

THE ISSUE OF LEGAL SUBJECTIVITY OF MANAGEMENT BODIES AND STRUCTURAL UNITS OF A LEGAL ENTITY

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Abstract

The author notes that the law nature of a legal entity presupposes the presence in the internal space of this legal actor a number of local legal relationships, in which the sole and collective elements of its organizational structure are involved.. All of them are endowed with the status of a participant (party) of this kind of legal relations and possess a certain individualized part of the legal subjectivity, inherent for legal entity in general. Therefore, governing bodies and other internal structures of legal entities do not have their own legal subjectivity. Through the organizational structure of the legal entity it is realized personal legal subjectivity just of this entity in all dimensions of the latter's existence. Accordingly, the structural elements of a legal entity are also not endowed with the status of subject of law.

There are few essential features, characterizing the individual status of legal subjectivity, inherent for the structural element of the legal entity. Firstly, the content and scope of the rights and obligations of such formation (so-called «individual legal capacity») is always limited in accordance with the list of functions, provided for it; secondly, so-called «individual active capacity» of a structural element of a legal entity is determined by the needs of the organization as a whole and is interdependent with the ability to act on its other internal entities; thirdly, the governing bodies and divisions of the legal entity are the operators of the active segment of its delictual capacity, but they are deprived of the opportunity to be held responsible for the offenses, committed by them (their individual status doesn't support the segment of «passive delictual capacity» of the legal person).

The aforementioned individualization of the legal subjectivity of governing bodies and structural subdivisions of a legal entity is their essential attribute which:

- a) creates the basis for effective internal corporate or administrative control over the activities of such entities;
- b) allows to realize an external regulation of the volume of a legal subjectivity potential of certain internal structural elements of a legal entity for the purpose of, among other aims, the implementation of actual public interests in their activity.

Keywords: legal subjectivity, management bodies, structural units, legal entity.

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1. Introduction

Legal experts have given their main attention before and are still focusing on the understanding of the essence, peculiar to a legal entity in one's external contradiction with the other subjects of law. While legal science acknowledges the existence of the internal legal space for legal entities, this last one is not almost examined from the side of its legal subjective content. We can explain this fact by the long dominance of the civilistic version for solving a problem of a subject of law and legal subjectivity. In particular, to understand the sectoral and general legal subjectivity of legal entity, the theoretical pattern, which is formed by legal science, is constantly applied as a result of understanding the civil legal subjectivity of a natural person. Meanwhile, ignoring the realities of the internal subjective field, from which the legal subjectivity of the legal entity grows up and by which it is kept by, inevitably impoverishes the content of such a category as "legal subjectivity", significantly limits its cognitive potential and, which is the most important, creates unjustified gaps in the scientific picture of legal reality.

In the civilistic literature prevails a point of view that any relationships, developing within the organizational and legal forms of the legal entities, are purely technical and the parties of these relationships are devoid of any legal subjectivity [1, p. 238]. And vice versa, most representatives of the economic and legal science emphasize legal subjectivity of structural units in commercial organizations and articulate the necessity to consider them although special, but, in any case, yet subjects of the economic law [2, p. 107; 3, p. 57]. The general theory of law almost doesn't pay attention to

the issues on the legal subjectivity status of such participants of legal relationships like the management bodies and internal units of legal entities.

2. Materials and methods of research

This publication aims to study the legal subjectivity status of the management bodies and other units of legal entities, the totality of which creates its organization structure. The study will be conducted with using of categorical and conceptual system of the general theory of law.

3. Results and discussions

A legal entity as a subject of law has a format of existence, within which it becomes a single and integral (in volitional relation) organization, endowed with legal-subjectivity, which is able to conduct transactions, to acquire the ownership and to alienate the property, to represent one's interests before the public authorities or local self-government bodies, to protect the subject rights in court, etc. As E. Adriano rightly points out, juridical persons "are fictional entities in the real world, but very real ones in the world of law" [4, p. 117]. The interaction of a legal entity with the other subjects of law is ensured by its management bodies, which may be collective (the general meeting of participants, the supervisory board, and the directorate) or one-person (when the executive body is the director). The management bodies of the legal entity have the powers, specified by the law, by the constituent document as well as they are set out in details in the internal regulations of a legal entity (in its so-called "individual acts").

In addition to the management bodies, the organizational "corpus" of a legal entity is formed by its structural units such as working areas, workshops, divisions, administrations, departments, etc. There is the constant practice of vertical organizational interactions of the management bodies of legal entities with their subordinated structural units. The numerous mutual horizontal transactions of the internal units of legal entities among themselves take place also.

