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CORPORATE LAW IN THE HIGHLIGHT OF DIVISION OF PRIVATE AND PUBLIC LAW

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INTRODUCTION

An important instrument of state influence on economic relations are the rules of law as an element of the mechanism of legal regulation of these relations[1]. The rules of law are made up of certain systems, which in the theory of law are called as subinstitutions, institutes, sub-branches and branches. Their legal interaction is important both for a single legal regulation and for study. Furthermore, it is important to determine the place of corporate law in the system of law of Ukraine, in particular in order to identify its features, methods and principles. Many scientists tried to find the ratio of corporate law on the field of public or private law. Nevertheless, often the methods and the underlying principles of the discussion have different backgrounds, and therefore do not give answers to the most important theoretical and practical questions.

Realizing that there is a public and private interest in corporations, it is probably not possible today to support the method chosen by many scholars for the full identification of civil law with the private[2], and other branches of law – with the public law. Such a vision of the theory of law was called normative, according to which private law (the rules governing private-law relations) are all legal norms contained in the civil code of a particular state as the only codified act of private law and other civil law laws. The rest of the rules of law and relations that they regulate should be considered public[3].

[1] Беляневич О. А. Господарське договірне право України (теоретичні аспекти). Київ : Юрінком Інтер, 2006. С. 173.

[2] Сібільов М. Предмети приватного (цивільного) права. *Право України.* 2014. № 6. С. 66–74.

[3] Банчук О. Підстави розмежування публічного та приватного права в Україні. *Публічне право.* 2011. № 1. С. 144.

1. Private and Public Law Issues in the Moder Era

Such an interpretation is simply a theory of division of private and public law. However, such an interpretation is simply a theory of division of private and public law. In particular, O. Bunchuk has counted more than a dozen main theories of such a distinction, starting with Savigny's classical theory of interest, which has recently been subjected to serious criticism because of the multifaceted nature of the interest category and its criteria[4]. For example, minority shareholders, may be public – important to the state because of its social nature and tension, and private – the interest of the minorities themselves as individuals.

Same norms of law cannot be an integral part of various institutes and branches of law. However, this should not be accepted in full measure. If we consider the law as an objectively existing category, then the legal norm may regulate relations in various fields. For example, the sale of a significant stake in a joint stock company is an integral part of corporate and competition law. If we do not recognize the "tangible" complex industries, then we can talk about the division of the law in the industry in the Soviet sense. In this case, all private norms will be civilian, and the rest will belong to the public law branches.

However, as A. O. Belyanevich rightly points out, the development of the issues of private and public law takes place on the basis of a well-established understanding of the system of law developed in Soviet jurisprudence. An apparent exaggeration is the assertion that private and public law in all developed legal systems still exist as two separate areas of legal regulation, as two different types of legal influence on social relations, despite the fact that the developed right only exists and can exist in the presence of two spheres of public and private law[5].

The unity in the understanding of many representatives of the science of civil law regarding the division of private and public law in ancient Rome was rightly questioned by O. A. Belyanevich, which proved how different approaches to such a division in the most quoted by modern researchers Digest Ulpian and Institutions Guy[6].

In this context French scholars should be mentioned in the field of diminishing the role of private and public law. Their research shows that

[4] Банчук О. Вказана праця. С. 143–146.
[5] Беляневич О. А. Вказана праця. С. 83–84.
[6] Беляневич О. А. Вказана праця. С. 84–86.

terms of private and public law were borrowed by Rome from the laws of Hammurabi, which derive from criminal law, and is connected with the honor of the gods and the organization of punishment of private individuals for crossing the boundaries of the sacral citadel[7]. From the foregoing it is seen that solving the modern issue by methods dated back more than two thousand years is quiet useless process.

In developing a theory of public interest in economic societies, O. M. Vinnik gives a vision of the French professor M. Planiole concerning the division of the right to public and private. In his opinion, private law regulates the activity that private individuals carry out on their own behalf and in their own interests. This opinion was shared by the prominent pre-revolutionary Russian civilist and commercialist G. F. Shershenevich, believing that the sphere of private law is defined by the following categories: "1) private individuals as subjects of relations; 2) private interest as a substance of relations ". Public law, as noted by M. Planoliol, "regulates the relations of persons acting in the general interest, by virtue of direct or indirect delegation of sovereign power", and its motto is "to ensure the harmony and consent of society, balance of interests of the individual, collectives, communities in society as a whole, stability of the state and its institutions, stability of the fundamentals of economic and social development"[8].

Scientists have noticed for a long time the fact that a number of civil norms are distinguished in the system of civil law. Therefore Petrazhitsky believed that "in the field of private law unions, which arise on a voluntary basis between legal entities, the norms of civil law by their nature to a large extent receive a special color, which distinguishes them among the mass of civil norms and gives them a certain We traits inherent in most of public law norms"[9]. One can say that for more than a hundred years these norms have become even brighter public-law color.

