

**LEGAL PERSONALITY OF INCORPORATED ENTITIES IN
RUSSIAN LEGISLATION AND TNC**Marat R. Suleymanov¹Guzel A. Valeeva²

Abstract: The goal of any branch of law is the effective regulation of public relations in any area with the goal of streamlining them. For this, it is necessary that the content of legal norms, as in a mirror, reflects the modern development of society and its ties. The past century and the current century have brought a lot to the modern world, and many of these innovations are associated primarily with the process of globalization. The consequence of this was the spread of integration processes, both between states and between business structures. Transnationalism and transnational corporations are natural consequences of the development of the world; they reflect the desire of mankind to unify goods and services. We note right away that by a transnational corporation we mean a complex union of legal and non-legal entities with the ability to combine their resources, experience and knowledge on

a global scale, between which there are stable internal economic ties, consisting of one or more parent companies and separate, but dependent subsidiaries units located in more than two states. This article compares the legal personality of a legal entity under the civil law of the Russian Federation with the legal personality of transnational corporations.

Keywords: transnational corporations, TNC's, globalization, legal entity, private law.

Introduction

The essence of the phenomenon of a transnational corporation in the context of private international law is determined by the place this type of corporation occupies in the specified field of law.

In view of the peculiarities of the rules of private international law,

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which we will discuss later in this article, the category of “legal personality” should be considered, first of all, from the standpoint of civil law, which is the basis for private law relations on an international plane.

Persons with the ability to be carriers of subjective legal rights and obligations are in different positions relative to each other. The legal status of these persons, the scope of their rights and obligations, is determined by their legal personality. It is traditionally understood as a special legal quality, which is established by law and allows a person to be a subject of law.

Also in the legal doctrine, the following definitions of legal personality are found: designation of the subject of law in relation to individual legal relations, the social and legal possibility of the subject to be a party to legal relations, the prerequisite for legal relations; social and legal property recognized by the state for citizens and other subjects of law, allowing them to enter into legal relations [1].

Methods

The concept of “legal personality” appeared in science at the

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beginning of the XX century, it is contained in Art. 6 of the Universal Declaration of Human Rights adopted by the UN General Assembly on December 10, 1948. In accordance with paragraph 1 of Art. 2 of the Civil Code of the Russian Federation, the legislation determines the legal status of participants in civil turnover, the grounds for their occurrence and the procedure for exercising their respective rights, that is, it regulates the legal personality of participants in legal relations.

The content of legal personality is a debatable issue. Some scholars consider legal capacity (the ability of a person to have subjective rights and legal duties) and legal capacity (independently, by their personal, conscious actions to exercise their rights) the parts that constitute legal personality. This point of view is shared by O.S. Joffe, S.S. Alekseev, N.V. Vitruk [2]. Scientists such as S.N. Bratus, A.V. Benedictes identify the concept of legal personality with legal capacity, and legal capacity is considered as a special type of the latter [3].

Passive dispositive capacity - the ability of a person to bear legal responsibility for the offenses committed

- is also considered by some researchers as part of legal capacity, while others distinguish it as an independent element of legal personality.

At the same time, supporters of all the above points of view agree that legal personality is a feature of the subject of law. Firstly, a participant in public relations should be able to have subjective rights and bear the obligations established by law. This feature is the basis of the legal determination of legal capacity in Russian civil law (paragraph 1 of article 17, paragraph 1 of paragraph 1 of article 49 of the Civil Code of the Russian Federation). In order for a person to be a subject of law, it must be: externally separate (for legal entities - a feature of organizational unity and the availability of separate property); personified (availability of means of individualization).

Secondly, in order to be a subject of law, a person must be able to develop, express and implement a personified will. Legal personality does not depend on the desires and will of individuals, but arises only with the help of objective law and cannot be limited or expanded, for example, by agreement or will.

Thus, for the purposes of this article, by legal personality we will understand - the unity of the legal capacity of a person, as well as his name (name), place of residence (location), which are mandatory conditions for participation in legal relations.

