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STAGES OF DEVELOPMENT OF THE LEGAL NATURE OF A LEGAL ENTITY IN CONTINENTAL AND PUBLIC LAW

Abdulkhaeva Anisa Abdumalikovna
3-year student of Private Law Faculty
at Tashkent State University of Law

Abstract:
The article is a legal comparative approach where legal entities of the continental and the Anglo-Saxon legal family are subject of legal investigation. Its main peculiarities in legal status, criteria of classification and functional purpose are examined.
Special focus is made on the development of the concept of a legal entity: historically it passed the way of debates on the nature of the legal entity (the so-called fictional and realistic theory), and reached to the actual trends of regulation. The activities of this institution concerning the legal systems of post-Soviet states and adaptation to new economic conditions are explored.
The author suggests that by means of the comparative analysis, it is possible to not only define the systemic divergences between the two legal families, but also define the most adequate ways to regulate the activity of the legal entities realizing the significant state functions. The study can lead to the improvement of corporate and administrative legislation through the study results.

Keywords: legal entity, corporation, shareholders' rights, share, company charter, theories of legal entity, essence of legal entity, corporate veil, Krasavchikov's theory, "bubble act", comparative law, public law.

The concept of a legal entity first appeared in Roman law. The Romans believed that not only people, i.e. individuals, but also human associations that participate in civil circulation as a single entity, distinct from the individuals that comprise them, could act as subjects of legal relations. The Romans classified such associations of individuals, distinguished by their independence in decision-making, etc., as unions of representatives of the same religion, unions of representatives of the same

profession, local civil communities, etc.[1] At the same time, Roman law still did not know the legal definition of a legal entity, formulating only its individual characteristics. Therefore, at present it is quite difficult to draw conclusions regarding what approach to understanding the essence of a legal entity the Romans adhered to.[2]

The theory of fiction, which appeared in the 12th century, is historically the first theory of the legal nature of a legal entity. However, it was finally formulated only in the 19th century in the studies of F.K. Savigny, E.R. Birling, etc. Representatives of this theory believed that a legal entity should be defined as a set of individual individuals, by resorting to legal fiction considered as a single person. Accordingly, if we adhere to this theory, it should be considered that the state, using legal fiction in the formation of relevant legislation, actually creates a kind of artificial subject of law, the existence of which is allowed to achieve the goals set by the individuals comprising it.[3]

The legal body is not only a form, but an essential legal institution which institutes a special legal status on organizations. It is an artificially originated entity, which has legal personality of its own and does not depend on the persons who are the members thereof. A legal entity is regarded as a legal "image" because it lives its own life after its founders, is considered a bearer of rights and obligations in civil circulation.

The most important characteristics of a legal person are:

1. organizational unity (there exists a management structure);
2. property enclosure (possession of own property);
3. autonomous endowment of liability;
4. the right to be tried by oneself in the court.

Citing the legislator of Article 39 of the Civil Code of the Republic of Uzbekistan, one can speak about the essential tier for the life of any human:

[1] Dozhdev D.V. Roman private law: textbook. M.: Norma, 200b. 7B4 p.
[2] Gorbunov M.A. Legal entities in Roman law // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2009. No. 5. P. 91-96.
[3] Shilova N.V. Concept and essence of a legal entity. Essay on history and theory: textbook. Manual. Moscow: Statut, 2003. 318 p.

"A legal entity is an organization that possesses or exploits its own property and is responsible with its property and has possibilities to purchase and apply property and non-property rights both, personal and non-property ones, bear the liability, become the defendant and the plaintiff, go to the court in its own person."[4]

This definition codifies the most significant peculiarities of a legal entity that focuses on its most important feature as an independent subject that is participating in civil law relations. In the next research we are going to examine the application of this legal structure within different legal systems.

Having defined what, the term legal entity means in domestic law, we will move on to the regulation of these entities in public law. Thus, in the Anglo-Saxon legal tradition, a legal entity (company) is an artificial legal structure created to participate in property turnover as an independent subject of law. Its essence is determined by two fundamental principles: absolute legal independence (separation from founders) and limited liability of participants.

