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Application of "Piercing the Corporate Veil" Doctrine in the Ukrainian Law

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Abstract:

Purpose: *In the article, authors develop a structure of applying the gaps of corporate law and the possibility of restricting all possible structures of the legal field in Ukraine. The functioning of corporate law is always exercised according to the principle of the company's greatest possible involvement in the employee's everyday life. There is always differentiation emerging, which determines to what extent the existence of corporate spirit and ethics are needed within the society.*
Design/Methodology/Approach: *The method of comparative law was used as the subject of the study, which enabled us to compare the customary rules of law with specific corporate law rules. Additionally, it is appropriate to apply the historical method, which fully reflects that the article elaborates the historical aspect of the development of the studied phenomenon as well as the formation of the holistic component.*
Findings: *The article implements the aspects of managing the legal regulation of corporate law on the basis of modernizing separate provisions of the legal area of a social environment.*
Practical Implications: *The perspectives of applying the corporate law provisions in the state's economic development can be defined as the conclusions of the study.*
Originality/Value: *The authors clearly demonstrate the obligation to implement the provision that stipulates that the corporate law, in case its principles are violated, has still to be oriented at understanding the specificity of its application in commercial institutions.*

Keywords: *Responsibility, corporate veil, piercing the corporate veil, control.*

JEL codes: *K15, K20.*

Paper Type: *Research article.*

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1. Introduction

The satisfaction of social needs as the goal of entrepreneurial activity cannot be legally fixed as its sign, although it is a condition for profit through satisfying public demand. The situation described quite often leads to all kinds of abuse, because the attempt to maximize profits forces entrepreneurs to commit various violations (Balouziyeh, 2013). That is why, under the present conditions of reforming Ukrainian legislation and developing certain branches of law, the question of reconsidering the existing foundations of the institution of liability of legal entities arises with regard to a possible deviation from the principle of limited liability enshrined in the legislation, which in the current Ukrainian realities of total struggle against corruption and the desire to improve national legislation, increases an importance and plays a fairly important role in the regulation of entrepreneurial relationships. Therefore, it is clear that the elements of "piercing the corporate veil" ("PCV") doctrine are to be found in the mechanism of business relations regulation.

2. Methodology

In this study we used the general academic methodology of systemic analysis to consider the responsibility of the controlling persons as an independent institute of corporate law as well as the method of structural functionalism to explore the interaction of the studied category with other institutes of civil law (material or civil liability) and other areas of law (predominantly, law on procedure and arbitration) and also the connection with the economic reality (some methods of economic analysis of law are used). During the preparation and analysis of legal information, we used the empirical and theoretical studies of national and foreign authors. The present paper was prepared using special methods of researching of legal phenomena: technical (studying legislative technique and defining the categories studied), comparative legal (studying static legal categories) and comparative historical (studying the dynamics of development of legal institutes).

2.1 The Concept of Corporate Right

The corporate right to participate should not be confused with the right to participate in the corporation as the latter is not a subjective right, but an integral part (element) of legal capacity. Legal capacity as "a general right" is a pre-requisite of specific subjective rights that can be abused, and the perpetrator not always causes harm relying on their subjective right, which is absolutely essential in order to qualify the violation as an abuse of right (Makhinchuk, 2017). For example, from the point of view of dogmatics, the actual beneficiary, who informally influences the actions of the nominal participant and director of the company under their control, juridically has no legal connection to them, if the law does not directly establish the contrary, and, therefore, has no subjective rights.

Moreover, the situation where the person controlling the company harms creditors can be called conditionally abuse of law. Since the subjective rights of the controlled company, which has its own legal personality, do not belong to its dominant participant de jure. Thus, the abuse of right ends where the direct violation of law begins, which is not based on the perpetrator's subjective right, i.e., a delict sensu stricto. Secondly, it is advisable to avoid the spread of norms related to the prohibition of right abuse, not to take this concept to its extreme of the times of socialism establishment, especially with regard to relationships that can be regulated in other way i.e., directly. We shall try to substantiate this point with reference to the present-day national civil legislation.

