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The theory of the legal entity in civil law: concept and value

The problems of definition of concepts and construction of the legal entity, its signs, history of development of institute of the legal entity, formation of concept of the legal entity in historical aspect and value of the legal entity in modern civil legislation are considered in this article. The legal entities are formed in many spheres of public and economic activity. Authors, analyzing the concept and value of the legal entity, come to conclusion that the legal entity is independent and property isolated subject having the rights and duties, his founders, as a rule, don't answer on its debts.

Key words: Civil law, legal entity, concept of legal entity, value of legal entity, historical aspect, founders.

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The beginning of history of the concept of a legal entity should be attributed to the early Middle Ages.

As indicated in the literature, the ancient Romans had a well-developed system of beliefs about legal person in relation to an individual [1; 209].

The concept of the same union was generated in public law as applied to the state, and thereby, the concept of Union (corporation) existed among the Romans only in public, and the notion of the person - only imperious law of [2; 141].

As the unions have property interests and participate in property turnover (ie, were the objects of Private Law), Roman law equated their legal position to persons and the category of the legal person is not used at all.

Whereas, according to L.L. Gervagen «the whole system of the Roman civilized life is significantly determined by the beginning of the individual and at the same time especially relations of every citizen, the picture of medieval life give us a totally opposite traits» [3; 127]. There is not a single person having legal capacity and Union (Corporation).

«The whole life — wrote N.L.Duvernoy, could be described below, opposite the Roman, impersonal feature, where a known and standing nature relations determined by man's belonging to the union, the continuity from generation to generation» [4; 87].

Under these conditions, the task of jurisprudence and legislation are to determine the most right of association and the attitude towards them individual rights, of persons concerned than the rights of individuals as independent units in the hostel.

The medieval glossators developed the concept of the corporation (universitas) as a union, recognized by the State as a subject of rights, and their successors, canonists, distinguished in this connection the concept of «face» and «man» and began to talk about the nature of that person.

One of the first interpretations of the notion of a legal entity gave Pope Innocent IV. He wrote in 1245 that a legal entity exists only in concept and thanks to fiction, it is not endowed with the body, and therefore does not possess will. Only members can act, but not the corporation because the corporation can neither to commit crimes or be Excommunication (impossibile est, quod universitas delinquat) [3; 89].

French bourgeois revolution of 1789, fighting the caste-guild system of feudal society and wanting to ensure the triumph of the principle of individual freedom, forbade any corporation formed on a professional basis, and kept authorization procedure for the formation of corporations that seek to profit. It was essentially limited number of legal forms of the latter. For this reason, the category of the legal entity for several decades has dropped out of the scientific revolution, and was not used in the legislation. French Civil Code (Code Napoleon), which to this day, does not use the concept of a legal entity.

The entire first half of the XIX century. corporations in France and to a large extent in the rest of Europe were created solely in the permitting procedure (registration procedure for the establishment of joint stock companies was introduced in France by the Law of 24 July 1867). The latter third of the century, as noted Duguit was noted in Europe, particularly in France, socialists' emergency traffic intensity, spread to all manifestations of human activity [5; 119].

Accordingly, the end of the XIX century. and the first decades of the XX century. characterized by an active scientific understanding of the phenomenon of the legal entity. The first major scientific study of the

concept of a legal entity was made F.K Savigny in the middle of the XIX century. and went down in history under the name «theory of fiction».

Otherwise its name — the «theory of impersonation». This theory has had a powerful influence on subsequent research and in certain embodiments, is in use today.

Causes of this theory revealed N.L Duvernoy, «If Roman thought clearly imagined the possibility of combining the individual, specific capacity with a person, it is as easy and breaks this bond, reduces man to the category of things or giving personal possession, where the individual is the owner, cannot be called» [4; 128].

Modern thought does not allow this gap, being relegated to the category of human things. But outside of a single person modern civil law is difficult to get along with the concept of face. «By linking the concept of individual time with props and reasonableness will the ability subject, our lawyers, philosophers, theorists have closed their way to explaining the whole range of civil legal effects going beyond the capacity of the individual. Meanwhile, the forms of such legal capacity and personality of collective units, unions, property complexes not only scarce, but infinitely more abundant in us than in Rome» [6; 331].

From this it follows logically are «theory fictions»: because, on the one hand, will, consciousness, i.e., properties entity which has the only person individual human being, and on the other hand, life gives many examples of how property rights do not belong to the individual, and the union of people, corporations, the legislator recognizes the corporation personality traits of the subject.