The key feature of regulation is the absence of a comprehensive regulatory block specifically devoted to related companies (groups of persons). As a result, the legal regime of such structures is formed mainly on the basis of general norms of corporate law, preserving at their core the classical doctrines: separate legal personality and limited liability.

At the same time, the level of legal regulation of corporate groups cannot be recognized as appropriate and sufficient: English law does not contain specialized provisions on holdings and affiliates, which leads to a fragmented application of general principles. Only in exceptional cases (fraud, abuse) do the courts resort to "piercing the corporate veil", remaining within the framework of traditional concepts.

The implementation of Bubble Act in 1720 marked an event in the history of corporate regulation in England. The legislation was implemented in the wake of the failure of the South Sea Company whose operations based on speculations had caused vast financial collapse. The gist of the legislation act was to impose harsh regulations on the incorporation of joint-stock companies - henceforth, such

[4] Civil Code of Republic of Uzbekistan (part one) of 21.12.1995 https://lex.uz/docs/111181#156513.

formation was possible only on the basis of a special royal charter or under the act of parliament.

The impact of the Bubble Act on English corporate law development is perverse. On the one hand, the law did its immediate job, the expansion of any financial pyramids and speculative schemes was blocked. Conversely, its policies placed contrived obstacles in the growth of a legitimate corporate landscape, essentially making the natural progression of joint-stock manifestation of the entrepreneurship dead in the water by a hundred years. It is with the abolition of the act in 1825 that achieved the path to fast development of company law in the times of the Industrial Revolution.

Modern corporate law doctrine is particularly interested in the historical experience of Bubble Act. It is a testament to the fact that excessively restrictive regulatory standards which are aimed at safeguarding the players within the market may achieve the opposite and suppress economic growth. This historical lesson is particularly topical to use in modern debates concerning the search of the optimum compromise between the necessity to ensure safe investment of money and to arrange the conditions, which are conducive to corporate entrepreneurship. Of interest is the fact that much of the principles enacted in later reforms to English corporate law were arrived at with the consideration of the bad experience in regulation created by the Bubble act.[5]

The modern British economy demonstrates a pronounced tendency towards capital concentration through the creation of ramified corporate structures, where groups of companies have become the main market participants. The economic feasibility and legal effectiveness of such a business organization are beyond doubt, but the English legal system continues to be guided by outdated principles, considering each legal entity in a group as a completely independent participant in limited liability relations. Surprisingly, the large-scale distribution of holding structures was not accompanied by an adequate scientific understanding of this phenomenon in English legal

[5] On preventing speculation in shares of trading companies, see: Shershenevich G. F. Course in Trade Law. Vol. 1. St. Petersburg, 1908. P. 404; Scott W. R. The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720. 1910. Vol. 1. P. 436-437; Manchester A. H. A Modern Legal History of England and Wales 1750-1950. L., 1980. P. 348-349; on preventing abuses in the sphere of trading in shares of unincorporated companies, see: Medvedev A. Yu. English Company of the Period of Permissive Incorporation (1720-1825) // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2013. No. 2. P. 115.

doctrine. The only significant study in this area was an analysis of the corporate structure of the thousand largest companies on the London Stock Exchange, which clearly demonstrated the depth of the problem. The results showed that companies from the top 50 list control an average of 230 subsidiaries, and a similar, albeit less pronounced, trend is observed in companies from the middle of the rating (positions 401-500).[6]

This gap between business practice and legal theory creates significant gaps in the regulation of corporate groups, leaving many aspects of their functioning without proper legal registration. This is especially acute in matters of parent company liability, distribution of assets within the group, and protection of creditors' rights. The current situation requires a revision of traditional approaches to the legal regulation of corporate structures, taking into account modern economic realities.

The British legal doctrine is yet to find the coherent account of the concept of the prevalence of groups of companies in the national economy. Nonetheless, a review of the literature makes it possible to distinguish the main drivers of the growth of this type of organization.

It is curious that the same factors are representative of two reverse but related processes within development of English corporate law. On the one hand, there is a liberalization of the corporate form, which appears as a consequence of the decrease in formal requirements to file the registration of companies. It is also true that the legislator prescribes the use of corporate form under some types of activities.

