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THE RIGHT TO REMEDY CORPORATE RELATIONS: A QUESTION OF THEORETICAL CERTAINTY

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Abstract

Sometimes the interests of participants in corporate relations begin to contradict each other, corporate conflicts and corporate legal disputes arise, and often participants in the conflict abuse their rights, paralysing the company's activities. In this case, it is necessary to find an appropriate solution for modifying the Ukrainian corporate law system and legislatively ensure effective remedies for the rights of participants in business companies. The following methods were used during the study: general scientific methods (concrete historical, Aristotelian, structural-functional, system-structural, etc.), special methods (comparative legal, modelling, system interpretation, legal technical), dialectical method of cognition, involvement of scientific tools of related humanities disciplines, a conceptual approach. The main steps to solve the problems of protecting the rights of participants and ensuring equal treatment were as follows: improving the legislation governing the activities of business companies; combining rules that ensure the rights of participants and guarantee their remedying under charters and internal documents. The judicial remedying of the company members' rights on the territory of Ukraine remains ineffective, which, in turn, is attributed by researchers to the discretion of the judiciary and the inability of courts to interfere in certain issues within the framework of corporate conflicts. At the same time, in this context, it is advisable to adapt the positive practices legalised in Germany, which would allow modifying existing approaches to organising corporate relations and remedying the rights of participants. Moreover, the convergence of legal systems and legal regulation of corporate relations is one of the most noticeable trends in the development of corporate legislation around the world.

Keywords

Legal Interest, Protection of Law, Corporate Dispute, the Principle of Equal Treatment, the Duty of Loyalty

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I. Introduction

In modern conditions, the remedies for civil rights and legally protected interests occupy an extremely important place among statutory remedies, which, in turn, becomes particularly relevant in the context of the European integration aspirations of Ukraine. In the context of transformational legal relations in Ukraine, entrepreneurship has become particularly flourishing, which immediately caused many issues relating to the violation of property and non-property rights of participants in business entities. Thus, according to the "Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" (2014), Ukraine is obliged to harmonise its legislation with the legislation of the European Union (EU); in particular, this applies to corporate law. The purpose of this adaptation is to achieve compliance with the Ukrainian legal system with "acquis communautaire", considering the criteria established by the EU for states that intend to join it. Thus, the corporate legislation of Ukraine is in the process of revision and updating, which has become one of the current priorities for Ukraine following the Action Plan "Ukraine – European Union" (2005). However, changes do not provide solutions to certain theoretical and practical problems, especially due to the archaic nature of certain doctrinal approaches; inconsistency and maladjustment of such changes. Commitment to EU corporate legislation in updating corporate legislation is justified not only by the processes of European integration taking place in Ukraine but also by the fact that EU corporate law is a useful example of corporate regulation (Kostruba, Maydanyk and Luts, 2020).

Representing an organised set of individuals and capitals, a corporate organisation has the main purpose of its existence to defend the private interests and values of those by whom it was created, which fully coincides with the postulates of the theory of civil society. Thus, corporations, which form an integral part of the economic, political, social, and legal reality of modern Ukraine, play the role of an integral element of the structure of Ukrainian civil society. Corporate legal relations constitute one of the central categories of the terminology of corporate law. In turn, differing interpretations of corporate legal relations lead to differences in approaches to solving many important issues, both in the doctrine of corporate law and in law-making and law enforcement.

As Bignyak (2018) accurately noted, the problem of defining the concept and characteristics of the corporation category, and its current legal personality, is very complex both from the standpoint of the general theory of law and from the standpoint of corporate and civil law. In terms of solving this problem, there is also the issue of defining the concept and legal nature of corporate rights, especially their remedy through new forms and means. In modern realities, according to Vasilieva (2013), issues of legal regulation of corporate relations do not contain problems related to the lack of legislative regulation, but are located in the plane of a rather capacious accumulation of regulatory array, which is not only responsible for solving the issue on the merits with clear designations of existing provisions and rules but also leads to conflicts, "discrepancies" and prompts legal scholars to think of new law-making or improvement of current legislation.

Proceeding from the above, it is very relevant to consider the main issues related to the essence and content of the right to remedy corporate relations. To achieve this purpose, it was necessary to define the following tasks: 1) consider the main points of the state of modern legal regulation of the right to remedy corporate relations in Ukraine and certain foreign countries; 2) analyse some issues of theoretical certainty regarding the right to remedy corporate relations.

II. Materials and Methods

The general methodological framework of this study is the dialectical method of cognition, which allows analysing the subject of study from different angles, but in unity with other legal phenomena, as well as considering law enforcement practice. This study employed general scientific methods of cognition: concrete-historical, which was used in the study of the dependence of the analysed remedy on changes in its historical forms; Aristotelian, which allowed formulating the concept of protection of corporate rights and interests in court, as a remedy for rights and its features; system-structural and structural-functional methods, which allowed establishing the place of the analysed remedy in the system of other remedies for rights.

