

Legal Issues of the Concept of “Corporate Disputes” Under Procedural Legislation: Theory and Practice

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ANNOTATION: The article deals with the issues of the concept of "corporate disputes", the signs and objectives of corporate activities, material and procedural differences in the subjective composition of corporate relations. Analyzed national and foreign legislation on the value of corporate disputes. It is concluded that the legal definition of the concept of corporate disputes is wider in terms of its content than the legal definition of the concept of corporate relations.

KEYWORD: corporate dispute, corporation, business partnership and company, general partnership, limited partnership, limited liability company, joint-stock company.

In order to determine priority areas for reforms aimed at further improving the welfare of the people, transforming sectors of the economy, accelerated development of entrepreneurship, unconditional provision of human rights and interests, the formation of an active civil society in subsequent years based on the principle "In the name of the honor and dignity of man" with a deep analysis of complex global processes and the results of the past stages of the country's development, the Development Strategy of New Uzbekistan for 2022-2026, developed as a result of a wide public discussion on the basis of the principle "From the Action Strategy to the Development Strategy", was approved. The Development Strategy of New Uzbekistan for 2022-2026 sets a direction for turning the principles of justice and the rule of law into a fundamental and necessary condition for the development of the country.

According to the Decree of the President of the Republic of Uzbekistan dated January 29, 2022 No. UP-60 "On the development strategy of the new Uzbekistan for 2022-2026", in order to establish effective judicial control over the activities of state bodies and officials, as well as increase the level of access of citizens and business entities to justice established the implementation of the principles of true equality and competitiveness of the parties in the trial.

There are many opinions about the doctrinal concept of a corporation in science, especially some scientists believe that the word "corporation" comes from the Latin word *corporatio* - meaning association, association, community, developed large joint-stock company, a set of legal entities and individuals organized for any activity¹. According to some scientists, the concept of "corporation" is derived from the word "corporatism", firstly, a set of persons united to achieve common goals, work

¹ [Qomus.info/encyclopedia/cat-k/korporatsiya-uz/](https://qomus.info/encyclopedia/cat-k/korporatsiya-uz/)

together and form an independent legal entity - a legal entity, and secondly, it is a common form of business organization in developed countries, given the concentration of managerial functions in the hands of top-level professional managers working on the basis of common ownership, legal status and employment².

The appearance of the concept of "corporation" in the legal literature dates back to ancient Roman law, but private corporations were not legal entities in ancient Rome, rather, it is a simple company-type partnership in which each member owns a share in the property and independently enters into relations with third parties³.

In foreign literature, the following legal features of a corporation are distinguished:

- firstly, the legal personality of a legal entity;
- secondly, the existence of limited liability of participants (limited liability);
- thirdly, the presence of transferable shares;
- Fourthly, the presence of competent management and investor ownership, including the right to control the firm and receive income⁴.

The definition of "corporation" in Article 65.1 of the Civil Code of the Russian Federation is based on the following features:

- the status of a legal entity;
- the founders (participants) of a legal entity have the right to participate (membership);
- The presence of a supreme body - a general meeting of participants or another (representative) body.

In the legislation of the Russian Federation, the goals of corporate activity are not important, since a commercial organization is both a non-profit organization and a corporation. Some legal literature has shown that non-business entities that do not make profit as the main purpose of their activities can also be considered corporations⁵.

In particular, according to Article 73 of the Civil Code of the Republic of Uzbekistan, a consumer cooperative is a voluntary association of citizens on the basis of membership in order to meet the material (property) needs of participants, carried out by combining property (share) contributions by its members. The rules of the Civil Code of the Republic of Uzbekistan on commercial organizations (part 6 of article 73 of the Civil Code of the Republic of Uzbekistan) apply to the commercial activities of a consumer cooperative. This means that a consumer cooperative is also considered a subject of corporate relations. In conclusion, it can be noted that non-profit organizations can also be corporations⁶.

² <http://staff.tiame.uz/storage/users/19/presentations/3pdu7qE6KVardp3Jra3Q8UyyOCKZfmDTZbSrGMhu.pdf>

³ Ibratova, F. B., Kirillova, E. A., Smoleń, R., Bondarenko, N. G., Shebzuhova, T. A., & Vartumyan, A. A. (2017). Special features of modern legal systems: cases and collisions.

⁴ Reinier Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe, and Edward Rock. The Anatomy of Corporate Law: A Comparative and Functional Approach // Edition 3-2017. P.1,5.