2.2 The Concept and Essence of the "Piercing the Corporate Veil" Doctrine

The CV is a phenomenon that separates the assets of a legal entity from the assets of its founders (participants) or controlling persons and makes it impossible to bring the latter to liability for the debts of a legal entity. In practical terms, the "PCV" doctrine should be scrutinized from two positions of civil liability; as the liability of a person controlling the corporation for his/her debts and as the responsibility of the parent company (controlling) for the debts of the subsidiary (controlling) enterprise (Habegger, 2002). In the first case, it is a question of the necessity of identification of the controlling person who actually may give instructions and thereby determine the directions of activity of a legal entity whose actions or inaction could have negative consequences for a legal entity, resulting in a situation where it is impossible to satisfy the requirements of creditors. In the second case, it is the prosecution of the parent company for the subsidiary's debts owing to the obvious situation in which the actions of the controlling company led to the insolvency of the controller, which also led to the inability of the creditors to satisfy their claims at the expense of the debtor's assets.

"PCV" doctrine is worth being viewed in the overall context of combating the abuse in corporate relations and can be considered as a kind of a supplement to the norms of the written law, which also provides the possibility of the actual deprivation of the members of the company (partnership) of their limited liability privileges under the certain circumstances. "PCV" is already a fairly permanent legal structure in many foreign countries and it is believed to correspond to "piercing/lifting the CV" in English and American law, to "Durchgriffshaftung" in German law, and "Doorbraak van aansprakelijkheid" in the Dutch legal system (Bryson *et al.*, 2017).

Today, the "piercing the CV" and "lifting the CV" terms are used by the judiciary system as identical, interchangeable, possibly equivalent and designating the same process terms. However the English court has at a certain point differentiated these notions by suggesting the use of the term "PCV" (piercing) to denote the rights/obligations or activities of the company as rights/obligations or the activities of its shareholders, and the term "lifting" the CV or looking behind it — to denote the company ownership with a certain legal purpose. The "PCV" doctrine is complex.

3. Results

3.1 Reasons for the PCV Application

The application of the "piercing/lifting the CV" doctrine, "PCV" means the negligence of the separate legal personality of the legal entity and the limited liability principle. The common practice in applying the "piercing of CV" doctrine by foreign courts is the assertion that the court has no right to pierce a CV based solely on the interests of justice. Attempting to systematize the various criteria used by the courts to remove the CV, foreign lawyers singled out the "alter ego", "instrumentality" and "agency" doctrines which in the general sense are part of the "PCV" doctrine. Allowing the widespread usage of PCV doctrine may violate the fundamental principles of civil law that manifest themselves in the limited liability of a legal entity and its separation. So, this doctrine should be the exception rather than the rule (Kuntz, 2018).

"Alter ego" doctrine is the most common reason for the removal of a CV. The essence of this doctrine is that under the condition of availability of certain facts the courts may remove the CV, having first established that the legal entity is "alter ego" of its founder and is created to meet his personal needs or to commit any unlawful actions. In this case, the grounding being available, the creditor has the right to claim that the owner of the legal entity is the "alter ego" of his company, that is, the owner of the company (the founder, the participant) and the company itself is the same subject of law. In cases where a legal entity is used to cover the business of its shareholders, officers or directors, the legal entity is considered "alter ego" of the named persons. Consequently, the concept of "alter ego doctrine" is a doctrine of the legal identity of a legal entity and its participants (Hopt and Pistor, 2001).

3.2 Difficulties in Applying the "PCV"

3.2.1 Distinguishing unlawful behavior between concealment (cover) and evasion (falsification)

One of the peculiarities of the "PCV" doctrine is that most court judgments on the need of removing the CV are set out in the form of an unofficial judge's opinion (obiter), if the CV has not been removed in the court decision itself. At the same time, the greatest difficulty in applying the "PCV" doctrine lies, i.e., in determining the corresponding unlawful conduct. Addressing to such formulations as "cover" or "falsification" in court decisions puts too many questions in terms of the uniqueness and almost impossibility of their normative consolidation in the normative legal acts of the appropriate grounds for the possibility of usage of this "PCV" doctrine. Absolutely two different principles are laid in the basis of these multifaceted terms, and the confusion in dealing with the relevant cases is due to the inability to distinguish clearly between them. For convenience, they may be called the principle of concealment and the principle of evasion.

