reality, with which the rules of law associate a change in civil relations. Moreover, since in addition to the content (of rights and obligations), obligatory elements

[1] Law of Ukraine "On Limited and Additional Liability Companies". (2020, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2275-19

of any civil legal relation are the subject composition and their objects, it must be recognised that the change in an object or subject composition also have to be considered as a change in civil relations [13]. Therefore, changing and replacing relations must be distinguished. Change occurs when the legal relation as a whole changes its elements. Replacement occurs when another (instead of) one legal relation occurs. This view makes it possible to fully and consistently understand why in some cases the termination (emergence) of rights (obligations) in certain persons is the result of a law-altering fact, and in others - a law-enforcer (enforcer) [8]. For this reason, in the theory of civil law, this group of legal facts is one of the debatable reasons.

Analysis of the legal literature allows to distinguish a number of theoretical views on the change of legal relations as a legal phenomenon. Thus, Ya. M. Magaziner, considering the very possibility of changing the legal relation, argued that a legal relation can change while remaining the same legal relation, that is, without becoming a new one [27]. In turn, S.B. Kultyshev completely denies the possibility of such a change, since the category "change of legal relation" cannot be recognised as one-line by value with the categories "occurrence" and "termination". Its use, according to the scientist, has a conventional character, is a stable terminological tradition. The basis of this position is that the change of any element of the legal relation must be considered as its termination and the emergence of a relatively independent new legal relation [28].

Obviously, based on S.B. Kultyshev's position, the authors would certainly have to conclude that there are no changing legal facts in the mechanism of legal regulation of corporate legal relations, and in civil as a whole. In such a case, they are not at all in the mechanism of legal regulation of civil relations. However, such a scientist's reasoning is difficult to doubt, since they will inevitably lead to the denial of the existence of a civil right of succession, the derivative means of acquiring rights and obligations, the possibility of changing the rights and obligations (content) in a contractual obligation, etc. As is rightly stated in domestic legal literature, this is inadmissible. Therefore, the authors fully share the approach by which the legal relation can change while remaining, that is, not becoming new [29]. Based on the above, the purchase and sale of shares and subsequent registration changes the subjective composition of members of a corporation. The following issue may result not only in the volume of rights of a participant (shareholder) but also in a subject composition, for example, an increase in a number of participants (shareholders). A decision of a general meeting to introduce the deceased participant's heir into a company changes a subject composition (one participant becomes another). The law-changing legal facts include bankruptcy or liquidation of a legal entity. After all, there is no doubt that by the time the bankruptcy or liquidation procedure is initiated, it significantly changes the possibility of exercising corporate rights. However, corporate relations themselves still exist. In the theory of law, law-terminating legal facts are considered to be those with which rules of law associate the termination of certain relations.

O.A. Krasavchikov proposed their division into two groups: absolutely terminating and relatively terminating. The first group includes those which terminate existence of a legal relation as a whole, the second group – those which terminate existence only partially [9]. Accepting the proposed classification, it can be noted that, indeed, there are some facts in the circle of legal facts, which the rule of law relates to the absolute termination of civil

relations. These include, for example, the loss of property in property relations, the death of a child in alimony, a combination of a creditor and a debtor in a contractual obligation, and the like.

However, there are some that terminate a relation only partially. These include, for example, the death of an author of a work that terminates copyright in part of personal non-property rights, but does not terminate the existence of property rights, the death of an artist performing similar effects, the death of a person depicted in a photo or other work of art also terminates personal non-property relations in the part of personal non-property rights, but does not terminate them in the part of property rights, withdrawal of one of three or more co-owners from the subjective composition of joint property relations and more. However, the use of such a classification, according to V.B. Isaev, will cause certain theoretical difficulties, which are to differentiate and determine the circle of law-changing and law-terminating legal facts that have different legal value [30]. This classification, as noted earlier, also calls into question the existence of succession, since it compels some researchers to regard it as a termination or creation, but not a change of legal relation [31; 32]. Therefore, for further investigation of law-terminating legal facts, it is necessary to define the concept of "legal termination".