Furthermore, special methods of legal science were used in this study: comparative legal method, which was used to correlate legal categories connected to the analysed remedy, similar to other remedies for corporate rights; modelling, which allowed formulating proposals for amendments to the current legislation; systematic interpretation and legal-technical methods, which allowed determining the true will of the legislator to implement the right to protect corporate legal relations. The study of remedies in various dimensions requires a scientific search involving scientific tools of related humanities – philosophy, sociology, etc. – in the knowledge of the law. Modern legal understanding, both in a subject-developed and content-developed form, cover the entire legal reality in its systemic understanding, and not only in the legal one – as a system of certain social relations governed by the state through generally binding legal acts adopted by it.

One can also use a conceptual approach to stating the methodological framework of the study concerning the category "remedy for corporate rights", which can be considered as a set of representations, or images formed as a result of violation or creation of a real threat of violation of corporate rights and legally protected corporate interests, and the corresponding reaction of society and the state to the listed violations and threats; as a system of provisions determining the possibility of applying measures of material and procedural order, which include elements of forms, methods, and means of remedying; as an element of the legal regulation mechanism, which is expressed in the unity of systems of legal means, ways, and forms used to exercise high-quality remedy for corporate relations and satisfy the interests of legal entities – participants in these relations.

The basis for the author's scientific inquiry was formed by the studies of numerous researchers, whose improvements made a notable contribution to the development of the outlined problems while stating the need for further research. At the same time, despite a considerable number of studies, the issues of designing a unified value approach to the

remedy for corporate rights and relations, improving Ukrainian legal regulation in this area, etc. remain relevant for Ukrainian science. This, in turn, justified the relevance of this study.

III. Results

The acceleration of the development of the private sector in Ukraine is directly related to the possibility of exercising the rights of ownership, use and alienation of corporate rights. At the same time, in case of violation of such rights, it is advisable to test the remedies for these rights, the effectiveness of which still causes doubts and discussions among theorists and practitioners. Nowadays, one can state the need to increase the level of effectiveness of legal support for remedying corporate rights acquirers. The fundamental principles of remedying human rights are outlined in Article 8 of the Constitution of Ukraine (1996), according to which the state provides guarantees for the protection of constitutional rights and freedoms of humans and citizens when applying to the court. Indicative in this regard is the guaranteed protection of the rights of all subjects of property and economic rights stipulated in Article 13.

The rights of participants of business entities on the territory of Ukraine have found their legislative consolidation in the Civil Code of Ukraine (2021), Economic Code of Ukraine (2021), Law of Ukraine "On Limited and Additional Liability Companies" (2018), Law of Ukraine "On Business Associations" (1991), Law of Ukraine "On Joint Stock Companies" (2008), Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" (2001), Law of Ukraine "On the Depository System of Ukraine" (2012) and other legislative acts. At the same time, despite the considerable number of existing legalised provisions, the issues of practical implementation of remedies for corporate relations and resolving corporate conflicts remain theoretically and practically undefined.

Different types of social relations occur between social subjects. Being regulated by law, they acquire new properties and qualities, transforming into legal relations. For the implementation of many legal provisions, which, as is known, are static in themselves, it is necessary to have legal relations through which an abstract legal provision appears in dynamics. Through the study of legal relations, the mechanism of influence of legal provisions on public relations is learned, and the need to improve the forms and methods of legal regulation to increase the effectiveness of legal provisions and strengthen the rule of law is revealed. One of the most specific features of legal relations is the regulation of public relations by law (Slepnev, 2009). More conventional in legal science is the positive-legal concept, according to which legal relations are interpreted as public relations regulated by legal provisions, the participants of which are carriers of subjective rights and legal obligations protected and guaranteed by the state (Buyanova and Marchenko, 2006). Corporate legal relations should be interpreted as legal relations wherein corporate rights are exercised and corporate obligations are performed. Subjects of corporate relations are a participant, member, shareholder, depositor, founder, investor (quasi-founder), former participant of a corporate enterprise, and a corporate enterprise itself. Corporate relations may arise between a corporate enterprise and a participant (shareholder, member, etc.), or between two participants (shareholders, members, etc.). The object of corporate legal

relations is the creation, operation, and termination of a corporate enterprise and the results of its activities. Such a generalised object of corporate legal relations covers the objects of individual corporate legal relations that arise in the exercise of certain corporate rights. The category of corporate legal relations is completely derived from the categories of corporate obligations, and, to the greatest extent, corporate rights, which is the content centre of gravity in the terminology of corporate law. In an objective sense, apart from corporate legal relations, corporate law also governs specific, different from labour, relations between a corporate enterprise and its officials, as well as, provided that they are recognised, internal organisational relations in corporate enterprises (between bodies and officials of a corporate enterprise), which together with corporate relations constitute the subject of corporate law as a sub-branch of economic law (Smityukh, 2016).