We should distinguish the so-called "separated units" of legal entities which are branch offices and representative offices. A separated unit, as a part of a relevant legal entity, is its structural entity that is ostensibly "independent" of a legal entity and able to perform a certain number of manufacture and/or representative functions over a distance and in the autonomous mode by implementing the fragment of the legal subjectivity, which is assigned to it, by the organization-founder.

Let's pay attention to the fact that the activity of the management body or unit of a legal entity has two vectors: external and internal one. The external orientation implies the interaction of a structural element of a legal entity with the other subjects of law; in such cases, its actions are recognized as those of a legal entity oneself. Participation of a legal entity in the external relations through its management bodies and units is not forbidden by the legal science [5, p. 99–100; 6, p. 35] and, moreover, this is enshrined in the legislation (part 1 Article 92 of the Civil Code of Ukraine) and implemented by courts at the level of precedent practice. The presence of a functional system, which is formed by the management bodies and internal units, provides the active capacity and permits the legal entity to participate in actual legal relations.

However, in a considerable number of cases, the vector of activity of the management body or other structural entity does not leave the boundary of the internal environment of the legal entity, outlined by its organizational framework. Each legal entity always has a certain "intra-subjective" sphere, filled with relationships of its management bodies, units and officials among themselves. The subjective intentions (volitional impulses), generated by the internal structures of a legal entity, are a basic material to form the rational and thoroughly balanced volition of the organization, which the latter can represent to the other subjects of law in the external "inter-subjective" world.

In this connection there is a certain cognitive dissonance which relates to the legislator's constant and silent use of the presumption of that the management bodies and ordinary structural units, as parts of internal organizational space of the legal entity, have some volume of legal subjectivity (which, however, is not specified by the "letter of law" even approximately). Therefore, in our opinion, there were and still are the open questions on who or what in legal subjectivity aspect is:

- a) the management body of a legal entity;
- b) an ordinary structural unit of a legal entity;
- c) a separated structural unit of a legal entity.

While giving a weighed answer to the above questions, firstly, we should agree that none of the internal elements of the organizational structure of a legal entity can have the personal legal subjectivity (because a part cannot be identical to the heterogeneous unity or be equal to it).

Secondly, it should be emphasized – that legal and organizational form which arises as a body or subdivision of a legal entity, should not be equated with the number of employees, involved to its staff. Actually, the legal entity, being the self-sufficient personality, as a whole does not coincide with its labor collective.

Thirdly, it is also important that provisions of the current legislation of Ukraine, governing the legal situation as to the management bodies and structural units of legal entities, indicate their status as participants (parties) of the legal relations. For example, under clause 7 of Article 3 of the Economic Code of Ukraine, the legislator directly makes reference to the structural units of business entities as to parties of so-called “internal-economic relations”, and under clause 2 of Article 166 of the Economic Code of Ukraine the management bodies of the enterprise associations or business partnerships shall be recognized as parties of the organizational and economic obligations.

The last of the above statements is the most important for further covering the subject of this study. Therefore, we will consider its in more details.

In the general theory of law, as well as in sectoral sciences, there almost generally accepted such a thesis that participation in legal relations (which are sanctioned by the legislation) envisages with the necessary presence of the relevant participant with a degree of certain legal subjectivity [7, p. 72; 8, p. 56] and, thus, it generates for last one a status of the subject of law [9, p. 37–38]. However, the formal correctness of this statement is only partially substantiated by facts. It does not reach the status of universal theoretical generalization with respect to the empirical filling of all those subject fields for characteristic of which is applied. The junction of a status of the participant of legal relations with a status of the subject of law is inviolable and indisputable only in the open legal space of the external interactions of the parties, who are realizing the property, obligatory and other legal relations, in which they stand up as active volitional persons with own interests. “Inter-subjective” legal relations by orientation, content and other features are quite different from those numerous corporate relations that join the management bodies and structural units inside of legal entities. The internal universum of legal subjectivity of every legal entity is “a locked reality”. It is limited by the legal form of its corporate shell, is covered by the sole purpose and tasks of the legal entity, and the individual volitional intentions of its officials, bodies and units merge into the consolidated flow of volitional activity of the organization as a subject of law in general, which absorbs the individual impulses and subordinates them according to the personal will of the legal entity.