In the legal literature there is no established understanding of the term "legal termination". In particular, law termination is the termination of legal relations, rights, obligations, powers or legal personality of subjects of civil law [3]. The above definition is noteworthy because it does not require proof that the termination of powers ceases the existence of a subjective right which they exercise. Termination of a subjective right terminates the obligation corresponding to it. Since terminated rights and obligations constitute the substance of a legal relation, the latter is consequently terminated. The termination of a legal personality of subjects of civil law may also indicate the occurrence of such consequences, but only if rights of such entities are not transferable to others. Thus, it must be acknowledged that the only absolute sign of termination in the above definition is termination of rights and obligations. Other features either repeat the above or are optional. In the legal literature, it is also argued that the termination of a legal relation is a break of a relation between its parties [33]. In agreement with the proposed concept, it should be noted that it needs some clarification. There are two reasons for the legal relation between parties to a relation being broken. The first is the termination of the subjective rights and obligations that exist between them. The second is the transfer of rights or responsibilities from one person to another (change of subject composition). As noted, the termination of the rights and obligations that make up the content of the legal relation really indicates the termination of the latter. Changing a subject composition by terminating the legal relation between the subjects does not terminate the legal relation itself, since a new person is appearing at the place of a person who left them, and therefore there is a succession.

Some researchers understand termination of legal relations as the absolute and irreversible loss of legal connection between a subject and its object [34]. Considering this approach, it should be noted that this can be caused by different circumstances of reality, such as alienation, destruction (loss) of an object, waiver of the right or deprivation of the right, etc. At the same time, the analysis of the above grounds allows to assert that alienation, by breaking the legal connection between a subject and an object belonging to

him, does not terminate a legal relation itself. This relation occurs with a purchaser, to whom the rights of a transferor are transferred. Therefore, the alienation of an object is not a termination but a change of legal relation. The latter are terminated only for a transferor, that is, there is a relative (partial) termination, or more precisely, succession.

Based on the foregoing conclusions regarding the termination of a legal relation, it can be argued that law-terminating legal facts are only those circumstances of reality, which the rules of law associate with the absolute termination of the legal relation. According to this theoretical understanding of law-terminating legal facts, the existing ones in the mechanism of legal regulation of corporate relations will be considered. When starting the study of the grounds for termination of corporate legal relations, it should be noted that the analysis of the legislation of Ukraine and the legal literature makes it possible to agree that the most obvious such legal fact is the termination of the legal entity itself. From that moment on (the exclusion of the organisation from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations) all corporate legal relations cease.

Some researchers may object pointing to such a right as a liquidation quota that occurs after a corporation is terminated. Therefore, in their view, some corporate rights can exist beyond the existence of a company. At the same time, the authors of this paper are convinced that the corporate legal relation does not include the right to a liquidation share, but the right to determine the legal fate of a liquidation share. The latter exists and is carried out within the framework of corporate legal relations. The right to a liquidation quota arises after the termination of a corporation and, accordingly, the corporate legal relations. It should be noted that although the terms "legal entity termination" and "exclusion of an organisation from the Unified State Register" are often identical in the legal literature, their meanings are not the same. The exclusion of an organisation from such a register is the final stage of termination of a legal entity. Its onset defines a moment from which it is believed that an organisation no longer exists. The exclusion act itself is an act of administrative law, that is, an administrative act. At the same time, the termination of a legal entity is a legal entity. Moreover, in each case it may be different. For example, a decision of a general meeting on liquidation, the establishment of a liquidation commission, the procedure of liquidation and exclusion of an organisation from the Unified State Register of legal entities, natural persons-entrepreneurs and public entities. Another example. Filing a claim for the termination of a legal entity, a court decision to terminate an organisation, the procedure for liquidation and its exclusion from the specified state register. The termination may also take place in the bankruptcy process and the like.