The exercise of corporate rights or performance of corporate obligations is a reliable criterion for distinguishing corporate legal relations from any relations between a corporate enterprise and its officials, internal organisational relations in corporate enterprises in case of their recognition and any ancillary relations with corporate specifics (administrative, family, inheritance, civil law, economic, non-corporate, etc.), both with the participation of only the corporate enterprise and its participants (shareholders, members, etc.), and with third parties related to the creation, operation, and termination of a corporate enterprise.

Legal remedy as an object of scientific research is constantly on the radar of specialists both in the field of a general theory of law and branch of legal sciences. Nevertheless, the relevance of the subject matter remains undoubted. Drastic changes have taken place in all spheres of public life, and the social structure of Ukrainian society has become much more complicated. Completely new relations have emerged, more complex both in structure and content, which necessitates their proper regulation. Researchers approach this concept from different perspectives, using different terms, among which "remedy" is one of the most common. Thus, Alekseev (1995) stated that remedy is a state-compulsory activity aimed at performing "restorative" tasks, namely restoring the violated right, and ensuring the performance of a legal obligation.

The goals and objectives of remedying include prevention of an offence, suppression of a violation of a right, elimination of obstacles to the exercise of subjective rights, and compensation for losses caused by a violation of subjective rights. Remedies should be understood not as actions of the remedy subject aimed at preventing, stopping an offence, removing obstacles to the exercise of subjective rights, or compensation for losses, but as claims of harassment of the remedy subject, aimed at achieving certain consequences, obtaining an appropriate result, which is realised by his or her actions. The actions of the remedy subject regarding the remedy means are conditioned, to a greater extent, by the organic unity of remedies (Kozlov, 2017). Depending on the outcome desired by the remedy subject, remedies for subjective rights can also be classified as remedies. Remedies allow the prevention or termination of a violation of the right (threat of violation). And remedies that allow restoring the violated right and (or) compensating for losses incurred in connection with the violation of the right. Subjective civil rights and the right to remedy act as different legal categories, since they have different legal grounds for their emergence. The basis for the emergence of subjective civil law is a lawful action, or an event fixed

by the legal regulator of civil legal relations, which has a regulatory legal meaning for participants in civil legal relations. At the same time, the basis for the exercise of the right to remedy is formed by legal facts of illegal nature.

A certain completeness of the scientific opinion on the independence of the right to remedy from subjective civil right, in the opinion of Kostruba (2018), is provided with a division in the structure of the right to remedy into three abilities: the possibility (ability) to perform independent factual actions to remedy the right (to use means of self-defence) or to perform independent legal actions to restore the right (to use means of operational influence); the possibility (ability) of demanding the forced restoration of the violated right from state bodies (to use remedies and means of liability); the possibility (ability) to remedy the right (to use means of coercion in new protective legal relations). Outside of legal influence are legal constructions relating to subjective civil law as a measure of possible behaviour, the existence of which should ensure the proper form of implementation of civil legal relations, since subjective civil law cannot fully reflect the available legitimate aspirations of subjects of civil legal relations. These include the legal structure of legal interest.

The functioning of the mechanism for expressing interests in law (transition to the stage of legal formalisation) begins with the competent state body's awareness of some legally significant interest. Proper awareness of public, collective, and individual interests is a necessary, but insufficient condition for scientifically objective and effective law-making. After realising the interest, the law-making body must decide whether this interest requires legal mediation (Stepanyan, 1977). A legally significant or legal interest is interpreted in two meanings: subjective and objective. In a subjective sense, *"legal interest is a conscious need for a person to use legal means to meet existing needs, that is, for the sake of performing socio-legal (legitimate) actions"* (Babaev, Baranov and Goyman, 1992). In the objective sense, legal interest is the basis of the legal education process; what is mediated by objective law is included in the subject of legal regulation; which is important for consolidating legal constructions that contribute to the realisation of these interests. To cover the mechanism of influence of interest on objective law and law-making, it is important to understand that the real socio-economic interests of subjects expressed in public relations are phenomena for which objective social norms are established (Mikhailov, 2002).

At present, in corporate disputes, when remedying subjective rights, legitimate interests are also protected. Perhaps that is why it is difficult to find a court decision wherein the content of a legitimate interest is covered. Despite attempts to prove the possibility of the existence of a legitimate interest regardless of subjective rights, only in exceptional cases can a legitimate interest that is not mediated by corporate rights be distinguished in corporate relations. An example is the appeal of a company member to the court with a claim for the company's obligations to state registration of changes in the company's constituent documents in connection with this member's disaffiliation. The moment when a member leaves the company is the date when they submit their application for resignation to the relevant official of the company. However, if the company does not perform any actions in connection with the submission of such an application, then it is not the rights of the retired member that are violated, but his or her interests, which do not depend on

corporate rights, since the person has lost the status of a company member after filing the corresponding application.

