

**CONTROVERSIAL ISSUES IN THE ACTION FOR ANNULMENT OF  
THE RESOLUTIONS OF THE GENERAL MEETING OF THE  
COMMERCIAL COMPANIES IN THE REPUBLIC OF BULGARIA**

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**Abstract**

The general meeting is the supreme body of any commercial company, which takes the main resolutions on all necessary and essential matters relating to their management, operation, and development. In order to ensure the lawful exercise of these powers, the legislator has provided for a special action on the basis of which partners/shareholders may challenge the resolutions of the general meeting and seek their annulment. In this context, the provision of Art. 74 of the Commercial Act grants each of the partners/shareholders a right of action for the annulment of resolutions which are unlawful or contrary to the memorandum of association or the articles of association.

The action for annulment of the resolutions of the general meeting of commercial companies is widely used in the jurisprudence, raising numerous legal issues related to its content, scope, and prerequisites for its granting. Some of these controversial issues have been resolved by Interpreting Judgement No. 1/2002 of 06.12.2002 of the Supreme Court of Cassation; however, there are still outstanding issues that require further analysis and discussion.

This study aims to examine the meaning, content, and scope of the action under Art. 74 of the Commercial Act for the protection of

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the rights of partners/shareholders, as well as practical problems arising in connection with its exercise. To achieve this goal, the relevant jurisprudence and doctrinal opinions which contribute to the clarification of the basic principles that guide the management of commercial companies and their interaction with legal entities, while seeking a balance between the protection of the rights of each partner and the principle of stability of the resolutions taken shall be analysed.

**Keywords:** *action for annulment, Art. 74 of the Commercial Act, resolutions, general meeting, commercial companies.*

### **I. On the legal nature of the right to request the annulment of the resolutions of the general meeting.**

The right of the general meeting of a commercial company to adopt resolutions is a fundamental principle of corporate governance. These resolutions are binding on all members of the company, regardless of whether they participated in the vote or voted against it. A resolution of the general meeting constitutes an expression of the collective will and has binding effect on all partners or shareholders. It is regarded as an exercise of authoritative power, as it produces legal consequences for the entire company and its members (Carsten Gerner-Boyerle, M. Schillig). Although this power of the general meeting is an expression of the majority principle, the legislator has provided mechanisms for the protection of the rights and legitimate interests of the partners when the adopted resolutions contradict the legal norms and the articles of incorporation. This power is not vested in the self-interest of the persons who at a particular time participate in it or form the majority, but serves the interests of all the members of the company and of the company itself as a legal entity. Therefore, that power is not unlimited, extending within the limits of the mandatory provisions of the law and of the memorandum or articles of association, as well as within the limits of the company's interest. The members of the company are bound by that power in so far as it is exercised within the limits indicated. In the event that this limit is violated, the shareholder has the right of action against the resolution taken (Ilieva, R. 2012, p. 68).

The right to seek the annulment of resolutions of the general meeting is an important tool that allows partners to object to acts they consider unlawful, unfair, or prejudicial to their rights. This right is not punitive, but potestative – its exercise by the individual member results in a legal change in the status of the appealed resolution, if the court upholds it. Its main purpose is to exercise control over the power of the general meeting in order to avoid its abuse, the same being within the law, the memorandum of association, and the general corporate interest.

The main function of this mechanism is to ensure a balance between the stability of company resolutions and the protection of individual members from possible abuse of power by the majority. In this sense, legal theory and

jurisprudence affirm the need for clear criteria concerning the grounds for the annulment of the general meeting, the range of persons entitled, and the procedural order by which such protection is provided. (Interpretative Decision No. 1/2020 of 31.05.2023 of the Supreme Court of Cassation).

Jurisprudence shows that the right to challenge the resolutions of the general meeting cannot be used arbitrarily, but must be subject to the principle of good faith and legality. In this respect, Interpreting Judgement No. 1/2002 of the Supreme Court of Cassation provides further clarity on a number of controversial issues relating to the application of Art. 74 of the Commercial Act, such as which resolutions are subject to judicial review, which partners/shareholders have the active legitimation to bring an action and within what time limits this right should be exercised.

