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Practical Consequences of the Annulment of the Minute of the General Meeting of Partners for Third Parties

The General Meeting is a critical governmental body of the capital companies. The decision of the general meeting is a legal document of great consequence; however, the significance of the minutes of the general meeting depends on the ownership structure. The general meeting and the minutes of the general meeting are the main legal activities of the company that have legal consequences for partners as well as third parties in the obligation relationship with the companies. Furthermore, private and public establishments have no unified practice on which transactions of the corporation require the decision of the general meeting and which do not. The separate article of the consolidated law on Entrepreneurs of Georgia regulates the possibility of the rescission of the decision of the general meeting, in the case the partner attends the general meeting and does not give his/her consent to the decision. The purpose of the paper is to determine the judicial practice and juxtapose it with the scientific theory, in particular, to what extent the judicial practice and the theory are close to each other and what consequences it may have in future; the main question arises if third parties will be able to protect their rights and ensure the continuance of the obligatory relationship in case of the annulment of the minutes of the general meeting. The paper discusses the nature and characteristics of the general meeting and the formal and substantial grounds for invalidating the decision of the general meeting; the article examines the judicial practice regarding the relevance of the annulment of the minutes of the general meeting.

Key Words: Minutes of the General Meetings, Decision of the Partner, General Meeting, Annulment of the General Meeting.

1. Introduction

The General Meeting is a structural entity of the capital companies that manage the company, the importance of the general meeting is emphasised not only by the legislation of Georgia but also by the regulations of the European Union, in particular, the structure of the corporation should comprise a general meeting of shareholders and executive organ.¹ The minutes of the general meeting are an important legal document,² however, the role of the general meeting in the corporation governance is

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¹ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) article 38.

² Udrescu D., Theoretical and Practical Aspects Concerning the Causes for Annulment of GMS Decisions, The Annals of "Dunarea de Jos" University of Galati Fascicle I, Economics and Applied Informatics, Vol. XV, N2, 2009, 847.

not universal, rather the role of the general meeting depends on the ownership structure of the company.³ Under the legislation of Georgia, the general meeting and the minutes of the general meeting are not only the managing function of the corporation, but a significant legal action that has legal consequences.⁴

The decision of the general meeting and the invalidity of the minutes of the general meeting have a certain impact on third parties when companies are in a relationship with them.⁵ For instance, the annulment of the minute may lead to the annulment of a pledge of the bank credit agreement.⁶ Moreover, private or public institutions do not have the same approach when a certain transaction requires minutes, which causes uncertainty.⁷ The new consolidated version of the special law of Georgia, with a separate article, regulates the possibility of the rescission of a decision of the general meeting when a partner participates in and attends the general meeting and votes against such a decision.⁸ In this case, defining the judicial practice regarding the invalidity of the minutes of the general meeting has immense importance in order to define the best possibilities to protect the rights of the third party.

2. Social Research Methods

The paper employs social research methods, in particular Deep Interviews, one of the qualitative research methodologies. Seven respondents from the bank were interviewed between March 27 and April 3, 2023; their responsibilities include providing legal advice regarding loan documentation for retail, MSME and SME loans, checking the legal accuracy of credit and other documents, including agreements between the bank and companies, minutes of general meetings, they control the documentation of loan collateral, such as mortgages, guarantees etc., compliance of legal and internal bank documents with the legislation of Georgia and bank standards. In addition, on May 15, 2023, the respondent from “Index LLC” was interviewed, the person who carried out the registration of transactions for the public registry agencies, responsibility included receiving all the documents for the registration of the transactions. During the interviews the following questions were asked: the position

³ *Sáez M.I., Riaño D.*, Corporate Governance and the Shareholders' Meeting: Voting and Litigation, *European Business Organization Law Review*, Vol. 14, No. 3, 2013, 390.

⁴ *Gaina V., Gaina A.*, The Legal Regime of the Decisions Adopted by the General Assembly of Members/Shareholders of the Commercial Company (GAM), Conference Paper: Supplement of Valahia University Law Study, *Stan M. (ed.)*, Târgoviște, 2017, 241-242.

⁵ *Laprade F.M.*, Rights and Obligations of Shareholders, National Regimes and Proposed Instruments at EU Level for Improving Legal Efficiency, Study of Directorate-General for Internal Policies of European Parliament, 2012, 106.

⁶ Decision of the Panel of Civil Cases of the Tbilisi City Court, Case №2/27085-21, 03.06.2022, (in Georgian).

⁷ Deep Interviews with the employees of the TBC JSC were conducted from the 27th of Mart to the 3rd of April of 2023 (original is kept to the Author), (in Georgian); Deep Interviews with LLC Index were conducted on the 15th of May 2023 (original is kept to the Author), (in Georgian); The Response of the National Agency of Public Registry of the Ministry of Justice of Georgia, № 112768, (in Georgian).

⁸ Law of Georgia on Entrepreneurs, Article 93, Clause 1, and Article 93, Clause 1, Sub-Clause a, Legislative Herald of Georgia 875-V66-X03, 02/08/2021.

of an employer, and job description; there were questions about the working process, for instance, whether they examined the minutes of the general meeting, what they paid attention to, whether the company's partner changed, what they did. The information obtained is important in order to establish the facts regarding the criteria for the legal assessment of the general meeting minutes; the employers of the bank had the experience of assessing and examining such documents during the working process and determining their compliance with the legislation of Georgia and intrabank standards. Qualitative research methodologies make it possible to describe the research object as it is seen by those who are in immediate contact with the object⁹. For the research purpose, public information was requested from the National Agency of Public Registry of the Ministry of Justice of Georgia in order to determine the practice of the agency pertaining to the examination and assessment of the minutes of the general meeting.¹⁰

Comparative legal methods were used during the research; the legal practice of the European Union and its member states was applied, in particular, the legal practices of Central European states, the Netherlands, Poland, Romania, and Lithuania to determine formal and substantive criteria for the minutes of the general meeting, in which cases the courts annul the minutes and what are the consequences of the annulment. The experience of those countries demonstrates the approach of the developed states regarding the issue which is useful for comparison since Georgia adopted its legislation regarding the entrepreneurs from the Netherlands and Central European Countries, and Georgia has a common communist history and close economic development with the Eastern European Countries.

3. Decision of the Partners and its Annulment

3.1. Legal Nature of the General Meeting of Partners

The general meeting has broad power; in addition to structural and internal corporate decisions, these include the decisions on the uncommon course of business that are not specified in the statute of the companies.¹¹ The general meeting is not only a structural entity of the corporation but also an agreement between partners,¹² therefore, the agreement is subject to the provisions of the civil code of Georgia.¹³ On important issues, voting is carried out unanimously or by a majority unless the law stipulates that the decision is made with the consent of all partners.¹⁴

⁹ *Zurabishvili T.*, *Qualitative Methods in Social Research*, Tbilisi, 2006, 6-7.

¹⁰ The Application was submitted on the 11th and 22nd of May, the Response was received on the 31st of May № 112768 (the Original is kept to the Author).