According to Russian civil law, the subjects of which are citizens and legal entities, the legal capacity of a citizen arises at the time of his birth and ceases his death (paragraph 2 of article 17 of the Civil Code of the Russian Federation), and legal capacity, which is understood as the citizen's ability to acquire and exercise civil rights through his actions to create civil duties for themselves and to fulfill them, arises in full from the age of majority (Clause 1, Article 21 of the Civil Code of the Russian Federation).

The distinctive characteristic of civil law is that in it the subjects of market relations - business companies and their associations, institutions, public organizations - are in an equal position and are abided by the "single economic law of the market." Therefore, in the paradigm of private law, they are all united under a single category of "legal entity".

In accordance with paragraph 1 of Art. 48 of the Civil Code of the Russian Federation, a legal entity is an organization that has separate property and is liable for it under its obligations, can acquire and exercise civil rights and bear civil obligations on its own behalf, be a plaintiff and defendant in court. Thus, the Civil Code of the Russian Federation puts an equal sign between the concepts of “legal entity” and “organization”.

One of the unconditional signs of the organizational unity of a legal entity is the presence of any constituent document, which would establish the goals of the activity, legal form, structure of the legal entity and other aspects of its activities.

The property of a legal entity must be separated from the property of its founders and others, so that such a person can independently bear civil obligations and responsibilities.

The continental system of law identifies the following features of a legal entity: the presence of a community of persons, voluntariness of creation, commonality of purpose, making and sharing of contributions.

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Outstanding Russian pre-revolutionary jurist G.F. Shershenevich regarding the concept of a legal entity noted: “the legal idea of the subject is caused by the needs of legal technology, which, in turn, are caused by the need to distinguish interests. From this point of view, attacks on the use of fiction by the science of law seem completely groundless. Of course, fiction does not correspond to reality and is not able to explain it, but this is a scientific device that helps to realize the vital task of delimiting interests” [4].

Results and discussion

All theories of legal entities can be divided into two categories:

- theories centered on the phenomenon of fiction (the existence of a real subject is denied);
- theories that recognize the real existence of the subject.

Theory of the collective (A.V. Venediktov) - the collective of a legal entity manages and disposes of its property. Director's theory (Y. Tolstoy) - the essence of a legal entity is expressed in the person making the most important decisions of the parent body / senior officer of the corporation. The theory of

social reality (DM Genkin) - the essence of a state legal entity should be justified: by what objective reasons cause the need for the existence of a legal entity and its use [5].

In development of the theory of fiction K.F. Savigny was developed:

- target property theory (A. Brinz): each legal entity is formed and exists in order to achieve a specific goal. This property serves a well-known purpose [6].

- The theory of collective property (Planiol): in order to simplify the management of collective property, a fictitious person is introduced [7].

I.A. Mankovsky in his article “Theories of the essence of a legal entity: a history of development and modern scientific approaches” emphasizes that the theory of fiction by Carl von Savigny is the most convincing. In addition to many other arguments, he refers to the definitions of a legal entity given in textbooks of Soviet law and concludes that “from 1958 to the present, almost all definitions of a legal entity used by legal science and practical jurisprudence are reduced to listing the main his attributes, which were first formulated in the theory of fiction. These include: organizational

unity; ability to independently act in civil circulation; property isolation, expressed in the ability of a legal entity to own property that is separate from the founders; limiting the liability of participants of a legal entity for its obligations” [8].

Each entity that has these characteristics is endowed with legal personality in accordance with state law.

Moreover, their legal personality is independent of the legal personality of other legal entities. But this definition emphasizes the contradictions between the legal form and the economic nature of the corporation, which may consist of many legal entities. The researchers noted that the design of the legal entity focused on issues, contradictions and trends in the development of legal personality.

According to the theory of an “independent legal entity” (legal entity theory), organizations included in the structure of a corporation are recognized as independent entities of law. Moreover, regulation is carried out at the domestic level, which enables corporations to evade responsibility for the actions of companies included in their structure.

This contradiction was reflected in the preamble of the EU Regulation No. 2157/2001 “On the Statute of the European Company (EC)” of October 8, 2001: “The legal regime for entrepreneurial activity in the Community is still mainly based on national law and therefore it does not correspond to the economic conditions in which such a regime should develop...” [9].