The standing to sue is an important element. Any person having the status of a partner or shareholder in the company has this right when the specific decision of the general meeting affects the right to membership or individual membership rights.

The request for annulment can be based on two main arguments.

The first is procedural illegality, which may include deficiencies in the procedure for convening or holding the general meeting.

The second is substantive illegality, where the resolution contradicts substantive provisions of the statute or the Commercial Act.

According to Art. 132 of the Commercial Act, in case of co-ownership of a company share, each of the partners has an independent right of action and is procedurally entitled to bring an action separately from the other co-owners.

In conclusion, it can be said that the right to seek the annulment of the resolutions of the general meeting performs a protective function within company law by providing an opportunity for judicial review of acts that may lead to unlawful or unfair consequences. However, its exercise should be subject to the principle of legal certainty in order to avoid excessive interference in the stability of the resolutions taken and the normal functioning of the company.

## **II. On the scope of the action under Art. 74 of the Commercial Act.**

The right of partners and shareholders to request the annulment of resolutions of the general meeting is a key element of the protection against unlawful acts in commercial companies. In this context, the question arises as to the scope of applicability of the action under Art. 74 of the Commercial Act, including whether it can be used against resolutions of the constituent assembly of a commercial companies and partnerships.

One of the significant issues that gives rise to discussion in theory and practice is whether the action under Art. 74 of the Commercial Act is applicable to the resolutions of the constituent assembly of the public limited company. The main argument against such a possibility is the lack of legal personality of the company at the time of the constituent meeting (Gerdjikov, O. 2007, p. 414-415). As of the date of the first constituent meeting, there is still no validly established legal entity, because the factual composition of the establishment

has not been completed. This means that it is not entered in the Commercial Register, therefore the founder - the person who subscribes to shares, is not yet considered a member of a joint-stock company. The capacity of 'shareholder' of the person subscribing for shares arises after the company is entered in the Commercial Register. (Kasabova. K. 2002, p. 93) The membership relationship with the incorporated company arises from this moment, and therefore this is also the moment when the potestative right of annulment arises within the meaning of Art. 74 of the Commercial Act.

From this point of view, the lack of legal personality of the public limited company at the time of the constituent assembly makes it impossible to exercise the action under Art. 74 of the Commercial Act against the resolutions taken at that stage. Instead, any defects in the incorporation must be attacked by means of other special actions governed by the Commercial Act.

Another significant issue that gives rise to conflicting interpretations is whether the action under Art. 74 of the Commercial Act can be applied to the resolutions of partnerships - (General Partnership and Limited Partnership). In this context, a dispute arises as to whether these companies even have a general meeting within the meaning of the Act and whether their acts can be attacked under this procedure.

According to one of the opinions maintained in the jurisprudence, the unanimous resolutions (or such taken by majority when this is provided for in the articles of incorporation – Art. 87 of the Commercial Act) by the unlimited partners in the general partnership and limited partnership constitute 'the will of a body of a legal entity, although not constituted by the partners' (Kalaidjiev, A. 2014, p. 100). In our opinion, the resolution represents the internal will of the partners and not the acts of a formal body. In partnerships, the community of partners plays the role of a general meeting. There is sufficient similarity between the resolutions of the general meeting of companies and the resolutions of the partners in partnerships to allow the application by analogy of the regime of the nullity of resolutions of the general meeting to partnerships. Thus, proceeding from the purpose of the judicial review (to provide protection against the resolutions of the supreme body) and from the systematic place of its regulation (Chapter 10 - General Provisions), some authors maintain the opinion on the applicability of Art. 74 of the Commercial Act to all commercial companies, including partnerships, although the latter do not have a general meeting with a statutory competence (Antonova, A. 2004, p. 106-107). In our opinion, however, their challenge cannot be carried out in accordance with the procedure of Art. 74, and in the presence of contradictions between the partners, the provisions of contract law should be applied. An action under Art. 74 cannot be a universal mechanism for challenging all resolutions taken within commercial companies.

