

The Role of a Lawyer in Non-Jurisdictional Forms of Defence of Corporate Rights

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Abstract:

In the context of globalisation and increasing complexity of corporate relations, the role of a lawyer goes beyond the traditional legal practice. This article is devoted to the study of the significance of the lawyer's participation in the mechanisms of protection of corporate rights outside the judicial system. The main non-jurisdictional methods such as mediation, negotiation and other alternative ways of dispute resolution are considered. It is emphasised that the professional competence of lawyers in these areas contributes to effective conflict resolution, reducing economic and time costs, as well as maintaining the business reputation and competitiveness of companies. The focus is on the skills and strategies that lawyers should possess to successfully implement these mechanisms in the changing legal landscape.

Keywords: mediation, lawyer, negotiation.

Jurisdictional methods of protection, i.e. appeal to the judicial authorities, are currently a common form of protection of corporate rights due to their efficiency and effectiveness. However, this method of defence has a significant disadvantage due to the excessive duration of court proceedings, as modern business values time resources. At the same time, the increasing workload of judicial bodies gives grounds for domestic legislators to search for new, alternative, but optimal solutions, which, in turn, leads to a significant increase in the relevance of the study and application of extrajudicial methods of protection of corporate rights.

Mediation is a rather young form of extrajudicial protection of corporate rights. However, mediation, in its turn, is a very old instrument of international law. If we look back in history, it can be found in places where, without accepting differences, further progress was impossible or a binding decision could be reached by negotiation rather than through norms or hierarchical order. With the use of mediation, it became clear that in some cases the possibilities of this method are in

many ways superior to court proceedings¹. Having come to realise this fact, not only European countries, but also later the countries of the Commonwealth of Independent Nations adopted this method and, as a result, introduced mediation into the legal system. In the Republic of Uzbekistan, the norms on mediation are enshrined in the Law of the Republic of Uzbekistan "On Mediation" dated 03.07.2018 No. ZRU-482, as well as the norms on mediation agreements in the Economic Procedural and Civil Procedural Codes of the Republic of Uzbekistan.

According to part 6 of Article 3 of the LRA "On Advocacy", an advocate may also act as a mediator. Consequently, this provision provides for the participation of an advocate as a mediator in corporate disputes on a professional or non-professional basis (Article 12 of the LRA "On Mediation"). The main task of a lawyer as a mediator is to encourage the parties to find a compromise. The development of mediation as an alternative way of protecting corporate rights requires quality professional training. Accordingly, a number of requirements are imposed on a lawyer as a mediator, which consist of knowledge of the current legislation, extensive knowledge of psychology and legal conflictology. The main task and the main skill of a mediator is the ability to build quality communication between the parties to a corporate conflict and guide them to a common solution that would suit both parties and at the same time comply with the applicable law. In order to fulfil his/her main function, a mediator needs to find out the specifics of each party's perception of the disputable issue². In addition, one of the mediator's functions is to search for information in case of its absence by referring, for example, to experts, setting up commissions, etc. Afterwards, the mediator explains the norms and rules of behaviour to the parties. Once the mediator has determined the subject of the dispute, he/she applies a precedent-setting approach, i.e. informs the parties how similar conflicts or disputes have been resolved before. The next function of the lawyer as a mediator is to maintain a constructive dialogue between the parties and control the quality of communication throughout the process, thus preventing either party from displaying ultimatums that would reflect negatively on the negotiations. As a result of resolving a dispute in this manner, the parties to a corporate conflict or dispute remain in a favourable position due to the absence of a sense of loss and animosity towards the other party. Thus, the parties retain a business relationship, which would not be the case if jurisdictional remedies were used.

One of the alternative ways to protect corporate rights is negotiation, which is the most promising form of extrajudicial protection of corporate rights. Negotiations are relationships aimed at reaching an agreement between the parties to a conflict of presumptive or actual nature. The main advantage of using negotiations is the absence of financial costs both on the part of the persons who are in conflict relations and on the part of the state, as well as the flexibility of the negotiation process. However, in order for negotiations to yield positive results in practice, it is necessary to significantly improve the general level of legal and business culture in the corporate environment³. Part 2 of Article 363 of the Civil Code of the Republic of Uzbekistan provides that the negotiations preceding the contract are also taken into account when interpreting the terms of the contract. But in the domestic legislation the process of negotiations is not regulated by a separate norm, as in the case of Article 434.1 of the Civil Code of the Russian Federation, which provides for negotiations as a stage of the conclusion of the contract, can help to move in this direction⁴.