A law-terminating legal fact for the right to obtain such information about the activities of the corporation is giving such information. Obviously, fulfilling an obligation to provide properly certain information to a participant is a legitimate wilful act. Considering that the authors of this article refer to corporative relations not only regulatory but also protective relations, it is fair that for the latter a legal fact is also eliminating a threat of infringement (for example, voluntarily or by court order), protection, that is, the restoration of a violation of a right (for example, voluntarily or by a court decision), or even an agreement of parties (for example, a settlement agreement or a transaction). It is obvious that apart from an agreement, other actions mentioned are indicative of legal actions, because regardless of a direction of a will of a person who commits them, they

create certain legal consequences and are legitimate. The right to participate in a company that is part of a corporate relation, sometimes, and the right to information about the activities of a corporation, always refer to personal non-property rights [35], and the latter are inseparable from the identity of a bearer. Therefore, it can be assumed that the death of a participant of a partnership of an individual may also be considered a law-terminating ground for these rights. However, such an assumption would be wrong. After all, they are part of corporate relations. The latter, as noted above, are capable of change, including by changing the subject composition. Therefore, for example, the death of a shareholder, as an event, gives rise to the succession of all corporate rights (obligations), which include both the right to participate and the right to information about the activities of a corporation. Of course, such consequences take place when a shareholder's heir accepts an inheritance. In the case, for example, of LLCs, in addition to an inheritance, a decision of a general meeting to accept a heir to participants is necessary, and in the absence of such consent, these rights are transferred to a company itself, unless otherwise provided by a general meeting of participants. Thus, the death of a corporation member is not a law-terminating act, but a law-changing fact.

2.3 Features of the legal structure in the mechanism of legal regulation of corporate relations

Completing the study of legal facts as the basis for the dynamics of corporate legal relations, the authors conclude that a certain set of circumstances of reality, with which the rules of law link such dynamics, in the legal literature is divided into: 1) a group of legal facts and 2) a legal (factual) set. Accordingly, a group of legal facts are several factual circumstances, each of which causes or can cause the same consequence, is fixed in the same norm and is a phenomenon of the same order [6]. V.B. Isakov referred to the legal (factual) population as a system of legal facts connected in such a way that legal consequences come only in the presence of all elements of this population. According to the author, the legal body encompasses interdependent elements, which alone may have no legal significance at all, or produce the consequences that the subjects of law sought [36]. For reasons of adherence to the principle of legal accuracy, the phrase "legal composition" is more successful, since different approaches to understanding the totality of legal facts, such as "legal entity", "legal composition", "actual composition", etc., serve only to indicate a certain set of legal facts, which are necessary for the emergence of civil legal relations. If to consider that the legal facts are interconnected in such a way that the legal consequences come only in the presence of all elements of this set and it is such a composition that produces the legal consequences, then it is appropriate to call it "legal structure" [6]. Art. 11 of the Civil Code of Ukraine provides a list of legal acts that are grounds for the emergence of civil rights and obligations.

The first impression of reading this article leads to the fact that the legal facts enshrined in it can give rise to any civil rights and obligations. However, this is not true. For example, the conclusion of a contract of sale of shares does not speak about the occurrence between their acquirer and a company of corporate legal relations, since it is necessary either to make a decision by a general meeting of participants on the acceptance to a company, or to act on entry in the register of shareholders. Accordingly, both the fact of purchase and sale of shares and the fact of entry in the register of shareholders should

be legal and only collectively will form the basis for the emergence of corporate relations. Most of the legal consequences in corporate relations are not established as a result of a separate legal fact, but arise from legal structures. This situation is not accidental, which is explained by the specifics of the corporate relations themselves and the requirements of the current legislation to regulate them. O.A. Krasavchikov pointed out that until the legal structure is complete in its scope and content, the elements that make up it remain only facts. These facts become legal only when quantitative changes (accumulations) in the composition end and qualitative changes occur. Only the completed composition is legal [9]. Therefore, the legal composition is a set of independent legal facts that have desired final legal consequences. This approach is supported by the view that legal composition is a system of legal facts (heterogeneous, independent circumstances of life, each of which may have the value of a separate legal fact), which is determined by the unity of elements that, by their totality, make it impossible to exclude any of legal facts of this composition [6].