¹¹ *Burduli I., Makharoblishvili G., Tokhadze A., Zubitashvili N., Aladashvili G., Maghradze G., Egnatashvili D.*, *Corporate Law*, 1st ed., Tbilisi, 2021, 321-323. (in Georgian)

¹² Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-73-73-2018, decision of 23.03.2022, para. 18.3.2; 28. (in Georgian). Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-851-795-2017, Decision of 20.04.2018, para. 18, (in Georgian).

¹³ Judgement of the Civil Chamber of the Court of Appeals, Case №28/2309-2019, 25.12.2019, para. 4.1, (in Georgian)

¹⁴ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1251-2021, 11.02.2022, para. 109, (in Georgian).

In the legal doctrine, there are diverse opinions regarding the purposes of the general meeting, some believe that the purpose of the general meeting is to satisfy the partners' intentions and goals, and others think that the general meeting is the manifestation of the partners' will.¹⁵ However, capital companies are not the property of any person, it is founded at the will of the partners,¹⁶ and the general meeting with the body of a company with management powers is the main governmental body: a director represents a company,¹⁷ and the general meeting is an essential structural and governmental part of the capital companies; this two-tier governance and dualism maintains a strict separation of responsibility and corporate governance.¹⁸ Consequently, the purpose of the general meeting is to determine the main course of the company's activities, ensure the accountability of the director, and create a forum for discussions between the director and partners.¹⁹ In relations with the company, partners are not a third party,²⁰ they have the right to receive any information about the corporation, on the other hand, the director is obliged to provide them with this information; this right cannot be limited even if the information is volumetric,²¹ moreover, the European states prefer to allocate more monitoring power to the general meeting of partners.²² Accordingly, one of the functions of the general meeting is to create a forum between the director and the partners to ensure the proper management of the companies.

Another purpose of the general meeting is to make a decision on the key issues of the company's activities.²³ Therefore, the general meeting has an important role due to its formal and substantive function; the general meeting represents the will of partners not in accordance with the number of participants, but in accordance with the shares of partners in the capital.²⁴ Moreover, the general meeting represents the will of the company, this will is not the same will of an individual

¹⁵ *Catea R.*, Practical Aspects Regarding the Claim for the Annulment of the Resolutions of the General Meeting of Shareholders, from a Substantial and Procedural Perspective, *Lex ET Scientia International Journal*, No. 24, Vol. 2, 2017, 16.

¹⁶ *Makharoblishvili G.*, Dogmatic-Theoretical Separation of Entrepreneurial Entities on the Foundation of Capital Companies, *Journal of Law, №2*, 2011, 107-108, (in Georgian).

¹⁷ Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-868-2021, Judgment of 20.10.2022, para. 9, (in Georgian).

¹⁸ *Spasevski D.*, General Meeting of Shareholders According to the Legal Framework of Germany, United Kingdom and North Macedonia, *Iustinianus Primus Law Review*, Vol. 10, No. 1, 2019, 11.

¹⁹ *De Jong A., Mertens G., Roosenboom P.*, Shareholders' Voting at General Meetings: Evidence from the Netherlands, *ERIM Report Series*, 2004, 3.

²⁰ *Daghie D.*, Considerations on the Annulment of the Resolution Issued by the General Meeting of Shareholders, Conference Paper: Supplement of Valahia University Law Study, *Stan M. (ed.)*, Târgoviște, 2019, 143.

²¹ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-54-2022, 28.09.2022, (in Georgian), paras. 19 and 21.

²² *Van der Elst C.*, Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders, *Annals of the Faculty of Law – Belgrade Law Review: Journal of Legal and Social Sciences*, Vol. 59, No. 3, 2012, 63.

²³ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-863-813-2015, 17.12.2015, para. 1.6, (in Georgian).

²⁴ *Chanturia L., Ninidze T.*, Commentary on Law of Georgia on Entrepreneur, 3rd ed. Tbilisi, 2002, 117, (in Georgian).

partner, i.e. the general meeting is not a sum of the will of partners, but the will of the corporation as an independent entity.²⁵ The decision of the general meeting is made by a majority of the wills, not by consensus,²⁶ and the rights of the minority and dominant partners must be ensured, especially when a corporation is a closed capital company in which partners lack the possibility to trade their shares; these circumstances induce discord among partners.²⁷ Dominant partners are able to have a significant influence on the general meeting, however, the dominant position must not be employed to harm either the interest of the company or cause harm to the minority partners.²⁸ When the dominant partner exercises executive functions and represents the corporations to third parties, this creates the basis for the partner to pursue his/her own interest and remove the minority partner from corporate governance.²⁹ Thus, the powers of the director and the partners are separated, even if the partner and the director are the same person.³⁰ The director is responsible for the negative consequences that result from the execution of the decisions of the general meeting, which are based on the will of the dominant partner, infringe on the rights of the minority partner and do not conform to the best interest of the corporation.³¹ Furthermore, partners have fiduciary duties owing each other,³² and every decision in the corporation ought to be made in concordance with the best interest of the corporation;³³ therefore, the minority partner has the possibility to defend his/her rights from infringement by filing an application for the annulment of the minutes of the general meeting as well as claiming for damage from the director.³⁴

²⁵ *Gaina V., Gaina A.*, The Legal Regime of the Decisions Adopted by the General Assembly of Members/Shareholders of the Commercial Company (GAM), Conference Paper: Supplement of Valahia University Law Study, *Stan M. (ed.)*, Târgoviște, 2017, 241.

²⁶ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-851-795-2017, 20.04.2018, para. 18, (in Georgian); Law of Georgia on Entrepreneurs, Article 37, Clause 1 and 2, Legislative Herald of Georgia 875-V6ს-X03, 02/08/2021 Law of Georgia on Entrepreneurs, Article 9¹, Clause 2 and 9, Legislative Herald of Georgia, 21-22, 28/10/1994 [Invalid Legal Act since 02.08.2021].

²⁷ *Miller S.K.*, Minority Shareholder Oppression in the Private Company in the European Community: A Comparative Analysis of the German, United Kingdom, and French Close Corporation Problem, *Cornell International Law Journal*, Vol. 30, No. 2, 1997, 385.

²⁸ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-979-2022, 27.12.2022, paras. 13-14, (in Georgian).

²⁹ *Miller S.K.*, Minority Shareholder Oppression in the Private Company in the European Community: A Comparative Analysis of the German, United Kingdom, and French Close Corporation Problem, *Cornell International Law Journal*, Vol. 30, No. 2, 1997, 386.

³⁰ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1353-2022, 23.01.2023, para. 9-13, (in Georgian).

³¹ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-73-73-2018, 23.03.2022, paras. 18.3.1 და 19, (in Georgian).

³² *Cahn A.*, The Shareholders' Fiduciary Duty in German Company Law, *Shareholders' Duties*, *Birkmose H.S. (ed.)*, Wolters Kluwer, 2017, 355.

³³ *Chanturia L.*, Corporate Governance and Liability of Directors in Corporation Law, Tbilisi, 2006, 305, (in Georgian).

³⁴ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1199-2019, 20.01.2022, para. 28, (in Georgian).