In the context of the issue of dividing the law into public and private it should be said that many scientists rightly emphasize that the

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[7] Gaudemet Y. Editorial. *Revue de Droit Association Henri Capitant pour la Culture Juridique Française*. 2012. № 5. URL: http://www.henricapitantlawreview.fr/edito_revue.php?id=48&lateral=48.

[8] Вінник О. М. Публічні та приватні інтереси в господарських товариствах: проблеми правового забезпечення. Київ : Атіка, 2003. С. 50–51.

[9] Петражицкий Л. Акционерная компания. Акционерные злоупотребления и роль акционерных компаний в народном хозяйстве. С.-Пб : Типография Министерства Финансов, 1898. С. 31.

division of the right to private and public is paramount for determining the type, methodology of legal regulation. N the same time the divsion does not correspond to the practical needs of the isolation of legal norms[10] and the need to explain separation of regulation complex legal relations.

European researchers of private law state that, despite the clarity of division into public and private, Ulpian's works lacked the criteria and grounds for such a division. In particular, in Digest, the abstract, modern look, the words of the praetor about a public river, which cannot be transmitted, are given[11]. This abstract sharpening of the delineation of the right to public and private may have served some practical needs of the law of Ancient Rome. If we take into account that the modern classical corporation did not exist in that historical time, it is difficult to apply such an abstract vision of two thousand years ago to find out the place of modern corporate law.

At the end of the nineteenth century Sokolovsky noted that, trying to find in the classical Roman law the origins of almost all phenomena of modern economic and legal life, many authors often consider the Roman institutions themselves from the standpoint of modern concepts, created only later, due to special conditions of life of the middle and new eyelids[12].

In addition, the private law of Roman lawyers was used not only in symbiosis with the public, but also in other means – private law as a Roman right, national, and the right of the nation[13]. Therefore, it is impossible to reach a final opinion on the nature of private and public law, taking into account only the works of one Ulpian. In our opinion, in Roman law there was no unity either in terms of their delimitation or in relation to their place in the system of law. On the other hand, the division of the right to private and public has a modern interest in the category of interest and the possibility of different regulation of any processes within a single branch or institution.

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[10] Беляневич О. А. Вказана праця. С. 83.

[11] Watson A. The Evolution of Western Private Law. JHU Press, 2001. P. 146.

[12] Соколовский П. Е.. Договор товарищества по римскому праву. Римське право в Університеті Святого Володимира: у 2 кн. Київ : Либідь, 2010. Кн. 1. С. 328.

[13] Митюков К. А. Курси римського права. Римське право в Університеті Святого Володимира: у 2 кн. Київ : Либідь, 2010. Кн. 1. С. 12.

2. Place of Corporate Law in Legal System

For civil law the vision that the rules of public and private law are intertwined only in normative acts, and not in the branches of law[14] is a compromise. For example, the process of creating a corporation is regulated by the rules of public law, since the state, having understood the complexity of private and public interest, establishes mandatory rules for registration. In addition, the creation of corporations takes place with the participation of state bodies, and if you turn to joint stock companies, this order is more imperatively settled. The same applies to the termination of corporations, and even to a greater extent. Thus, we cannot consider the rules governing the establishment of a corporation as private, and, therefore, they are out of civil law regulation on the subject.

In our opinion, the assertion that the participants always have a choice as to how they behave in the corporation, and the corporation does not issue any binding orders[15], is not entirely correct. First, both the majority and the minority have the opportunity to mutually influence and conquer the will of the participants. For example, according to Part 1 of Art. 64 of the Ukrainian Joint-stock Company Act, a participant of a limited liability company that does not systematically perform or improperly performs duties or impedes its actions to the achievement of the objectives of the partnership may be excluded from the partnership on the basis of a decision voted by the participants owning in aggregate more than 50% of the total number of votes of the members of the partnership. System analysis of this norm gives grounds for the conclusion that in fact it is a question of depriving a participant of his property – shares in the authorized capital. And, therefore, it is seen the explicit subordination of his interests to the interests of the corporation.

Secondly, corporate relations are not limited to the corporation-participants, they go beyond these narrow frameworks, as we repeatedly emphasized. Thirdly, there are such corporate legal relationships, for

[14] Варул П. Место корпоративного прав в правовой системе. *Гражданское право и корпоративные отношения* : материалы международной научно-практической конференции, посвящ. 90-летию видного казахстанского ученого-цивилиста Басина Ю. Г., г. Алматы, 13–14 мая 2013 г. Алматы : Курсив, 2013. С. 109.

[15] Спасибо-Фатєєва І. Вчення про корпоративні праві і цивілістична доктрина. *Право України.* 2014. № 6. С. 88.

example, between a holding company and a dependent (corporate) enterprise, where the relationship of dependence-control is obvious[16].

