

The Concept and Types of Corporate Disputes: Theory and Practice

Ibratova Feruza Babakulovna

Professor of Tashkent State Law University, Doctor of Law

Abror Mamadaliyev Abdurakhmon ugli

Independent competitor of Tashkent state law university

ABSTRACT: The article deals with the legal issues of determining disputes related to corporate, establishing the circle of persons who go to court with a request to initiate a case on a corporate dispute. The opinions of scientists on the issue of determining the rights and legitimate interests, the violation of which will lead to a corporate dispute, are analyzed. It is concluded that external corporate conflicts include conflicts: between corporation members and third parties; between the corporation (its participants) and state bodies; between a corporation, its controlling entity and third parties.

KEYWORD: corporate dispute, corporate relations, securities, corporations, professional participant, corporate conflict.

In order to develop rules for determining disputes related to corporate ones, it is necessary to establish the circle of persons who have the right to apply to the court with a request to initiate proceedings in a corporate dispute, and the circle of persons who will act as a defendant; in other words, to determine the circle of participants in corporate relations¹.

Without dwelling in detail on the question of the composition of participants in corporate relations, we note that we cannot agree with the opinion that the number of participants in corporate relations should include "state bodies registering corporations, allowing circulation of their securities, etc. potential investors; professional participants of the securities market"². Unreasonable inclusion of creditors and registrars in the number of participants in corporate relations³.

The presence of a wide range of participants in corporate relations gives them an unlimited character and makes them indistinguishable from other relations. According to A.V. Terentyev, it is necessary to rank among the participants of corporate relations the members of the corporation, the bodies of the corporation

¹ Терентьев А. В. Корпоративные споры в современном российском законодательстве // Электронное приложение к Российскому юридическому журналу. – 2019. – №. 3. – С. 69-74.

² Гутников О. В. Содержание корпоративных отношений // Журнал российского права. 2013. № 1.

³ Добровольский А. А. Исковая форма защиты права // Гражданский процесс: хрестоматия / под ред. М. К. Треушников. М., 2005.

and the corporation itself⁴. Consequently, a corporate dispute may be initiated only on the basis of the claims of one of the specified participants in corporate relations directed to a participant in the same relations.

Thus, under corporate disputes, we propose to understand disputes arising from relations arising in the process of creation, operation, termination of the corporation, related to the participation and (or) management of it, the participants of which are the corporation, its members and bodies of the corporation⁵. Of course, this definition does not claim to be an absolute truth and requires “polishing”. From our point of view, it is important to establish the rights of all participants in corporate relations, determine the rights and legitimate interests, the violation of which will lead to the emergence of a corporate dispute, as well as establish obligations, the failure to fulfill which may lead to a corporate dispute.

When considering the concept of a corporate conflict, D. I. Dedov and A. E. Molotnikov characterize it not as a disagreement that arose between the participants in corporate relations, but as a violation of the legal rights and (or) interests of the participants and (or) the corporation as a whole due to illegal actions other members or corporate management⁶.

S. Yu. Filippova believes that a corporate conflict is a special characteristic of a normal corporate legal relationship, indicating the presence of any disagreement between the participants in this legal relationship affecting their legally protected rights and interests. Thus, she considers corporate conflict as a negative characteristic of corporate relations. In principle, one can agree with the proposed point of view only in terms of non-identification of a corporate conflict with a corporate relationship, however, it seems wrong to single out only participants in corporate relations as participants in such a conflict⁷.

Due to the diversity and differences in the interests of the participants in the corporation, the differences in the goals pursued by them, corporate conflicts are distinguished by the diversity of their types. The need to classify corporate conflicts is determined, firstly, by their diversity, and secondly, by the need to identify the optimal and effective way to resolve and prevent a conflict that has arisen in a corporation.

The legal doctrine, as well as law enforcement practice, has not developed uniform criteria for classifying corporate conflicts.

V.A.Laptev proposes to classify corporate conflicts depending on their initiator. The author highlights internal and external corporate conflicts. It can be noted that internal corporate conflicts are directly related to management and participation in a corporation, i.e. essentially stem from the content of corporate relations. In turn, external corporate conflicts involve the participation of third parties who, by their actions or inaction, violate the rights of corporation participants or create obstacles to their implementation.

A.A. Kirillovykh characterizes external corporate conflicts in a slightly different way, by which he understands conflicts related to the takeover and seizure of control over an enterprise as a result of the aggressive policy of other organizations⁸. Considering such conflicts, the author focuses not on the participation of third parties in them, but on those actions of the organization through which they can gain control over the corporation, respectively, and the forms of such conflicts will be takeovers and corporate takeovers.

⁴ Терентьев А. В. Корпоративные споры в современном российском законодательстве //Электронное приложение к Российскому юридическому журналу. – 2019. – №. 3. – С. 69-74.

