

Adaptation of shareholders Decisions

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Abstract:

The decision of the general assembly of shareholders is to challenge an internal decision issued by the company's legal organs, is against the company itself, and it is unreasonable to submit the company. And the second is negative for the burden of pushing this argument on the stability of the company and behind it the national economy if the majority of the use of the right to vote against the collective interest of the company to preserve their own interests.

Therefore, we hope to strengthen the provisions of the Commercial Law relating to the General Assemblies of the Shareholders by enshrining the right of the minority shareholder to claim the invalidity of the General Assembly resolution, once the arbitrariness of the majority has been established in its decision and on the condition that the minority does not abuse the right to appeal. Economical, including companies.

Keyword :

Conditioning, Resolutions, General Assembly, Shareholders, Law.

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Qualification des décisions des actionnaires

Résumé :

La décision prise par l'assemblée générale des actionnaires est un acte unilatéral émanant de la société. La contester par les membres de l'A.G., c'est de recourir contre une décision interne rendue par les organes légaux de la société; c'est-à-dire la société contre elle-même; et, il est déraisonnable de porter plainte contre soi-même. D'un autre côté, le recours contre cette décision ne peut être repoussé pour motif de la stabilité de la société et, par conséquent la stabilité de l'économie si la majorité des actionnaires cherchent, à travers la décision, leurs propres intérêts et au détriment de la minorité.

A travers cette étude, nous allons démontrer les lacunes des dispositions du droit commercial en la matière et nous tenterons d'y remédier, notamment s'agissant du droit de la minorité des actionnaires de réclamer la nullité d'une décision de l'A.G. des actionnaires.

Mots clés:

Conditionnement, résolutions, assemblée générale, actionnaires, loi.

تكييف قرارات جمعيات المساهمين

الملخص:

تكييف قرارات الجمعية العامة للمساهمين على أنها تصرف قانوني من جانب واحد هو الشركة ينطوي على جانبين، أحدهما إيجابي لجهة أن الطعن ضد قرار الجمعية العامة للمساهمين هو طعن ضد قرار داخلي صادر عن أجهزة الشركة القانونية، أي بالنتيجة ضد الشركة نفسها، ولا يعقل أن تتقدم الشركة بدعوى ضد نفسها فتكون مدعية ومدعى عليها في نفس الوقت. وثانيهما سلبي لوطأة الدفع بهذه الحجة على استقرار الشركة ومن ورائها الاقتصاد الوطني إذا ما تعسفت الأغلبية في استعمال حقها بالتصويت ضد مصلحة الشركة الجماعية حفاظا على مصالحها الخاصة.

لذلك فإننا نأمل في تدعيم نصوص القانون التجاري المتعلقة بالجمعيات العامة للمساهمين، بتكريس حق مساهم الأقلية بالمطالبة ببطان قرار الجمعية العامة للشركة، متى ثبت تعسف الأغلبية في اتخاذ قرارها وبشرط عدم تعسف الأقلية في استعمال حق الطعن، وفي هذا تكريس للشراكة الحقيقية التي ينجح بها أي مشروع اقتصادي وبضمنه الشركات.

الكلمات المفتاحية:

تكييف، قانون، قرارات، الجمعية العامة، المساهمين.

Introduction

Contributors can intervene in the life of the company only as members of the general assembly, and the meeting of associations according to legal rules, and decisions are taken by majority¹.

There are several types of associations during the life of the company:

- Shareholders shall meet annually in an association to approve the accounts of the financial year, and decide on the distribution of profits and the election of directors and commissioners, if there is a need for this, and this assembly is the ordinary general assembly.²

- Other ordinary meetings shall hold the name of extraordinary or extraordinary public assemblies, which shall meet to amend the basic law in all its provisions, and shall be subject to conditions reinforced by the majority quorum.³

The practice also revealed the existence of mixed associations, in which decisions are taken, some of which are due to the validity of the ordinary assembly, and others to the validity of the extraordinary assembly. It is also called upon to approve the accounts of the fiscal year, and vote on capital increase, the deliberations of the mixed assembly must therefore take into account the special rules that govern two categories of decisions to be taken.⁴

The jurisprudential views on the adaptation of the resolutions of the general assembly to the legal shareholders have differed, since this limitation is important in determining the defendant in the appeal against these decisions. Who is the defendant in this lawsuit is the company? Or the shareholders' association? Or the shareholders who make the decision, especially if the shares are in the hands of one shareholder? The problem is the subject of the research.

