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THEORIES OF THE ESSENCE OF THE LEGAL ENTITY AS A LEGAL CONSTRUCT: A MODERN PERSPECTIVE

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Ilnytska N.F. Theories of the essence of the legal entity as a legal construct: a modern perspective.
The article provides a comprehensive doctrinal analysis of the theories concerning the essence of a legal entity as a fundamental legal construct of civil law and their significance for the modern understanding of legal personality. It is emphasized that, despite the legislative definition of a legal entity in the Civil Code of Ukraine, civil law doctrine still lacks a unified approach to determining its legal nature, the limits of legal capacity, and its correlation with the interests of individuals, collectives, and the state. The purpose of the study is to clarify the essence of a legal entity through the analysis of historical and contemporary theoretical concepts and to determine their influence on current Ukrainian legislation. The research examines the main provisions of fictional theories (F. C. von Savigny, A. von Brinz, R. von Jhering, M. Planiol) as well as realist approaches (O. von Gierke, L. Michoud, R. Saleilles, the collective theory of A. Venediktov, the director theory of Y. Tolstoy, and the organizational theory of O. Krasavchikov). It is demonstrated that these approaches significantly influenced the formation of the modern legal construct of a legal entity, particularly its organizational unity, property separation, general legal capacity, and liability for the actions of its bodies and employees. It is substantiated that theoretical concepts of a legal entity are not merely of historical or doctrinal interest but have direct practical relevance for the interpretation of Ukrainian civil legislation, especially provisions concerning the creation of legal entities, determination of their legal status, and limits of liability. It is stressed that underestimation of doctrinal foundations leads to an overly simplified normative understanding of legal entities and complicates law enforcement practice. The conclusion is drawn that the current legal regulation of legal entities results from the synthesis of various theoretical approaches, and their further study remains essential for the development of civil law and the improvement of Ukrainian legislation.

Key words: legal entity, theory of fiction, realist theories, legal personality, property separation, liability of a legal entity.

Ільницька Н. Ф. Теорії сутності юридичної особи як правової конструкції: сучасний погляд.
У статті здійснено комплексне дослідження теорій сутності юридичної особи як базової правової конструкції цивільного права та їх значення для сучасного розуміння правосуб'єктності юридичних осіб. Наголошено, що попри нормативне закріплення поняття юридичної особи у Цивільному кодексі України, у доктрині цивільного права відсутній єдиний підхід до визначення її правової природи, меж правосуб'єктності та співвідношення з інтересами фізичних осіб, колективу та держави. Метою дослідження є з'ясування сутності юридичної особи через аналіз історичних і сучасних теоретичних концепцій та встановлення їх впливу на чинне законодавство України. У роботі розкрито основні положення фікційних теорій (Ф. Савін'ї, А. Бринца, Р. фон Ієрінга, М. Планіоля), а також реалістичних концепцій (О. фон Гірке, Л. Мішу, Р. Салейля, теорії колективу А. Венедиктова, теорії директора Ю. Толстого, теорії організації О. Красавчикова). Показано, що зазначені підходи вплинули на формування сучасної конструкції юридичної особи, зокрема її організаційної єдності, майнової відокремленості, загальної правоздатності та відповідальності за дії органів і працівників. Обґрунтовано, що те-

оретичні концепції юридичної особи не є лише історико-правовим надбанням, а мають безпосереднє прикладне значення для тлумачення норм цивільного законодавства України, зокрема положень щодо створення юридичних осіб, визначення їх правового статусу та меж відповідальності. Підкреслено, що недооцінка доктринальних підходів ускладнює правозастосування та призводить до спрощеного розуміння сутності юридичної особи. Зроблено висновок, що сучасне правове регулювання юридичних осіб є результатом синтезу різних теоретичних концепцій, а їх подальше дослідження є необхідною умовою розвитку цивільного права та вдосконалення законодавства України.

Ключові слова: юридична особа, теорія фікції, реалістичні теорії, правосуб'єктність, майнова відокремленість, відповідальність юридичної особи.

Problem statement. The institution of the legal entity occupies a central position within the system of subjects of civil law and participants in commercial turnover, serving as a fundamental legal construct for organizing economic, social, and public activity. Despite the normative definition of the concept of a legal entity in the Civil Code of Ukraine, legal doctrine continues to demonstrate significant controversy regarding its legal nature, underlying substance, limits of legal personality, and its correlation with the interests of natural persons, collectives, and the state.