In a narrower sense, the term "protection" is used to define one of the ways to remedy property interests, which is expressed in the factual actions of the most competent person (self-protection) in the actions of other persons associated with this person by certain relations that are carried out in his or her interests (Tarkhov, 1997). That is, the means associated with the exercise of a person's right to remedy also form an integral part of the general legal mechanism for remedying property rights. It is in this sense that this term is used in regulations that govern relations concerning the provision of property protection services, while at the same time defining the essence of the service itself. Notably, in legislation and judicial practice, it is used as an expression "legal protection", and as "legal remedy", but with a predominance in favour of the latter. In the system of means of ensuring the protection of the interests of the individual, society and the state, law and order, important place belongs to state coercion as one of the main methods of public administration. Legal coercion – this is the application of measures of influence established in legal provisions by an authorised subject of power to regulate public relations. It is closely connected with the state authorities, directs the behaviour of people within the framework of the law, assesses illegal behaviour, and imposes on the offender the obligation to suffer certain hardships, to make amends to society. Legal coercion is performed in the interests of society, the state and, ultimately, the offender.

Generally, binding rules of conduct create a special sphere – legal (jurisdictional). All phenomena, social relations, and behaviour that fall into this sphere acquire special features and characteristics. The legal provisions govern social relations (various connections that arise between the systems and elements that make up society). In turn, one of the features of society is its heterogeneity and constant development. It is natural that in the process of existence and development of society within its subsystems, between people, certain contradictions arise, which can develop into conflicts (Arabadzhieva and Gomonov, 2006). An offence is an element of social conflict, which inevitably translates this conflict into a sphere of legal influence (Paraskeyova, 2006). The illegal behaviour of the subject is a true conflictogenic factor that transfers the normal interaction of subjects into the plane of conflict interaction. Legal conflict is any conflict wherein the dispute is somehow connected with the legal relations of the parties, and, consequently, the content of relations entails legal consequences for the subjects or objects of the conflict. Furthermore, most conflicts involve ways and means of preventing and ending them. Therefore, such conflicts in most cases are legal (Dmitriyev et al., 1997). Most conflicts are prevented, terminated, and resolved by public authorities: executive authorities, the court, the prosecutor's office, and local self-government bodies. Corporate conflicts can be interpreted as conflicts that arise between the management bodies of an economic company and its participants, as well as between the participants themselves if this conflict encroaches on the interests of society (Makarova, 2005).

Agreeing on the features of a corporate dispute, researchers concluded that corporate dispute means unsolvable pre-trial (out-of-court) divergences of interests and (or) violations of corporate rights of participants and corresponding relations arising from the

membership and management of the corporation (Andreev and Laptev, 2015). According to judicial practice, explanations and recommendations of higher courts, corporate disputes include disputes on claims of participants of legal entities for invalidation of constituent documents or parts thereof, changes in them; on liquidation of a legal entity or cancellation of its state registration; on claims of shareholders of private joint-stock companies for transfer of the rights and obligations of the buyer of shares to them in connection with violation of their pre-emptive right to purchase shares sold by other shareholders of the company, etc.

For example, in the case of an approach to a legal interest as a wish to use it in the form of a certain good, simple and lawful resolution, the person concerned has the possibility of applying to the court, setting the task of satisfying individual and collective needs also in the case where their actual pertinence to that person raises reasonable doubts. However, the criterion of the degree of mediation in the subjective law of such an aspiration of a person is not defined in the legislation of Ukraine and acts as a discretion of the court. For example, a dishonest person, subjectively believing that they have a certain interest in receiving particular material benefits, or in their non-receipt by another person, has the right to appeal procedurally against the adopted acts of law enforcement in the absence of an objective legal incentive to do so. However, the court would come to an appropriate conclusion and confirm its position on the case by delivering an appropriate judgement after a long period, which would negatively affect the bona fide participant in the corresponding legal relations. As a result, the doctrinal definition of a person's legal interest for its possible remedy is of great importance in the field of law enforcement. The existence of a legitimate interest of a company participant, which is remedied by filing a corresponding claim in court, is conditioned by the protection of its subjective civil right in corporate legal relations between the participants of the business company. This is confirmed by the legal position of the Supreme Court of Ukraine, which is set out in the Court's decision of July 1, 2015, in case No. 3-327rc15 (Resolution of the Supreme…, 2015). The court of cassation instance, upon considering the court case, came to an erroneous decision, which laid in the fact that the law does not make provision for the right of a shareholder (member) of a business company to request the court to remedy rights or legally protected interests of the company outside the representation relations. Thus, a company member is not endowed with a subjective right to exercise the powers of the owner of the company's property, as a result, the plaintiff is not related to those entities that have the right to appeal against the mentioned agreements. Business company members cannot request the court to remedy the rights and interests of other business company members and the company itself outside the representation relations, as well as put forward their claims, relying on violations of the rights of other company members.