Because these ideas are crystallized in three legal descriptions: contractual analysis, collective legal action and unilateral legal action, the problem will be addressed in three sections, including an explanation of each theory on its own. Let us determine at the end of the study the defendant, all in accordance with Algerian law.

¹ Order No.75-59 of September 26, 1975, which includes commercial Law, amended and supplemented by Law No. 05-02 of 06 February 2005, JORA. No.11 issued on 09/02/2005, is based on the majority rule for the extraordinary general assembly in article 674 last paragraph in which it was stated: "it shall act by a two-thirds majority of the votes cast; ». And the same provision for the ordinary general assembly in article 675 last paragraph.

² Ibid, articles 675/1 and 676.

³ Ibid, article 674.

⁴ Georges Ripert et René Roblot, par Michel Germain, les sociétés commerciales, Tome 1, 21 édition, librairie générale de droit jurisprudence, Paris, 2014, p. 320.

Section 1 : The contractual analysis

The contract is considered to be the most important form of legal action in social life. Article 54 of the civil code defines it as a contract where by an individual or several other persons are obliged to grant, do or do nothing.

Thus, the disposition of the act by the description of the contract requires the agreement of all parties to its conclusion and its content, that is, the contract takes place once its parties have exchanged their identical will to be bound by the place and reason of the contract¹.

The application of this adjustment to the resolutions of the general assembly of shareholders requires the expression of their will jointly², and this will produces legal effects.

However, the decisions of the association do not have the nature of the contract because they are not taken by consensus or by mutual agreement. They are imposed on the minority even if they do not accept them, as they are imposed on the absentee shareholders³, which necessitates a return to the company contract which was agreed upon by the partners. The terms of this contract including the majority law.

Therefore, what prevents the statement of the nodal nature of the resolutions of the general assembly of shareholders that it cannot know in advance who will be the shareholders with the decision of the majority⁴.

Section 2 : Collective legal act

If the legal act is the will to create a legal effect established by law in pursuance of that will, the principle of will means that the will is able to establish legal action and determine the consequences it entails⁵.

It is a two-pronged principle: the first part concerns the form, the consensual principle, which makes the will alone devoid of any formality for the creation of conduct. All that is required is to express an expression of will, and this expression is in any way, it may be spoken or written or even by reference, and may be implied.⁶

The second part relates to the subject, whereby the will also has the authority to determine the effects of the conduct. The will to establish a contract not known by

¹ Order No. 75-58 of September 26, 1975, which includes the civil code, amended and supplemented by Act No. 05-10 of 20 June 2005, JORA. No. 44 issued on 26 June 2005, guarantees the terms of the contract « consensual, subject and cause » in articles 59 to 98.

² Bruno Dondero, Paul Le Cannu, droit des sociétés, 7 édition, librairie générale de droit jurisprudence, Paris, 2018, p. 501.

³ Imad Mohamed Amin Al-Sayed Ramadan, protection of the shareholder in the joint stock company (comparative study), legal books house, Egypt., 2008, p.716.

⁴ Georges Ripert and others, op. cit, p. 248.

⁵ François Chénédé, Yves Lequette, Philippe Simler, François Terré, droit civil - les obligations, 11 édition, éditions Dalloz, Paris, 2013, p.98.

⁶ Order No. 75-58 includes the civil code, op.cit, article 60 paragraph 02.

law, to go against the provisions of contracts regulated by the law, and make the contract form or in kind.¹

On the basis of this legal basis, the will to conclude collective legal action, taken from a group with close or not conflicting interests². There is no doubt that the resolutions of the general assembly are legal acts and not contracts.

However, the statement that it is a collective legal act is supposed to take decisions from the shareholders or more, and that there should be co-collegiality - and common interests,³ but the fact proved that the decisions of the general assemblies of the shareholders may be taken by one shareholder who owns the majority, followed by the French law that organized the same one-person company⁴, which is the same as the provisions of Algerian Law - the limited liability company of one person –⁵, in the sense of jurists, recognized a general assembly consisting of one person or shareholder.

In addition, even if a group of shareholders participate in the general assembly, it is not always recognized that they have close interests, such as in the distribution of profits or when the capital is increased or reduced. On the good conditions for the waiver of shares⁶.