Historically developed theories of the legal entity– from fictional to realist approaches– have not lost their relevance for contemporary legal understanding, as their ideas are directly or indirectly reflected in current Ukrainian legislation, in particular in matters concerning the procedure of establishment, scope of legal capacity, property separation, liability for acts of governing bodies (Article 1172 of the Civil Code of Ukraine), as well as classification of legal entities. At the same time, the absence of a unified doctrinal approach and a modern conceptual understanding of the essence of a legal entity complicates the interpretation of legal norms and their practical application, especially in the sphere of liability, corporate relations, and the limits of independence of a legal entity.

Purpose of the study. The purpose of this study is to clarify the legal nature of the legal entity through the prism of the historical development of relevant doctrinal concepts, to determine their influence on the formation of the modern legislative approach in Ukraine, and to identify the applied significance of these theories for understanding the legal status of legal entities, particularly with regard to their establishment procedure, scope of legal capacity, property separation, and liability.

State of research. The study of the essence of the legal entity continues to attract scholarly attention, which is conditioned by the need for deeper doctrinal comprehension of this category for the purposes of correct interpretation of civil legislation and its practical application. The investigation of individual doctrinal directions concerning the essence of the legal entity, as well as the issue as a whole, has been carried out by Ukrainian scholars such as V. Borysova, Z. Romovska, I. Spasybo-Fatieieva, M. Parasiuk, V. Kochyn, V. Tsomra, R. Prylutskyi, O. Dzera, and others. The results of their research allow for a more precise understanding of the essence of the legal entity and help identify the degree of influence of relevant theories on the formation of its legal personality.

Main material. Legal entities are important participants in social relations across various spheres of societal and state life and constitute the most numerous subjects of economic and commercial turnover. Therefore, the process of functioning of legal entities, the legal regulation of their establishment, and the conduct of their activities represent essential issues for ensuring their existence.

Modern social life cannot be imagined without such participants in legal relations as legal entities. Originating in late Roman law, this legal construct today plays an exceptional role in solving the most important tasks faced by individuals and society. On the one hand, a person finds in it an extension and amplification of their legal capacity; on the other hand, legal entities create the necessary infrastructure of civil society. The history of the development of legal entities reflects a dramatic struggle between the individual and the state for freedom, in particular for the freedom of voluntary associations. Therefore, the state of legal entities in modern society is an important indicator of the level of freedom and the significance of the individual [1, p. 64].

From the very beginning, the institution of the legal entity was based on the independence of such an association and the impossibility of reducing it to a simple aggregation of participants and contributed property. In the property sphere, the legal entity emerged as a form of satisfying public needs in the mechanism of capital centralization required for the implementation of large-scale economic projects. In the non-material

sphere, the emergence of a legal entity was associated with a different purpose– namely, the protection of interests of certain social groups and strata. Proceeding from the fact that the legal entity primarily performed the function of capital centralization, legal scholars emphasized the feature of organizational unity of such an entity, which is currently reflected in the doctrine of civil law of Ukraine [2, p. 140].

According to Y. O. Pokrovsky, in associations and institutions being created, the individual personality finds its natural continuation and reproduction [3], thereby considering the legal entity as an extension of the natural person, his or her purposes and intentions.

The emergence of the legal entity construct in civil law is explained by the fact that, first, it enables groups of individuals to participate in civil turnover, and second, it allows limiting the liability of individuals for their debts.

The same idea is expressed by Z. V. Romovska, who notes that the term "legal entity" is a specific legal category introduced to serve public interests and to facilitate commodity production and circulation. Through the category of the legal entity, the activity, property, and liability of founders, participants, and members of an organization are separated from the activity, property, and liability of the organization itself as an independent subject of civil relations [4, pp. 287–288].

For a comprehensive study of the processes and conditions of creation and functioning of legal entities, as well as a deeper understanding of certain aspects of their legal status, it is important to examine the issue of the legal nature of the legal entity and the history of the emergence of this construct as a legal phenomenon.

It should be noted that the question of the essence and concept of the legal entity is among the most controversial issues in legal science from Roman law to the present day. Scholars have described the question of the essence of the legal entity as one of the most intricate issues in legal theory. A vast number of theories have been developed attempting to reveal the nature of the legal entity, to find its "substrate," and to determine the meaning of the concept of "legal personality" and its relationship with the concept of a legal subject.

When discussing theories of legal entities, it should be understood that, despite the diversity and apparent disorder of civil law literature devoted to this issue, all of them converge on the recognition that a legal entity is an independent phenomenon, distinct from others, and constitutes a new point of attribution of rights and obligations. To ensure the functioning of the economic system, civil law operates with the concept of a "person," into which characteristics are embedded that make it possible to clearly individualize such a subject among others [5, p.44]. This mechanism of participation in civil relations is предусмотрено, inter alia, for public entities (the state, territorial community) that lack features of individualized subjectivity.