CONCLUSIONS

Therefore, it should be noted that the reasons for the emergence, change and termination of corporate relations in the activities of corporations in their composition and quality can be simple and complex. The grounds that produce legal consequences only in the presence of one legal fact (for example, a transaction that does not require additional approval) can be attributed to the first. Whereas the second is based on several interdependent legal facts (entry in the register of shareholders, corporate agreement, etc.), and accordingly legal facts that have multiple legal directions (for example, a decision of a meeting of participants (shareholders)). Legal facts in the mechanism of legal regulation of corporate legal relations have all the signs of the traditional specific differentiation of legal facts that exist in the current legal doctrine and applicable law of civil law. At the same time, they have their own peculiarities, which are characteristic only of corporate legal relations.

The conclusions drawn are of theoretical importance for further investigations of the mechanism of legal regulation of corporate relations, as they allow to extend, through a deductive method, an idea of reasons for the emergence, change and termination of corporate legal relations. This, in turn, will contribute to the formation of a clear and consistent case law: establishing the grounds for the emergence, change and termination of corporate relations; identification of signs and necessary elements of such grounds; differentiating them from the grounds of occurrence of other legal consequences, etc.

REFERENCES

[1] Hryniak, A., Kot, O., & Pleniuk, M. (2018). Regulation mechanism of private legal contracting relations in civil law. *Journal of Legal, Ethical and Regulatory Issues*, 21(Special Issue 1), 14.

[2] Kozlova, N.V. (2005). *Legal personality of a legal entity*. Moscow: Statut.

[3] Kostruba, A.V. (2013). Understanding of law-terminating legal facts from the point of view of the grounds for termination of ownership: civil law aspect. *Chronicle of the Kyiv University of Law*, 2, 159–164.

[4] Kravchuk, V.M. (2005). *Corporate law. Scientific and practical commentary on legislation and ship practice*. Kyiv: Istina.
[5] Lomakin, D.V. (2008). *Corporate legal relations: general theory and practice of its application in business companies*. Moscow: Statut.
[6] Pleniuk, M.D. (2016). *Grounds for binding legal relations in the mechanism of legal regulation.* Kyiv: Private Law and Entrepreneurship Research Institute named after Academician FG Burchak of the National Academy of Natural Sciences of Ukraine.
[7] Thanks-Fateeva, I.V. (2012). *Civilistics: Towards the formation of doctrines.* Kharkiv: Golden Pages.
[8] Pleniuk, M., & Kostruba, A. (2018). *Legal facts in the doctrine of private law of Ukraine*. Kyiv: Burchak Research Institute for Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine.
[9] Krasavchikov, O.A. (1958). *Legal facts in Soviet civil law*. Moscow: Gosyurizdat.
[10] Zhukov, V.I. (1988). On the issue of a multifactorial model of law. Social and psychological sciences in improving the efficiency and culture of service. In *Abstracts of all-Union scientific and practical conference* V. II. (pp. 48-50). Tartu: Tartu University
[11] Bodnar, T.V., Belianevych, O.A., Patsuriia, N.B., Radzyviliuk, V.V., & Rieznikova, V.V. (2019). Issues and prospects of legal regulation of commercial concession in Ukraine. *Asia Life Sciences,* 2, 847-862.
[12] Almlöf, H., & Bjuggren, P. (2019). A regulation and transaction cost perspective on the design of corporate law. *European Journal of Law and Economics,* 47(3), 407-433.
[13] Slipchenko, S.O. (2014). *The mechanism of legal regulation of personal non-property relations with current assets.* Kharkiv: Kharkiv National University of Internal Affairs.
[14] Karmaza, O.O., Makhinchuk, V.M., Derkach, A.L., Spektor, O.M., & Sheludchenkova, A.S. (2019). Application of "piercing the corporate veil" doctrine in the Ukrainian law. *International Journal of Economics and Business Administration,* 7(4), 524-538.
[15] Tait, A.A. (2017). Corporate family law. *Northwestern University Law Review,* 112(1), 1-60.
[16] Luts, V.V. (Ed.). (2010). *Corporate Law of Ukraine*. Kyiv: Yurincom Inter.
[17] Ashtaeva, S.S., Ashtaev, J.S., Lidjeeva, K.V., & Rubeko, G.L. (2015). The legal status and responsibility of the state corporations in the russian federation. *Mediterranean Journal of Social Sciences,* 6(3), 200-205.
[18] Ashtaeva, S.S., Deriugina, T.V., Noyanova, A.A., Hasikova, E.K., & Burinova, L.D. (2015). Acts of corporations as the main factor in the lapse of the right of participation in corporations. *Mediterranean Journal of Social Sciences, 6*(3), 169-173.
[19] Carr, C. (2019). Corporate social responsibility, human rights and law firms. *Alternative Law Journal, 44*(3), 220-225.
[20] Heaton, J.B. (2017). The "long term" in corporate law. *Business Lawyer,* 72(2), 353-366.