Certification of the will of partners has several forms: firstly, it is the statute of the company, when the partners make a decision to found a corporation,³⁵ and, secondly, the minutes of the general meeting of the partner when the meeting is held.³⁶ Participation of partners in voting is a declaration of the will, and the compilation of the will establishes the will of the company; the validity of the partners' will is proved by the minutes of the general meeting.³⁷ The decision of the general meeting is the agreement between partners which is subject to the provisions of the Civil Code of Georgia as well as the provisions of the Law of Georgia on Entrepreneurs.³⁸ Consequently, the partners, as well as the body of a company with management powers can file an application for the annulment of the minutes of the general meeting³⁹ if either of them thinks that the decision made by the general meeting is not in conformity with the best interest of the corporation since the director is obliged to make every necessary step to achieve the objectives provided by the articles of the statute and act out of the interests of the company.⁴⁰ In case the partner poses a threat to the interest of the company, the body of a company with management powers can take measures against this partner in order to protect and secure the interests of the corporation.⁴¹ Partner also has the possibility to file an application for the annulment of the minutes if the general meeting decision is a void transaction, thus, the rights of the partner are violated.⁴²

To sum up, capital companies are not the property of any person who founded them, and the general meeting of the partners, together with the director, is the governmental body of the corporation; the dualist system of corporate government ensures a strict separation of responsibility and management. The general meeting is an agreement among the partners, it has broad powers that comprise the decisions on the companies' uncommon course of business. The will of a partner is declared at the general meeting and certified in the minutes of the general meeting; the minutes are an important legal document. The general meeting declares the will of the company, which is constituted and shaped by the majority of the will of all partners and the will of the partner reflects the share of the partner in the capital. Participation of partners in voting is a declaration of the will; the compilation of their will determines the will of the corporation. The purpose of any decision in a company is the

³⁵ *Makharoblishvili G.*, Dogmatic-Theoretical Separation of Entrepreneurial Entities on the Foundation of Capital Companies, *Journal of Law, №2, 2011*, 107, (in Georgian).

³⁶ Law of Georgia on Entrepreneurs, Article 38, Clause 1, Legislative Herald of Georgia 875-V6b-X03, 02/08/2021.

³⁷ *Chanturia L.*, Ninidze T., *Commentary on Law of Georgia on Entrepreneur*, 3rd ed. Tbilisi, 2002, 305, (in Georgian).

³⁸ Brožová S., The Nature and Legal Effects of Shareholders Agreements in the Czech and Slovak Private Law and its Interpretation, *European Scientific Journal*, Vol. 15, No. 31, 2019, 4.

³⁹ *Burduli I.*, *Makharoblishvili G.*, *Tokhadze A.*, *Zubitashvili N.*, *Aladashvili G.*, *Maghradze G.*, *Egnatashvili D.*, *Corporate Law*, 1st ed., Tbilisi, 2021, 330, (in Georgian).

⁴⁰ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1077-2018, 21.11.2019, paras. 11.1 and 17, (in Georgian).; Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-612-571-2017, 28.07.2017, para. 24.4, (in Georgian).

⁴¹ *Rhee R.J.*, The Tort Foundation of Duty of Care and Business Judgment, *Notre Dame Law Review*, Vol. 88, No. 3, 2013, 1183.

⁴² Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1319-2018, 21.05.2021, para. 171, (in Georgian).

protection of the interests of the corporation so that the rights of the minority partners are not violated by the dominant partners.

3.2. Annulment of the Minutes of the General Meeting

3.2.1. Formal Grounds for the Invalidity of the Decision of the General Meeting

The decision of the general meeting is a voidable transaction and, thus, can be declared invalid if the essence does not comply with the legislation of Georgia, and the requirements of the company's statute, and the violation is substantial.⁴³ The annulment of the minute of the general meeting makes sense when the decision of the partner or partners is disputed by another partner, whether the legitimate interest of the claimant is justified and the annulment has legal consequences for the plaintiff.⁴⁴ In the case of annulment, it is determined whether the violation is procedural or substantial, and it ought to be determined whether the interests of the company are damaged.⁴⁵

The violation of the procedural requirements is the absolute formal ground for the invalidity of the decision of the general meeting,⁴⁶ since the partner of a company has active processual status;⁴⁷ therefore, the general meeting ought to be convened and certified in accordance with the statute of the company and the provisions of the law; in particular, the competent person must convene the general meeting, and the partners must be invited to the meeting as it is established by the statute, the writing notice pertaining to the convention of the general meeting must contain the brand name of the company, the place, date or time of the general meeting.⁴⁸ The formal ground of the consolidated law on Entrepreneurs is enumerated in detail, then it was in the invalid law.⁴⁹ In the case of a violation of the procedure of convening the general but all the partners attend the meeting and give their consent for convening the meeting and they do not require to postpone the meeting, then the formal criteria of the annulment are excluded.⁵⁰ The decision of partners should not create an unequal situation for or violate the interest of other partners, moreover, the formal aspect of the decision-making should be adhered to, in particular, if the decision-making requires a unanimous vote, it must be adopted

⁴³ Law of Georgia on Entrepreneurs, Article 93, Clause 1, Legislative Herald of Georgia 875-V66-X03, 02/08/2021.

⁴⁴ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №56-73-73-2018, 23.03.2022, para. 23, (in Georgian).

⁴⁵ Sáez M.I., Riaño D., Corporate Governance and the Shareholders' Meeting: Voting and Litigation, European Business Organization Law Review, Vol. 14, No. 3, 2013, 368.

⁴⁶ Gaina V., Gaina A., The Legal Regime of the Decisions Adopted by the General Assembly of Members/Shareholders of the Commercial Company (GAM), Conference Paper: Supplement of Valahia University Law Study, Stan M. (ed.), Târgoviște, 2017, 249.

⁴⁷ Daghie D., Considerations on the Annulment of the Resolution Issued by the General Meeting of Shareholders, Conference Paper: Supplement of Valahia University Law Study, Stan M. (ed.), Târgoviște, 2019, footnote 21, 143.

⁴⁸ Law of Georgia on Entrepreneurs, Article 39, Clause 1, Subclause a-d, Legislative Herald of Georgia 875-V66-X03, 02/08/2021.

⁴⁹ Comp. Law of Georgia on Entrepreneurs, Article 9¹, Clause 1 and 2, Legislative Herald of Georgia, 21-22, 28/10/1994 [Invalid Legal Act since 02.08.2021].

⁵⁰ Law of Georgia on Entrepreneurs, Article 36, Clause 7, Legislative Herald of Georgia 875-V66-X03, 02/08/2021.

unanimously.⁵¹ If it is clear from the minutes of the general meeting that the voting rights of the partners are violated or the fiduciary duties of partners are infringed, in this case, the decision of the general meeting is declared invalid in accordance with the judicial practice of Germany, Austria and Czechia.⁵²

The duty of information of the partner is a significant criterion for the possible invalidation of the decision of the general meeting, this principle prevents the director from the deliberate decisions.⁵³ In some cases, the ground of the annulment was the legal capacity of the general meeting, when the number of the partners attending the general meeting in question was not enough for the quorum.⁵⁴ However, the invalidation of the decision depends not only on the quorum if the decision is not made unanimously on the issue which arises from the uncommon course of business that is not based on the purposes provided for by the statute, therefore, the declaration of the will of all partners is necessary.⁵⁵

To sum up, the violation of the procedural requirements is an absolute formal ground for declaring invalid the decision of the general meeting, in particular, the general meeting should be convened and certified in accordance with the statute of the company and the provisions of the law; the new law on entrepreneurs has detailed description of the criteria for the drafting the minutes of the general meeting, which is the reflection of the judicial practice in the law. The purpose of the strict regulation of the law is to prevent deliberate decisions of the directors, ensure the quorum, protection of the rights of partners and the principles of informing the partner.