Upon cancelling the decision of the Supreme Economic Court of Ukraine of November 19, 2014, in case No. 911/2435/14 on the claim of V. F. Fedorov against the "Agrocom" Limited Liability Company and the "Beta-consulting" Private Enterprise for invalidation of agreements, the Supreme Court of Ukraine indicated that according to the provisions of Parts 1, 2, Article 16 of the Civil Code of Ukraine, everyone has the right to request the court to remedy their non-property or property right and interest. A suitable way to

remedy civil rights and interests may be to invalidate a transaction. According to Parts 1 and 2, Article 203 of the Civil Code of Ukraine, the essence of the transaction should not run to contradict this code, other regulations of civil legislation, the interests of the state and society, and its moral norms. The person operating must have a mandatory level of civil legal capacity. The reason for the invalidity of a transaction is non-compliance at the time of making the transaction by the party(ies) with the requirements regulated by Parts 1–3, 5, and 6, Article 203 of this Code. If the invalidity of a transaction is not explicitly established by law, but one of the parties or another interested person denies its validity on the grounds established by law, the corresponding transaction may be invalidated by the court (the disputed transaction) (Article 215 of the Civil Code of Ukraine). It can be stated that the courts are remedying the corporate rights of company participants more frequently, contributing to the implementation of the right to remedy the corresponding rights (Resolution of the Supreme…, 2015).

In this context, the example of Germany and countries under the influence of German law, which began to define loyalty duties in corporate and trust relations in the mid-20th century and described them as a broader principle of civil law that permeates various branches of law, can be very demonstrative. These loyalty obligations vary in intensity and do not necessarily meet the highest standards of fiduciary loyalty, which comes into play when the interests of one-person conflict with the interests of another and require the interests of others to prevail. The duty of loyalty can be understood as a particularly strong duty between the parties to legal relations that exist in a hidden form somewhere in the law. German law initially sets out the requirement of good faith and honest behaviour in the conduct of its law of obligations. The German doctrine of corporate law has long recognised the existence of the obligation of loyalty of partners in partnerships, even if there are no particular rules establishing such a thing. Starting in the 1930s and continuing after World War II, researchers developed a duty of loyalty in German law, writing about partnerships and corporate law, seeking to determine what responsibilities individuals have in a commercial association. Modern sources, including the decision of the Federal Supreme Court, clearly describe the corporate duty of loyalty as a particular example of the general principle of civil law applied to persons who manage the property of another person (Gelter and Helleringer, 2018).

The Federal Supreme Court described the corporate duty of loyalty as an example of a duty that applies to any "manager of another person's property", adding that *"the general principle of civil law that someone manages another person's property must act exclusively and without restrictions in the interests of the owner also applies in corporate law"* (Rechtsprechung…, 2005). It is also sometimes considered a restriction on the statutory requirement of equal treatment of shareholders, even if the uncodified duty of loyalty is much more practical in reality (Aktiengesetz, 2020). In light of this, it is obvious that German legal science and doctrine consider the director's duty of loyalty as a general principle of corporate law, and not just a narrow, contextualised, law-specific duty. In recent decades, German courts have extended the obligation of loyalty from directors to shareholders and attribute this not only to the benefit of the corporation but also to other shareholders. In its 1988 decision, the Federal Court ruled that a majority shareholder must

follow the principles of loyalty regarding minority relations (Rechtsprechung . . . , 1988). In a subsequent 1995 case, the court explained that a minority shareholder who had the right to veto an operation necessary for the corporation's survival due to the redundancy requirement was also subject to a special loyalty obligation (Rechtsprechung . . . , 1995).

IV. Discussion

Among the definitions of corporate legal relations derived from the category of corporate rights, according to Smityukh (2016), one should also note the definition proposed by Vasylyeva (2018), who understands corporate relations as property and personal non-property relations arising between a participant in a legal entity and this legal entity, as well as between participants (founders) in the implementation of corporate rights, or legal relations based on the participation of subjects in legal formations that have the features of legal entities, the essence of which is the so-called corporate rights arising based on certain legal facts, namely participation in the foundation agreement, joining a cooperative, acquiring ownership of a share, shares, etc. Pereverzev (2004) concluded that corporate relations as internal organisational and economic relations are developed during the management of economic activities between corporate business entities and subjects of organisational and economic powers – the founders (participants) and their authorised bodies.