The second opinion provides an intermediate solution to the above problem, namely that the applicability of the action under Art. 74 of the Commercial Act in respect of partnerships should not be absolutized, but limited only to cases where the memorandum of association expressly provides for a general meeting as the supreme body of the company (Kostova M.,

Krystev K. 2001, p. 27). The absence of such a clause precludes the admissibility of the action under Art. 74 of the Commercial Act and is grounds for claiming the nullity of the resolution adopted by the 'sham' general meeting, as it falls into the category of non-existent legal acts. According to the authors, it is permissible for a partnership to form its own supreme body, relying on the dispositive and subsidiary regulation in the matter of the management of a general partnership (Art. 84(1) of the Commercial Act, in conjunction with Art. 80 of the Commercial Act). At the same time, the fact that not all powers of the general meeting of a company are compatible with the peremptory provisions in the matter of partnerships is also taken into account (Stefanov, 2012, p. 7). This is so because Art. 85 and Art. 95, paragraph 2 of the Commercial Act provide that the withdrawal of the management entrusted to a partner, respectively the exclusion of a partner, may be implemented only by a judicial procedure through a constitutional action – not by general consent of the partners, whether formed at a general meeting provided for as a body in the memorandum of association. Such a resolution of the artificially created general meeting must be qualified as null and void, since its formation is contrary to the mandatory legal norms and principles of company law. The lack of legitimacy and legal basis of such a meeting leads to the legal nullity of the resolutions adopted, while calling into question their legal binding force. It would be null and void within the meaning of paragraph 1 of the Interpretative Decision No. 1/2002 of the Supreme Court of Cassation – it was taken in the absence of competence (and is not voidable under Art. 74 of the Commercial Act due to violation of a mandatory legal provision).

The third opinion excludes the application of Art. 74 of the Commercial Act in respect of partnerships in an absolute and categorical manner, also rejecting the possibility for general partnerships and limited partnerships to form a general meeting at their discretion in the memorandum of association (Judgement No. 5/2011 Supreme Court of Cassation). It is accepted that the action under Art. 74 of the Commercial Act is inapplicable to partnerships (Gerdjikov, O. 2007, p. 410). General partnerships and limited partnerships do not have statutory management bodies – each general partner has the right to manage (Art. 84, paragraph 1 and Art. 105, sentence 1 of the Commercial Act). There are common features between the resolutions of the general meeting of companies and the resolutions of the partners in partnerships, but they are not sufficient to justify the application by analogy of the regime of the resolutions of the general meeting of partnerships (Kolev, N. 2011, p. 16). The general partner has no such need for judicial protection as he/she has the ability to suspend the resolutions of the partners. This peculiar right of veto is derived per argumentum a contrario from Art. 105, sentence 2 of the Commercial Act and is explained by the personal and unlimited liability of general partners. The resolutions taken by the General Meeting of a company are so-called transactional resolutions which bind all members without their having the right of veto – this justifies their need for protection under Art. 74 of the Commercial Act.

The question of the applicability of the action under Art. 74 of the Commercial Act to partnerships remains a subject of theoretical and practical debate, especially when the articles of incorporation expressly provide for a clause formulating the existence of a general meeting. The main issue is whether such a contractual provision can create relevant legal consequences that justify the possibility of challenging resolutions under Art. 74 of the Commercial Act. The possibility of such a provision producing relevant legal effects must be denied (Ruschev, I. 2011, p. 5-12).

First of all, the legal structure of partnerships, which by their legal nature are based on the personal participation of the partners and on the principle of fiduciary relationships between them, must be taken into account. The dispositive and subsidiary provision of Art. 84 para. 84, par. 1 (in conjunction with Art. 80 of the Commercial Act) should not be interpreted broadly – the management may be entrusted to one or several partners or to an external person, but not to an artificially created body which does not find a legal basis in the activities of the general partnership and limited partnership. In this context, the express contractual freedom provides that a general meeting may not per se create an additional body which has no statutory basis in the applicable law. The organisational structure and governance model of commercial companies are governed by mandatory legal rules (Koleva, R. 2005, page 9).