The principle of concealment is believed to be legally unoriginal and may not always be the reason for PCV (Hopt and Pistor, 2001). That is, the mediation of the company or, perhaps, several companies in order to hide the real owners (controlling persons) allows to recognize them in exceptional cases, assuming that their identity is legally significant. In such cases, the court does not neglect the "veil", but just looks behind it to reveal the facts hidden by the corporate structure. According to the principle of avoidance, the court may neglect the CV if it is established that the company was created in order to evade fulfillment of obligations and that such a structure is used by the controller for personal profit (Makhinchuk, 2012).

The principle of evasion determines that the application of corporate law is admissible only in the conditions when there is a possibility to apply civil law and, consequently, it is necessary to provide certain guarantees that the right will be implemented in principle. In this vein, we say that every participant of legal relations can become a subject of law for a limited period, and this thereby will form an integrated structure of overcoming the complexity of development of the legal phenomenon.

3.2.2 Differences in application of the "PCV" doctrine due to the country

The application of the "PCV" doctrine in various foreign countries has its differences and features that are determined by the country's belonging to one of the two legal systems: Romano-Germanic or Anglo-Saxon (Bryson *et al.*, 2017; Khorin *et al.*, 2018a, 2018b; Haar, 2000; Habegger, 2002; Peng and Chang, 2008, Rajput, 2016).

Anglo-Saxon system of law courts in most cases bring the controlling persons to the company responsibility (founders, participants) while removing the CV. The countries of the *Romano-Germanic legal family*, besides bringing the company founders and participants to responsibility for the debts, typically bring the controlling company to responsibility for the debt of the company control (the presumption of responsibility of the parent company for the debts of the subsidiary). The common practice in many foreign countries in the application of the "PCV" doctrine is the statement that if persons who have the ability to control, determine the actions of a legal entity, acting unfairly and unreasonably in the interests of such a legal entity, they are liable for damages, caused by their illegal actions or inactivity. At the same time, the owners of the legal entity or persons who manage the legal entity (direct directors), not only can affect the main directions of its activities, but also directly involved in the management of assets of a legal entity, defining the main directions of activity of such a legal entity (Corlett, 2013).

3.2.3 Vague criteria for the corporate law usage

Currently, there is no shared vision among the scholars and practitioners as to which criterion is to be used to unify the facts based on which the court justifies its decisions by considering the relevant categories of cases. In particular, the basic idea that corporate law should take hold by way of developing internal regulations, and the admissibility of separate provisions can be approved by court, can be seen in the work (Kuntz, 2018). The authors of the article, iter alia, identify the judicial authorities as a

possibility for corporate structures to bring their differences to a single denominator. Some researchers consider the main concepts of corporate law enforcement through potential problems that can be solved only on the condition of pre-trial settlement of the majority of disputes (Kuntz, 2018). This postulate is adapted in the work (Nygh, 2002), where similar provisions and constrains for judicial relationship of transnational corporations — all this is determined by a unified structure, which implements development vectors in the direction of working in the local legal environment. The authors of the paper (Peng and Chang, 2008) elaborate the abovementioned provisions basing on the example of local administration bodies to manage the corporation, whereas in the paper by Abramov (2015) the author defines the economic contents of certain legal instruments.

Further, the work of Rajput (2016) presents perspectives that judicial authorities could adjudicate corporate disputes only on the conditions of compatibility of jurisdictions. An even more uncertain situation comes with the circumstances (criteria and tests) that the court takes into account while PCV, since it does not have a general, unifying principle that would be taken as a basis for the application of this doctrine (Fleischer, 2006). The mechanism of applying the "PCV" doctrine mostly depends on each case according to the criteria defined in the various tests. It is believed that the three universal criteria used to enable the court to remove a CV are:

- the obviousness of dominance over the company and its control by persons who, by their actions or inactivity, damage the company and use the latter with an unlawful purpose;
- a causal link between the unlawful conduct and the negative consequences (Khorin *et al.*, 2018b);
- the availability of control, economic dependence, unlawful actions and the causal link between the activities of the parent enterprise with respect to the subsidiary and the damage to the latter.

