

## Basic Rights of the Members of Limited Liability Societies and the Protection of These Rights in Kosovo

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### Abstract

The purpose of this thesis is analyze and description of basic rights of limited liability society members. Motivation for writing of the thesis is, creation of conditions and possibilities for realization of rights of limited liability members as one of legal organization forms of trade societies. In this thesis we will argue that in comparison right is not existed unique separation of these rights. By evaluation as general division, we support separation of the society member rights with limited liability, which separation is made in three basic groups, as follows: the rights for self governance, group which contain the right of cooperation in actions on establishment, the vote right, the right for deciding, the right to lead works and representative rights, the right of supervising and cooperation in liquidation procedure, Property rights, group which contains, the right on profit, on compensation of expenses and damages, the right of disposable shares and the right of cooperation-cooperation in remained part from liquidation and Special rights, group which contains, the right to be noticed, of minority and the right for more deposits or special rights.

**Keywords:** limited liability society, member of society, basic rights

### 1. Introduction

Obligations of members against society and third persons, at the same time to them (members) give the rights whichm they had in trade society and the rights from its functioning. In comparative right, it is talking about non sameless of separation of these rights. This made that many authors not agree with the kinds number and content of member rights and the source of these rights. Many authors, separate the rights of capital society in two basic grouos: the right in governance and property right (Ledič, 2002) We considet that the mostly separation of mentioned rights is made by author D.Lediq, which these rights separate in: "rights in governance (with indication in establishment and interruption), 2. Property rights and 3. Specific rights". From that reason also treatment of mentioned rightsm will be done by this separation. In this thesis is treated legislation and legal practice in the Republic of Kosovo, which by treating in comparative aspect, will be made efforts to show level of legislative, theoretical and practical development.

### 2. Research methodology

This is theoretical searching, based in primary and secondary data. To well understand tretaed issuem are studied and analized lot of books, laws and science articles. Except that, are analyzed and evaluated judicial practice and direct application of trated issues.

### 3. The rights in governance (with indication in establishment and interruption) of l.l.c.

The rights designation itself shows that it is talking about rights of member with indication in establishment and interruption of work of trade society concretely of the society with limited liability, so this right is separated in:

#### 3.1 The right in interaction and establishment

When it is talking for the right of trade society stablishmentm this right law knows to all physical and legal persons. The limited liability company is established in the base of contractm establishers in such way arrive to establish this society (Art. 387 par.1 of Law for trade societies of Croatian Republic, no.107/07, 11 october 2011). Such legal solution is

foreseen also in austrian right (Lidič, 2002). The right for establishment of limited liability company as in the right of establishment of share society has every physical and legal person. The establishment will be done just one establisher (Barbič, 2005). Such standing accept the Albanian and Kosovo right (Art. 68.par.1 of the Law No.9901, dated 14.4.2008 For traders and trade society, of Albania with art. 78 par.1, of the Law for trade societies of Kosovo, Law No. 02/L-123, 27 september 20070). Directive for private societies with limited liability with one member (Societas Unius Personae), was presented as alternative solution of european society with limited liability with purpose of establishment of little and middle enterprises and make easy the conditions for establishment of trade societies abroad (<http://hrcak.srce.hr/>).

### 3.2 The vote right

Each partner has the right of take part in all general meetings of shareholders and vote in regular way for issues in this meeting. Every shareholder has the right to take part in decisions and has the equal votes in the initial establishment capital. The croatian law, foreseen that the right in vote of each member which has his share in determined value, and remain possibility that in establishment contract be foreseen any other way of regulation of the vote right, while every member had the right on one vote. From this solution is understand that it is possible to have the member which do not have the right of vote. In German and Austrian law the right of vote (Stimmrecht) also is regulated in the same way (Ledič, 2002) So is primary rule that in the governance of this legal organization form of trade society to be emphasized decision of members as capital society and not as persons society. Because of that reason here is decided according the capital and not according the persons. Such solution we can find in Swiss law for obligations article 808 and French law for trade societies article 58 (Vasiljevič 1993). The way of realization of the right on vote it can be realized with direct participation or through authorized person. Also is known the possibility of realization of this right in electronic way and through mail etc. (Mallezi, 2011).