Another additional argument in support of the inadmissibility of the action under Art. 74 of the Commercial Act in this case is the *numerus clausus* principle, which applies with full force both to the types of companies and to their organs and management system. According to this principle, the members of a commercial company may not arbitrarily determine the number and type of its organs – in this respect the autonomy of company law is subject to limitations. It is not possible for the memorandum of association of a general partnership or limited partnership to provide for the formation of a body atypical of the form of company concerned – this makes it inadmissible for this 'sham' body to take resolutions which bind the company, and this fact in turn excludes the applicability of Art. 74 of the Commercial Act to such 'decisions', which is why an action under Art. 74 of the Commercial Act is inapplicable in the case of partnerships, even if the articles of incorporation provides for the existence of a general meeting of the partnership or limited partnership.

### **III. Disputed issues in relation to the active legitimacy of the action under Art. 74 of the Commercial Act.**

The provision of Art. 74 of the Commercial Act does not require the existence of a legal interest as a procedural prerequisite for filing a lawsuit (Judgement No. 128/2009). The legislator has provided for a broad standing by granting any partner the right to challenge the resolutions of the general meeting, including by one who voted in favour of the resolution or for whom it has favourable consequences (Landjev, B. 2000, page 118). Moreover, the transformation right under Art. 74 of the Commercial Act is an expression of the controlling powers of each partner/shareholder to comply with the law and

the memorandum of association or the articles of association, and not a means to protect individual interests.

The resolutions of the general meeting have a specific legal and economic significance, which is reflected in the legal sphere of entities that do not fall within the circle of partners or shareholders in the company. The manager and the controller have a legal interest in seeking annulment where they are not partners in respect of the resolution under Art. 137 par. 1, item 8 of the Commercial Act to bring actions of the company against them; the creditors of a partner or shareholder in respect of the resolutions under Art. 137, par. 1, item 3 of the Commercial Act and Art. 221, item 7 for the distribution of profits and their payment; the persons employed by the company in respect of the resolution under Art. 137, par. 1, item 6 of the Commercial Act for the closure of branches; the members of the supervisory board and the board of directors in respect of the decisions referred to in Art. 221, item 5. Therefore, the *de lege ferenda* proposals to expand the circle of actively legitimated persons under Art. 74 of the Commercial Act should be supported (Kolev.N. 2012, p. 19).

In relation to the active legitimation under Art. 74 of the Commercial Act, there are disagreements in theory and practice as to the moment when the 'partner/shareholder' status arises, leading to contradictory jurisprudence and different interpretations in the doctrine.

The active legitimation of the persons who signed the articles of incorporation or subscribed for shares at the constituent assembly shall arise from the constitutive entry in the Commercial Register (Art. 67 of the Commercial Act), from which moment the status of a party to the membership relationship arises.

In a limited liability company, membership arises either originally – through the admission of new members upon a capital increase (Art. 122 in conjunction with Art. 148, par. 1, item 3 of the Commercial Act), or derivatively – through the transfer of a membership interest to a non-member (Art. 122 in conjunction with Art. 129 of the Commercial Act) or through the inheritance of a membership interest (Art. 129 of the Commercial Act).

Disputes regarding the moment of acquisition of active legitimacy under Art. 74 of the Commercial Act arise from the contradictory interpretation of the provision of Art. 140, par. 4 of the Commercial Act, according to which the decision on the admission of a partner has effect from its entry in the Commercial Register.

In the jurisprudence it has been accepted that the resolution on admission of a new partner by argument of Art. 137, par. 1, item 2 of the Commercial Act has immediate effect on the company and its partners, and the registration has its constitutive effect only on persons external to the company (Judgement No. 39/2011).

In legal theory, some authors advocate the opinion that the emergence of membership is determined solely by the moment of entry of the decision for admission in the Commercial Register. (Goleva, P. 2014, p.114; Kolev, N. Commercial and Contract Law Magazine, issue 1, 2024). This opinion cannot

be shared as it ignores important aspects of the process of admission of new partners.