3.2.2. Substantial Grounds for the Invalidity of the Decision of the General Meeting

The decision made by the majority should not put any partner in an unequal position,⁵⁶ in this case, the discussion of the content of the minutes of the general meeting is critical. The court considers and assesses the subject of the minutes, it assesses the declared will and juxtaposes it to the facts, comparing them and making conclusions; after the consideration of all these, the court decides the practicability of the annulment of the minutes; It is important for the court that, after the examination of the parties, the explanations of the parties do not contradict the content of the minutes of the general meeting of partners, which affects the inner conviction of the court.⁵⁷

⁵¹ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-48-2022, 16.09.2022, para. 34, (in Georgian).

⁵² *Laprade F.M.*, Rights and Obligations of Shareholders, National Regimes and Proposed Instruments at EU Level for Improving Legal Efficiency, Study of Directorate-General for Internal Policies of European Parliament, 2012, 59.

⁵³ Decision of the Panel of Civil Cases of the Tbilisi City Court, Case №2/27085-21, 03.06.2022, para. 6.2, (in Georgian).

⁵⁴ *Burduli I., Makharoblishvili G., Tokhadze A., Zubitashvili N., Aladashvili G., Maghradze G., Egnatashvili D.*, Corporate Law, 1st ed., Tbilisi, 2021, 325, (in Georgian).

⁵⁵ Judgement of the Civil Chamber of the Court of Appeals, Case №28/90-19, 25.12.2019, para. 31, (in Georgian).

⁵⁶ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1319-2018, 21.05.2021, para. 139, (in Georgian).

⁵⁷ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-558-2021, 26.06.2022, para. 19, (in Georgian); Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-477-2020, 20.10.2022, (in Georgian).

The decision of the general meeting may be annulled and invalidated in full or part if the decision does not fall within the scope of authority of the general meeting under the statute if the general meeting made a decision on an amendment which contradicts the law, if the decision contravened provisions of law primary purpose of which was to protect the creditors' rights, if the decision contravened public order or moral standards.⁵⁸ The decision made by dominant partners at the general meeting ought to be in concordance with the development goals of the company or fulfilment of its undertaken obligations, and not to the personal interests of the dominant partners.⁵⁹ In order to protect the rights of the partner the invalidation of the decision is possible if the minority partner does not consent to it,⁶⁰ since the minority partner can appeal against the decision in the case his/her own rights are violated and the legitimate interests exist,⁶¹ and the annulment of the minutes of the general meeting has legal consequences for the plaintiff,⁶² i.e., the violated right of the plaintiff will be able to restore.⁶³

The substantial part of the general meeting is assessed by the grounds of avoidance of a transaction, such as avoidance of transaction under duress, including the duress by the third parties,⁶⁴ which can be identified if the case of duress is mentioned in the minutes of the general meeting.⁶⁵ The person with the right of rescission can apply to the court based on the provisions of the civil code of Georgia concerning the validity and avoidance of a transaction.⁶⁶ Therefore, on the ground of the rescission of an authorised person, the court applies the legal requirements of the avoidance of a transaction,⁶⁷ the law demonstrates it by stipulating that one of the grounds for the annulment of the decision is that it contradicts the law and moral standards. However, the main principle of the court for invalidating the minutes of the general meeting when it is rescinded by a partner or partners, is that the

⁵⁸ Law of Georgia on Entrepreneurs, Article 39, Clause 1, Sub-Clause e, Legislative Herald of Georgia 875-V66-X03, 02/08/2021.

⁵⁹ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-73-73-2018, 23.03.2022, para. 18.3.1, (in Georgian).

⁶⁰ *Catea R.*, Practical Aspects Regarding the Claim for the Annulment of the Resolutions of the General Meeting of Shareholders, from a Substantial and Procedural Perspective, *Lex ET Scientia International Journal*, No. 24, Vol. 2, 2017, 16.

⁶¹ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-979-2022, 27.12.2022, para. 18, (in Georgian).

⁶² Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-502-2020, 27.09.2022, para. 11, (in Georgian).

⁶³ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1841-2019, 30.09.2020, para. 17, (in Georgian).

⁶⁴ Judgement of the Civil Chamber of the Court of Appeals, Case №28/2309-2019, 25.12.2019, para.8, (in Georgian).

⁶⁵ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-33-33-2018, 02.08.2019, para. 23.1-23.3, (in Georgian).

⁶⁶ *Chanturia L., Ninidze T.*, Commentary on Law of Georgia on Entrepreneur, 3rd ed. Tbilisi, 2002, 305, (in Georgian).

⁶⁷ *Burduli I., Makharoblishvili G., Tokhadze A., Zubitashvili N., Aladashvili G., Maghradze G., Egnatashvili D.*, Corporate Law, 1st ed., Tbilisi, 2021, 327-330, (in Georgian).

annulment must have its legal consequences for the partners, the partner must have his/her legitimate interest, and the annulment must be prerequisite for restoring the violated rights.⁶⁸

Unlike Georgia, the court of Denmark has the competence to change the content of the minutes of the general meeting and declare it invalid in full.⁶⁹ Georgia has its own solid judicial practice when the decision of the general meeting cannot be declared invalid, moreover, the court does not discuss the legitimacy of its content, in particular, the decision on the dismissal of the director.⁷⁰ The Georgian judicial practice is a correct approach as long as the decision of the general meeting is the inter-partner relationship and the court should not have control over that matter,⁷¹ – it is impossible to resolve the corporate policies and inter-partner relationship with the involvement of the court;⁷² the decisions on the governance of the company are made at the general meeting and the courts are limited to monitoring the protection of the minority partners' rights.⁷³ It is noteworthy, that the skills of the director, who enforces the decision of the general meeting, is critical for the development of the company, therefore, the partners have the right to dismiss the director at any time to mitigate risk.⁷⁴ Besides, the partner who sells his/her shares of a company and preserves the right of redemption, before the seller redeems her/his shares, the buyer-partner has all the rights and obligations of the partner; hence the former partner who redeems the shares has no opportunity to appeal against the decisions made by the partner prior the redemption.⁷⁵ In accordance with the EU directive,⁷⁶ the transparency of the norms and provisions regulating the relationship between the company and third parties, as well as the relationships among the members of the corporation is essential; in order to protect the third parties, it is important to restrict the possibilities of invalidating the transactions between the company and third parties for those obligations which entered into force, as well the

⁶⁸ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-731-2021, 30.09.2021, (in Georgian).