Consequently, the main issue to be resolved in the course of legal regulation of economic relations is the establishment of not the one in which the boundary between the private interests of economic entities and public interests is laid down, but the one by means of which the legal instrument of economic law can ensure the consistency of interests of the sub- objects of management and society as a whole[17]. If it is determined that private and public law form a vertical rather than a horizontal structure, then it will be obvious that private law and public law permeate all branches of law. Consequently, in the context of the division of the right to public and private, one should not refer to the sectoral division, but to the nature of the rules of law. Such an interpretation will make it possible to solve not only the theoretical issues of division of law into private and public, and actually depart from this approach, but also many other theoretical and practical issues.

We believe that private and public law in corporate relations serve as a methodological task for regulating corporate relations through the interaction of public and private interests, rather than its assignment to private or public law. In this context Shcherbyna notes that the opposition of public and private interests in the state regulation of the economy by legal means is inadmissible, since it is by way of streamlining the public-legal regulation of private legal relations that it is possible to achieve an optimal balance of public and private interests[18].

In view of the above, it is worth pointing out the opinion of the Polish scientist Cornelius that public and private law are two elements of the legal system, isolated according to a horizontal corporation, according to which separation of separate branches of law is carried out[19]. This allows to divide the law not on the basis of private and public elements, but using the above objective process of sectoral and

[16] Лукач І. В. Правове становище холдингових компаній. Київ : Юрінком Інтер, 2008. С. 97–92.

[17] Беляневич О. А. Вказана праця. С. 349.

[18] Щербина В. С. Публічні й приватні інтереси в господарських відносинах. *Приватне право і підприємництво.* 2014. Вип. 13. С. 30.

[19] Kornelius B. The topicality of the law division into public law and private. *SLGR.* 2011. № 39 (26). P. 91.

functional specialization. This is confirmed by the system of modern German economic law, which will be discussed further.

There is no historical interpretation of the idea that the idea of economic law and the adoption of a business (business) code is conceptually based on the idea of economic law, which for the first time became widely disseminated in the pages of European legal literature at the beginning of the XX century. The justification of this concept is, in particular, the book by J. Gödemann "Fortschritte des Zivilrechts im XIX Jahrhundert", published in 1910. Among the articles of this author, published in Russian translation in 1924 in Kharkiv, also is the article "Basic features of economic law»[20].

We consider it necessary to consider the historical process of formation of economic law not in isolation from the European, but in its context, taking into account the realities of the Soviet era (especially the threats to economic law scholars after the notorious meeting on the questions of Soviet state and law in 1938 under the direction of the main theorist Soviet law).

First there was a trade law in Europe, which the Soviet science of economic law tried to adapt to the features of the command and administrative system, since trade law was automatically recognized as "bourgeois" and could not exist in the USSR. For centuries, the isolation of the entire USSR right in European law (including under the influence of the Anglo-Saxon system of law), there have been significant changes. Those concepts and processes that were the subject of discussions of the scientists of pre-revolutionary Russia, have undergone significant changes.

In this regard, Kulagin noted that the development of the economic function of the state, the expansion of its business activities, various restrictions on the right of private property and freedom of contract – all the phenomena inherent in the Western economy in the second half of the XX century – excessively complicated and without the complicated issue for Western jurisprudence is the delimitation of public and private law. Various theories of law, which claimed to adequately reflect these changes in the social and economic life of the West, including the theory of "legal socialism", the theory of social functions, the bourgeois concept of economic law, or generally rejected the division of the right

[20] Майданик Р. Право України: дуалізм і система. *Приватне право*. 2013. № 1. С. 34.

to public and private, or emphasized the futility this division in terms of general systematization of law, as did the founder of normative law school Kelsen. In turn, the active penetration of public foundations into the sphere of civil law, especially evident during the First World War, led to the emergence of bourgeois constructions of economic law[21]. Note that in the cited quotation under the economic law, Kulagin, obviously, meant economic law, which is one of the branches of the law of the modern German legal system.

Before turning to the contemporary German legal system, it is worth emphasizing that there is no unity in understanding the doctrinal level. It is well known that the Civil Code and the Commercial Code are in parallel in Germany, and some scholars regard trade law as private, which, together with the rules of civil law, is an economic private law[22]. Other researchers point out that in the Commercial Provision, there are only a few extractives to the Civil Code[23]. As Protsenko rightly points out, even those scholars who recognize the commercial law as part of a civilian must necessarily state that this is a special civil law[24] (not to be confused with a special part of civil law, which is part of the general civil law of Germany).