[21] Slipchenko, S.O. (2015). The subjective composition of transactions regarding commitment of which is of interest. *Journal of Eastern European Law*, 13. Retrieved from http://easternlaw.com.ua/.
[22] Cumming, D., Filatotchev, I., Knill, A., Reeb, D.M., & Senbet, L. (2017). Law, finance, and the international mobility of corporate governance. *Journal of International Business Studies,* 48(2), 123-147.
[23] Kamyshansky, V.P., & Karnushin, V.E. (2016). Civil relation: socio-psychological aspect. Moscow: Statut.
[24] Malcev, V.A., Kamishansky, V.P., Slesarev, V.L., Elyazyan, A.S., & Ryzhik, A.V. (2018). The protection of the right to use the property by the European court of human rights judgments. *International Journal of Civil Engineering and Technology*, 9(10), 2013-2019.
[25] Zhornokui, Yu.M. (2015). General provisions on protection of non-property rights of participants of business associations. *Law and Innovation*, 1, 148–153.
[26] Zhornokui, Yu.M. (2015*). Corporate conflicts in joint stock companies: the civil aspect*. Kharkiv: Pravo.
[27] Magaziner, Ya.M. (2006). *Selected works on the general theory of law*. St. Petersburg: Legal Centre Press.
[28] Kultyshev, S.B. (2006). *Disposal of claims through assignment* (Candidate thesis, Far Eastern State University, Tomsk, Russian Federation).
[29] Slipchenko, A.S. (2018). *Methods and forms of civil turnover* (Candidate thesis, V.N. Karazin Kharkiv National University, Kharkiv, Ukraine).
[30] Raz, A. (2018). Share law: Toward a new understanding of corporate law. *University of Pennsylvania Journal of International Law*, 40(1), 255-321.
[31] Orlova, I.V., & Sokolova, T.D. (2017). The role and functions of public councils in enhancing effectiveness of regional state authorities. *RUDN Journal of Sociology,* 17(1), 124-132.
[32] Kizdarbekova, A.S. (2011). Termination of legal relations of shared ownership. *Bulletin of the Karaganda State University*, 3. Retrieved from http://articlekz.com/node/1735 (date of access: 03.15.2018).
[33] Voronov, A.M., Kobzar-Frolova, M.N., Redkous, V.M., & Gogolev, A.M. (2019). Civil society of modern Russia: Problems of implementation of constitutional rights and freedoms. *International Journal of Economics and Business Administration,* 7, 243-251.
[34] Park, J.J. (2017). Reassessing the distinction between corporate and securities law. *UCLA Law Review, 64*(1), 116-182.
[35] Zhornokui, Yu.M., & Slipchenko, S.O. (2019). Personal intangible rights in the national doctrine of civil law. *Law of Ukraine*, 1, 105–119.
[36] Feigerlová, M., & Pauknerová, M. (2018). Private international law for corporate social responsibility. *Lawyer Quarterly*, 8(4), 379-399.

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