In other words, the corporation is embodied, personified. In this case, the legislator is aware that a corporation cannot be a person, i.e., resort to fiction. «The theory of impersonation» was perceived by the legislation and at the same time been friendly criticism from lawyers. Weaknesses of this theory are obvious: a fiction resorted to only as a result of a temporary lack of sufficient legal technology. If we consider the corporation as a person, so she does not become a person. L.L. Gervagen cleverly reveals the essence of contradiction «theory fictions»: «Question: who is the subject of negro at the corporation? A: The contact with her as with an individual» [3; 131].

But it does not answer the question, says L.L. Gervagen. In addition, there are no limits to impersonate, in addition to the limits of human imagination. Finally, as he wrote E.N Troubetzkoy, «fiction is a fiction, the assumption of something non-existent, meanwhile, attributing rights institutions and corporations, we do not have to invent something non-existent: connecting people in the community, pursuing certain goals, as does the institution with defined functions are very real values» [7; 174].

Once the «subject of rights» — does not the same thing as people, institutions and corporations to name entities - does not mean to create fictions.

Criticized the «theory of fiction», however, gave rise to a number of other doctrines, one way or another is used to explain the concept of a legal entity category. Among them is the idea of impersonation property (K. Belau), the essence of which lies in the fact that the property that serves a specific purpose, for the benefit of the people, by playing the role of actions of the person.

Accordingly, this theory is applicable to the same criticism as the main «theory of fiction».

A number of scholars in the study of this problem, we propose to do without cinate persons subject (A.Brints et al.). There are rights relating to the purpose; legal entities may be allowed (for example, inheritance). Legal entity from the point of view of these scientists have lasting state property management, separate from all other assets. The criticism of this theory is the fact that the subjective right is impossible without a subject, which can only be a man, for objective law regulates relations between people, rather than the relationship between people and not between individuals and not individuals.

In addition, representatives of this theory also cannot do without the use of fictions.

Some scientists have solved the problem of the legal person by a denial of the legal entity. For Example. R. Iering and his followers (in Russia, in particular, N.M Korkunov), based on the fact that the support of the right may be the only person believed that a legal person — no more than a way of existence of the legal relationship of persons within its composition (destinators right).

Purpose entities, wrote N.M Korkunov — the same human interests, but common to a certain group of people, their activities — members of the legal entities (people), or their representatives, their field — the will of individuals. Therefore, the legal rules in place to distinguish between identical interests of a number of individuals considered homogeneous interests as a whole, as one of interest, and the group itself — as a subject of legal relations, legal entity. This is nothing more than a special technique that simplifies the relationship with the people concerned.

In response E.N. Trubetskoy reasonably argued that the number of legal entities there are those who exist independently of the will of the persons, entering into their composition. In addition, members of the legal

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person are constantly changing, but its essence remains. Even if all existing members of that person died, the legal entity would exist and retained their rights [7; 178].

Y.S. Gambarov after the French scientist M. Planoles, denied the existence of several legal entities from other positions: the position that man can be the subject of rights, does not mean that every law must be provided not only as an individual: a form of vesting can be both individual and collective. However Y.S. Gambarov referred to Planiol, according to which, under the name of the legal entity it is necessary to understand the collective property, taken apart from the other and consisting in a non-private property the possession of more or less large group of people. These fictitious entities do not exist even fictitiously... Need the myth of a legal entity to replace a positive concept, which can only be collective property».

On this basis, Y.S. Gambarov ruled out the theory of a legal entity from the teachings on the subject of law, and toss it in the doctrine of public possession of [8; 445].

In the analysis of this theory are convinced that it is independent from the will of its creators we have another fiction: if there is a collective form of ownership of property, other than individual ownership (collective property), it inevitably raises the question of the subject (or subjects) of this possession. The circle is closed.

By some authors the problem of the legal entity was solved by denying the real existence of not only legal, but also individuals as subjects of rights: they both have a clean legal abstraction. For Example, E.N. Trubetskoy, claimed: «a Legal person is not alive, but normative created the norm» [7; 179].

A special place in doctrines of legal entity is the concept of its existence as a real entity with real social relations. This idea became widespread in Germany (O. Guirec,, Dernburg, Regelsberger) and France (L. Misha, P. Solal).

The founder of the organic theory of the legal entity Acting Guirec argued that a legal entity is a special body-spiritual body, the Union of the personality. This is not a product of law and order, and a real body, on which the state influences, but does not call for life [9; 358].