According to the findings of Makarova (2005), corporate relations are, most importantly, relations within the corporation itself between different groups of corporation participants, between them and professional management, and between directors and management. The lawyer pointed out differences in the nature of these relations and emphasised that these relations belong to the sphere of management (which is broader than internal organisational relations), to property relations. By generalising the opinions expressed in the doctrine, Bignyak (2018) identified several main approaches to solving the issue under study, according to which internal legal relations can arise between a corporation (a corporate-type legal entity) and its participants; between a corporate-type legal entity and its participants, as well as between participants; between participants of a corporate-type legal entity; between a corporate-type legal entity and its bodies; between participants and/or bodies of a legal entity created by them and a corporate-type legal entity.

Sverdlyk and Strauning (2002) envisaged the content of the subjective right to remedy in a three-level system of powers. The first level allows the authorised person to decide the method and form of remedy, the second – implements the chosen method within the framework established by law; the third – appealing in court or challenging the actions that violate his or her rights through administrative proceedings. However, according to Bignyak, considering the essence of remedying corporate rights and interests, it is important to note that the choice of the form, method, and means of remedying the violated right cannot be considered as a system of rights of a person. The remedies for corporate rights and interests form an integral part of numerous branches of substantive and procedural law (civil, civil procedural, economic law, and economic procedural law), which suggests their complexity. The content of this right is an action aimed at eliminating violations and restoring the right through the choice of appropriate remedies. After all, the

right to remedy is guaranteed by the Constitution of Ukraine, the Civil Code, corporate legislation and international legal acts, regardless of whether a person expresses a desire to take advantage of such an opportunity (Alexandrov, 1955).

The concept "mechanism of legal regulation" was developed in the 1960s by Alekseev (1995) and includes the following elements: statutory framework, regulations (as a link serving the statutory framework), legal relations, individual acts, legal awareness and legal culture. In the future, the author clarified his position, writing that according to the stages of legal regulation, three, and considering the special optional stage – the stage of application of the law – four main elements of the legal regulation mechanism are clearly distinguished: legal provisions, individual prescriptions for the application of law (optional element), legal relations, acts of exercise of rights and obligations. Thus, a statutory remedy should include the following elements: legal provisions that form the legal basis of the statutory remedy; legal relations that arise between participants in public relations upon remedying; acts of exercise of rights and obligations (self-protection); acts of application of a law, when a remedy is applied with the participation of the state, specially authorised bodies, or officials. According to Bignyak (2018), corporate rights and interests can be remedied without coercion by a jurisdictional body, which in modern realities does not act as the only body responsible for remedying the violated rights and resolving disputes. Apart from the above, proceeding from the essence of the offence, the owner of corporate rights can independently incline to a certain remedy, and the state and the owner of corporate rights themselves should be interested in ensuring that the remedy does not necessarily appear in a jurisdictional form.

In terms of the conflict that should be considered legal, Kudryavtsev (2002) reduced the question to an alternative: either all elements of the conflict – motivation, participants, objects, etc. – must have a legal characteristic for the conflict to be recognised as legal, or it is sufficient that at least one of its elements has legal characteristics. The researcher is inclined to the latter decision and argued that *"a legal conflict should be recognised as any conflict wherein the dispute is somehow connected with the legal relations of the parties (their legally significant actions or states) and, consequently, the subjects of the conflict, or the motivation of their behaviour or the object of the conflict have legal features, and the conflict entails legal consequences"* (Kudryavtsev, 2002). Nikologorskaya (2007) described corporate conflict as an attitude that is based on a conflict of interests and rights, although the actions of subjects of such an attitude are aimed at implementing mutually exclusive goals, the achievement of which they strive as participants in such corporate relations. According to Shimbareva (2010), a corporate conflict should be understood as *"a set of corporate legal relations accompanied by a conflict of interests of the corporation, corporation members, and management officials, the object of which is corporate control."* Thus, Professor Zhornokuy (2015) indicated that the definition of the basic category that can serve as the basis for defining a legal conflict should be based on the essential features of this phenomenon. However, legal science has not developed uniform criteria for assigning a particular legal connection to a conflict situation that has a legal characteristic. In turn, the author's attempt to draw a parallel between the concept of protected corporate legal relations and corporate conflict is controversial, since the former is described by the

objective presence of a violated subjective civil right or the legal interest of a participant in regulatory civil relations, while the latter has an external undefined, but subjectively volitional developed marginal behaviour of a person. Thus, interest is not a part or component of subjective civil law, it is not included in its structure but exists separately, being a prerequisite and goal of this subjective civil right.

Some researchers identify the concepts of "remedy" and "protection". Therewith, Romovska (1997), drawing attention to the interdependence of the categories of legal remedy and legal protection, does not recognise their identity. With this statement, according to Bignyak (2018), one must agree. Because, as Agapeyev (1984) claims, "legal protection" is a broad concept and includes a system of various legal measures to protect the right from possible violations. Considering that the remedying of corporate rights includes components of a substantive and procedural nature, and today there are no unified procedural modifications to the remedies for corporate rights of alternative forms, according to Bignyak (2018), it is necessary to adopt the Model Law "On Remedying Corporate Rights". Such a framework law would allow for defining a single terminology, systematising issues of remedy options and consolidating all possible alternative remedies for corporate rights with the definition of the specific features of remedies for corporate rights and regulating the procedure of each alternative and possible remedy considering the specific classification of corporate conflicts.