According to Bulgarian legislation and more specifically in Art. 1 and 2, in conjunction with Art. 119, par. 4 of the Commercial Act, the establishment of the membership relationship is conditioned by the will of the manager of the company. The manager, as the representative of the company, plays a key role in this process. He/she has the option of acting in bad faith and failing to comply with his/her obligation to certify the copy of an amended articles of association and to submit it within seven days for publication in the commercial register. If the manager fails to fulfil this obligation in due time or at all, the newly admitted partner will not be able to exercise his/her membership rights under Art. 123 of the Commercial Act nor fulfil his/her membership obligations under Art. 142 of the Commercial Act, as he/she is not yet a party to a validly created membership relationship. (Zlatareva, M. 2007, p.118)

The constitutional effect of the registration of the resolution on the admission of a new partner is mainly relevant for the legal certainty of third parties in good faith who want to know the membership of the company with which they initiate legal relations. However, the practice of the Supreme Court of Cassation (SCC) shows that a person admitted as a partner by a resolution of the general meeting, which is not entered in the Commercial Register, acquires active legitimacy in the action under Article 74 of the Commercial Act from the moment the resolution is made (Judgement No. 36/26.05.2015).

This means that although the membership is not formally entered in the Commercial Register, the newly admitted partner already has certain rights and obligations towards the company. This position underlines the importance of the resolutions of the general meeting and their immediate legal effect, irrespective of the administrative procedures related to entry in the Commercial Register.

Therefore, the creation of a membership relationship is a complex process involving both legal and factual elements. It is important to note that while registration in the Commercial Register is necessary for the legal certainty and transparency of information on the membership of the company, it is not the only factor determining the moment of the creation of the membership relationship (Koleva, R. 2004, p. 116). The resolution of the general meeting to admit a new partner also plays a key role and has immediate legal significance.

It should be noted that the right under Art. 74 of the Commercial Act arises and can be exercised before the temporary certificates or shares are issued, as they are not constitutive but legitimation-regulatory securities. This means that the membership rights arise from the moment of incorporation of the company, respectively from the moment of capital increase.

As noted by Kalaydzhev (2005, p. 38), the temporary certificates transferred through the giro materialise not only the right to receive the subscribed shares, but also all membership rights, including the right under Art. 74 of the Commercial Act. This confirms that membership rights arise independently of the physical existence of the shares or temporary certificates,

but depend on the legal acts that create them - for example, the resolution of the general meeting to admit a new member.

The legislation provides that the registration of certain acts in the Commercial Register has a constitutive effect, which means that from the moment of registration, legal persons come into existence or certain rights are established. For example, Art. 67 of the Commercial Law provides that commercial companies come into existence from the moment of their entry in the Commercial Register. However, in the case of membership rights, registration is mainly relevant for legal certainty and transparency of information on the membership of the company, not for the creation of these rights themselves.

Pursuant to Art. 10.1 of the Commercial Register and the Register of Non-Profit Organisations Act (CRRNPOA), third parties in good faith may refer to the entry even if the entered circumstance does not exist. This means that the registration provides the security of the legal world and the peace of mind for citizens by ensuring that the effects of the registered acts will be respected by third parties and state authorities.

Consequently, even if the interim certificates or shares have not yet been issued, the rights and obligations of the shareholder have already arisen and can be exercised. This is particularly important for the legal certainty and stability of corporate relations in public limited companies.

In this sense, in connection with the membership rights in the PLC, the question arises as to the significance of the entry of the transfer of registered shares in the shareholders' book (Art. 185, par. 2 in conjunction with Art. 179 of the Commercial Act) – i.e. whether the 'shareholder' status arises at the moment of acquisition of the share or at the moment of its entry in the book of registered shareholders.