Organic theory comes from the fact that all of collectivity that satisfy the known actual conditions, are legal entities. Any legal entity needs the will to exercise their rights, where there is no will, there is no law. Meanwhile, the real will exist only in humans, so only human individuals and can Express the zero collective entities, and it is possible, if the latter have the appropriate authorities. In this construction the body is nothing, as an individual, passing outside the will of the collective entity. Collegiality in the legal sense are nothing without their bodies. Between the collectivity and the body there is no legal relationship, as they represent a single person. There is one legal entity, collectivity, organized, thinking and willing through their bodies.

This theory has been criticized, and its opponents have advanced various charges, for example, that this theory instead of the «theory of fiction» Savigny puts «another, even more artificial and giving medieval scholasticism fiction of the real existence of those aggregate of persons and property, in which the unity of will and many have nothing more than the sum of individual wills». There were accusations and the «biologization of a legal entity» [10; 358].

Despite criticism, proponents of the idea About. Guirec developed it within the so-called realist theory. In particular, L. Misha and R. Saleilles pointed out: that the human collective has turned into an independent entity, different from the sum of the individual components required: a) the staff of the permanent interest, other than the individual interests of its members; b) the organization concerned, are able to identify the collective will, to represent and protect the common interest; C) the inclusion of staff in the legal environment [11; 299].

Close to this interpretation of the signs of a legal entity or of the conditions of existence of the legal person" gave E. N. Trubetskoy (although, as already noted, he did not support the organic theory). In his opinion, such conditions include: 1) a goal that cannot be achieved by the efforts of individuals and requires joint efforts of several persons; and the goal should be a continuing, constant; 2) the availability of material of the substrate, i.e., those actual conditions, without which there can be achieved a common goal; 3) legal recognition by external legal authority, and this authority is not necessarily a state.

As the material of the substrate, by E.N. The Trubetskoy can act as either property or person, or both. You cannot talk about the existence of the legal person, having neither members nor property, asserted E. N. Trubetskoy, although you may experience it without cash members, i.e., only in the presence of the property. With regard to legal recognition, it is, according to E. N. Trubetskoy, it is possible not only from the state, making occurs the phenomenon of «illegal legal entity» [7; 174].

The modern doctrine of the legal personality of corporations in General is based either on the «theory of fictions» or organic (realistic) or positivist theories of legal entity, almost not making anything new in any of

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them. However, as it may seem paradoxical, still exists today multiplicity of theories of legal entity does not adversely influence the practice of its functioning. The original goal of that faced by researchers of the phenomenon of legal persons, the rationale for the delineation of the property (and the consequent identification of the different property rights, duties and responsibilities of the Corporation and members of this Corporation, as well as third parties. It is the generality of the above goal despite the confusion, combines the theory of the legal entity and allows all of them, in the words of C. N. The Bratus, «perfectly serve the needs of the modern capitalist circulation» [12; 215].

Legal entity appears as the subject of both public and private law, entering into civil, administrative, criminal and labour relations, on its own behalf and is responsible within the framework of these relations in their own property. The challenge for the domestic legal science in the theory of the legal entity in the era of socialism seems to be completely insoluble.

As you know, our country has consistently pursued the idea of the national economy as a single, managed from a Central state-owned enterprises, is included as a link in the apparatus of the state. Under such conditions, strictly speaking, in the country there is only one entity, one entity — the state and private enterprise are the only special economic agencies of the state.

The body has no personality, for he is one with the education, whose organ he is, does not and cannot have any of their individual goals and interests, and its function is that through it operates, according to L. Dugi, «collectivity».

Thus, the body is never a person who has not its own right, but only competence.

However, over time it was found that within this huge state of the syndicate at the abundance of vertical hierarchical relationships can not do without direct horizontal relations between individual economic agencies of the state.

The need arose in the definition of legal personality (personality) of these bodies in relations with individuals selling their ability to work (labour legal personality).

In the period of the NEP was nominated several concepts of public trust as a legal entity, and they all, one way or another, tried to apply traditional approaches to this concept in the context of Soviet economic reality. These are: a) separate centers of civil rights and obligations; b) a kind of private enterprise, built on the model of capitalist enterprises, the rights of shareholders in which the Supreme economic Council; C) the personalized part of state property.

According to E.A. Vlasic, the legal personality of the state is personified not the property, namely, the state authority as an economic organization. But as a legal entity can only be the owner of the property, trusts and other government organizations are emerging, but still «immature» legal entities.