Analysis of Ukrainian and German legislation on remedies for corporate relations shows that Ukrainian legislation has quite weak points in comparison with German legislation in this area. That is why proposals for updating corporate regulations in Ukraine are urgent. Legislatively, both Ukraine and Germany have sufficient remedies for the rights of minority shareholders, but in Germany, shareholders have more influence, while Ukraine has many barriers to the effective practical implementation of such remedies. Lapina, Kostyuk, Braendle and Mozghovyi (2016) propose to supplement the Law of Ukraine "On Joint Stock Companies" with such principles as the principle of equal treatment and the duty of loyalty. Thus, as a result of the discussion, it can be concluded that a considerable number of judgments on the remedies for corporate relations make it particularly interesting and necessary to analyse the qualitatively changed type of corporate relations from a general theoretical standpoint.

V. Conclusion

In modern conditions, the sphere of corporate relations is steadily expanding in parallel with the development of civil society in Ukraine, a free civilised market, and the growth of social activity of people and their collectives. These relations objectively require adequate legal mediation to streamline and develop them. Corporate relations always reflect relations within the corporation – relations that develop between the members of the corporation, its management bodies and the corporation itself regarding the organisation of its activities, as well as the exercise of corporate rights and obligations of participants in corporate relations.

"Remedies for corporate rights" can be considered as a set of representations, and images formed as a result of violation or creation of a real threat of violation of corporate rights and legally protected corporate interests, and the corresponding reaction of society and the state to the listed violations and threats. Also, as a system of provisions determining the possibility of applying measures of material and procedural order, which include elements of forms, methods, and means of remedying. And as an element of the legal regulation mechanism, which is expressed in the unity of systems of legal means, ways, and forms used to exercise high-quality remedying of corporate relations and satisfy the interests of legal entities – participants in these relations.

It can be concluded that a considerable number of judgments on the remedies for corporate relations make it particularly interesting and necessary to analyse the qualitatively changed type of corporate relations from a general theoretical standpoint. Considering that the remedy for corporate rights includes components of a substantive and procedural nature and there are currently no unified procedural modifications of the alternative remedies for corporate rights, researchers propose to adopt the Model Law of Ukraine "On Remedying Corporate Rights", which can put an end to the theoretical debates of the doctrine representatives.

For the effectiveness of pre-trial, judicial, or out-of-court remedies for corporate rights, it is necessary to consider the experience of German corporate legislation, which is in a state of continuous improvement due to integration processes within the European Union. Furthermore, the convergence of legal regulation systems of corporate relations is one of the most noticeable trends in the development of corporate legislation around the world.

References

Action Plan "Ukraine – European Union". European Neighborhood Policy. (2005). Retrieved from https://zakon.rada.gov.ua/laws/show/994_693#Text.

Agapeyev, V. Ye. (1984). Protection of property rights of citizens and organizations by tort and insurance obligations. *Soviet State and Law*, 2, 63–65.

Aktiengesetz. (2020). Retrieved from https://dejure.org/gesetze/AktG/53a.html.

Alekseev, S. S. (1995). *Theory of Law*. Moscow, BEK Publishing House.

Alexandrov, N. G. (1955). *Legality and legal relations in Soviet society*. Moscow, Gosyurizdat.

Andreev, V. K., Laptev, V. A. (2015). *Corporate law in modern Russia*. Moscow, Prospect.

Arabadzhieva, O. V., Gomonov, N. D. (2006). Legal conflict: nature and features. *Vestnik MGTU*, 9(1), 142–147.

Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part. (2014). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.

Babaev, V. K., Baranov, V. M., Goyman, V. I. (1992). *Dictionary of categories and concepts of the general theory of law*. Nizhny Novgorod, Nizhny Novgorod Academy of the Ministry of Internal Affairs of the Russian Federation.