This seemingly weak coherence actually has one purpose, to encourage shrewd business people to construct complicated business ventures. This two-block strategy of the legislator, on the one hand, simplifying the requirements and on the other hand, tightening them ultimately leads to building large networks of interrelated companies, which is consistent with the interests of the business community.

This recent development is an indication of how contradictory the laws of the contemporary business world are. By one side, legal conservatism of the legal doctrine still exists, being in denial of the economic facts of capital concentration. Conversely, a pertinent absence of pervasive regulation of holding structures

[6] Tricker R.I., Corporate Governance. Ch. 5. P. 467.

notwithstanding their effective control is worsened by the atomization of the scientific knowledge of the phenomenon of corporate group.

The English legislative policy can be characterized by the duality of its efforts: liberalization of the corporate form is followed by limited restrictions, and objectively, this complex of measures encourages the formation of sophisticated forms of entrepreneurship. But due to the absence of a special legal regime of group of companies, there are great risks on the participants of the turnover. Distribution of liability in holdings, safeguarding the rights of the creditors, hindering the misuse of the corporate form are key questions that lack a satisfactory answer on a legal front.

The possibilities of the formation of the institution of legal entities in England presupposes the overcoming of this conceptual crisis. It needs to create a special set of rules regarding corporate groups, update the concept of shaking the corporate veil, as well as align the regulation to the effective demands of business.

The English model of a legal entity is still strengthened by the historical advantages of its flexibility and predictability and reacts to the demands of the modern corporate economy by essential adaption to the challenges. The entrenched inconsistencies between legal theory and business practice can be eradicated only by an overall overhaul of the conventional practices.

Having considered the legal nature of the English approach to regulating legal entities, we will move on to the domestic, that is, continental concept of legal regulation of these entities, and our starting point will be the Civil Code of the RSFSR of 1922,[7] since Uzbekistan implemented this Civil Code into its legal framework due to the historical fact of Uzbekistan's location in the Russian Soviet Federative Socialist Republic. While the historical legacy of the Bubble Act demonstrates England’s cautious approach to corporate regulation, the Soviet legal tradition developed its own distinctive conception of legal persons against the backdrop of a socialist economy. This contrast becomes particularly evident when examining the 1922 Civil Code of the RSFSR. The Soviet approach to legal

[7] Civil Code of the RSFSR: adopted at the 4th session of the All-Russian Central Executive Committee of the 9th convocation on October 31, 1922 / Collection of laws and regulations of the Workers' and Peasants' Government. 1922. No. 71.

personality, which emerged just two years after the adoption of the New Economic Policy (NEP) in 1920, reveals fundamentally different philosophical underpinnings than those that shaped English corporate law, particularly with regard to state enterprises and the operational management of socialist property.

The rules which make up the institution of a legal person are gathered in the Chapter Two, which is, Subjects of Rights (Persons) of the portfolio dubbed General Part of the Civil Code of 1922. Moreover, the legal status of individual organizational and legal forms of legal entities (full partnership, limited partnership, limited liability partnership, joint-stock company), which defines the legal basis of such type of legal entities, is determined by the norms included in paragraphs 2-5 of Chapter Ten of the part titled as the "Law of Obligations" of the said code. Chapter 15a Subjects of Rights (Persons) is composed in a straightforward manner; it contains 17 articles, 9 of which deal with the status of citizens, who are called persons by the code, and 8 - with the status of legal entities. In such a way, the Civil Code of 1922 cannot be called to divide the part that is devoted to the subjects of civil rights into parts that can be used to regulate (characteristics of the status) each of the groups of the subjects. Naturally, this can be explained by the fact that the code introduces only two categories of subjects of civil rights and the number of provisions comprising this structural element of this code is not important.

Talking about the content of the institution of a legal entity as of the first half of the Soviet period of Uzbek history, it is necessary to note that the Civil Code of 1922 contained the definition of the concept of a legal entity (Article 13); the rule according to which a legal entity must have a charter, rules or a partnership agreement (Article 14); the rule that the moment of emergence of the legal capacity of a legal entity was determined by specific rules (Article 14); the rules declaring that a civil circulation could be entered only by the bodies of a legal entity, including in cases of using the institution of representation.