Thus, the question of the concept and essence of the legal entity is one of the most complicated problems of the bourgeois legal theory, particularly the theory of civil law. The problem of the legal entity the subject of many publications in scientific journals and monographs of civilistas different historical periods and countries. Created a huge number of theories that attempt to reveal the nature of the legal entity, to find him «substrate», to define the concept of law and the relationship of this concept with the notion of an entity.

Recognizing the vast majority of legal entity legal entity, bourgeois lawyers in their research, they inevitably face the question of whether it should be considered as a subject of law and what is subjective rights. A variety of methodological attitudes of the individual authors in addressing the General question of the subject of law to a considerable extent and causes a variety of theories of legal entity. The causes of the Institute of legal entity, as the causes and evolution of the law due to the complexity of the social organization of society, the development of economic relations and, in consequence, of the public consciousness. In the development process of the society of legal regulation of relations involving only individuals as the only subjects of private law was insufficient for developing economic turnover. Lawyers of the Roman Republic discussed the idea of the existence of unions, which had inseparable, separate property and acted in civil circulation on its own behalf. The concept of «legal person» was unknown to Roman lawyers, and its essence they were not studied, but the idea is to expand the circle of subjects of private law through special organizations, unions of citizens, we are obligated Roman law [1; 358].

In the Middle ages presentation on legal entities were still under the influence of the doctrines of Roman law. However, in this age and in the New time structure of the legal entity has been further developed and as a result of the accumulated experience of regulation of relations with the participation of legal entities - the creation of the civil and commercial codes of the nineteenth century. The development of the economy in the late nineteenth century led to the development of the doctrine of legal entities — there was the original research of the problems of legal persons Is the Institute of legal entities increased in the twentieth century.

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This growth was driven by infrastructure complexity and internationalization of business activities, expansion of government intervention in the economy and the emergence of new information technologies. Due to this significantly increases the amount of legislation on legal entities, as well as improving its quality. The improvement of this important and complex social institution, as a legal entity, is almost impossible without serious research. Such studies were conducted throughout the history of legal entities and in the nineteenth century led to the creation of a number of fundamental theories.

The question of who or what is the media properties legal personality is defined as the basic scientific problem, which, in turn, causes the most debate. Soviet legal science has paid serious attention to the study of the theory of the legal entity. In 40–50-ies was created a number of works that laid the Foundation for the modern understanding of this Institute. At that time attention was focused on the study of the legal person state-owned enterprises, however, are made at the same time, the findings have significant scientific and methodological value today. The simultaneous existence of many different theories of legal entity it is possible to explain the great complexity of this legal phenomenon. At different stages of economic development at the forefront some other signs of a legal entity, depending on which of the functions of this Institute prevailed at this stage, the development of scientific attitudes reflected, in General, and reflects the evolution of the institution of a legal entity.

To the question what are the objectives of the legislative regulation of the status of legal entities today, the answer can be given, based on analysis of those functions carried out by the Institute of legal entity:

1. Design collective interests. Institute of legal entity in a certain way organizes, arranges internal relations between members of the legal entity, transforming their will to the will of the organization as a whole, allowing it to function in civil circulation on its own behalf.

2. The pooling of capital. Legal person, in particular this kind of as a joint stock company, is the best form of long-term centralization of capital, which is unthinkable without large-scale entrepreneurial activities.

3. Limiting business risk. The design of the legal entity allows you to restrict proprietary risk of the participant by the amount of contribution to the capital of a particular legal entity.

4. The management of capital. Institute of legal entity creates the Foundation for a more flexible use of capital owned by the same person, in different areas of business. Established legislation on legal entities, the securities and exchanges is one of the means of wealth management in the entire country and therefore is a powerful factor of self-regulation, self-organization of a market economy, contributes to the internationalization of economic life (Appendix a).

The legal definition of a legal person enshrined in paragraph 1 item 33 of the Civil Code of the Republic of Kazakhstan: «a Legal person is an organization which has the right of ownership, economic jurisdiction or operational management of separate property and meets this property for its obligations, may on its own behalf, acquire and exercise property and personal non-property rights and obligations, and be a plaintiff and defendant in court. A legal entity must have its own balance sheet or budget (Annex B).