⁵ Терентьев А. В. Корпоративные споры в современном российском законодательстве //Электронное приложение к Российскому юридическому журналу. – 2019. – №. 3. – С. 69-74.

⁶ Корпоративное право: учебный курс. Учебник / Отв. ред. И. С. Шиткина. М., 2011. С. 917. (авторы главы – Дедов Д. И., Молотников А. Е.).

⁷ Филиппова С. Ю. К вопросу о понятии корпоративного конфликта // Российская юстиция. 2009. – № 12. – С.35.

⁸ Кирилловых А. А. Корпоративное право. Курс лекций. М., 2009. – С.59.

It seems impossible to agree with this point of view, since, considering external corporate conflicts as takeovers and corporate takeovers, the author narrows the circle of conflicts that may be external, since the list of this group of conflicts may also include conflicts arising between corporation members and third parties. (for example, contesting related-party transactions or making a major transaction without proper approval); between the corporation (its participants) and state bodies; between a corporation, its controlling person and third parties (for example, in the case of joint and several liability of the parent company for the debts of a subsidiary)⁹.

D. I. Dedov and A. E. Molotnikov divide corporate conflicts into: 1) corporate contradictions; 2) hostile takeovers (corporate takeovers); 3) corporate blackmail (greenmail)¹⁰.

In their opinion, corporate contradictions include those contradictions that arise in the process of managing a corporation and participating in it.

A hostile takeover should be considered as a takeover carried out regardless of the will of the executive bodies of the acquired legal entity and (or) its participants in the acquired legal entity¹¹.

Other unlawful actions that may be associated with the abuse of law may also be recognized as hostile takeover. Corporate blackmail is understood as a set of various actions of a participant committed in order to force a company or its main shareholders to purchase shares owned by this minority shareholder at a rather high price. In fact, this phenomenon is a kind of extortion.

In our opinion, this classification is too general, since it does not take into account all the diversity of corporate conflicts existing in the legal practice.

The criterion for the classification of corporate conflicts proposed D. I. Dedov and A. E. Molotnikov, is a violated right or legitimate interest. Thus, the authors single out corporate conflicts that arose as a result of a violation of the ownership of shares (shares), associated with a violation of the rights of a participant arising from membership in a corporation, associated with a violation of the interests of the corporation itself¹².

The next basis for classifying corporate conflicts is the subjective criterion. So, according to O. V. Osipenko, depending on this criterion, the following corporate conflicts are distinguished:

- corporate conflicts arising between minority shareholders (shareholder) and majority shareholder;
- conflicts arising between shareholders and management;
- “all against all”, (i.e. the emergence of a conflict situation between minority shareholders);
- confrontation between the administration and the labor collective, in the event that if the members of the latter are collectively holders of a significant block of shares and use shareholder rights to solve social and labor problems¹³.

S.Yu.Filippova, in turn, offers a different division of corporate conflicts depending on the subjects involved in it. The author highlights corporate conflicts: between members of the corporation; between participants and members of the corporate management bodies; between members of corporate governance bodies;

⁹ Ibratova F. Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts //Middle European Scientific Bulletin. – 2021. – Т. 16.

¹⁰ Корпоративное право: учебный курс. Учебник / Отв. ред. И.С. Шиткина. М., 2011. С. 954. (авторы главы –Дедов Д.И. и Молотников А.Е.).

¹¹ Ibratova F. Foreign Practice of Use of Mediation on Collective Labor Disputes //American Journal of Social and Humanitarian Research. – 2022. – Т. 3. – №. 10. – С. 57-62.

¹² Ibratova F. B. et al. Special features of modern legal systems: cases and collisions. – 2017.

¹³ Осипенко О. В. Институты корпоративного управления и акционерные конфликты в России. М., 2004. С. 331.

between members and the corporation; between participants, members of management bodies and the corporation (complex corporate conflict)¹⁴.

It should be noted that the author, distinguishing between corporate conflicts depending on the subjects involved in it, does not take into account that other subjects can act as participants in corporate conflicts in addition to the parties to corporate relations, and therefore we consider this classification incomplete¹⁵.

O.V.Osipenko divided corporate conflicts depending on their social usefulness, so he singled out socially harmful conflicts, which included corporate seizures of greenmail, and socially beneficial conflicts arising from the conscientious protection of corporate rights by minority participants or members of the corporation's management bodies. The second type of conflict can be managed by reaching a compromise, unlike the first, in which the parties have opposing interests and, therefore, reaching a compromise or otherwise resolving the conflict situation is almost impossible.

This classification, in our opinion, seems interesting and we can agree with it, since, as the author rightly noted, a corporate conflict often arises when minority shareholders protect their rights, which is aimed at reaching a compromise between the participants of the corporation¹⁶.