⁶⁹ Laprade F.M., Rights and Obligations of Shareholders, National Regimes and Proposed Instruments at EU Level for Improving Legal Efficiency, Study of Directorate-General for Internal Policies of European Parliament, 2012, 98.

⁷⁰ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-477-2020, 20.10.2022, (in Georgian).

⁷¹ *Zurabiani L.*, Essence, Function and Reception of the Business Judgment Rule in the Corporate Law of Georgia, *German-Georgian Journal for Comparative Law*, №5, 2020, 41, (in Georgian).

⁷² Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1059-2019, 20.09.2019, para. 28, (in Georgian).

⁷³ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1141-2018, 30.11.2018, II-3.2, (in Georgian).

⁷⁴ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-612-571-2017, 28.07.2017, para. 24.3, (in Georgian).

⁷⁵ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-896-2019, 30.11.2021, para. 20, para. 38, (in Georgian).

⁷⁶ The implementation of this very directive is envisaged by the Association Agreement between The EU and Georgia, see: *Bakakuri N., Gelter M., Tsertsvadze L., Jugeli G.*, *Corporate Law*, Tbilisi, 2019, 37-50, (in Georgian).

retroactive force of the annulment, and the third parties should have time to object to any declaration of nullity.⁷⁷

To sum up, the decision made at the general meeting is an agreement between partners, the agreement is a voidable transaction and, thus, is subject to the provisions of the civil code of Georgia as well as the provisions of the Law of Georgia on Entrepreneurs. As for the content of the minutes of the general meeting, the court considers and assesses the declared will and juxtaposes it to the facts, comparing them and deciding whether to declare null or declare the validity of the decision of the general meeting. The decisions ought to be under the scope of authority of the general meeting, should not contradict the law, public order and moral standards, and should protect the creditors' rights. The decision ought to conform with the interests of the company, the development goals of the corporation and the fulfilment of the undertaken obligations, as well as the interest of the minority partners must be protected. The substantial part of the general meeting is assessed by the grounds of avoidance of a transaction, such as avoidance of transaction under duress, including the duress by the third parties, which can be identified if the case of duress is mentioned in the minutes of the general meeting. The decisions which regulate inter-partner relationships are rarely annulled or are not invalidated by the court unless the minority partners' rights are violated, protection of which is observed by the court.

The main purpose of the formal and substantial avoidance of the minutes of the general meeting is to protect the interests of the company without violation of the minority partners' rights, as well as to prevent the deliberate actions of the director. The director is responsible for the negative consequences that result from the execution of the decisions of the general meeting, which are based on the will of the dominant partner, therefore the decision of a partner or partners is not subject to unconditional enforcement if the best interests of the company are compromised. For the partner's part, the minority partner has the right to protect her/his rights by the rescission of the decision of the general meeting as well as filing an application to claim for damage from the director. Consequently, the partner and the body of a company with management powers can file the application for the annulment of the minutes of the general meeting.

4. The Annulment of the Minutes of the General Meeting and Methods of Legal Protection of Third Parties

4.1. Determination of Power and Preventive Measures

4.1.1. Scope of Authority of the General Meeting

The annulment of the decisions of the general meeting has serious legal consequences for the creditors, for instance, when the company decides whether to take out a credit or pledge collateral.⁷⁸ The developed countries of Europe do not have a unified approach to what scope of authority the

⁷⁷ Directive (EU) 2017/1132 of the European Parliament and of the Council Relating to Certain Aspects of Company Law (Codification), Official Journal of the European Union, Document 32017L1132, 2017, recitals 5-6.

⁷⁸ Decision of the Panel of Civil Cases of the Tbilisi City Court, Case №2/27085-21, 03.06.2022, (in Georgian).

general meeting is and when the director needs its consent; some countries consider the matters of taking out credits from financial institutions, collaterals to loans under the powers of the general meeting, and others of the director.⁷⁹ Moreover, it is important to determine what is ordinary and what is the uncommon course of business in order to be more specific about the matters when the decision must be made by the general meeting. Some scholars reckon that the credit agreements with banks in a prudential amount are the company's ordinary course of business,⁸⁰ and the decisions on the ordinary course of business are made by the directors; matters about the uncommon course of business are decided by the general meeting.⁸¹ However, there is no single approach in the practice regarding the determination of the company's ordinary and uncommon course of business, every case must be assessed individually and the company ought to prove what is within the scope of the course of business and what is not.⁸²

The corporate law of Georgia, in turn, obliges companies and the body of a company with management powers to enforce the decisions under the scope of authority of the general meeting.⁸³ In addition, the director is responsible for observing the procedure for convening the general meeting.⁸⁴ Therefore, in the case of the defect of will, the validity of the agreement between the director and third parties depends on the good faith of the contracting party,⁸⁵ since good faith is the founding principle of the law of obligations,⁸⁶ it is the cornerstone of civil circulation and a general principle of guidance for private law relations.⁸⁷ The good faith of the contracting parties is set if the decision to enter the obligation relations with the company is based on the information registered in the companies register;⁸⁸ accordingly, the source for determining the scope of the body of a company with management powers is the statute of the company which is publicly accessible in Georgia.

⁷⁹ *Van der Elst C.*, Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders, *Annals of the Faculty of Law – Belgrade Law Review: Journal of Legal and Social Sciences*, Vol. 59, No. 3, 2012, 54-57.

⁸⁰ *Burduli I., Makharoblishvili G., Tokhadze A., Zubitashvili N., Aladashvili G., Maghradze G., Egnatashvili D.*, *Corporate Law*, 1st ed., Tbilisi, 2021, 322-323, (in Georgian).

⁸¹ *Van der Elst C.*, Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders, *Annals of the Faculty of Law – Belgrade Law Review: Journal of Legal and Social Sciences*, Vol. 59, No. 3, 2012, 55.

⁸² Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-197-2020, 16.10.2020, para. 33, (in Georgian).

⁸³ *Burduli I., Makharoblishvili G., Tokhadze A., Zubitashvili N., Aladashvili G., Maghradze G., Egnatashvili D.*, *Corporate Law*, 1st ed., Tbilisi, 2021, 316, (in Georgian); Law of Georgia on Entrepreneurs, Article 34, Clause 4, Legislative Herald of Georgia 875-V6ს-X03, 02/08/2021.

⁸⁴ *Sáez M.I., Riaño D.*, Corporate Governance and the Shareholders' Meeting: Voting and Litigation, *European Business Organization Law Review*, Vol. 14, No. 3, 2013, 373.

⁸⁵ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-559-2019, 04.12.2019, para. 307, (in Georgian).

⁸⁶ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1416-2022, 07.02.2023, para. 61, (in Georgian).

⁸⁷ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1252-2020, 29.09.2021, (in Georgian).

⁸⁸ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-559-2019, 04.12.2019, para. 307, (in Georgian).

Consequently, it is essential, before the third party accepts the decision of the general meeting of the companies and enters into the agreement with them, that the contracting parties assess the content of the minutes of the general meeting, conformity to the company's statute and the legislation of Georgia. The third parties, with all the information at their disposal, must be convinced that the company declared the will to enter into the obligation relations with them appropriately.