These are the main criteria for the application of the "PCV" doctrine regarding the possibility of attracting a parent company for subsidiary debts. It is problematic to prove the existence of instructions from the parent company regarding the subsidiary, as they are usually not issued in writing.

The control criterion is closely related to the "PCV" doctrine. The development of the company's activity is accompanied by the increased role of the international integration in the economic sphere and sets certain requirements to the uniformity and clearness of the principles of formation and algorithms of calculation of profit, tax base, investment terms and capitalization of the funds earned (Akhmetshin and Osadchy, 2015). American courts pay particular attention to the factor of inadequate capitalization within the "PCV" doctrine. As part of the "PCV" doctrine, the abuse and control should be directly related to the fact that the corporate structure is used by the owner avoid liability. In deciding on the merits of the case, in terms of the possibility and need of PCV, in each case, courts use new criteria and tests depending

on the peculiarities of the case, which means that the criteria used by the courts in previous similar cases are not mandatory.

Therefore, the criteria for piercing a CV are not exhaustive and can be supplemented taking into account the new circumstances that justify the decision (Haar, 2000). To pierce the CV, you must first establish and confirm the degree of actual, not the potential, control of an individual in a corporation, and only after that establish and prove the causal link between the actions and the negative consequences. In particular, the definition of supervisors is a certain prerequisite for prosecution within the application of the "PCV" doctrine. Subjects being able to control the corporate structure (controlling person) can not only be the direct owners having created the corporation, but also the directors, shareholders and other participants who have the opportunity to determine the directions of the corporation's activity and influence the decision making, thereby implementing corporate structure control.

The causal link between the actions or inactivity of the controlling person and the actual negative consequences is the main circumstance to be proved in the application of the "PCV" doctrine. The damage caused to the corporate structure, particularly if this was the result of obtaining the relevant instructions, i.e., the controlling person rights abuse must be proven (Khorin *et al.,* 2018b). The identification of the controlling person(s) of the corporation with an aim of bringing it (them) to responsibility, if unfairness and wrongfulness of their actions in the performance of their duties, which led to the impossibility of the corporation to meet its obligations, is proven, is a rather effective way of protecting the creditors' rights against unfair debtors within the application of the "PCV" doctrine, since the consequence of establishing the identity of the ultimate beneficial owner should be a considerably simplified procedure for the imposition of arrest property of such persons in the cases provided for in the legislation (Cortenraad, 2000).

3.3 Review of Ukrainian legislation in Terms of Elements of "PCV" Doctrine Application

Aiming at lowering the level of corruption in the country, the following legislation acts have recently been adopted: Law of Ukraine "On amendments to certain legislative acts of Ukraine as for the identification of final beneficiary entities and public figures" (Bulletin of the Verkhovna Rada…, No.46) and "On amendments to some legislative acts of Ukraine concerning the maintenance of the national anti-corruption bureau of Ukraine and the national agency for prevention of corruption" (Bulletin of the Verkhovna Rada…, No.43) which amend a number of normative legal acts aimed identification of ultimate beneficial owners of legal entities. In the context of the necessary additions it comes to the Commercial Code of Ukraine (hereinafter – the CC of Ukraine, 2003), the Code of Ukraine on administrative offenses (Bulletin of the Supreme Council… No.51), the Law of Ukraine "On state registration of legal entities, individual entrepreneurs and community groups" (Bulletin of the Verkhovna Rada…, No. 31-32).

According to Art. *641*, "Ultimate beneficial owner (controller) of the enterprise" of CC of Ukraine, enterprises, other than state-owned and municipal utilities, are required to establish their ultimate beneficial owner (controller), regularly update and store information and provide it to the state register in the cases and in the amount provided by law. In accordance with the Law of Ukraine *"On prevention and counteracting the legalization (laundering) of proceeds from crime, terrorism financing and financing of mass destruction weapons proliferation"* (Bulletin of the Verkhovna Rada…, No.50-51) the ultimate beneficial owner (controller) is the natural person which, has the right to exercise a decisive influence on management or business operations of the legal entity irrespective of the formal ownership, either directly or through other persons, in particular through the implementation of the right of ownership or using all assets (funds, property, property and non-property rights) or their significant share, the right to decisive influence on the composition formation, the results of voting, as well as the actions providing the ability to determine the conditions of economic activity, provide binding instructions or perform functions of the controlling body, or the person who has the ability to exercise influence through direct or indirect (through other natural or legal person) owning of one entity on its own or jointly with associated natural persons and/or legal entities of 25 or more percent shares in the share capital or voting rights in a legal entity.