In a situation where, for example, a business company operates in more than two jurisdictions, it is forced to encounter different regulatory procedures, that is, conflict of laws rules. It should be noted that in modern conditions the number of such enterprises is constantly increasing. In a diversified market, entrepreneurs decide that in one state it is more profitable to place one production process, since, for example, this type of work there can be carried out most efficiently or cheaper. Another part of the production is located in the second country, where, for example, there are the best components. The best packaging is made in a third country, etc. This is how international monopolies, giant enterprises, which are

also called transnational corporations, are formed [10].

Thus, the reasons why companies embark on the path of "transnationalization" may seem obvious: the glut of existing markets, the need to enter new markets; search for a market with less or no competition at all; the need to develop unused production capacities; the demand for the product in the foreign market, while in the domestic market the demand for it has finally fallen; the search for ways to diversify production, which helps strengthen the company's position in a crisis; investing in the economy of foreign countries, in production.

Next, we will identify the correlation of the legal personality of legal entities with the legal personality of transnational corporations, as well as disclose the sources on the basis of which we can talk about the legal personality of transnational corporations,

There are different points of view on the structure of a multinational corporation. L.A. Lunts, G.M. Velyaminov suggests that the parent company itself, which has many dependent subsidiaries abroad, is called

a transnational corporation. V.M. Tolstoy believes that such corporations are nothing more than legal entities within the meaning of national law [11].

The Convention on Transnational Corporations, concluded between the CIS countries in Moscow on March 6, 1998, in which Russia does not participate, refers to the category "transnational corporation" as a legal entity (a set of legal entities) formed by two or more parties to the Convention and registered as a corporation [12]. In this case, the legal personality of such a corporation will not differ from the legal personality of a legal entity under international private law, and the set of its rights and obligations will be determined in accordance with personal law. Consequently, the feature of determining the legal personality of transnational corporations in this case is leveled [13].

According to another point of view, which is shared by many jurists and economists, as well as the United Nations Conference on Trade and Development (UNCTAD), a transnational corporation is a combination of legal and non-legal entities. And when looking from this

position, the question arises - does the procedure for determining the legal personality of a legal entity under international private law coincide with the procedure for determining the legal personality of a transnational corporation, and if not, what are the differences?

In order to resolve this issue, it is necessary to determine whether a multinational corporation is a legal entity. In order to answer this question, we must compare whether this type of corporation falls under the characteristics of the legal entity that we examined above.

Summary

If a transnational corporation as a single entity is not registered in any special register, does not have a single legal registration and a single constituent document, and is a combination of different legal forms and mechanisms, then it does not have the organizational and legal unity, unlike a legal entity [fourteen]. Indeed, if we turn to article 1202 of the Civil Code of the Russian Federation, then the characteristics of a legal entity indicated in them, such as, for example, the presence of a certain

organizational and legal form, functioning strictly in accordance with the constituent document, are completely unusual for a multinational corporation consisting of many legal and non-legal entities around the world. Consequently, only constituent parts, divisions of a corporation can and will have legal personality, while a transnational corporation as a whole, which is not a legal entity, as we have just noted, will not have legal personality.

In a sense, we have an unbalanced, distorted picture: despite the fact that the structural parts of the corporation are united, ultimately, by a single goal of activity - maximizing profit - they are not a single subject of private international law. This caused many difficulties in the legal regulation of transnational corporations.

Conclusions

Legal personality in international private law can be defined as the ability of a person to be a bearer of legal rights and obligations in the field of private law, his ability to independently acquire and exercise his rights in the private law sphere with the participation of a foreign element, as well as the

ability to bear responsibility for the offenses committed by him in this domain.

In order for a transnational corporation to have legal personality in private international law, it as a whole must fall under the definition of a legal entity, meet its characteristics. Otherwise, the corporation as a whole does not have legal personality under international private law, but since the companies included in its structure are legal entities, then, therefore, a multinational corporation has the ability to conduct its business without legal personality. This is the contradiction between the legal form and the economic content of a transnational corporation.

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