Section 3 : Unilateral act

A part of jurisprudence was adopted on the idea of unilateral will as a source of obligation in civil Law⁷ to answer the problematic nature of the legal decisions of the general assembly of shareholders.

¹ Order No. 75-58 includes the civil code, op.cit, article 106.

² Michel Kahn, franchise et partenariat, 5 édition, éditions dunod, Paris, 2009, p. 129.

³ Alain Bénabent, les contrats spéciaux civils et commerciaux, 8 éditions, éditions lextenso, Paris, 2008, p. 193.

⁴ French commercial code, article L. 223-1: « A limited liability company is set up by one or more persons who only bear losses up to the amount of their contributions. When the company has only one person, it is called "sole member". **The sole partner exercises the powers devolved to the meeting of shareholders** by the provisions of this chapter. »

⁵ Order No. 75-59 includes commercial law, op.cit, article 564: « A limited liability company shall be established by one or more persons who bear losses only within the limits of their shares if the limited liability company established in accordance with the preceding paragraph includes only one person as a sole partner, Limited liability. »

The sole partner shall exercise the powers vested in the association of partners under the provisions of this Chapter. »

⁶ Business corporations act, Quebec official publisher, current as of July 12, 2018, p.81.

⁷ The Algerian legislator takes individual will as a source of obligation in specific cases, not as a public source, meaning that he has not considered individual will as a general source of obligation, but rather as an exceptional source, in cases where the Law provides for it. Belhadj Al Arabi, the general theory of commitment in Algerian civil law, part I (Legal Action, Contract and Individual Will), University Publications, 6th edition, Algiers, 2008, p.331 ; Order No. 75-58 includes the civil code, op .cit, article 123 bis.

Individual will is unilateral legal action. A unilateral will can have a legal effect, such as binding affirmation¹ and the award of a suspended contract². It may also be the reason for gaining the right in kind as in the will or in the fall of the in-kind right, as well as the right of easement³.

Individual will can terminate the nodal bond as in isolating the agent and quitting him⁴ as the personal right may be extinguished as in discharge⁵. Here, the following principles must be emphasized:⁶

1. A unilateral will cannot establish the right of the person who issued it, or establish the obligation on others.

2. A unilateral will may establish the right to a person other than the person who issued it, and the obligation shall be borne by the person who issued it.

The association is a legal body affiliated to the company whose jurisdiction is determined by the Law.

Therefore, its decisions are the decisions of the company, which in legal terms means that these decisions are unilateral acts of the company aimed at its public interest or what is known as collective interest⁷. This interpretation is related to the personality of the legal company⁸.

¹ order No. 75-58 includes the civil code, op.cit, article 63: « If he is appointed for acceptance, the positive shall remain in effect until such time elapses. The term may be derived from the circumstances of the case, or from the nature of the transaction. »

² Vacation is defined as being unilateral legal act in which the person who has the right to exercise it shall be declared responsible for keeping it to the conduct that has been held against him and making it productive for its effects based on the moment of its convening. Abdul Razzaq Ahmed Al-Senhoury, theory of contract, part I, Halaby publications, Beirut, 1998, p. 181; In the civil code, the license is set forth in the contract which is voidable and the purpose of which is to waive the right to request cancellation of the disposition and result in the demise of the risk of disqualification. Abd al-Moneim Faraj al-Sadah, theory of contract in the Laws of the Arab countries, part one, al-Nahda al-Arabiya house, Cairo, 1974, p. 79; And order No. 75-58 includes the civil code, op.cit, article 100.

³ Law No. 84-11 of 09 June 1984 containing the family code, amended and supplemented by order No. 05-02 of 27 February 2005, JORA.No. 15 of 27 February 2005, article 184: «The commandment of ownership is added to after death by way of donation. »

⁴ Order No. 75-58 includes the civil code, op.cit, article 586 : «The agency shall also terminate terminate the agent's dismissal or the agent's balance. » ; And article 588 : « The agent may at any time waive the agency, if any agreement is found to be contrary to that,... »

⁵ Ibid, article 305: «the obligation is extinguished by the voluntary surrender made by the creditor. » ; And article 306 paragraph 1: «the delivery of the bond is subject to the rules of the fund which govern the liberalities. »

⁶ Muhammad Taqiyah, Individual Will as a Source of Commitment, No Publishing House, Algiers, 1984, p. 187.