The definition is more than traditional. Compare, legal entities recognized organizations that have separate property, may in its own name acquire property and personal non-property rights and bear responsibilities, to be plaintiffs and defendants in court, arbitration or in the court of arbitration (article 23 of the civil code of the Kazakh SSR [13]). Another option: «a legal person is an organization, which owns full economic management or operational management of separate property, is liable for its obligations with this property and is in court, arbitration court or arbitration on its behalf. Legal entities may have had a social and moral rights and responsibilities» (paragraph 1 of article 11 were).

Thus, the proposed new Code, the definition in principle preserved the idea and the spirit as the civil code of 1963, and the basics of 1991. As before, we see mention of the possibility of acquiring a legal entity with rights and obligations on its behalf, if they have a legal standing. Also, following the principles in the definition of «moved» and rule on the liability of a legal entity separate property on its obligations. As noted by A.P. Sergeev, Y.K. Tolstoy, «...one is tempted to conclude that this definition, having stood the test of time, adequately reflects social realities. But is it really» [14; 215].

In our opinion, this definition is not the most successful, if only because it consists exclusively of signs (and external) and does not reveal the meaning, the essence of a legal entity. In the Civil Code of 1994, for the first time in the history of Kazakhstan law basically a codification of the civil law contains explicit system of rules on legal entities; didn't know the previous codification of both Soviet and pre-revolutionary periods. The code establishes the fundamental basic provisions on which is based the subsequent legislation on specific types of legal persons. This Code introduces absent in earlier legislation is extremely important for

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the sustainability of civil turnover principle of a closed list of legal entities, according to which a legal entity can be created and maintained only in such legal form, which is directly provided for by law. For commercial organizations, the list of legal forms provided by the Code, for non-profit contained in the Code list may be supplemented by other laws, the rules of which, however, should not contradict the provisions of the Civil Code and to deviate from established principles. Thus, the subjects of civil relations, along with the physical act of a legal person (article 1 of the civil code of Kazakhstan).

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A legal entity is organized, created and endowed with the rights and duties of the subject property relations. Founders (founders) of the legal entity form to be separate legal entity as the subject property relations from themselves. The practical significance of the Institute of legal persons for property in civil law relations that the founders of the legal entity have the ability to limit your business risk amounts, what they consider acceptable. A legal person is the bearer of new subjective rights, other than the subjective rights of the people behind the organization. Currently, it is a complex concept is in the process of historical formation, and its description change quickly depending on the economic condition of the country and scope. On the basis of the conducted analysis of current legislation of Kazakhstan proposed the following definition of a legal entity, revealing its essence and contains the necessary and sufficient set of attributes of a legal entity. This definition would match all listed in the legislation, the types of legal entities: «a Legal person is the notional subject (not material), created one or an arbitrary number of individuals for the implementation of certain founders (founders) of the target».

Thus, the problem of formation of the concept of a legal person from the past, caused some difficulties. At present, the legal definition of this concept is enshrined in the Civil code of RK, there is enshrined in the General provisions on regulation of activities of legal entities in Kazakhstan.

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Азаматтық құқықтағы заңды тұлға теориясы: ұғымы және мәнісі

Мақалада заңды тұлға құрамы, оның ұғымы мен белгілері, бұл ұғымның тарихи дамуына, заңды тұлғаның түсінігін тарихи қырынан қалыптасуы және қазіргі азаматтық заңнамада заңды тұлға мәнінің келелі мәселелері талданған. Заңды тұлғалар қоғамдық және шаруашылық қызметтің көптеген салаларында құрылады, бірақ осы институттың қажеттілігі мен маңызы, біріншіден, мүліктік қатынастардың субъектісін заңды тұлғаны құрған субъектісінен ажыратуға болатындығымен анықталады. Заңды тұлға бұл дербес және мүліктік оқшауланған құқықтар мен міндеттері бар субъект, оның құрылтайшылары, ережеге сәйкес, оның қарыздары бойынша жауап бермейді деген қорытынды жасалды.

Ш.Р.Мулькубаева, Г.А.Ильясова

Теория юридического лица в гражданском праве: понятие и значение

В статье рассматриваются проблемы определения понятий и конструкции юридического лица, его признаков, история развития института юридического лица, формирование понятия юридического лица в историческом аспекте и значение юридического лица в современном гражданском законодательстве. Отмечено, что юридические лица образуются во многих сферах общественной и хозяйственной деятельности. Авторы, анализируя понятие и значение юридического лица, приходят к выводу, что это самостоятельный и имущественно обособленный субъект, имеющий права и обязанности; его учредители, как правило, не отвечают по его долгам.

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