Some scholars argue that numerous theories of the legal entity have no practical significance and are unsuitable for explaining its use in modern highly developed property turnover.

However, there is also a position– which is shared in this study– that theories of the legal entity, despite their emergence in different historical periods and under different legal orders, have fully practical significance for contemporary legal reality [6, p. 118]. The underestimation of the importance of continuing research in this direction results in imperfections in current legislation and problems in its practical application, which can be observed, for example, in the analysis of liability of both legal entities and their founders.

In legal science, the question of the period of origin of the legal entity construct remains controversial. Some scholars attribute its origin to the period of flourishing Roman private law; however, most argue that Roman law did not know the concept of a "legal entity," and terms such as *universitas*, *corpus*, and *collegium* were used instead [6, p. 118]. Nevertheless, as Z. V. Romovska notes, and a century earlier Y. O. Pokrovsky emphasized, the merit of the Romans lies in laying the foundation for understanding and further development of this concept. The development of the idea of the legal entity as an independent subject of civil law and an independent center of economic life constitutes one of the greatest achievements of Roman law; through it, this legal form entered the system of modern European law [3, pp. 304–305].

The development of the concept of the legal entity owes much to medieval and canon law, which laid the foundation for its theoretical understanding and practical application. However, the very idea of the existence of subjects distinct from natural persons emerged much earlier. During the Middle Ages, when society was characterized by feudal fragmentation and the dominance of religious institutions, there arose a need for legal mechanisms capable of regulating the activities of collective formations– from monasteries to guilds. It was precisely in this period that the idea of the legal entity began to acquire clearer contours, combining Roman legal traditions with new social and religious realities. The active development of maritime trade particularly demonstrated the necessity of rethinking the personal participation of merchants in conducting business

and led to the emergence of the idea of "capital partnerships," in which some participants contributed their personal involvement, while others contributed funds or other resources, all while retaining influence over decision-making and the right to receive profits [6, p.113].

The term "legal entity" was first used in the German Civil Code. In English law, the term "artificial person" was used. French and Swiss law employed the term *personae morale*. The legislation of the Russian Empire used the term "estate of persons" (*soslovie lits*). In the Ukrainian translation of the Austrian Civil Code, S. Dnistryansky used the term "legal person" (*pravnycha osoba*) [4, pp. 286–287]. In common law countries, the terms "company" and "corporation" are used. The term "legal entity" itself originates from German legal doctrine.

Legal science recognizes a large number of theories of the legal entity, which in the broadest sense can be divided into two groups: fictional theories denying the existence of any real subject with legal personality, and realist theories recognizing such a subject.

Among fictional theories, it is necessary to mention Savigny's "theory of fiction," Brinz's "theory of purpose-bound property," Planiol's "theory of collective ownership," and Jhering's "theory of interest." Their main feature is the denial of the existence of a real subject with legal personality.

The theory of fiction, historically the first, derives its name from Pope Innocent IV, who noted that a corporation is merely an abstract concept, a legal name, a fictitious person (*persona ficta*). Its scientific justification was later developed in the works of Savigny, who argued that a legal entity is an artificial, fictitious subject recognized solely for legal purposes, and that such a subject lacks consciousness and will and is therefore incapable of acting [6, c.119].

Representatives of the theory of purpose-bound property (Brinz (1857), Becker (1861), etc.) argued that corporate property belongs not to its founders but to the purpose for which the legal entity exists. Thus, the legal entity is a continuing state of management of property separated from the founders' property [6, p. 120]. The theory of collective ownership (Planiol, Gambarov) understood the corporation as a special form of managing collectively owned property. The theory of interest (Jhering) held that legal rights serve human interests; thus, the legal entity is a means of expressing and securing the interests of individuals or groups [8, p. 39]. Normativist theorists (Rümelin, Jellinek, Kelsen, etc.) viewed the legal entity as a product of legal order created by the legislator.

Realist theories include the "organic theory", "theory of social reality", and "theory of state", as well as Soviet theories such as Venediktov's "theory of collective", Tolstoy's "theory of director", and Asknaziy's "theory of state".