The opinion which prevails in the theory (Kasabova, K, 2000, p. 93) that the transfer transaction, which is not reflected in the book of shareholders, cannot be opposed to the company – that is, in relation to it, the holder of the share is the registered shareholder and only he/she can exercise the rights incorporated therein. Incorporation is relevant only to the opposability of the rights of the endorsee against the company, but is not an element of the factual constitution of the giro. Subsequent transferees of the transferred share also validly acquire it, but cannot exercise the membership rights it confers against the company until they are entered in the register of registered shareholders. As the holder of the share, the endorsee has the right to dispose of it – to transfer it and pledge it – but cannot effectively exercise the rights he/she derives from the membership relationship.

The obligation set forth in Art. 185, par. 2 of the Commercial Act to record in the shareholders' register the transfer of registered shares, or the temporary certificate certifying them (given the explicit reference in Art. 187, paragraphs 2 and 3 of the Commercial Act) is aimed at creating clarity in corporate relations (for example, in the calculation of the quorum and the majority in decision-making), and not unjustified blocking of membership rights. In order to achieve the pursued certainty in the internal relations, it would

be sufficient for the company to receive a notification of the giro, accompanied by proper evidence. In this way, the possibility of effective exercise of the membership rights will be made dependent on the will and timely actions of the right holder and not on the arbitrariness of the executive body of the company, which may have an interest in keeping the membership rights of the endorsee blocked (SCC Judgment No. 70/2020). The contradictory nature of the entry is characteristic of public registers, and the register of registered shareholders is a private testimonial document and as such enjoys only formal evidentiary value.

The foregoing leads to the conclusion that the holder of registered shares or temporary certificates acquires active legitimacy under Art. 74 of the Commercial Act from the moment of the transfer transaction and not from the moment of its entry in the register of registered shareholders.

With the termination of the membership relationship with the limited liability company, the former shareholder also loses the active legitimation under Art. 74 of the Commercial Act. Membership in the Ltd. shall automatically terminate upon the occurrence of the legal facts provided for in Art. 125, par. 1, items 1, 2, and 4 (death, placement under full disqualification, liquidation of the legal entity, bankruptcy), as well as with the expiry of the term of the partner's notice under Art. 125, par. 2 of the Commercial Act. A similar automatic termination effect is also observed in the case of exclusion of a partner who has not paid or deposited his/her equity contribution within the additional period set by the general meeting, upon expiry of which he/she is 'deemed to be expelled' (Art. 125, par. 1, item 3, in conjunction with Article 126, par. 1 of the Commercial Act). In the case of exclusion under Art. 126 par. 126, par. 3 of the Commercial Act, however, a resolution is required of the general meeting pursuant to Art. 137, par. 1, item 2, appendix 2 of the Commercial Act.

The quality of a partner or shareholder must be present at the time of the adoption of the contested resolution. The termination of the membership relationship with the claimant in the course of proceedings for annulment of a resolution does not automatically render the action inadmissible. Being a partner or shareholder of the applicant is an absolute procedural prerequisite which must exist throughout the whole course of the court proceedings. However, it is important to note that the loss of that capacity in the course of the proceedings must be assessed in the light of the applicant's legal interest in the relief sought.

If a partner or shareholder has lost his or her capacity due to the termination of the membership relationship, this does not necessarily mean that the action becomes inadmissible. The claimant's legal interest in the relief sought remains the controlling factor. For example, if a shareholder has terminated his/her membership in the company by giving written notice, the term of which has expired after the action under Art. 74 of the Commercial Act was brought, he/she may still have an interest in the annulment of a resolution affecting his/her rights, such as the distribution of profits in deviation from the shares agreed in the memorandum of association.

Thus, even if the claimant has lost his/her capacity as a partner or shareholder in the course of the proceedings, the proceedings should continue as long as there is a real legal interest in the relief sought. This underlines the importance of the company's interest and the need to protect the legality and rights of all members in the company.

Moreover, the action under Art. 74 of the Commercial Act is designed to ensure that the resolutions of the general meeting comply with the law and the memorandum or articles of association and this action does not serve as a means of obtaining benefits for one or more partners or shareholders. The individual interest of the partner or shareholder shall take precedence over the interest of the company.