The ultimate beneficial owner (controller) cannot be a person who has a formal right to 25 percent or more of the charter capital or voting rights in a legal entity, but is an agent, a nominal holder (nominal owner) or only an intermediary in relation to such a right. Data that enable to establish the ultimate beneficial owner (controller), is an information on the individual including the name, first name and patronymic (if any) of the natural person (natural persons), the country of his (their) permanent place of residence and date of birth (Danling, 2019).

As for the Code of Ukraine on administrative offenses, there is an addition to Art. 166 11 cl. 5, which provides for the imposition of a fine on the failure of a legal entity to provide the state register with information on the ultimate beneficial owner (controller) of the legal entity as of the head of a legal entity or a person authorized to act on behalf of a legal entity (executive body), as provided by the Law of Ukraine *"On state registration of legal entities, individuals, entrepreneurs and public units"* (Bulletin of the Verkhovna Rada…, No.31-32). In view of the changes related to the identification of the ultimate beneficial owner, it is worth saying about the responsibility of individuals who are actually able to exercise the decisive influence on the management or business operations of the legal entity, either directly or through others, while defining the conditions for economic activities and giving binding guidelines.

Accordingly, such a person could be prosecuted under the condition if it is proven dishonest in the performance of duties (Schulz and Wasmeier, 2012). Given the foregoing, there is a need to talk about the possible consolidation of the provisions on the status of the ultimate beneficial owner and the possibility of bringing him to justice

as by the Civil Code regulations at Ukraine according to the Law of Ukraine *"On prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing and mass destruction weapons financing"*. Of course, we need substantial arguments to support the expressed position that cannot be determined within a scientific work, but they will be the basis for further research on the said issues.

Elements of "PCV" doctrine can be found in Art. 126 of Commercial Code of Ukraine. In particular, in paragraph 6 it is stated that if the corporate enterprise, through actions or inaction of the holding company, turns out to be insolvent and is declared bankrupt, the holding company bears subsidiary liability for the obligations of the corporate enterprise. In the context of the above it is worth recalling that insolvency is the insolvency of the debtor to fulfill after the set period the monetary obligations to the creditors in no way other than through the restoration of its solvency. As is known, bankruptcy is recognized as insolvency of the debtor to restore its solvency through the procedures of readjustment and the agreement of the world and to repay established in the manner prescribed by law, the money claims of the creditors in no way other than through the application of the liquidation procedure (Nygh, 2002). In this context, the debtor is a legal entity, an entrepreneurial entity or an individual on obligations that appeared in the physical entity in connection with the performance of its entrepreneurial activities, unable of fulfilling within three months its monetary obligations on the arrival of a specified term for their fulfillment, which is confirmed by a court decision and entered into legal force and the decree on the enforcement of executive proceedings, unless otherwise provided by law (Sheehy *et al.*, 2009).

Elements of "PCV" doctrine also can easily be found in the individual provisions of the Law of Ukraine *"On restoration on debtor's solvency or recognition him bankrupt"* (Bulletin of the Verkhovna Rada…, No. 31). In particular we are talking about item 5, Art. 41 of the law, which clearly states that in the event of bankruptcy of the debtor through the fault of its founders (participants, shareholders) or other persons, including the fault of the debtor's head, which are entitled to give instructions binding on the debtor or have the opportunity to determine its actions in other ways, the founders (participants, shareholders) of the debtor-legal entity or other persons may be entrusted with subsidiary liability for its obligations in the event of insufficiency of the debtor's property.