The Civil Code of 1922 designated legal entities as associations of people, institutions or organizations which as such, can, acquire rights to property, contract, cause and demand and plead in court (Article 13). Even as per the perspective of norm-setting methodology, the weakness of this legal norm lies in the abstract nature

of the concepts constituting/presenting in it: the concept of association of individuals, the institution, the organization, and the lexical rotation as such.

To be more specific, the Civil Code of the RSFSR, which was legally in force until October 1, 1964 on the basis of the Law of the Russian Soviet Socialist Republic On Approval of the Civil Code of the RSFSR, is already a more extensive and structural-compositional large normative legal act. It is also very clear about the division into big structural pieces - sections, each of which has the serial number and the title. There are chapters, chapters, respectively - articles in each of the sections. This kind of the structure of the code greatly facilitates working with this normative act in comparison with the Civil Code of the year 1922 because there is no uncertainty (large structural units are called sections, medium ones - chapters, small ones - articles). Unfortunately, the legislator was not enough consistent in the question of structural certainty of the Civil Code of 1964. So, in particular, the second part of the code Persons, of interest to us has two large structural units each of which is marked out with a serial number and a title: "1. Citizens", "2. Legal entities". Accordingly, here, the legislator not only repeats the same error of his predecessor (in the Civil Code of 1922 the groups of structural units of the code lack names), but also adds a new one to them: they erroneously do not have the same name. Articles of the Civil Code of 1964 are referred to as articles (whereas now this seems an obvious fact, but after working with the Civil Code of 1922, you realize that there is no need to have doubts on the matter). Civil Code of 1964 articles are in paragraphs (some are numbered). The paragraphs, in general, develop legal norms which follow one another, however, are not identical. In other words, we can say that: "Article 26. Legal capacity of a legal entity.

A legal entity has civil legal capacity in accordance with the established goals of its activities.

The legal capacity of a legal entity arises from the moment of approval of its charter or regulations, and in the case where it must act on the basis of the general regulations on organizations of this type, from the moment the competent authority

issues a resolution on its formation. If the charter is subject to registration, the legal capacity of a legal entity arises at the moment of registration."[8]

From a theoretical point of view, A.V. Venediktov proposed the theory of a legal entity, the theory of a collective. Venediktov connects the legal personality of state bodies with the preservation of commodity-money relations in the Soviet economy. O.S. Ioffe noted that the most important merit of Venediktov and his theory of a collective was the creation of a general doctrine of Soviet state legal entities. The main provisions of this doctrine boiled down to the fact that the civil legal capacity of state bodies is based not only on the unity of state socialist property, but also on the operational management of its constituent parts. In his works, O.S. Ioffe convincingly proves that the position of the theory of a collective receives the greatest support in the USSR.

The merit of A.V. Venediktov in solving a number of theoretical problems of the legal status of state legal entities is undeniable. Thus, scientists drew attention to the fact that, while enshrining in Article 19 the rule that legal entities are state enterprises and their associations transferred to business accounting, the Civil Code of 1922 did not formulate the same general rule for recognizing the legal personality of state institutions. This gave reason, for example, to M.S. Lipetsker to assert that all institutions that are not directly recognized as legal entities are not such, and the state itself acts as the bearer of civil rights and obligations arising from the activities of institutions.[9]

A similar position, although in a more moderate version, was expressed by D.M. Genkin, who proposed to distinguish state budgetary institutions from state administration bodies so that the former would be considered legal entities, while this quality would not be recognized for the latter[10]. In 1954, during a discussion on legal entities, M.O. Reikhel reproduced the views voiced by M.S. Lipetsker, and in doing so received very broad support.[11]

[8] Civil Code of the RSFSR / Bulletin of the Supreme Council of the RSFSR. 1964. No. 24. Art. 407.
[9] Venediktov A.V. State socialist property. Moscow-Leningrad, 1948.
[10] Genkin D.M. Legal entities in Soviet civil law // Problems of socialist law. 1939. No. 1.
[11] Soviet state and law. 1954. No. 8.