At the same time, in the scientific discussion in Germany, there is another vision of the possibility of state interference with private law[25]. And here there clearly is the issueof the dissimilarity of the conceptual apparatus of the legislation of Ukraine and Germany. Public law in Germany is traditionally understood as Öffentliches, which can be translated as "public law". Its norms also regulate economic relations, and economic law is an integral part of it. At the same time, commercial private law includes the rules of commercial law, company law and only subsidiary and civil law. However, studies of recent years show a direct impact of the rules of public law on the right of societies, and, therefore,

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[21] Кулагин М. И. Предпринимательство и право: опыт Запада. Москва, 1992. С. 5–6.

[22] Meyer J. Wirtschafts-privachtrecht. Eine Einfürung. Springer-Verlag, Berlin Heidelberg, 2002. P. 6

[23] Boemke B., Ulrici B. BGB Allgemeiner Teil. Springer : 2009. P. 17.

[24] Проценко И. Признаки торгового права Германии как особенной отрасли частного права. *Закон и жизнь*. 2013. № 8–4. С. 219.

[25] Seewald O. Wirtschaftsverwaltungsrecht. URL: http://www.jura.uni-passau.de/fileadmin/dateien/fakultaeten/jura/lehrstuehle/seewald/skript_wirtschaftsverwaltungsrecht_07_seewald.pdf.

on the state regulation of the law of societies[26]. In fact, this corresponds to the notion of commercial law as a complex branch of law in Ukraine.

For France, the distinction between public and private law is also very important, as evidenced at least by the fact that the Revue de Droit Association's Henri Capitant française has been devoted to public and private law. French scholars are asking this question: what is today a sign of the original construction of legal dualism? She became a paradox. On the one hand, the limits of public law are expanding along with the development of European law, especially in the economy, due to the fact that it is the main vector in the implementation of EU legislation in domestic law. At the same time, the administrative system has quite successfully manifested itself in this direction.

On the other hand, due largely to the effect of EU law and the Convention for the Protection of Human Rights and Fundamental Freedoms, in private and public law, important foundations have been found, the process of approximation which is currently ongoing. This contributed to the complementarity and cooperation in public and private law relations, which manifested itself at once in several areas. It is through the synthesis of differences and cooperation that public and private law are currently being revealed[27].

Given the above, one may not agree with the fact that the GK "is based on the philosophy that proceeds from the possibility of combining private legal and public-law principles into a new unified quality of legal regulation of so-called economic relations. Such a world has not seen. "[28] The preservation of the autonomy of trade law fully corresponds to the tendency of modern law to a differentiated regulation of homogeneous social relations, depending on their subjective composition. Also controversial is the thesis about the unlawfulness of the establishment in the Civil Code of a separate from the Central Committee of the legal regulation of such basic institutions of private law as subjects, property and contract rights, etc[29].

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[26] Seewald O. Wirtschaftsverwaltungsrecht. Вказана праця. P. 16.

[27] Gaudemet Y. Вказана праця.

[28] Довгерт А. С. Система приватного права та структура проекту нового цивільного кодексу України. Кодифікація приватного (цивільного) права. К., 2000. С. 4.

[29] Довгерт А. С. Сучасні приватноправові реформи в Україні з огляду на формування всесвітньоцивільного права : Доповідь на академічних читаннях АПрН України 17 березня 2009 р. К., 2009. Вип. 12. С. 20.

However, the structure of the trade codes of Germany and France proves the opposite – both acts determine the subjects of trade law, trade commitments, contracts, etc. The fact that the GK contains more public or restrictive norms is quite logical given the transition of the Ukrainian economy from the administrative-command to the market. In addition, all trade codes of the countries of Europe, the Model Trade Code of the USA and the Commercial Code of Japan define such concepts as "merchant", "commercial obligations" and "commercial" agreements. This refutes the above-mentioned thesis on the uniqueness of the Civil Code in the context of legal regulation of such basic institutions of private law as subjects, property and contract law.

Moreover, the structure of the German Law On Joint Stock Companies indicates the existence of explicitly public norms in this document. In particular, Book 3 regulates punishment and fines, which lays down rules on civil, criminal and administrative liability. Concerning the connection of this Law with the Civil and Commercial Codes, the figures say for themselves: the Civil Code is specified in the Law 9 times, and about Commercial – 82.

In the context of the division of the right to private and public it is also advisable to refer to the experience of the Anglo-Saxon countries. One can not entirely agree with the assertion that in the countries of Anglo-American law the division of public and private law is not applied, although we undoubtedly support the fact that in these countries the law is not divided into the industry in the traditional sense, but forms separate sections (the right of companies , purchase and sale right, etc.). English lawyers are actively discussing private and public law at various levels: competition law, public contract rights, company law rights, consumer rights protection, transport law, etc. It is about diffusion of public and private law[30]. We believe that in English law, the vertical characterization of private and public law is best shown when it comes not to uniform regulation of private and public laws, but of specialization. As for American law, it should be recalled that, as in English law, there is no division of law in the industry, as well as codes. However, there is the Model Trade Code in the United States, but there is no Model Civil Code.