### 3.3 The right on deciding

The right on deciding is the right which flows from the right of vote as legal and statute right of the member of limited liability trade. This right is guaranteed from the law itself and statute, while the practical way of its realization is related with the engagement of member to realize this right, Realization of this right can be through society bodies and is determined from active participation of society member in deciding bodies.

### 3.4 The right on direction of trade works

The right to direct the society works, belongs to shareholders-owners. Direction-management of works of limited liability society are performed by Director or manager Directors of society which at the same time will be owners of society. If owners of society take decision, they can transfer the works of management in administrator which can be outside of society owners order. Owners can decide to believe the management of society to the management board or board of directors, which also can be from the order of shareholders, or all be outside the order of shareholders, or be mixed so some will be from shareholders order while the others can be from abroad (Galgano, 2009). In albanian right, the right to direct the society works with limited liability is belong to administrators (Art 95 Law For traders and trade society, of Albania). In Kosovo, administration of corporation is done through Director of Board of management directors, which are named from the establishers. They are competent for representation of society and direction of society works (Krasniqi, 2014).

### 3.5 The right of representation

in the limited liability society, if any of members desire to cooperate in representation and fulfill conditions to be named, there is no any obstacle to present its candidature and be the member of directorate-direction board. It is the equality of candidates, without taking into account if they are member of society or not, and fulfillment of pro conditions which should had every third member of directorate – direction board, as in the abovementioned case regarding the right of direction with works of society.

### 3.6 *The right on supervising*

Society members with limited liability have the right of supervising realized in the main Parliament of society, if that society has not formed supervising board as special body.

### 3.7 *The right on cooperation in liquidation procedure*

Members of limited liability society do not have *ex lege* the right of membership in taking part in liquidation procedure of the society. It is for members of direction board according to the force of the law they are liquidators but in the society contract or with the decision of society members for liquidator can be named other persons. The law foresees the possibility that with the request of society, instead of members of direction board, be named other liquidators. With this method it is understood that it was made acceptance of l.l.c member right for cooperation in liquidation procedure (Ledič, 2002).

## 4. **Property rights**

### 4.1 *The right on profit*

Basic right of society members with limited liability is their right for participation in profit or dividend. A member of society could not take part in exercising of other rights, but it is not known as possibility that a member of society be excluded from the right of participation or dividend. This standing is determined from the character of profit of trade society. Members of society with limited liability realize their participation in annual profit, if with contract of society is not foreseen different. This right of members of limited liability society in Kosovo is regulated with legal provision - article 92 of Law on trade societies.

### 4.2 *The right on expenses and damages compensation*

Members of trade societies as in the persons society also in the capital society, can present in report of society request for compensation of expenses which is related with performed Works of society, respectively require compensation of damage which is caused as a result of performing of such Works. When it is talking about the member of society with limited liability which except payment for basic deposits, are obliged for actions which are not made from payment of moneys, but with monetary value, it should be foreseen in contract if society pro conditions for fulfillment of such actions and determination of compensation which can not be bigger than value of action which should be fulfilled. It means that also compensation of expenses for establishment of limited liability society, can be paid only until the height which is determined with society contract. If there has no any other deposit, to the establisher is belong the expenses of society in proportionality with their basic deposits (article 393 Law for trade societies of Croatia), (Ledič, 2002).