⁷ Wajdi Salman Hatoum, role of the collective interest in protecting commercial companies, halabi human rights publications, first edition, Beirut, 2007, p.350.

⁸ Order No. 75-58 includes the civil code, op.cit, article 417.

However, there are cases in which the personality of the shareholders is taken without the company's personality, such as the case of the dismissal of the partner who objected to the extension of the company or whose actions are an acceptable reason for its dissolution¹. And the case of objection to the solo behavior of the partner in charge of management². In both cases, the liability of the shareholder is raised without the company. May lead to their resolution.

However, these cases constitute an exception that does not affect the validity of this opinion for the following reasons:

a) The legislator shall describe the decisions of the general assemblies by deliberating in the guide to the trading phrase contained in the text of article (674) of the commercial Law and the claim that the proceedings are null and void against the company and not against the partners³.

b) The claim of the directors against the company shall be brought to the attention of the company, as stated in the text: « contributors may, in addition to the claim for compensation for the damage caused to them personally, hold a single claim against the company against the administrators.»⁴

c) That there is no provision in the Algerian Law to recognize the general assembly the right to litigation including the right to claim against it before the courts, and in return the same Law recognized the company this right as a moral figure once formed and for others to adhere to this character even if the company did not abandon the procedures of publicity⁵.

d) That the majority of the jurisprudence⁶ went to a system rather than a contract. to say that the decisions of the general assembly of shareholders is a collective legal act, contradicted by the reality of conflicting interests of the shareholders gathered.

The general opinion of the shareholders is that the general assembly's decisions to the shareholders are a unilateral act of the company more relaxed, in view of the fact that the general assembly is an organ not separate from the company, and can not be sued against the society in isolation from the company, but that the appeal against general assembly decisions are against the company.

¹ Ibid, article 442 paragraph 1.

² Ibid, article 428 paragraph 1.

³ Order No. 75-59 includes commercial law, op.cit, of article 733 to article 743.

⁴ Ibid, article 715 bis 24.

⁵ Order No. 75-58 includes the civil code, op.cit, article 417.

⁶ Georges Ripert et René Roblot, par Michel Germain, op.cit, p. 641; Bruno Dondero and others , op.cit., p. 503; Mohammed Farid Al-Arini, commercial companies, university publications house, Alexandria, 2002, p. 452; Abdul Rahim Abdul Aziz Jawihan, decisions of the general assembly in the joint stock company, Hamid publishing and distribution house, Jordan, first edition, 2010, p.16.

Conclusion

Within the scope of the general assemblies of the shareholders there are many provisions regulating how they play their role in the company as the supreme authority and the main body in the money companies, especially the joint stock companies.

The most important of these provisions is a rule of law that applies permanently and in all general assemblies of shareholders. It is therefore conceivable that a single shareholder who holds a majority of the votes by virtue of owning the largest share in the company's capital will be able to impose his opinion on the rest of the shareholders attending the meeting of the association. For those who miss them, and those who oppose the text of the Algerian Law clearly.

As a result, it is conceivable that decisions of the majority of the members of the general assembly will be issued in the interest of the company or in conflict with it and with some of the interests of the partners. It is therefore difficult to say that such decisions cannot be discussed because they are issued by the majority, returns majority decisions to the interest of the company.

However, the search to adapt the general assembly's resolutions to the shareholders revealed that in case of appeal against the decision of the general assembly, the case against an internal decision issued by the company's legal organs, ie against the company itself, and it is unreasonable that the company filed a claim against itself and be plaintiff and defendant at the same time.

This rule excludes the case of an appeal against a contract in which the company holds the status of the claimant against whom it has contracted (the majority shareholder) as a defendant.

In the face of this situation, which may lead to the dissolution of the company and then destabilize the national economy for the instability of companies, we propose to the Algerian legislator to enshrine the right of the minority shareholder to demand the invalidity of the general assembly resolution of the company to which he belongs, in view of the nature of the defect of arbitrariness of the majority, directly or indirectly as a result of the violation of the equality of the shareholders, or indirectly as a result of the violation of the decision of the collective interest of the company involving the interests of the minority.

This right should be restricted to two conditions:

1. Prove the arbitrariness of the majority in taking the decision.
- 2-Non - abuse of the minority in the use of the right to appeal the decision of the majority.