A. S. Semenov and Yu. S. Sizov classify them on the basis of an analysis of the essence, goals of such conflicts and propose to divide them into the following types: 1) violation of the law; 2) acquisitions; 3) conflicts over dividends, i.e., related to making a profit; 4) conflicts with managers (in case of doubts about the effectiveness of corporate management, as well as the integrity of those persons who carry out such management); 5) competition, i.e. conflicts aimed at undermining the financial condition and competitiveness of the company; 6) corporate blackmail¹⁷.

Within the framework of this approach, the authors seek to most fully cover the range of those contradictions that may arise in a corporation and lead to a corporate conflict, however, in our opinion, the proposed classification is unsystematic, since it lacks a single criterion for separating corporate conflicts¹⁸.

V.A. Laptev proposes to classify corporate conflicts depending on the type of violated corporate rights. The author highlights corporate conflicts that have arisen as a result of violations of: management rights, property rights, information rights¹⁹.

In our opinion, this classification is the most successful, since it allows us to cover the whole variety of corporate conflicts existing in law enforcement practice and systematize them²⁰.

At the legislative level, the concept and list of possible corporate disputes is defined in Article 30 of the EPC of the Republic of Uzbekistan, as well as clause 7 of the Decree of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan dated June 20, 2014 N 262 "On some issues of resolving corporate disputes by economic courts." However, in these acts there is no systematization of corporate conflicts, and

¹⁴ Филиппова С. Ю. Корпоративный конфликт: возможности правового воздействия. М., 2009. С. 87.

¹⁵ Ibratova F. B., Erezhepov B. I., Ortikov S. S. ECONOMY, ORGANIZATION AND MANAGEMENT OF ENTERPRISES, INDUSTRIES, COMPLEXES //Editorial team.–2019. – 2019. – Т. 1. – С. 13-19.

¹⁶ Ibratova F. Мировое соглашение в гражданском судопроизводстве: теоретические проблемы и практика //О 'zbekiston qonunchiligi tahlili. – 2018. – №. 4. – С. 35-39.

¹⁷ Семенов А. С., Сизов Ю. С. Корпоративные конфликты. Причины их возникновения и способы преодоления. М., 2002. С. 11–16.

¹⁸ Ibratova F. Bankrotlik to 'g 'risidagi ishlarda prokuror ishtiroki.

¹⁹ Андреев В. К. Лаптев В. А. Корпоративное право современной России. М., 2017. – С.195.

²⁰ Babakulovna I. F., Ibraiyimovich E. B., Sodikov O. S. SIMPLIFIED PRODUCTION IN THE ECONOMIC PROCESS AND ITS FEATURES: NATIONAL AND FOREIGN APPROACH //International journal of professional science. – 2022. – №. 5. – С. 42-50.

only some of their types are listed, in particular, those related to the ownership of shares, shares in the authorized (share) capital of business companies and partnerships, shares of members of cooperatives, related to foreclosure on shares and shares, invalidation transactions of the corporation and decisions made by it, and others.

V. V. Dolinskaya proposes to divide corporate disputes into three groups:

- related to the creation of any legal entity, i.e. regardless referring it to corporations;
- related to the management of a legal entity or participation in it, being a commercial organization, i.e. regardless of whether it belongs to corporations;
- associated with the management or participation in a number of non-profit legal entities²¹.

It seems that the proposed V.V. Dolinskaya's classification of corporate disputes is not entirely correct, since the author admits that such a dispute arises within any legal entity, not only corporate type.

Summing up, on the basis of the stated different points of view of scientists, it is possible to propose a general classification of corporate conflicts depending on the subjects of the conflict. As discussed in the previous paragraph, all participants in corporate conflicts can be divided into two groups depending on whether they are direct participants in corporate relations or not. Thus, internal (i.e. participants in corporate relations) and external participants (third parties, i.e. participants in other corporate-related relations) are distinguished²². Based on this division of subjects, all corporate conflicts that arise in an organization can be divided into internal and external.

In turn, internal corporate conflicts include conflicts: 1) between the participants and the corporation (associated with the implementation of managerial, property, information rights and the performance of duties); 2) between the participants of the corporation (associated with participation in and exclusion from the corporation, violation of the pre-emptive right to purchase shares (shares), etc.); 3) between members of the corporate management bodies; 4) between the corporation and its executive body (manager) (associated with the vesting and termination of the powers of such a body, the exercise of its powers and the presentation of claims to it for damages for illegal actions).

The structure of external corporate conflicts includes conflicts: between the participants of the corporation and third parties (for example, contesting transactions with interest or making a major transaction without proper approval); between the corporation (its participants) and state bodies; between a corporation, its controlling person and third parties (for example, in the case of joint and several liability of the parent company for the debts of a subsidiary).