Therefore, the law establishes the right to claim demands against third parties, which bear subsidiary responsibility for the obligations of the debtor in connection with bringing it to bankruptcy in accordance with the legislation. In addition, within the framework of applying the bankruptcy procedure to the debtor, which is liquidated by the owner (Article 95), it is provided that if the property of the debtor-legal entity for which the liquidation decision is taken is not sufficient for the satisfaction of creditors' claims, the legal person is liquidated in the manner, provided by the present law. In point 6 of the same article it is written that the owner of the debtor's property (the person authorized by him), the head of the debtor, the chairman of the liquidation

commission (liquidator) who committed the violation of these requests, are jointly and severally liable for unsatisfactory claims of creditors.

An additional argument for the benefit of existence in the Ukrainian legislation the elements of "PCV" doctrine can be found in the Law of Ukraine *"On banks and banking activity"* (Bulletin of the Verkhovna Rada…, No. 5-6), which defines control as an opportunity to exercise a decisive influence on the management and/or activity of a legal entity through direct and/or the indirect ownership of one person alone or jointly with other persons of a share in a legal person that corresponds to the equivalent of 50 or more percent of the authorized capital and/or voting legal person, or independent of the formal ownership the opportunity to exercise such influence on the basis of an agreement or in any other way (Khorin *et al.,* 2018a).

The law defines the significant participation as a direct and/or indirect ownership by one person alone or jointly with other persons of 10 and more percent of the authorized capital and/or voting rights of shares, legal person land shares or independent of the formal ownership opportunity of significant influence on management or activities of the legal entity. A person is recognized as the owner of a mediated significant participation, regardless of whether the person exercises control of the direct owner of the participation in the legal entity or the control of any other person in the chain of ownership of the corporate rights of such legal entity (Peng and Chang, 2008).

The law of Ukraine *"On amendments to certain legislative acts of Ukraine on improving the system of individuals' deposits guarantee and the withdrawal of insolvent banks from the market"* (Bulletin of the Verkhovna Rada…, No. 43) refers to following changes. Part two of Article 80 of the Commercial code of Ukraine was supplemented with the words "except as provided by law". Therefore, there are provisions in accordance with which the joint stock company is the public company that has a charter capital divided into a certain number of shares of the same nominal value and liable for obligations only by the property of the company, and shareholders bear the risk of losses associated with the activities of the company, within the value of the shares they are entitled to, except as provided by law. Point 2 of article 152 of Civil code of Ukraine (Bulletin of the Verkhovna Rada…, No. 40-44) is supplemented with the words "except for cases set by the law".

Therefore, there is a provision according to which the stock company is liable for its obligations with all its property. Shareholders do not answer for the obligations of society and bear the risk of losses associated with the activities of society, within the value of shares held by them (except as required by law). Paragraph 5 of Article 52 (Precedence and procedure of satisfying the requirements of banks, payment of expenses and payment procedures) of the Law of Ukraine *"On the system of ensuring individuals' deposits"* (Bulletin of the Verkhovna Rada…, No. 50) reads as follows: *"5. The fund or authorized person of the fund in case of insufficiency of the property of the bank addresses to bank contact person, whose acts or omissions resulted in the infliction of damage to creditors and/or bank, and/or related persons by the bank,*

which is the result of actions or omissions directly or indirectly received property benefit, with a claim for compensation for damage caused to the bank. In case of refusal to satisfy such requirements or to comply with the requirements within the period prescribed fund or by an authorized person fund, the fund is drawn with such requirements in court".

Individual elements of "PCV" doctrine are found in Ukrainian Tax Code (Bulletin of the Verkhovna Rada…, No. 13-14; No. 15-16; No. 17). Tax code standards of Ukraine mention the profit acquirer (the beneficiary): the beneficial (actual) recipient (owner) of income for the purposes of applying the reduced rate of tax under the rules of international agreement of Ukraine to dividends, interest, royalties, compensations, etc. of non-residents from sources in Ukraine is considered to be the person entitled to receive such income. While beneficial (actual) recipient (owner) of income may not be legal or natural person, even if such person has the right to receive income, but is an agent, nominee holder (nominee) or is just an intermediary with respect to such income. This allows us to identify the main criteria for the possibility of bringing to responsibility the founders (participants), but actually it is on the factual controllers and as a consequence, the application of "PCV" doctrine in the Ukrainian legislation.

