

Abstract - Liability of board members of corporations

Liability of board members of corporations is multi-layered phenomenon, which is as well appearing in the dynamics of organisational structure and functioning of complex economic and legal mechanisms of relationships, which itself is the business corporation in its basis and not only in relationship to its own inner structure, but as well to the external subjects with which the corporation enters relationships on different levels and degrees.

The question of its seizure and especially its confirmation is further complicated by dynamic development of business relationships and corporations itself, although we can presume that the basic and elementary principles of liability are basically invariable. These are legal relationship, rights and obligations of singular concrete subjects, their abiding and breaking and following consequences in shape of damages or other impacts.

What is more, complications occur with the existence of different legal views on functioning of the business operations as they are established and they bring not only single legal systems in well-known forms of continental and Anglo-American views, but as well legal policies of single countries. All is enhanced by different levels of development of individual legal policy.

Following these matters, not only the continuity of development of examined phenomenon, but even evident and necessary existence of diverse views on the question of liability brings certain hazards - what applied yesterday, not only will not apply tomorrow, but can be bettered already today.

That is also one of many possible answers to the existence of various opinions, solutions and especially outputs to individual meaning of the word liability, its classification and practical application as well. It is at this point where the business principles collide with the legal principles along with principles of motivation and evident principles of sanctions. Thus this explosively dynamic blend obviously cannot simply remain still and in one place.

The question of evaluation of concrete liability system is then equally important among the complex of social relationships, phenomenon and the meaning of ownership and its application, functioning of corporations within companies, morale and other systems. Plurality, unconformity and dialectic of interests described above further amplifies mentioned relationships.

The task of how to effectively prevent corporations and other subjects, which are in certain relationships with these corporations and who are mainly their creditors, from assets losses essentially has to be set by all the more or less significant legal policies. Their economy is

erected around principles of personal ownership and the incentive with more or less equal opportunities in the framework of market administration, since on the exchange, agreement and relationships emerging from them are these systems basically built. These corporations just cannot work without revolutions or serious disturbance of questions of the social peace without balance in structural relationships noted earlier.

Due to its character, the thesis is factually divided into six parts. The first part is focused on general definition of phenomenon of the business corporations and corresponding terminology, which characterises this institution in terms of its foundations and basis from the viewpoint of elementary terms of the theory of creation and operation of the corporation, the theory of trade expenses, the theory of agency, legal subjectivity, establishment schemes of the corporation including ownership relationships and limited liability. All these traits are substantial in the possibility of examination of this complex mechanism.

The second part is dedicated to the systems of directing and administration of business corporations – Corporate Governance - and to the mechanism of their operation. It reminds of and analyses ways of establishment, directing and administration of business corporations including their evaluation in terms of efficiency with the possibilities of rehabilitation of these systems during periods of crisis, which we have witnessed.

The third part is focused on the rights and duties of the members of statutory bodies of business corporations in contractual as well as legal relationship, the care of appropriate controller and specific duties, which emerge from their position in the corporation in continuity to the following issues of their liability.

In the following part, the thesis is solving liability and institutional principles of liability from the viewpoint of definition of terms and relationships towards other normative systems and institutions from the general viewpoint and theoretical, historical and development facets of the institute of legal liability.

The fifth part is dedicated to private - legal liability of board members of corporations in terms of relationship to the corporation itself and in terms of relationship to third persons, especially to the creditors - it addresses various possibilities and conceptions of protection of the rights of creditors, the impact of bankruptcy, the zone of insolvency, deepening insolvency and the issue of piercing the corporate veil including liability and derivative legal actions as the process means to the application of stated demands.

In the last part, the thesis addresses current matter of the new legal alteration of corporate law, its relationship to the question of liability of board members of corporations. It also reminds us of the new approach of the so called “active liability” and its factual legal

alteration as well as pointing out all the not completely resolved issues related to this alteration. At the same time, it provides suggestions de lege ferenda with possibilities of insights into the future development of corporate law, which is generally located in the next phase of its unbelievably dynamical development inspired by the needs of business world, globalisation and ever further expanding possibilities of international cooperation, which, effectively, has no boundaries. Hence the fact that legal science undoubtedly has to react to this development.

Nowadays, it again seems, not only in our social conditions, that we are moving on the principle of pendulum, which always diverts to one or another side, according to the level of pressure of certain social needs or interest groups. Today, we are in phase of diversion in the way of the loosening of the legal control – what was prohibited is being permitted, what was not valid before is valid now. All this in the name of removal or overcoming of the old with the aim of higher efficiency of legal organisation with movement reaching as far as towards competing with other legal policies in the belief that dynamics and the merit of such development will, ultimately, be more efficient and emerging issues, including liability, will fade into background and will be overcome more easily than with contemporary enforced legal control or even by even higher level of enforcement.

This question can only be responsibly answered by the future development. The fact that new legal alteration of corporate law is, despite often stressed promotions, nothing new, not by its terminology, nor by its essence, provides us with healthy and justified doubt.

Analysis and undivided view of the mentioned issue liability of board members of corporations in the context of the knowledge of international legal alterations and economic connections, which in this context cannot be ignored, was the reason behind this thesis. The aim was also to contribute with my view not only to the complex view on the issue of presented social phenomenon of liability of board members of corporations, but as well to the problems, phases and components, which form this aggregate, including ambition to not only name and analyse these effects, but to even try to predict further possibilities of future development of liability in terms of corporate law.