Therefore, the admissibility of the action is present even if the claimant has lost the capacity of a partner or shareholder, the proceedings should continue because the action under Art. 74 of the Commercial Act defends the corporate welfare, which in this case outlasts the claimant's membership. Therefore, the active legitimation under Art. 74 of the Commerce Act belongs to the person who held the capacity of 'partner' or 'shareholder' at the time of the adoption of the resolution to be annulled or at the time of the action for annulment.

#### **IV. Controversial issues in relation to the grounds for annulment under Art. 74 of the Commercial Act.**

The adjudication of the issues related to the challenge of the resolutions of the general meeting of commercial companies under Art. 74 of the Commercial Act (CA) is the subject of considerable attention both in theory and in practice. According to the provisions of Art. 74 of the Commercial Act, the resolutions of the general meeting may be challenged in the presence of violations which consist in contradiction with the imperative provisions of the law or with the provisions of the memorandum of association (articles of association). The theory and practice on the issue of the grounds for the annulment of these resolutions have been developed in the context of judicial interpretations, among which an important contribution has been made by the Supreme Court of Cassation (SCC) Interpreting Judgement No. 1/2002, where in paragraph 1 the Supreme Court judges accepted that 'if the norms of quorum at a general meeting or majority at a vote are violated, a resolution is subject to annulment' (Bobatinov, M. 2002, p. 5).

According to items 6 and 8 of this interpreting judgement, the supreme judges found that the resolutions of the general meeting are subject to annulment if the rules on the formation of a quorum at the meeting or the rules on the majority required for valid resolutions have been violated. These basic procedural requirements are not only formal but also essential for the proper functioning of the company's organs and for the protection of the rights of shareholders or members.

The principle of legal certainty and the stability of the resolutions of the general meeting is at the heart of the legislative intervention in setting limitation periods for bringing actions. Art. 74, par. 2 of the Commercial Act

provides that an action for annulment of a resolution of the general meeting must be brought within 14 days of the day of the meeting if the claimant was present or if he/she was duly invited, and in case of non-attendance – within 14 days he/she was informed about the resolution, but not later than 3 months from the meeting. These time limits are not only intended to prevent unnecessary delays in the process, but also to ensure that the legal certainty of companies is not subjected to an unduly long period of uncertainty.

The binding nature of these preclusive terms is fundamental, as their non-compliance leads to the inadmissibility of the action and the annulment of the decision, regardless of its contradiction with the law or the articles of association/memorandum of association. This strictness relating to procedural time limits is an expression of the legislative objective of ensuring the stability of the legal regime of commercial companies and preventing abuse of rights. (David A. Cabrelli, Mathias M. Siems (ed.). 2020.)

Additionally, it is important to note that no new grounds for annulment that were not raised in the original action may be introduced in the pending proceedings under Art. 74 of the Commercial Act. This rule is clearly confirmed in item 6 of Interpreting Judgement No. 1/2002 of the Supreme Court of Cassation, which emphasises strict compliance with the procedural requirements regulated by law. Such a restriction essentially serves to protect the stability of commercial relations and to prevent possible procedural manipulations which could create unnecessary legal uncertainties.

In conclusion, the existence of clearly defined and strictly enforceable rules on the grounds and time limits for challenging resolutions of the general meeting, consistent with the requirements of the Commercial Act, is not only a necessity for legal certainty, but also a response to the need to stabilise corporate relations. Failure to comply with the established procedural deadlines and requirements leads to legal consequences that not only limit the possibility of appeal, but also maintain the purposefulness of the corporate process and guarantee the rights of stakeholders within strictly defined terms and conditions.

#### **V. Controversial issues relating to the effect of the annulment.**

The annulment of resolutions of the general meeting pursuant to Art. 74 of the Commercial Act (CA) is usually not given retroactive effect. This thesis, although widely accepted in legal practice, is not substantiated by specific arguments in the text of the law itself, since Art. 74 of the Commercial Act does not contain an express provision supporting the retroactive effect of the annulment. In legal theory, the retroactive effect of annulment has been regarded as a fiction designed to achieve certain legal effects. In principle, only the legislator can introduce such a legal regulation by means of explicit statutory texts, where this is necessitated by the requirements of justice or social expediency.