O S. Ioffe rightly noted that if we agree with this view, it would be impossible to explain the nature of property relations involving state institutions, which are not directly recognized as legal entities by law, but by virtue of the very system of their organization are capable of establishing these relations. He noted that the most important merit of A.V. Venediktov and his theory of the collective was the creation of a general doctrine about Soviet state legal entities.[12]

It is necessary to note that one of the important steps on the way to the establishment of the theory of legal entities of state, performed by A.V. Venediktov was connected with the establishment of the law of operational management. Considering the problems of the state socialist property, the scientist defined the most actual directions in this sphere, and the right to the operational management was one of those directions. This is what made it possible to justify the matter of such resolution of state legal entities carrying out state-duties functions as vested with property, to establish the symptom of property individuality of a legal subject.

And so we will now outline the theory of organization which is familiar to all O.A. Krasavchikov`s who merits particular attention. The organizational theory contributed by O.A. Krasavchikov is a core contribution to the doctrine of Russian civil laws and it provides a new view of the identifying nature of legal entities pertaining to a complex socio-legal phenomenon. Krasavchikov came up with a unique style because of his interpretation of Article 11 of the 1961 Fundamentals and Article 23 of the 1964 RSFSR Civil Code, he found a way of connecting the real social life and the abstract legal conceptualization.

The main idea of Krasavchikov is actually a conceptual distinction between two things which are really fundamental, namely the legal entity as an organization and its legal personality. An organization in the marxist perspective was a particular social formation i.e. a system of essential forms of the society that through which people or groups combine in order to realize some common end, amounts to a structurally and functionally differentiated whole in the society. When this social entity has taken on particular elements of defining it, it becomes a legal entity and is endowed with: organizational unity, segregation of property, the ability to act in civil

[12] Ioffe O. S. Selected works on civil law: From the history of civilistic thought. Civil legal relationship. Critique of the theory of "economic law". Moscow, 2000.

transactions in its own name, independence of property liabilities and the possibility of taking part in a judicial procedure.

The theory formulated by Krasavchikov was a very sharp reaction towards conventional fictional and realistic theories of legal personality. Though he also denied the two opposites, the position of legal entities as mere legal fictions that appeared under the command of the state and as independent social beings who lived their own lives that depended neither on the state nor on normative form, he offered the dialectical synthesis confirming the reality of the interaction between the normative form and substantial organizational content. The legal personality, according to his model, is the legally established scale of the possibilities and the need of an organization to involve itself in the relations of civil interactions, as well as with other types of legal interactions, which establishes the limits of the legal capacity of an organization.

The specific importance of the approach offered by Krasavchikov is that it attaches great importance to the internal processes that take place within legal entities. His theory emphasizes the necessity to control the manifestation of organizational activity not only outside but also to control relationships within the organization that applies to the relationships between members and the relationships of the governing bodies to the employees. This point of view has had a far-reaching impact on the contemporary Russian corporate law, especially concerning corporate governance and individual liability of control persons.

Although certain criticism (especially in respect of its relative underemphasis of the property side of legal entities) has been made of the theory, this theory still has plenty of relevance as applied to modern jurisprudence. Its value as a method is especially manifested in studying the difficult corporate organization, and business groups, where the organizational conditions are also a significant attribute as important as segregation of property. Modern corporate relations evolve to prove this strategy by showing the need to take into account formal-legal and organizational-managerial sides in regulating the life of legal entities.

Let us move on to the stage of modern development of the legal nature of legal entities in the independent Republic of Uzbekistan. For this, let us turn to the Civil Code of the Republic of Uzbekistan.

In Uzbekistan, the legal regime of juridical persons is defined in an organized manner as Articles 39-46 of the Civil Code present one complex of rules that define main peculiarities, organizational and activity conditions of legal entities. Article 39 provision defines an essential feature of a legal entity as an organization having segregated property under its control or operational management, which allows independent liability responsibilities, exercising of rights and the right to engage in proceedings. A 2025 amendment further giving all legal entities a mandate to have independent financial records further entrenched this definition, even more, reinforced accountability. Under the Article 40, legal entities are divided between commercial and non-commercial organizations. Commercial entities, whose motive is to earn a profit, can be business partnerships, societies, or production cooperatives, non-commercial entities, such as public associations, foundations and institutions, can only engage in limited entrepreneurial activities as long as they do not go against their statutory aims. Both groups are permitted to build unions, which is flexibility of the legislation, which implemented latest changes.