Bignyak, O. V. (2018). *Civil law protection of corporate rights in Ukraine: thesis of the Doctor of Law*. Odesa, Odessa Law Academy.
Buyanova, M. O., Marchenko, M. N. (2006). *Legal encyclopedic dictionary*. Moscow, Prospect.
Civil Code of Ukraine. (2021). Retrieved from https://ips.ligazakon.net/document/T030435?an=4326.
Constitution of Ukraine. (1996). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
Dmitriyev, A. V., Zaprudskiy, Yu. G., Kazimirchuk, V. P., Kudryavtsev, V. N. (1997). *Fundamentals of conflict management*. Moscow, Yurist.
Economic Code of Ukraine. (2021). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15#Text.
Gelter, M., Helleringer, G. (2018). *Fiduciary principles in European civil law systems*. Retrieved from https://ecgi.global/sites/default/files/working_papers/documents/finalgelter-helleringer_0.pdf.
Kostruba, A. V. (2018). Theoretical understanding of the system of legal forms of protection of corporate relations. *Bulletin of the National Academy of Pedagogical Sciences*, 1, 97–119.
Kostruba, A. V., Maydanyk, R. A., Luts, V. V. (2020). Bonum requirements of the beneficiary in the corporate rights protection system in Ukraine: Implementing best practices. *Asia Life Sciences*, 1, 189–207.
Kozlov, N. A. (2017). Essential and legal characteristics of the way to protect subjective rights. Varieties of ways to protect the rights of the taxpayer. *Voronezh State University Bulletin. Series: Law*, 3, 208–216.
Kudryavtsev, V. N. (2002). *Legal conflictology. Selected works on the social sciences*. Moscow, RAS.
Lapina, Yu., Kostyuk, A., Braendle, U., Mozghovyi, Ya. (2016). Shareholders rights and remedies (comparative law perspective). *Corporate Board: Role, Duties & Composition*, 12(3), 6–13.
Law of Ukraine "On Business Associations". (1991). Retrieved from https://zakon.rada.gov.ua/laws/show/1576-12#Text.
Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets". (2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2664-14#Text.
Law of Ukraine "On Joint Stock Companies". (2008). Retrieved from https://zakon.rada.gov.ua/laws/show/514-17#Text.
Law of Ukraine "On Limited and Additional Liability Companies". (2018). Retrieved from https://zakon.rada.gov.ua/laws/show/2275-19#Text.
Law of Ukraine "On the Depository System of Ukraine". (2012). Retrieved from https://zakon.rada.gov.ua/laws/show/5178-17#Text.
Makarova, O. A. (2005). *Corporate law*. Moscow, Walters Kluver.
Mikhailov, S. V. (2002). *Category of interest in Russian civil law*. Moscow, Statut.
Nikologorskaya, Ye. I. (2007). Settlement of corporate conflicts in shareholder legal relations. *Laws of Russia: Experience, Analysis, Practice*, 7, 46–51.

Paraskevova, S. A. (2006). Definition of a civil conflict. *Civil Law*, 3, 17–21.
Pereverzev, O. M. (2004). *Economic and legal support of corporate control in joint stock companies: thesis of the Doctor of Law*. Donetsk, V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine.
Rechtsprechung. BGH, 01.02.1988 – II ZR 75/87. (1988). Retrieved from https://de-jure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=01.02.1988&Aktenzeichen=II%20ZR%2075/87.
Rechtsprechung. BGH, 20.03.1995 – II ZR 205/94. (1995). Retrieved from https://de-jure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=20.03.1995&Aktenzeichen=II%20ZR%20205%2F94.
Rechtsprechung. BGH, 21.12.2005 – 3 StR 470/04. (2005). Retrieved from https://de-jure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=21.12.2005&Aktenzeichen=3%20StR%20470/04.
Resolution of the Supreme Court of Ukraine of 01.07.2015 in case No. 3-327rc15. (2015). Retrieved from https://protocol.ua/ua/postanova_vsu_vid_01_07_2015_roku_u_spravi_3_327gs15/.
Romovska, Z. V. (1997). Personal intangible rights of individuals. *Ukrainian Law*, 1(6), 47–60.
Shimbareva, Ye. V. (2010). *Corporate conflicts and control: civil law aspect: thesis of the Doctor of Law*. Rostov-on-Don, Southern Federal University.
Slepnev, A. V. (2009). *State as a subject of legal relations: thesis of the Doctor of Law*. Moscow, Plekhanov Russian University of Economics.
Smityukh, A. V. (2016). On the question of defining the concept of corporate legal relationship. *Law Power*, 24, 134–141.
Stepanyan, V. V. (1977). Interests significant for lawmaking and their reflection in Soviet law. *Soviet State and Law*, 2, 121–125.
Sverdlyk, G. A., Strauning, E. L. (2002). *Protection and self-defense of civil rights*. Moscow, Lex-Kniga.
Tarkhov, V. A. (1997). *Civil law. A common part. Lecture course*. Cheboksary, Chuvash Book Publishing House.
Vasilieva, V. A. (2013). Problems of corporate law development. *Private Law*, 1, 135–145.
Vasylyeva, V. A., Luts, V. V., Sishchuk, L. V. (2018). *Corporate law of Ukraine: problems of theory and practice*. Kharkiv, Pravo.
Zhornokuy, Yu. M. (2015). *Corporate conflicts in joint stock companies: civil law aspect*. Kharkiv, Pravo.