4.1.2. Determination of Powers of Management

The company may rescind the contracts with the third parties if it was concluded the management powers of the body of a company were limited, the third party and the person with powers of representation act together to damage the company.⁸⁹ A limited powers of management of the body of a company implies, in turn, defining the scope of the powers of representation and powers of management under the statute of the company and laws.⁹⁰ Consequently, the third party must consider the case when the director and the dominant partner are the same person. In this case, the minutes of the general meeting exist formally, and the will of the company is declared, nevertheless, the minority partners enjoy extensive procedural rights and may file an application to the court for the violated rights in question if the company has suffered the damage.⁹¹ Therefore, the minutes of the general meeting and all the contracts concluded based on the minutes will be annulled if the agreements with the third parties are damaging to the company and the minority partner proves at the court. In these circumstances, the third parties must check the publicly accessible information about the company, they must be convinced that the power of representation is not limited and then enter into the agreement with the company for the purpose of complying with the standards of good faith.

As was mentioned, the court declares the minutes of the general meeting invalid if the annulment contributes to the restoration of the violated right and the plaintiff has a legitimate interest; in other cases, the court considers that the legal ground for the annulment of the decision of the general meeting is not present. Evaluating the judicial practice, it is important to check all those documents which are accessible publicly by the banks so as not to doubt the good faith of their intentions; particularly, in contractual relations, the companies have to envisage all the legal risks and assess those as equal part of the transaction.⁹²

⁸⁹ Law of Georgia on Entrepreneurs, Article 42, Clause 3, Legislative Herald of Georgia 875-V66-X03, 02/08/2021; Law of Georgia on Entrepreneurs, Article 9, Clause 4, Legislative Herald of Georgia, 21-22, 28/10/1994 [Invalid Legal Act since 02.08.2021]

⁹⁰ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-197-2020, 16.10.2020, para. 28, (in Georgian).

⁹¹ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-687-658-2016, 06.11.2018, (in Georgian).

⁹² Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-310-2022, 16.12.2022, para. 18, (in Georgian); Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-354-2021, 25.06.2021, para. 112, (in Georgian); Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სს-1417-2018, 16.11.2020, para. 17, (in Georgian).

4.2. Change in the Partners and Validity of the Minutes of the General Meeting

The judicial practice of Georgia sets apart inter-corporate relations and relationships with third parties for the purposes of simplifying civil rotation.⁹³ Companies and their partners are separated from each other as two independent persons – the partner not as an owner, but as a beneficiary.⁹⁴ Consequently, the partners' common will forms the company's common will thus it is essential to discuss the cases when the company declared its will earlier and after its declaration the partner was changed.

The rights and obligations of a partner vary depending on the shares the partner owns in the company.⁹⁵ The decision of the general meeting doesn't need to be voted unanimously, the common will of the company is declared by the partners attending the general meeting and voting for or against the proposed subject matter.⁹⁶ Unless otherwise provided for by the statute, a limited liability company adopts a decision by a majority of three-quarters of the votes of participants in voting.⁹⁷ Therefore, if the party of credit relationships, such as surety, owner of the collateral, borrower, or co-borrower, is a legal person, then a bank examines the statute of the company, the powers of representation and powers of management of the body of a company, then the bank evaluate formal and substantial part of the minutes of the general meeting, the data about the partners and the information confirming their scope of power, what decisions partners made, whether all the partners participated at the general meeting or not, the general meeting had the right to make a decision; if some partners did not participate in the meeting then the general meeting must be certified by the notary and in this case the bank examines if there is mentioned that the procedure for convening the general meeting was observed. In case the company submitted the minutes of the general meeting to the bank, on the basis of which it enjoys the credit products, or the company is the owner of the collateral, it is a surety, but then a partner or partners are changed, in particular, a new partner has entered or a successor has replaced the previous partner, the bank examines the shares with voting rights of the new partner in the company to provide the company with a new credit product or add a new collateral owner of which is the company. If the bank discovers that after presenting the minutes of the general meeting, the shares of the partners have been distributed in such a way that the remaining partners with less than 70% of the shares give their consent on a specific matter, then the bank asks the company to present new minutes of the general meeting, which approves the previous decisions of the general meeting

⁹³ Decision of the Constitutional Court of Georgia on the Case №1/1/543 “Metalinvest LLC” v. the Parliament of Georgia, 29.01.2014, II-19, (in Georgian); Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №sb-197-2020, 16.10.2020, para. 30, (in Georgian).

⁹⁴ *Jugeli G., Giguashvili G.*, Commentaries on the Draft Law of Georgia on Entrepreneur (Edition of 09.02.2021), Tbilisi, 2021, 42, (in Georgian). 42, (in Georgia); Law of Georgia on Entrepreneurs, Article 20; Law of Georgia on Entrepreneurs, Article, 5⁸, Clause 3, Legislative Herald of Georgia, 21-22, 28/10/1994 [Invalid Legal Act since 02.08.2021].

⁹⁵ The Complete List of Shareholder Rights, ob., <<https://bit.ly/3ZUdlvy>>[09.04.2023]

⁹⁶ *Uliasz R.*, Procedural Flaws of Shareholders’ Resolutions – A Comparative Approach, Review of European and Comparative Law, Vol. 51, No. 4, 2022, 95–96.

⁹⁷ Law of Georgia on Entrepreneurs, Article 124, Clause 3 and Article 195, Clause 3, Legislative Herald of Georgia 875-V6b-X03, 02/08/2021.

pertaining to the disbursement of the credit products and the use of the company's property as collateral, acting a company as a surety.⁹⁸ Unlike the banks, the National Agency of Public Registry of the Ministry of Justice of Georgia has a different practice; in case the company has earlier submitted the minutes of the general meeting to complete a registration procedure of a mortgage agreement, the agency always requires a renewed decision of the partners when the partner or partners are changed in the company's ownership structure; the agency does not take into account the percentage of the shares that are changed.⁹⁹ If all the company's shares come to be held by a single partner, when the single-partner company applies to the bank, the bank requires the decision of the partner which considers the disbursement of credit products, the permission to the management body of a company to use company's own property as collateral to secure the obligation,¹⁰⁰ while the National Agency of Public Registry does not require a decision of a partner to complete a registration procedure in case the partner and the director are the same person.¹⁰¹

The approach of the banks is an additional protection procedure to avoid the annulment of the minutes of the general meeting and observe the good faith standard. The decisions of the general meeting create, change or terminate a civil-law relationship,¹⁰² it is subjected to the provisions of the civil law regulating the transactions; therefore, the institution of Subsequent Consent (Approval) applies,¹⁰³ which has retroactive force, and the expressed will is valid from the moment of the conclusion of the voidable transaction.¹⁰⁴

The banks and the Agency have different approaches to the assessment and evaluation of the validity of the minutes of the general meetings and the decision of the partner; the practice of the Agency is based on Article 8, Clause 3 of the Law of Georgia "on the Public Registry" stipulating that "a registration body may request the submission of additional documents or information related to the registration procedure that is necessary to make a decision on the issue raised in the application"; and the Agency interprets the validity of the declaration of will in accordance to the civil law of Georgia.¹⁰⁵ The different practice of the Agency is determined by the fact that the Agency protects

⁹⁸ Deep Interviews with the employees of the TBC JSC were conducted from the 27th of Mart to the 3rd of April of 2023 (original is kept to the Author), (in Georgian).