[30] Freedland M., Auby J.-B. The Public Law. Private Law Divide: Une entente assez cordiale. Bloomsbury Publishing, 2006. P. 93–254.

Taking into account the coexistence of public and private norms in symbiosis and counterbalance in most of the economic laws that have manifestation in the public and private interests thoroughly investigated by Vinnik, we consider that today it is expedient to consider the division of the right to public and private not through the prism of laws, which are increasingly based on a special sectoral principle, but through the rule of law. So public and private law have the character of horizontal rules of law. Thus, the combination of a single law of private and public law is the most obvious manifestation in corporate laws.

Now let's turn to the definition of corporate law in the legal system. In science, different views on the place of this sub-branch of law are expressed depending on different criteria. In order not to duplicate the research of the notion of corporate legal relations, we only note that consideration of the concept of corporate legal relations, which is the subject of corporate law, is devoted to subsection 2.1 of this work. Most research on the concept of "corporate law" focuses on defining the content of corporate legal relationships. Instead, we are particularly interested in the allocation of corporate law in the system of law of Ukraine.

It is methodologically important to determine the direction of our study of the place of corporate law in the system of law, in particular, sectoral affiliation and systemic. With regard to the sectoral affiliation of corporate law, there are two approaches within which there is a misunderstanding. According to the first approach, corporate law is a component of civil law.

Taking into account the above, we will develop the opinion of Poedinok: only with the help of the economic-legal concept, which provides for the complex application of private law and public-law elements of regulation of economic relations in order to ensure a balance of private and public interests in the field of management[31], one can explain the phenomenon of separate systems economic law, in our case – corporate law. The unity of the subject of legal regulation makes it possible to speak of the emergence of a complex field of law. The presence of the subject of a complex branch of law determines the

[31] Поєдинок В. В. Правове регулювання інвестиційної діяльності: теоретичні проблеми. Ніжин : Аспект-Поліграф, 2013. С. 123.

availability of the method, the complexity of the subject also determines the complex nature of the method[32].

Searches for the system component of the definition of corporate law provide grounds for considering corporate law as an institution, a system of norms, an independent industry and a sub-sector. Traditionally, in the science of Soviet law, the basis for the division of law in the industry was the subject and method[33]. However, researchers of the theory of law recently rightly point out that for the allocation of its branches is not enough to use the criterion of unity of the subject and method of legal regulation, especially with respect to new branches of law. Complex branches combine both public law institutes and private law[34].

Note that even in Soviet times, it was about integrated institutions and sub-sectors of law. In particular, Polenina[35] wrote about the affinity of the institutions formed on the brink of various branches of law, for example, civil, family and labor. The scholar noted the formation of new branches of law through the development of such adjacent institutes, stressing that it is difficult to precisely determine exactly when they become an independent branch of law and that, obviously, this criterion also has an appropriate legislative framework.

Regarding corporate law, the uniform subject of regulation is obvious – corporate relations. This gives grounds for asserting that corporate law rules are not merely a set, but also interact with one another. Therefore, we do not agree that corporate law is a system of norms, which is formed from different institutions of civil law, since its subject is a homogeneous, fully regulated relationship.

As regards the consideration of corporate law as a system of norms, the following should be emphasized. Consequently, corporate law actually "borrows" the rules from various institutions of civil law, for example, the general part, obligatory, contractual, without forming its

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[32] Самарходжаев Б. Б. Понятие корпоративного права и его место в системе права. *Гражданское право и корпоративные отношения* : материалы международной научно-практической конференции, посвящ. 90-летию видного казахстанского ученого-цивилиста Басина Ю. Г., г. Алматы, 13–14 мая 2013 г. Алматы : Курсив, 2013. С. 133.

[33] Алексеев С. С. Теория государства и права. Москва : Юрид. лит-ра, 1985. С. 278–280.

[34] Мінка Т. П. Правовий режим як критерій поділу права на галузі. *Часопис Київського університету права.* 2003. № 3. С. 18–21.

[35] Поленина С. В. Комплексные правовые институты и становление новых отраслей права. *Правоведение.* 1975. № 3. С. 71–79.

own system. However, our study of the structure of corporate relations shows the specifics of subjects, objects and content of corporate legal relations. In addition, the author's attention remains corporate management as one of the objects of corporate relations.