### 4.3 *The right with availability with shares*

One or more members of society with limited liability, has a possibility that during action and their business to be changed (Ledič, 2002). To the societies with limited liability even that in principle is foreseen the possibility of transfer (and heritage) of shares, is not existed the unlimited freedom for transfer of funds to their persons. Before all is required determined form and are foreseen their limitations which even are not the same in all systems, but mostly restrict their free circulation – transfer (Art. 73 For traders and trade society, of Albania, Art 96-98 Law for trade societies of Kosovo and Art. 413, Law for trade societies of Croatia)

### 4.4 *The right of interaction – participation in remained measure from liquidation*

It is accepted rule from all legislations and rights, to be known and ensure the right of coo participation of society members. This right in Kosovo legislation is regulated with article 119 of Law for trade societies of Kosovo, while in Albania, participation of partners in remained measure from liquidation of society is regulated with article 219 of the Law: with exclusion of contrary clauses of statute, separately of own capitals, remained after payment of nominal amount of shares or parts of established capital, is done with partners in the same proportion with their contribution in basic capital"

(Malltezi, 2011). Një rregullim i përafërt parashihet edhe në të drejtë kroate ( Art. 472 regarding article 379.par.1.,Law for trade societies of Croatia).

## 5. Special rights

### 5.1 The right to be noticed

It means not only the society member be noticed with decisions issued by directing bodies, but the right that member previously to be informed for possibility on issuance of society decisions. In the base of this right, member of society has a possibility to take the actions with purpose of prevention of harmful decisions for him and society. Member also has the right to contribute on actions which will be in favor of issuance of favorable decisions for him and society. Such solution speciallu os cleared in legal literature from german right and aurtian right (Ledič, 2002). In albanian right, it is talking about the right of partners to be informed permanently, with actions of trade societies and documents and presented reports from directing bodies of society. This right is realized in such way that to the partners these documents put in disposition in society offices, or the same be sent with mail (Malltezi, 2011). At all realization of this right, is realized through the partners rights to take all publik information, issued from society regarding with its action by including the right of financial receipt and ther documeents as is foreseen by the law and the statute of society (Corporate Governance-Manual, 2009). Also the law for trade societies of Kosovo, article 88,foreseen the right on free Access to the society archive.

### 5.2 The right of minority protection

This right of capital members:it is talking about part of trade society members which comes in conclusion that with any decision is violated their rights determined with law, statute or contract, and counter such decisions. There are authors that this right of minority protection relate with called "report of faith", because by invoking in courtesy and faith this report must regulated in such way even when are in question reports between members of trade society. The Croatian law regulated this right in article 450, where is talking about possibility of members which has until 10% of capital, to present claim in court with purpose of revizion appointment with purpose that the same to control last financial report (Ledič, 2002).

Solution for enurement of shares in minority which represent at lesat 5% of total votes in gjeneral assembly is regulated with article 88 of the Law, which regulates issue of solucion of claims from partners of minority.

### 5.3 The right on more deposits or special rights

With contract for establishment of society, for several reasons, to any member of society can be given any special right as example the biggest number of votes in report with height of deposit despite ther deposits in society, the right of veto in some decisions of directing board of society etc. Base of these rights is in the contract itself of establishment of society and can be changed only with cange of contract (Vasiljevič, 1993). Also croatian author Lediq, foreseen possibility of knowledge of such right, but withdraw the warning that the same can be foreseen with contract of statute in contrary, can not produce legal effects for society (Ledič, 2002).

### 5.4 The right on claim against members of society (*actio pro soci*) and against itself society dhe (*actio pro societate*)

It means the right of society member to raise claim against another member, which has not fulfilled his obligations against society and the right to present claim against society respectively claim against bodies of society (Vasiljevič, 1993).

## 6. Recommendations/Conclusions

In the conclusion of this thesis, we can found conclusions which can be as follow:

The right of shareholders in limited liability society, belongs efficas protectionm which is in the level of legislative arrivals and practical arrivals in region and abroad. It has tendency of further advancing, by making efforts continuously for equality with the practices of legislation and practices of EU members and developed places. It is remained the duty of legislative bodies, court and administrative bodies and doctrine duty to take necessary actions for further advancing until the full arrival of abovementioned place standards.

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