REFERENCES

1. Терентьев А. В. Корпоративные споры в современном российском законодательстве // Электронное приложение к Российскому юридическому журналу. – 2019. – № 3. – С. 69-74.
2. Гутников О. В. Содержание корпоративных отношений // Журнал российского права. 2013. № 1.
3. Добровольский А. А. Исковая форма защиты права // Гражданский процесс: хрестоматия / под ред. М. К. Треушникова. М., 2005.

²¹ Долинская В. В. Проблемы корпоративных споров при разработке единого Гражданского процессуального кодекса Российской Федерации // Законы России: опыт, анализ, практика. 2015. № 3. С. 53.

²² Babakulovna I. F. GROUNDS FOR THE INTRODUCTION OF BANKRUPTCY PROCEDURES FOR AN INDIVIDUAL ENTREPRENEUR OR AN INDIVIDUAL WHO HAS LOST THE STATUS OF AN INDIVIDUAL ENTREPRENEUR // International journal of professional science. – 2022. – № 1. – С. 5-9.

4. Терентьев А. В. Корпоративные споры в современном российском законодательстве //Электронное приложение к Российскому юридическому журналу. – 2019. – №. 3. – С. 69-74.
5. Терентьев А. В. Корпоративные споры в современном российском законодательстве //Электронное приложение к Российскому юридическому журналу. – 2019. – №. 3. – С. 69-74.
6. Корпоративное право: учебный курс. Учебник / Отв. ред. И. С. Шиткина. М., 2011. С. 917. (авторы главы – Дедов Д. И., Молотников А. Е.).
7. Филиппова С. Ю. К вопросу о понятии корпоративного конфликта // Российская юстиция. 2009. № 12. С. 35.
8. Ефименко Е. Н., Лаптев В. А. Корпоративные конфликты (споры): учебно-практическое пособие. М., 2015. С. 95.
9. Кирилловых А. А. Корпоративное право. Курс лекций. М., 2009. С. 59.
10. Ibratova F. Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts //Middle European Scientific Bulletin. – 2021. – Т. 16.
11. Корпоративное право: учебный курс. Учебник / Отв. ред. И.С. Шиткина. М., 2011. С. 954. (авторы главы –Дедов Д.И. и Молотников А.Е.).
12. Ibratova F. Foreign Practice of Use of Mediation on Collective Labor Disputes //American Journal of Social and Humanitarian Research. – 2022. – Т. 3. – №. 10. – С. 57-62.
13. Ibratova F. B. et al. Special features of modern legal systems: cases and collisions. – 2017.
14. Осипенко О. В. Институты корпоративного управления и акционерные конфликты в России. М., 2004. С. 331.
15. Филиппова С. Ю. Корпоративный конфликт: возможности правового воздействия. М., 2009. С. 87.
16. Ibratova F. B., Erezhepov B. I., Ortikov S. S. ECONOMY, ORGANIZATION AND MANAGEMENT OF ENTERPRISES, INDUSTRIES, COMPLEXES //Editorial team.–2019. – 2019. – Т. 1. – С. 13-19.
17. Осипенко О. В. Конфликты в деятельности органов управления акционерных компаний. М., 2007. С. 40–45.
18. Ibratova F. Мировое соглашение в гражданском судопроизводстве: теоретические проблемы и практика //О ‘zbekiston qonunchiligi tahlili. – 2018. – №. 4. – С. 35-39.
19. Семенов А. С., Сизов Ю. С. Корпоративные конфликты. Причины их возникновения и способы преодоления. М., 2002. С. 11–16.
20. Ibratova F. Bankrotlik to ‘g ‘risidagi ishlarda prokuror ishtiroki.
21. Андреев В. К. Лаптев В. А. Корпоративное право современной России. М., 2017. – С.195.
22. Babakulovna I. F., Ibraimovich E. B., Sodikov O. S. SIMPLIFIED PRODUCTION IN THE ECONOMIC PROCESS AND ITS FEATURES: NATIONAL AND FOREIGN APPROACH //International journal of professional science. – 2022. – №. 5. – С. 42-50.
23. Долинская В. В. Проблемы корпоративных споров при разработке единого Гражданского процессуального кодекса Российской Федерации // Законы России: опыт, анализ, практика. 2015. № 3. С. 53.
24. Babakulovna I. F. GROUNDS FOR THE INTRODUCTION OF BANKRUPTCY PROCEDURES FOR AN INDIVIDUAL ENTREPRENEUR OR AN INDIVIDUAL WHO HAS LOST THE STATUS OF AN INDIVIDUAL ENTREPRENEUR //International journal of professional science. – 2022. – №. 1. – С. 5-9.