A number of scientists, mainly representatives of civil law science, consider corporate law as an institution. In their opinion, corporate norms are formed only within the civil law. The Institute of Law is a set of normative regulations of the field of law, expressing the content of interdependent legal norms governing a particular group (type) of social relations, as well as social relations or their elements[36]. The analysis of theoretical studies regarding the allocation of sub-areas of law allows us to conclude that the sub-sector must have certain common characteristics of the institutes that it integrates. In particular, according to O.A. Galeti, the domain of law is always not just a set of related legal institutes, but also a result of the specialization of legal influence, and this specialization is objective-subjective, that is, covers both the objective needs of society, so and inquiries and intentions of legal practice[37].

In addition to uniting homogeneous corporate norms, corporate law also has a second component in the field of law, since in society there is an objective need for the study and unified regulation of corporate relations, which manifests itself in the role of corporations in society, as well as CSR, as discussed above. The requirements of legal practice are evident, as evidenced by systematic clarifications of the highest judicial bodies on corporate law issues. Thus, we believe that corporate law is a subregistry of economic law and of a complex nature, since it does not have homogeneous regulation, it is regulated not only within the framework of purely corporate institutions, for example, corporate governance and the implementation of corporate rights, competition law, labor and even family (on the rules of criminal law in the German Law "On Joint Stock Companies" mentioned above).

O. R. Kibenko defines corporate law as a complex inter-branch legal institution, the rules of which regulate private law and public-law relations, which are formed in connection with the creation,

[36] Галета О. А. Підгалузь права як категорія сучасної загальнотеоретичної юриспруденції. *Порівняльно-аналітичне право*. 2014. № 5. С. 15.

[37] Галета О. А. Вказана праця. – С. 16.

activity and liquidation of economic partnerships[38]. Agreeing with the fact that the rules of corporate law regulate both private law and public-legal relations, we do not share opinion on corporate law as an interbranch institute. The fact is that corporate law is much larger than it is enough for an institution, besides, only in its system corporate law forms two institutions – corporate governance and the exercise of corporate rights.

However, even individual representatives of civil law science drew attention to the fact that the regulation of corporate relations does not fit into the subject of such subjects of civil law as property and liability law. Corporate law is a subcontract of economic law, therefore we do not support the thesis that this sub-sector consists of a system of norms and other sources regulating corporate relations that arise in the process of creation and activity and termination of corporate enterprises (corporations)[39]. In particular, it is unclear what the scientist is referring to when speaking of other sources, since the rule of law may not exist beyond the source of law, which is its objective external appearance.

This point of view is controversial, based on the formal definition of legal regulation. Depending on the nature of the objective requirements of the economic basis, the content of legal regulation is: a) streamlining and consolidating the dominant social relations, and b) promoting the development of new social relations[40]. So even if the rules of corporate law have historically gone out of business, then over the last century they have become clear legal (become part of the charters) and even legislative consolidation. Therefore, it's worth talking about corporate law as a system of law, reflected in sources of law.

It is worth adding that in the corporate law tightly combined methods of economic law – the method of power regulations (the procedure for the creation of business partnerships), autonomous decisions (corporate governance) and recommendations (model statutes)[41]. At the same time, the corporate law did not work with its own

[38] Кибенко Е. Р. Корпоративное право Украины. Х. : Эспада, 2001. С. 33–36.

[39] Прилуцький Р. Б. Про поняття корпоративного права та його місце у системі права України. *Часопис Академії адвокатури України.* 2013. № 2. С. 9.

[40] Алексеев С. С. Механизм правового регулирования в социалистическом государстве. Москва : Юрид. лит., 1966. С. 10.

[41] Пронська Г. В. Вибране. Київ : Освіта України, 2013. С. 502–503.

method. Thus, corporate law is a sub-sector of commercial law regulating corporate relations, that is, relations on the implementation of corporate rights and corporate governance.

Shcherbyna, considering the subject of legal regulation, which is economic relations, defines the basic principles of economic law. These principles are also inherent in corporate law, in particular:

– optimal combination of market self-regulation of economic relations of economic entities and state regulation of macroeconomic processes (the state seeks to grant freedom of corporate rights and corporate governance in accordance with the requirements of the legislation);

– economic diversity (corporations operate in different spheres of the economy, which also depends on their legal status, for example, banks, insurance companies, etc.);

– recognition of all subjects of property rights equal before the law, prevention of unlawful deprivation of property (all shareholders and participants have equal basic corporate rights, but the amount of these rights may vary depending on the participation of a person in the authorized capital);

– Providing the state with protection of the rights of all subjects of ownership and economic activity (the state ensures the rights of minority participants, in particular their right to convene extraordinary meetings, the right to information on the activities of the company, the sale of shares in case of disagreement, etc.);

– the right of everyone to entrepreneurial activity, the prevention of abuse of a monopoly position on the market, unjustified restriction of competition and unfair competition (corporate law is particularly related to competition, in particular, regarding economic concentration);

– social orientation of the economy (CSR).