It is a question of the right to give binding instructions to the debtor or the possibility to otherwise determine its actions if such actions have resulted in negative consequences (Rajput, 2016). If the founders (participants) have taken illegal decisions on the legal entity, the "PCV" doctrine can also serve as a preventive method that will protect against various reputational risks. The company's reputation is not only a predetermining factor from the point of view of its customer, but also a powerful motivator for employees (Akhmetshin *et al.,* 2018).

There is no clear position of the legislator in the part of possible identification of the ultimate beneficiary, disregarded the Civil Code of Ukraine. Because the existing controversy between business executives and civils about the legal nature of the business relations in Ukraine has lasted for more than a year, so making no emphasis on the identification of the legal nature of business relationships and the determination of their proper place in the system of legislation. The provision of Art. 96 of the Civil Code of Ukraine, namely, p. 3 and p. 4, clearly prescribe that the participants (founders) of the legal entity are not liable for the obligations of the legal entity and the legal entity is not liable for the obligations of its participant (founder), except the cases provided for by the constituent documents, and the law. Art. 1172 of the Civil Code of Ukraine (2003) must be considered, according to which it will be borne by the legal entity (employer) as for their own actions (Jurkevičius and Pokhodun, 2018).

Legal entity meets the participants (founders) liabilities, which are associated with the project, only in case of the approval of their actions by the relevant organ of the legal entity. That is, according to Art. 96 of the Civil Code of Ukraine, there are two grounds on which the participant (founder) shall be responsible for the obligations of the legal entity and vice versa: unless such liability is provided by the constituent documents,

and the law, and if there is a confirmed fact of approval of the actions of participants (founders) by the relevant body of the legal entity.

4. Conclusions

Summing up, let us consider the following important points, further analysis of which will make it possible to develop outlined in the framework of the concept of applying the "PCV" doctrine in the Ukrainian law. So, despite the general novelty of "PCV" doctrine for the Ukrainian legislation actually its elements are fixed at the level of current legislation norms supported by the wording of certain provisions. In the current Ukrainian realities of total reformation of the legislation it is necessary to insist on final beneficiaries to be personally responsible for the acts or omissions in relation to the legal entity that has led to the inability to meet the responsibilities by the latter. Further legislative initiative should be aimed at strengthening the responsibility of the said persons. Although the updated legislation obliges to identify the ultimate beneficial owner is more connected with taxation, it is possible that later such identification will be an effective and quite an efficient tool in the creditors' hands to search for, arrest the debtor's assets and further prosecution of companies for debts within the doctrine "PCV" doctrine.

The recently adopted Law of Ukraine *"On the National Agency of Ukraine on identification, tracing and management of assets derived from corruption and other crimes",* (National Agency of Ukraine…) defines the legal and organizational bases of National Agency functioning, which is the central body of executive power with special status, which secures the formation and implementation of state policy in the field of identifying and tracing assets that can be arrested in criminal proceedings and/or management of assets, seized or confiscated in criminal proceedings. National Agency, as defined in Art. 9, 10, can be an essential element that would help to enliven the idea of applying the "lifting the CV" doctrine in Ukrainian legislation.

Despite the absence of any formulations both in the doctrine and legislation of Ukraine including the phrase "corporate veil" (CV), "piercing the CV", it cannot be said that there are no elements of "PCV" doctrine in Ukrainian law. It is stipulated that the provisions of Ukrainian legislation contain tools to hold the supervisors accountable for obligations under the protection of creditors' rights, which makes it possible to assert the existence, albeit limited, of "PCV" doctrine in the law of Ukraine. In the future, the domestic legislator must find a reasonable limit in borrowing foreign experience in the application of the "PCV" doctrine so that building on the principles of Anglo-American law, elaborated and used in practice in the application of "PCV" doctrine should not destroy the existing fundamental legal structure of Ukrainian corporate law. Now the possibility of implementing the bases of said concept in Ukrainian legislation requires more detailed investigation and the corresponding justification.

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