⁵ Корпоратив низолар: тушунчаси, турлари ва уларни судда кўришнинг ўзига хос жиҳатлари. Амалий қўлланма / М.Саидов. – Тошкент: 2019. – Б.11.

⁶ Ибратова, Ф. Б. (2015). Гражданско-правовые проблемы признания банкротами индивидуальных предпринимателей в Республике Узбекистан. *Вопросы современной юриспруденции*, (5-6 (47)).

To be considered a corporation, there must be an organizational unit of certain persons, formed by two or more persons (the founders)⁷, therefore, any commercial organization, including business partnerships and companies, a general partnership, a limited partnership, a limited liability company, a joint-stock company, a subsidiary business company, a dependent business company, production cooperatives, a unitary enterprise.

The development of the theory of corporate relations was started in the XIX-XX centuries. One of the first creators of this theory was the German civilist Otto von Gierke, whose work "German Cooperation Law" contained new theoretical provisions that formed the basis for an organic theory of the essence of a legal entity and the doctrine of what we now call corporate law.

I.T. Tarasov in his work "The Doctrine of Joint-Stock Companies" wrote that "legal relations developed in joint-stock companies should be carefully brought under well-known, old legal constructions, always keeping in mind that new forms of association also cause new legal relations"⁸.

L.I. Petrazhitzky pointed to the existence of civil rights that are not related to either real or liability rights, meaning by them the rights certified by shares⁹.

The modern doctrine of corporate law has not developed a uniform understanding of corporate legal relations¹⁰. First of all, there is an opinion that the latter should be understood in a broad and narrow sense, while a corporation in a broad sense covers any form of association of persons in order to achieve a common goal, even if such an association was not organized in the form of a legal entity (for example, co-owners of property or persons carrying out joint activities under a simple partnership agreement)¹¹.

The concept of "corporate disputes" is also not available in national legislation¹². The definition of the concept of a corporate dispute, given in Article 30 of the Economic Procedure Code of the Republic of Uzbekistan, contains an indication of the relationship to create a legal entity, participate or manage a corporation, as those signs that indicate the corporate nature of the dispute. Also, the definition of the concept of a corporate dispute, given in Article 225.1 of the Arbitration Procedure Code of the Russian Federation, contains an indication of the relationship for the creation of a legal entity, participation or management of a corporation, as those signs that indicate the corporate nature of the dispute. We agree with the opinion of those scientists who evaluate the concept of corporate disputes as broader in content than the concept of corporate relations, given in the norm of Art. 2 of the Civil Code of the Russian Federation. So, S.A. Sinitsyn notes that the norms of paragraph 1 of Art. 2 of the Civil Code of the Russian Federation and Art. 225.1 of the Arbitration Procedure Code of the Russian Federation are aimed at defining and regulating one type of legal relationship, but the above norms differ from each other in terms of the range of regulated relations¹³.

⁷ Ibratova F. Bankrotlik to 'g 'risidagi ishlarda prokuror ishtiroki.

⁸ Тарасов И.Т. Учение об акционерных компаниях. М.: Статут, 2000. С. 411-412.

⁹ Петражицкий Л.И. Акции: биржевая игра и теория экономических кризисов. СПб.: Тип. М. Меркушева, 1911.С. 41.

¹⁰ Браславец, О. Н., Влавацкая, М. В., Дрыгина, Ю. А., Ибрatова, Ф., Калинин, Е. Д., Лагунова, Л. В., ... & Эсанова, З. (2021). Человек как субъект общественных изменений: социальные, гуманитарные и психологические проблемы.

¹¹ Корпоративное право. Актуальные проблемы теории и практики / Бабкин С.А, Бевзенко Р.С., Белов В.А., Блинковский К.А; под ред. В.А. Белова. М.: Юрайт, 2014. С.51-52.

¹² Esenbekova P. et al. LEGAL NEGOTIATION ISSUES: THE IMPORTANCE AND TYPES //Norwegian Journal of Development of the International Science. – 2021. – №. 75-2. – С. 17-20.

¹³ Синицын С.А. Корпоративные правоотношения: содержание и особенности регулирования // Журнал российского права. 2015. №6. С.53.

According to M.V. Kleponosov, disputes related to the application of corporate law are often characterized by the presence of a large circle of persons whose rights and legitimate interests are affected by a corporate dispute. Such disputes are complex, since within the framework of one dispute the interests of the legal entity itself, which cannot function normally in a situation of a corporate conflict, the interests of participants or members of legal entities whose rights have been violated or contested, and also, often, the interests of a third party are affected. The latter situation arises, in particular, when challenging the powers of the general director of the company, which may lead to the recognition of all transactions concluded by him as invalid, or when challenging transactions for the placement of equity securities of the company¹⁴.