The literature covered the issue of own principles of corporate law. For example, Garagonich highlights the following principles of corporate governance (which we consider an institute as a sub-branch of corporate law): the principle of subordination of the majority of minorities; the principle of dependence of the degree of influence of a participant on the management of a corporate enterprise on the size (share) of its contribution to the capital of a corporate enterprise; the principle of general management and control of the participants (members) of the corporate enterprise by its activities; the principle of

centralization of management and the delineation of the competence of the corporate enterprise; the principle of the possibility of involving non-members (members) in the management of a corporate enterprise[42].

These principles can be considered as principles of corporate governance, which are more economic than practical value. However, they cannot be recognized as the principles of corporate law. In particular, the principle of subordination of the majority of minority, defined as the main principle of building any corporate system, which establishes the differences between classical civil contractual relations, built on equality, autonomy and freedom of expression of the parties, and corporate relations – as a kind of economic relations in which decisive does not become the will of a particular individual, but the will of the majority[43].

This principle is rather controversial and cannot be realized in all corporate relations. Yes, sometimes a minority is also endowed with rights, the exercise of which forces most to obey its will. For example, in accordance with clause 4 of Part 1 of Art. 47 of the Law of Ukraine On Joint Stock Companies, extraordinary general meetings of a joint stock company are convened by the supervisory board at the request of shareholders (shareholder), which, on the date of filing a claim, collectively hold 10 or more percent of ordinary shares of the company. In this case, the majority at least formally submits to the minority, since extraordinary meetings are at least convened, if not conducted because of the absence of a quorum.

The corporation operates the principle of the superiority of the interests of the corporation over the interests of its participants. However, this principle is not always implemented even in the economy. In particular, if there is a will of the participants, they can eliminate the corporation, in which case their interests will dominate the interests of the corporation itself. In this aspect, it is worth recalling the combination of public and private interests as a dichotomous and multidimensional phenomenon.

[42] Гарагонич О. В. Поняття та принципи корпоративного управління. Порівняльно-аналітичне право. 2013. № 3-2. С. 156–157.

[43] Гарагонич О. В. Вказана праця. С. 156.

CONCLUSIONS

Thus, corporate law is a part of economic law, its subject is corporate relations, it also uses the methods of economic law. Corporate law inherents in both the general principles of commercial law and its own. That is precisely why we believe that it is necessary to refer to the legal principles inherent in corporate law and derivatives from general economic ones. In addition, the principles of corporate law are significantly influenced by the principles of corporate governance and the theory of CSR. Based on the above, one can define the following basic principles of corporate law:

– combination of private and public interests, which we partially analyzed in this unit and thoroughly investigated;

– maximizing the profit of the corporation (we substantiated the economic and legal importance of this principle in the previous section);

– proportionality of the participant's contribution to the authorized capital of the amount of participation rights in the corporation;

– corporate social responsibility;

– compliance with corporate law requirements of EU company law;

– basic corporate rights to participate in the management of a company and to obtain corporation profits from each member of the company (in particular, the right to participate in general meetings, the right to information on the company's activities and the right to dividends);

– effective corporate governance taking into account the interests of both the majority and the minority (although this principle is largely declarative and rather economic, but it should be based on the system of corporate governance, namely, the distribution of functions between corporate governance and control bodies);

– the control of participants in the activities of the corporation (for example, in accordance with Part 2, Article 58 of the Law of Ukraine On Joint Stock Companies, the executive body of a joint stock company is accountable to the general meeting and the supervisory board, organizes the execution of their decisions. The executive body acts on behalf of the joint-stock company within the limits, established by the company's charter and by law).

SUMMARY

The article deals modern issues of corporate law in the highlight of division of private and public law. Particular attention is paid to the study of division of private and public law in the modern era. The up-to-date classical corporation did not exist in the Roman era, that is why it is difficult to apply such an abstract vision of two thousand years ago to find out the place of modern corporate law. It was concluded that private and public law in corporate relations serve as a methodological task for regulating corporate relations through the interaction of public and private interests, rather than its assignment to private or public law. Corporate law is a part of economic law, its subject is corporate relations, it also uses the methods of economic law. Corporate law inherents in both the general principles of commercial law and its own. That is precisely why we believe that it is necessary to refer to the legal principles inherent in corporate law and derivatives from general economic ones.

REFERENCES

1. Беляневич О. А. Господарське договірне право України (теоретичні аспекти). Київ : Юрінком Інтер, 2006.

2. Сібільов М. Предмети приватного (цивільного) права. *Право України.* 2014. № 6. С. 66–74.

3. Банчук О. Підстави розмежування публічного та приватного права в Україні. *Публічне право.* 2011. № 1. С. 144.

4. Gaudemet Y. Editorial. *Revue de Droit Association Henri Capitant pour la Culture Juridique Française*. 2012. № 5. URL: http://www.henricapitantlawreview.fr/edito_revue.php?id=48&lateral=48.