The juridical personality of the entities as described in Article 41, is directly intertwined with the set intentions of them and at the time of their inception (and not any other time) comes to place and it ends only when the liquidation occurs. Activities that are specific might demand licenses, and any disproportion of the rights should follow courses given in the laws covered with the recourse to the judicial developments. According to Articles 42-43, the establishment of legal entities is the process of creating legal entities that have founders (property owners or authoritative bodies) and entail creation a basic document, either a charter or an agreement, describing the governance, profit sharing and functional range of those legal entities. These requirements were standardized by the amendments of 2025 and clear organization and purpose are guaranteed.

Article 44 deals with state registration which is an essential procedure that gives something its legal being and entails its being listed in a register which is accessible to all. Refusals may only be made on the basis of procedural or documentary shortcomings, rather than on subjective determinations of expediency, with the strengthening of the view by an amendment, in 2007. Article 45 establishes the role

of organizational bodies with regard to execution of rights and obligations and they are liable in cases of pursuing actions in bad faith.

Lastly, Article 46 also protects names of legal entities by stipulating that names must be representative of the forms of organizations and organizational activities, it also secures the trade name as exclusive whereas there is also a defined clarity in jurisdiction vis-a-vis the registered location. Collectively, they give rise to a harmonious legal framework that fosters economic activity, holds parties accountable, and is in par with international governance principles, whilst also allowing successful activities on a business front and social front to fit into an organized yet transparent environment.

An examination of the history of formation of the institution of legal entity in the public (England) and continental (Uzbekistan, with references to the legacy of RSFSR) law reveals two opposing tracks of development and identifies the peculiarities of the relevant legal traditions the Anglo-Saxon and the continental. The English law viewed a legal entity as a man-made construct, which were given the effect of a legal person through legal fiction. It consists of two main principles of legality which include its independence on founders and limited liability. Since the late 17 th century, the English model has changed considerably, particularly since the repeal of the so-called Bubble Act in 1825, creating a strong boost towards the speedy evolution of the corporation legislation in the dawn of the industrial revolution. The English model, however flexible and practical it might be, nevertheless, has the drawback in terms of fragmentation of the regulation of the holding structures: there are no explicit regulations on the matter of groups of companies, allocation of responsibility and creditor rights protection, which poses a grave danger in corporate practice. The exceptions to the principle of piercing the corporate veil are used in extremely narrow sense, being narrowed only to the instances of blatant abuse.

Meanwhile, the history of the legal regulation of legal entities in the Republic of Uzbekistan is that since the strictly centralized and ideological vision of the Soviet era (in the light of the norms of the Civil Code of the RSFSR of 1922 and 1964), less strict and more market-oriented vision became the norm to be implemented within the framework of the Civil Code of the Republic of Uzbekistan. Soviet law

envisioned legal entity as the tool of the state economic policy which was revealed, in specific, in the collective theory of A.V. Venediktov and in the organizational theory of O.A. Krasavchikov. These theoretical constructs focused on the inner form of organizational legal entities, their relation to socialist property, and the responsibility on the part of the state.

Instead, modern Uzbekistan legislation is, in its turn, grounded on the concept of the legal subject as an independent subject with a clear definition of separation of property, the right to enter into civil law relations and bear independent responsibility. The legislation of the country provides a strict and comprehensive regulation of the types of the legal forms, the order of their state registration, the managing subjects, the questions of its legal capacity, and liability. New amendments of 2025 have made more focus on the transparency, the financial reporting and the safeguarding of rights of the participants.

Comparative study depicts that English model leaves more freedom and flexibility to the market players although it leads to legal ambiguity in the concept of corporations groups. Meanwhile, the Uzbek system that has experienced various phases of the rigorous centralization today entails a more balanced, ordered and public-type of regulatory framework that guarantees legal stability as well as legal protection of participants.

That is why the experience of Uzbekistan shows the progression form the dogmatism of ideas to the contemporary legal positivism, whereas English system, so rich in history and keeper of the principles aimed at the market, confronts the complications of re-regulation of the principles of law-making to the new models of the corporate integration.

Literature review:

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