⁹⁹ The Response of the National Agency of Public Registry of the Ministry of Justice of Georgia, № 112768(original is kept to the Author), (in Georgian).

¹⁰⁰ Deep Interviews with the employees of the TBC JSC were conducted from the 27th of Mart to the 3rd of April of 2023 (original is kept to the Author), (in Georgian).

¹⁰¹ Deep Interviews with LLC Index were conducted on the 15th of May 2023 (original is kept to the Author), (in Georgian); The Response of the National Agency of Public Registry of the Ministry of Justice of Georgia, № 112768(original is kept to the Author), (in Georgian).

¹⁰² *Sikorska-Lewandowska A.*, The Legal Nature of Resolutions of the Governing Bodies of Companies and Their Challengeability in the Light of the Provisions of Polish Law, *Acta Iuris Stetinensis*, Vol. 27, No. 3, 2019, 153.

¹⁰³ Civil Code of Georgia, Article 101, Parliamentary Gazette, 31, 24/07/1997.

¹⁰⁴ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №sb-1412-1332-2017, 14.11.2018, para. 1.3.5, para. 1.3.6, (in Georgian).

¹⁰⁵ The Response of the National Agency of Public Registry of the Ministry of Justice of Georgia, № 112768(original is kept to the Author), (in Georgian).

itself from the alleged annulment of the minutes of the general meeting as long as the registration body cannot complete the transactions that may be invalidated based on the law.¹⁰⁶

The approaches of banks and the National Agency of Public Registry to determine the validity of the minutes of the general meeting differ. The banks take into account the changes in the company's ownership structure; if the shares of the new partner or partners exceed 70%, banks require the company to submit a renewed decision of the general meeting, while the Agency requires the minutes without fail. In case the director and the partner are the same person, the Agency does not need a decision of the partner for the purpose of completing the registration procedure, but the decision of the partner is essential for the banks in any case. Therefore, the bank and the Agency try to establish their standard of the validity of the minutes of the general meeting or the decision of the partner to avoid the future annulment of the document.

4.3. de lege ferenda, The Principles of Law for the Legal Protection of Third Parties

The judicial practice of Poland demonstrates that the minutes of the general meeting may be annulled on the basis of the provisions of the civil code stipulating that a transaction may be declared invalid,¹⁰⁷ in case a legal transaction which is contrary to the law or intended to circumvent the law,¹⁰⁸ and based on the provisions relating to the defect of the declaration of will.¹⁰⁹ However, the provisions of the civil code are not applied separately from the law on Entrepreneurs, but in harmony with it, and based on the procedure provided for in the corporate laws.¹¹⁰

The law of Georgia on Entrepreneurs, likewise, stipulates the management body of a company, a member of that body, or a participant partner in the general meeting has the right to file an application for the annulment of the decision of the general meeting if it substantially violates the requirements of the legislation of Georgia or the statute.¹¹¹ The corporate law of Georgia is unclear regarding the consequences of the annulment of the minutes of the general meeting. The law obliges the management body to submit to the registration authority a legally effective court decision on the annulment of a decision of the general meeting and the previously registered decision ought to be changed.¹¹² Following the teleological interpretation of the law, the invalidation of the decision of the general meeting is possible in cases when, as a result, the changes in the registry authority are necessary. However, as the practice indicates the annulment of the minutes is not an independent

¹⁰⁶ Commentaries on the Civil Code of Georgia, Book II, Law of Things, Chanturia L. (ed.), Tbilisi, 2018, 530, (in Georgian).

¹⁰⁷ *Smanio I.*, Admissibility of Using the Provisions of the Polish Civil Code as a Basis for Declaring Resolutions of Meetings of Capital Companies Invalid, *Prawo i Więż*, No. 35, Vol. 1, 2021, 29.

¹⁰⁸ Case C-520/21, Arkadiusz Szcześniak v. Bank M. SA [ECJ], Opinion of Advocate General Collins, delivered 16 February 2023(1), para. 7.

¹⁰⁹ *Smanio I.*, Admissibility of Using the Provisions of the Polish Civil Code as a Basis for Declaring Resolutions of Meetings of Capital Companies Invalid, *Prawo i Więż*, No. 35, Vol. 1, 2021, 36.

¹¹⁰ *Id.*, 42.

¹¹¹ Law of Georgia on Entrepreneurs, Article 93, Clause 1 and Clause 2, Legislative Herald of Georgia 875-V6b-X03, 02/08/2021.

¹¹² *Id.*, Article 39, Clause 2 and Article 40, Clause 1.

claim, but a prerequisite for other claims,¹¹³ thus, the authorised body, whether it is a director, a partner or a group of partners, applies for the annulment of a voidable transaction concluded with third parties, even if the annulment of the minutes of the general meeting is not directly claimed, but indirectly the claim implies the annulment of the minutes as well, the court will consider the issue and if the court satisfies the claim it also indirectly declares the decision of the general meeting invalid.¹¹⁴

The court applies not only the Law on Entrepreneurs but also the Civil Procedure Code of Georgia, the judicial practices of ECtHR¹¹⁵ and the Civil Code of Georgia,¹¹⁶ that demonstrates the wide range of argumentation processes for the judgment. A judge is not a law-maker, a judge interprets what is already a part of the legal materials¹¹⁷ and is limited to the claim of the parties of the lawsuits.¹¹⁸ The interpretations of the judge are not his/her personal opinion of what is right and what is wrong, but the individuation of law from the principles of law,¹¹⁹ from the various areas of law, established in the network of legal rules, with the determination of the structure of the law and finding the connections with other laws.¹²⁰ Furthermore, to resolve the case, the court must maintain balance so as, on the one hand, not to intervene in the scope of powers of the general meeting, and not to violate the principle of autonomy of the company and the general meeting,¹²¹ and on the other hand, to refer to the principles of the law. The facts are necessary for the courts to resolve the case, every case depends on fact-finding;¹²² the parties of the lawsuits are responsible for the facts, especially, the factual circumstances on which the parties base their claim or counterclaim,¹²³ and the court cannot correct procedural mistakes made by the parties during the litigation.¹²⁴ Consequently, if the declaration of the will of partners has the ground for the annulment of the minutes of the general

¹¹³ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-33-33-2018, 02.08.2019, para. 31, (in Georgian); Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-1841-2019, 30.09.2020, paras. 18-19, (in Georgian).

¹¹⁴ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-1199-2019, 20.01.2022, para. 31, (in Georgian).

¹¹⁵ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-731-2021, 30.09.2021, para. 17, para. 22, paras. 31-33, (in Georgian), Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-1319-2018, 21.05.2021, para. 132, (in Georgian).

¹¹⁶ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-1319-2018, 21.05.2021, para. 106, (in Georgian).