The success of the lawyer's participation directly depends on the orientation of the negotiating parties towards reaching an agreement and compromise. In negotiations, there is no struggle to defend one's position, as the task of negotiations is to find a mutually beneficial solution. The function of the lawyer is primarily to plan the negotiations, identify the cultural characteristics of

¹ Pushkina T. N. The concept and meaning of mediation // Vestnik of Udmurt University. Series "Economics and Law". - 2017. - T. 27. - №. 3. - C. 159-163.

² Gubarev I.V. Extrajudicial ways of protection of corporate rights. "Young scientist" № 11 (115) 2016 - P. 1266

³ Gubarev I.V. Extrajudicial ways of protection of corporate rights. "Young scientist" № 11 (115) 2016 - P. 1266

⁴ Civil Code of the Russian Federation (Part One) of 30.11.1994 N 51-FZ (ed. of 11.03.2024)

the participants and map out the negotiations. The key point in this process is to work out a mutually acceptable solution, to find the "heart of the matter", which in turn can become an integral part of the final agreement.

At the same time, despite their significant advantages, extrajudicial methods of protecting corporate rights have a number of disadvantages. These include:

1) Dependence of the positive result of the application of the above measures on the parties to the conflict themselves. No matter how the lawyer did not behave professionally and specialist in his business, if the parties do not have a predisposition to compromise, it is difficult to achieve a mutually beneficial final solution. The maximum possibility that can come from the lawyer in such a case, not only the possession of legal knowledge of the current legislation, but also to possess the art of negotiating or being a mediator, which can be achieved by strong knowledge in the field of psychology, science of kinetics, legal conflictology. It seems that proper training and raising the level of business culture in the corporate environment will lead to a significant reduction in the number of conflicts in general⁵.

2) Insufficient development of the above procedures leads to an acute shortage of professional staff, which, in turn, leads to distrust of people and the company in the possibility of resolving the dispute in this way. It is assumed that precisely because of the insufficient application of the promotion of such procedures, lawyers and other professionals do not find it necessary to invest in their knowledge and skills because of the financial costs, as such costs may not be justified.

3) The excessive cost of remuneration of labour of some specialists who do not spare no expense in investing their professional knowledge due to the shortage of sufficient professional staff.

Despite the nuances given above, the analysis of these factors suggests that all the above disadvantages can be overcome, as evidenced by the experience of foreign countries. Since the above-mentioned advantages of such measures will justify the resources invested in their promotion in a fairly short period of time. This means that there is a need to pay attention to this direction not only in scientific research, but also in state and legal policy.

Practice shows that the participation of a lawyer in this process helps to reduce the heat of the conflict and directs the dispute in a constructive direction. Lawyers advise their clients, help to formulate arguments and proposals, presenting them in a way that is most acceptable to both parties. This is especially important in a corporate environment where conflicts can negatively impact a company's business reputation and financial position. Thus, the lawyer in the non-jurisdictional mode of resolving corporate disputes plays a key role in providing legal support and facilitating mutually beneficial solutions, thereby helping the parties to avoid lengthy and costly litigation.

List of references used:

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3. Civil Code of the Republic of Uzbekistan dated 29.08.1996;
4. Civil Code of the Russian Federation (Part One) of 30.11.1994 N 51-FZ (ed. of 11.03.2024)
5. Gubarev I.V. Extrajudicial ways of protection of corporate rights. "Young scientist" № 11 (115) 2016 - P. 1266
6. Pushkina T. N. The concept and meaning of mediation // Vestnik of Udmurt University. Series "Economics and Law". - 2017. - T. 27. - №. 3. - C. 159-163.

⁵ Gubarev I.V. Extrajudicial ways of protection of corporate rights. "Young scientist" № 11 (115) 2016 - P. 1266