This raises the fundamental issue of the applicability of fictions in law, which are only permissible if they are clearly regulated in law. According to Prof. Pavlova, the retroactive effect is only a fiction, while in the legal reality

only the legislator can establish fictions by normative texts when there are sufficient grounds imposed by the requirements of justice or social expediency (Pavlova, M. 2002, p. 119). Therefore, it should be assumed that the annulment of the resolutions of the general meeting always effective for the future. Consequently, in the context of Art. 74 of the Commercial Act, it should be assumed that the annulment of the resolutions of the general meeting has only future effect and not retroactive effect. This conclusion is also supported by item 3 of Interpreting Judgement No. 1/2002 of the Supreme Court of Cassation (SCC), according to which 'after the successful conduct of either of the actions (under Art. 71 and Art. 74 of the Commercial Act), the resolutions of which have effect for the future, the registered circumstance will be deleted on the basis of Art. 498 of the Civil Procedure Code (now Art. 29 in conjunction with Art. 30 of the Commercial Register Act), and the deletion also has no retroactive effect'. The possibility of the deletion of a circumstance entered in the public register and its effect only in the future appears to be an additional argument against the retroactive effect of annulment.

In addition, if the annulment of the resolutions of the general meeting were to be given retroactive effect, this would undermine the stability and security of relations both within the company itself and in its external relations. Such retroactivity could lead to legal uncertainty and call into question the legality of the actions already taken as a result of the annulled resolution. In order to ensure stability in corporate relations, it is assumed that the court judgement to annul a resolution of the general meeting has effect prospectively, i.e. after the court judgement has entered into force. This approach prevents the negative consequences of retroactivity and ensures predictability and certainty in legal relations.

According to this approach, the court judgement to annul the resolution of the general meeting has binding effect for all members of the company, irrespective of their participation in the proceedings. This maintains legal certainty and ensures that all members of the company will be bound by the outcome of the legal proceedings. This is particularly important for the stability of commercial relations and for the protection of the rights of shareholders and members.

Furthermore, failure to seek annulment within the time limits results in the permanent stabilisation of the resolutions of the general meeting. Only positive resolutions which produce legal effects for the future and are binding for the members of the company are subject to annulment. The court cannot give judgement in place of the general meeting unless it finds serious breaches of the law or the articles of association.

For example, if the general meeting decides not to carry out roof repairs, the court cannot overturn such a resolution and oblige the company to start action to repair the roof structure. This underlines the importance of legal certainty and stability in corporate relations.

### **Conclusion**

The submission makes it clear that an action under Art. 74 of the Commercial Act is a key instrument for the protection of legality, the articles of association/memorandum of association, and the corporate interest. However, the current legal framework is burdened with numerous controversial issues that hinder its effective application. In order to achieve true fairness and efficiency in the protection of individual shareholders and the corporate interest, it is necessary that the legislator takes decisive steps towards improving the existing legal framework; only in this way will the need for a clear and consistent legislative framework that serves as a basis for correct and consistent jurisprudence be addressed.

Firstly, legislation must be refined and simplified to avoid ambiguities and contradictions in its interpretation. This includes clearly defining the conditions and procedures for bringing an action, as well as defining a wider range of persons who can bring an action. Second, the process of handling these cases should be expedited and streamlined to ensure timely and effective protection of the corporate interest. Third, training of judges and lawyers on the new amendments and their application is essential for uniform and consistent case law.

In addition, monitoring and evaluating the effectiveness of newly introduced provisions is critical to identifying potential problems and correcting them. Only through a systematic approach and constant adaptation of legislation can we ensure a stable and predictable legal environment that promotes the sustainable development of commercial relations in Bulgaria.

Ultimately, the successful reform of Art. 74 of the Commercial Act will not only strengthen the protection of corporate interest, but also increase the confidence of investors and businesses in the rule of law. This will contribute to economic growth and stability, while reinforcing the principles of transparency and fairness in corporate governance.

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