¹¹⁷ *Partsvania M., Contra Legem: Interpretation: A Curious Decision from the Practice of Administrative Legal Proceedings*, Journal “Legal Methods”, №3, 2019, 99.

¹¹⁸ Civil Procedure Code of Georgia, Article 248, Parliamentary Gazette, 47-48, 31/12/1997.

¹¹⁹ *Partsvania M., Contra Legem: Interpretation: A Curious Decision from the Practice of Administrative Legal Proceedings*, Journal “Legal Methods”, №3, 2019, 58.

¹²⁰ *Penner J., The Individuation of the Law of Property*, New York, 1997, 38.

¹²¹ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-1141-2018, 30.11.2018, II-3.1 ცდს II-4, (in Georgian).

¹²² Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-558-2021, 26.06.2022, para. 10, (in Georgian).

¹²³ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-354-2021, 25.06.2021, para. 102, (in Georgian).

¹²⁴ *Id.*, para. 101.

meeting, nevertheless, the court finds that nothing would have been changed in the content of the minutes, in this case, the court should not declare the minutes invalid as long as the main principle for the annulment of the decision of the general meeting is when the basic rights of partners are violated.¹²⁵

The good faith of the contractual party must be considered if the court declares null and void the minutes of the general meeting based on which the credit agreement was concluded. The creditor ought to examine all the accessible documents which provide an additional basis for the claim for damages under the tort liability.¹²⁶ The violation of the fiduciary duty by a director is part of tort law.¹²⁷ A partner or creditor has the right to claim damages based on tort liability if the director breaches fiduciary duty.¹²⁸ The duty of the director to the partner does not run directly but through the corporation, thus, it is not easy to determine the duty of the director to the partners.¹²⁹ Moreover, limited powers of the bodies of a company flowing from the statute or the decisions of authorised bodies, cannot be employed against the third parties, even if the decision is published.¹³⁰ In practice, as theoretically provided for in the doctrine, the powers of the director and the powers of the company should be separated; the court speaks of the need for separation of powers even when the director and the partner are the same person.¹³¹ Since the partner-director enjoys the dominant power to influence the internal corporate relations and external relations with the third parties, minority partners, therefore, should protect their rights by not claiming for the annulment of the minutes of the general meeting, but by claiming for the compensation of damages the company suffered by the director.¹³²

In order to bring about a conclusion, the court is limited to the factual circumstances on which the parties of lawsuits based their claim when considering the case of the annulment of the minutes of the general meeting. When Interpreting the Law of Georgian on Entrepreneurs, the court may apply to the civil code of Georgia and the principles of laws. Therefore, any cases of the annulment of the decisions of the general meeting depend on the legal tactics of the parties in the litigation, in particular, what facts are presented to the court and how the principles of law are used in the course of the legal argumentations.

¹²⁵ *Sáez M.I., Riaño D.*, Corporate Governance and the Shareholders' Meeting: Voting and Litigation, European Business Organization Law Review, Vol. 14, No.. 3, 2013, 375.

¹²⁶ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-1199-2019, 20.01.2022, para. 41, (in Georgian).

¹²⁷ *Rhee R.J.*, The Tort Foundation of Duty of Care and Business Judgment, Notre Dame Law Review, Vol. 88, No. 3, 2013, 1142.

¹²⁸ Judgement of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-1199-2019, 20.01.2022, para. 42, (in Georgian).

¹²⁹ *Rhee R.J.*, The Tort Foundation of Duty of Care and Business Judgment, Notre Dame Law Review, Vol. 88, No. 3, 1183-1184.

¹³⁰ Directive (EU) 2017/1132 of the European Parliament and of the Council Relating to Certain Aspects of Company Law (Codification), Official Journal of the European Union, Document 32017L1132, 2017, art. 9, para. 2

¹³¹ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, Case №სბ-851-795-2017, 20.04.2018, para. 19, (in Georgian).

¹³² *id.*

5. Conclusion

The dualist system of a capital company separates the powers and responsibilities of the director and partner, even if the partner is the director of the company. The general meeting has broad powers and comprises the decisions regarding the uncommon course of business of a company and the votes cast by a majority of partners constitute and shape the will of the company itself. The validity and declaration of will of a partner are certified in the minutes of the general meeting. The responsibility of the director is to execute the decisions of the partners and to protect the company from all the negative consequences that result from the enforcement of the minutes of the general meeting. In case the partner poses a threat to the interest of the company, the body of a company with management powers can take measures against this partner to protect and secure the interests of the company and file an application for claiming the annulment of the minutes of the general meeting or decision of the partner. The purpose of any decision in a company, in turn, is to protect the interests of the company so that the rights of the minority partners are not violated by the dominant partners. The minority partner has the possibility to protect his or her rights by appealing against the decision of the general meeting as well as filing an application for claiming damages the company suffered from the director.

The court examines formal and substantial grounds for the annulment of the decisions of the general meeting, in particular, if the minority partners' rights are protected. If a partner rescinds the decision of the general meeting, the court declares the minutes null and void in the following cases: 1) the annulment of the decision has legal consequences for the partner; 2) the legitimate interest of the partner is justified, and 3) the restoration of the plaintiff's right is possible. The law of Georgia on Entrepreneurs is vague regarding the consequences of the annulment of the minutes of the general meeting. According to the law the invalidation of the decision of the general meeting is possible in cases when, as a result, the changes in the registry authority are necessary. However, the court clarifies that the annulment of the partners' decision is not an independent claim, but a prerequisite for other claims, in particular, if the statement of claim considers the avoidance of such transactions which caused damages for the company, but the annulment of the minutes of the general meeting is not directly claimed, the court invalidates the transactions and, thus, indirectly declares the decision of the general meeting invalid.

The annulment of the decisions of the general meeting has serious legal consequences for the third parties such as the creditors and registration authority. The Law of Georgia on Entrepreneurs does not define the ordinary course of business and uncommon course of business, neither legal doctrine nor judicial practice has a common approach to the issue. The unified criteria for assessing the validity of the minutes of the general meeting do not exist, which is why the banking institutions and the National Agency of Public Registry have diverse approaches.

Good faith is the only method for banks to protect themselves from the negative consequences resulting from the annulment of the minutes of the general meeting. The good faith is set, when deciding to have the obligation relations with the company, by the information the contractual party possesses. The accessible information must be registered in the companies register; therefore, it is essential, before the financial institution accepts the decision of the general meeting of the companies and enters into the agreement with them, that the contracting parties assess the content of the minutes

of the general meeting, conformity to the company's statute and the legislation of Georgia and must be convinced that the power of representation is not limited.

Analysing private and judicial practice, there are different approaches for assessing the validity of the minutes of the general meeting. In addition, the Law of Georgia on Entrepreneurs is unclear and does not provide substantial criteria for the annulment of the minutes. Consequently, the corporate law and the general provision of the civil code are utilized together. It must be mentioned that civil laws have to be employed in the context of the interpretation of the Law of Georgian on Entrepreneurs so that the interests of all parties of the transactions be observed. To protect the third parties, it is essential to restrict the possibilities of invalidating the transactions between the company and third parties for those obligations which entered into force.

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