In addition, the object of the dispute in most cases is the specific corporate rights of a participant in a legal entity, which do not relate to the rights in rem and obligations traditionally distinguished in the doctrine of civil law¹⁵. The combination of the above features gives cases of corporate disputes increased complexity. At the same time, the tasks of justice and the judicial system are not only the quick and effective resolution of disputes, but also the provision of all interested parties with the right to judicial protection, real access to justice¹⁶.

According to S.A. Rvachev, given the meanings of the concepts "dispute" and "corporate" and their semantic connections, it is possible to define the category of "corporate disputes" as significant disagreements that arise within the enterprise, with the participation of shareholders (shareholders), the company's management and the enterprise itself about the activities of the enterprise, which are resolved by the court. Such a designation of corporate disputes can not only serve to develop theoretical knowledge about this category, but also have a practical application¹⁷.

P.V. Krasheninnikov explains that corporate disputes in the legal literature are disputes related to the entrepreneurial activities of business partnerships and companies, and implies a violation of any corporate legal relationship¹⁸. A.S. Esekeyev, summarizing the interpretation of the concept of "corporate disputes", notes that the concept of "corporate dispute" includes disputes arising directly from corporate relations, but certainly due to membership in a corporation¹⁹. Some authors, for example, N.G. Frolovsky, note that the concept of "corporate disputes" has not only a special content, defined by arbitration procedural legislation, but also has a generalizing, special (procedural-legal) and, to a certain extent, conditional character²⁰.

We should agree with the opinion of K.I.Yurlova that a corporate dispute is a disagreement between the participants in corporate legal relations arising out of or in connection with participation in

¹⁴ Клепоносова М. В. и др. Корпоративные споры: определение понятия в целях разграничения подведомственности и подсудности //Исторические, философские, политические и юридические науки, культурология и искусствоведение. Вопросы теории и практики. – 2010. – №. 2. – С. 31-36.

¹⁵ 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.

¹⁶ Клепоносова М. В. и др. Корпоративные споры: определение понятия в целях разграничения подведомственности и подсудности //Исторические, философские, политические и юридические науки, культурология и искусствоведение. Вопросы теории и практики. – 2010. – №. 2. – С. 31-36.

¹⁷ Рвачёв С. А. Проблема определения категории «корпоративные споры» //Вестник Поволжского института управления. – 2010. – №. 2. – С. 91-95.

¹⁸ Комментарий к Арбитражному процессуальному кодексу Российской Федерации (постатейный) / Под ред. П.В. Крашенинникова. М.: Статут, 2009. С. 91.

¹⁹ Есекеев А.С. Теоретические проблемы корпоративных отношений и корпоративных споров // Предпринимательское право. - 2007. - № 4. С. 5 - 6.

²⁰ Фроловский Н.Г. Понятие корпоративного спора // Законы России: опыт, анализ, практика. - 2010. - № 6. С. 11 - 16.

corporations, i.e. This is an unresolved corporate conflict. The range of subjects of corporate legal relations is quite wide and includes: directly the corporation; participants (members) of the corporation; corporate bodies and their officials; other third parties, if they enter into legal relations with the participants of the corporation in connection with their participation in these corporations. Corporate disputes, as a rule, can arise in a circle of certain subjects: between the founders of a legal entity and the corporation itself; between corporate bodies and their officials; directly between the founders of the corporation, including between members and third parties; between participants of a legal entity and management bodies²¹.

Thus, the legal definition of the concept of corporate disputes is wider in terms of its content than the legal definition of the concept of corporate relations, although, in our opinion, there should not be such a discrepancy. Disputes arise precisely from the relations that precede them, therefore it is incorrect to attribute to corporate disputes those disagreements that arose within the framework of other legal relations, even if remotely related to the participation or management of a corporation. The approach implemented in the legislation to the definition of the concept under study is methodologically incorrect, since it is based on an artificial expansion of the scope of the subordinate, dependent concept - corporate disputes - in relation to the scope of the defining concept (corporate relations).

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²¹ Юрова К. И. Современные правовые аспекты корпоративных споров // Ответственный редактор: Сукиасян АА, к. э. н., ст. преп. – 2014. – С. 25.

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