5. Вінник О. М. Публічні та приватні інтереси в господарських товариствах: проблеми правового забезпечення. Київ : Атіка, 2003.

6. Петражицкий Л. Акционерная компания. Акционерные зло-употребления и роль акционерных компаний в народном хозяйстве. С.-Пб : Типография Министерства Финансов, 1898. С. 31.

7. Watson A. The Evolution of Western Private Law. JHU Press, 2001.

8. Соколовский П. Е.. Договор товарищества по римскому праву. Римське право в Університеті Святого Володимира: у 2 кн. Київ : Либідь, 2010. Кн. 1. С. 328.

9. Митюков К. А. Курси римського права. Римське право в Університеті Святого Володимира: у 2 кн. Київ : Либідь, 2010. Кн. 1. С. 12.

10. Варул П. Место корпоративного прав в правовой системе. Гражданское право и корпоративные отношения : материалы международной научно-практической конференции, посвящ. 90-летию видного казахстанского ученого-цивилиста Басина Ю. Г., г. Алматы, 13–14 мая 2013 г. Алматы : Курсив, 2013. С. 109.

11. Спасибо-Фатєєва І. Вчення про корпоративні праві і цивілістична доктрина. *Право України*. 2014. № 6. С. 88.

12. Лукач І. В. Правове становище холдингових компаній. Київ : Юрінком Інтер, 2008.

13. Щербина В. С. Публічні й приватні інтереси в господарських відносинах. *Приватне право і підприємництво*. 2014. Вип. 13. С. 30.

14. Kornelius B. The topicality of the law division into public law and private. *SLGR*. 2011. № 39 (26). P. 91.

15. Майданик Р. Право України: дуалізм і система. *Приватне право*. 2013. № 1. С. 34.

16. Кулагин М. И. Предпринимательство и право: опыт Запада. Москва, 1992. С. 5–6.

17. Meyer J. Wirtschafts-privachtrecht. Eine Einfürung. Springer-Verlag, Berlin Heidelberg, 2002. P. 6.

18. Boemke B., Ulrici B. BGB Allgemeiner Teil. Springer : 2009. P. 17.

19. Проценко И. Признаки торгового права Германии как особенной отрасли частного права. Закон и жизнь. 2013. № 8–4. С. 219.

20. Seewald O. Wirtschaftsverwaltungsrecht. URL: http:// www.jura.uni-passau.de/fileadmin/dateien/fakultaeten/jura/lehrstuehle/ seewald/skript_wirtschaftsverwaltungsrecht_ 07_seewald.pdf.

21. Довгерт А. С. Система приватного права та структура проекту нового цивільного кодексу України. Кодифікація приватного (цивільного) права. К., 2000.

22. Довгерт А. С. Сучасні приватноправові реформи в Україні з огляду на формування всесвітньоцивільного права : Доповідь на академічних читаннях АПрН України 17 березня 2009 р. К., 2009. Вип. 12. С. 20.

23. Freedland M., Auby J.-B. The Public Law. Private Law Divide: Une entente assez cordiale. Bloomsbury Publishing, 2006.

24. Поєдинок В. В. Правове регулювання інвестиційної діяльності: теоретичні проблеми. Ніжин : Аспект-Поліграф, 2013.

25. Самарходжаев Б. Б. Понятие корпоративного права и его место в системе права. *Гражданское право и корпоративные отношения* : материалы международной научно-практической конференции, посвящ. 90-летию видного казахстанского ученого-цивилиста Басина Ю. Г., г. Алматы, 13–14 мая 2013 г. Алматы : Курсив, 2013. С. 133.

26. Алексеев С. С. Теория государства и права. Москва : Юрид. лит-ра, 1985.

27. Мінка Т. П. Правовий режим як критерій поділу права на галузі. *Часопис Київського університету права.* 2003. № 3. С. 18–21.

28. Поленина С. В. Комплексные правовые институты и становление новых отраслей права. *Правоведение.* 1975. № 3. С. 71–79.

29. Галета О. А. Підгалузь права як категорія сучасної загальнотеоретичної юриспруденції. *Порівняльно-аналітичне право.* 2014. № 5. С. 15, 16.

30. Кибенко Е. Р. Корпоративное право Украины. Х. : Эспада, 2001.

31. Прилуцький Р. Б. Про поняття корпоративного права та його місце у системі права України. *Часопис Академії адвокатури України.* 2013. № 2. С. 9.

32. Алексеев С. С. Механизм правового регулирования в социалистическом государстве. Москва : Юрид. лит., 1966.

33. Пронська Г. В. Вибране. Київ : Освіта України, 2013.

34. Гарагонич О. В. Поняття та принципи корпоративного управління. Порівняльно-аналітичне право. 2013. № 3–2.

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