Representatives of the organic theory Heinrich Beseler, Otto von Gierke, Regelsberger and others proceeded from the premise that a corporation cannot be a fictitious person, since it is a real, actual, living person rather than an artificial product of thought, and that the existence of a corporation cannot be arbitrarily confined to private law only, because certain types of corporations may participate in public life with independent rights. A legal entity, therefore, is a social organism akin to a human being. Similar views were shared by representatives of the theory of social reality Léon Michoud, Raymond Saleilles and others, who developed the ideas of the organic theory and were the first to identify the attributes of a legal entity: its own will and interest, which enabled it to act independently as a subject of transactions. A legal entity is recognized as a subject of law existing in reality, not a human being, yet still a person, albeit "incorporeal." This concept was supported by many renowned scholars, including D. Meyer, N. Suvorov, V. Sinaysky, I. Pokrovsky and others. The state theory of Rudolf Leonhard defines a legal entity as a subject that actually exists alongside natural persons, the essence of which is a continuing state of administration by permanent administrators of certain ownerless property, separated from all other property for a legal purpose [8, p. 40].

The founders of the collective theory (A. Venediktov) and the director theory (Y. Tolstoy) maintained that any legal relationship is a relationship between people, and only people can be participants in civil legal relations; therefore, transactions and other acts embodying the activity of a legal entity are performed by the collective or by the director [10]. The collective theory was supported by such scholars as S. Bratus, O. Ioffe, V. Mozolin and others. According to the state theory of S. Asknaziy, a state legal entity is in fact the state itself ("the nationwide collective"), acting within a specific sector of the system of economic relations, meaning that legal entities have no interests distinct from those of the state [6, p. 123]. It is also necessary to mention the organization theory (O. Krasavchikov, A. Pushkin), according to which a legal entity is an organization as a particular social formation, that is, a system of essential social interconnections by means of which

individuals or their groups are united to achieve designated goals into a single structurally and functionally differentiated social whole [9, p. 117].

The above concepts did not remain merely historical accounts of the emergence of the legal phenomenon of the legal entity, but significantly influenced the understanding and legislative consolidation of its legal status, as well as the transformation of that status in connection with changes in the economic conditions of the functioning of legal subjects.

The theory of fiction had considerable practical significance. With its help, several important provisions were substantiated. First, if legal entities do not exist by themselves but only by virtue of legal determination, they cannot be created freely but arise only in the manner and on the basis of a special state authorization. Thus, the foundations of the future mandatory registration of legal entities were laid. Second, proceeding from the fact that a legal entity as such had no will, it was not recognized as a subject of criminal liability [8, p. 43; 6, p. 119].

Thanks to the theory of personified (purpose) property, according to which the essence of a legal entity consists of separate property participating in civil circulation, the proprietary independence and separation of the property of a legal entity remain one of its main attributes.

In connection with the development of entrepreneurship and corporate forms of legal entities, the approaches formulated in the theory of interest have gained relevance. Is a private or public interest embedded in the creation of a particular legal entity? Partly this criterion underlies the division of legal entities in the Civil Code of Ukraine into entities of private law and entities of public law. The presence or absence of the purpose of making a profit, of a commercial interest, underlies the division of companies into entrepreneurial and non-entrepreneurial (Articles 83–85 of the Civil Code of Ukraine) [10].

According to realist concepts (the organic theory and the theory of social reality), a legal entity is a subject existing in reality, which is not created but only recognized by the legal order, its existence being acknowledged. Thus, the declarative (normative-declarative) procedure for the creation of a legal entity emerged. This also prompted the recognition of general legal capacity of legal entities, which is reflected in the Civil Code of Ukraine, adopted on 16 January 2003, pursuant to Part 1 of Article 91 of which a legal entity is capable of having the same civil rights and obligations (civil legal capacity) as a natural person, except for those which by their nature may belong only to a human being. Owing to the collective theory, it became possible to formulate the concept of the liability of a legal entity for the actions of its employees as for its own. This position is also enshrined in Article 1172 of the Civil Code of Ukraine. The definition of a legal entity in Part 1 of Article 80 of the Civil Code of Ukraine is formulated from the standpoint of the organization theory, since it defines a legal entity through the concept of an organization [10].

Thus, the theories of the legal entity contributed to a comprehensive understanding and study of its essence, as well as to the formation of its modern "image" and legal status.

Conclusions. The analysis of historical theories of the legal entity demonstrates that they are not merely a product of legal history but constitute the doctrinal foundation of modern legal regulation in Ukraine. The provisions of various theories are reflected in the structure of the legal entity enshrined in the Civil Code of Ukraine: from the organizational approach (Article 80), recognition of general legal capacity (Article 91), and the principle of property separation to liability for actions of employees (Article 1172) [11].

Thus, the study of the legal nature of the legal entity through the prism of historical doctrines has direct practical significance for the correct interpretation and application of civil legislation, particularly in matters of establishment of legal entities, determination of their autonomy, and liability. Ignoring doctrinal origins leads to an overly simplified normative understanding of the legal entity and complicates the resolution of practical legal issues.

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