Therefore, we believe that legal subjectivity of a legal entity is united and holistic in all dimensions, internal and external. That fact is determined by one’s nature as an objective law segment, which is personalized and endowed by the corporate “body”. Structures of a legal entity, both in external and internal projections of their activity, implement the single legal subjectivity, inherent to the legal entity as an integral and self-sufficient subject of law. In due time, H. Shershenevych specified that the objective law considers as the subjects of law “a joint-stock company rather than its board and a hospital rather than its chief physician” [10, p. 585]. The legal capacity, delictual capacity or active capacity, that the objective law envisages for a legal entity, orderly fill its organizational and functional construction and create legal statuses for the individual forms of one’s internal corporate embodiment, which, in fact, are arised as the management bodies, departments and other structural units of a legal entity. The external volitional actions of legal entities are a kind of “point discharges” of the internal legal subjective potential that was created and accumulated by their bodies and units.

The nature of a legal subjective potential, peculiar to the particular abstract structural unit of a legal entity, is characterized by the fact that this potential is devoid of self-sufficiency and the unit acquires it in connection with developing the organization’s legal subjectivity as a whole. A part of

legal subjectivity of a legal entity, which is accessible to the its body or unit, begins to make sense just as a “link”, integrated into a holistic “chain” of its general legal subjectivity. Each structural element operates by the divided in one’s favor scope of the legal subjectivity of the legal entity, providing its functioning both in external and internal dimensions. It is explained, that the only possible way for a legal entity to achieve a status of the subject of law with full volume of legal capacity, delictual capacity and, mainly, the active capacity, shall be the creating of an adequate system of bodies and other internal structural elements, which can preserve the required measure of legal subjectivity like to that as the form preserves the content.

Thus, the internal structural elements of a legal person are the entities that are not self-sufficient in the sense of legal subjectivity. They cannot exist beyond the organizational and legal “solids” of their legal entities (including branch offices and other units, which may be remote from their organizations in space, but always connected with them in the frame of single functioning as subjects of law).

The above-mentioned is a ground to specify the essential features, peculiar to the legal-subjectivity status of an abstract structural element (the management body, an ordinary unit, a separated unit), present in the organizational structure of a legal entity, in particular:

- the scope of rights and obligations of the management body or unit of a legal entity, which we may call “the individual legal capacity”, very arbitrary and not quite accurately, is always limited according to the scope of the functional tasks of such a body or unit. Thus, a part of the legal capacity of a legal entity, which is assigned to the relevant internal entities, shall be determined by a place of the latter in the structure of the organization in general, like the actual and real legal capable whole;

- “the individual active capacity”, if we may say so, of each separate structural element of an organization shall be determined by the needs of the organization in general and is under control and influence of the other management bodies or units, with which internal elements of the legal entities should coordinate or subordinate one’s actions;

- as to the delictual capacity, it should be noted that, on the one hand, the management bodies and units of a legal entity are operators of its active segment. It means that they provide for the imposition of liability (or promote the application of liability measures) on those subjects of law, which violated rights and/or interests of the relevant organization. On the other hand, the management bodies and other units of a legal entity, including the branch offices and representative offices, are deprived of the burden of the delictual capacity in the sense of directing to them the liability, envisaged by law. In fact, the subjects of negative liability for the offences, which were really committed by a management body or structural unit of the legal entity, shall be either a legal entity oneself (since any property, organizational and other penalties, originated from the other subjects of law, are implementing against the legal entity), or one’s officials (executives), or other related persons (beneficiaries, controllers, etc.).

In our opinion, the internal structures of the legal entity are individualized operators of its personal legal subjectivity. The management bodies and other units support that clusters of legal subjectivity which assigned them. The interconnected configuration of these clusters establishes the legal personality of the organization, overall scope and content of which it preserves as a subject of law.

Along with this, the mentioned individualization of the internal elements of legal entities creates for them a consequence that is a fixation in legislation of their status as the participants of the legal relations, even just internal ones. The ground for such singling out is a number of factual and, mainly, legal attributes, which individualize the structural element of the legal entity and, therefore, to the certain extent, oppose it to other internal formations. The bearer of the subject identity, peculiar to the unit or another structural element of a legal entity, is a relatively autonomous part of its labor collective, which is involved in the activity of any internal formation as the staff of the last one.

Taking into account an overall vision of the nature, essence and features of legal subjectivity, peculiar to elements of the organizational structure of the legal entity, we may list their characteristic features, fixed in the legislation:

1) such structures are defined by participants of the internal organizational legal relations only. In the external sphere, the legislation qualifies their actions as ones of the legal entities, to which they are members. It can be particularly evident in the activity of the executive body in each organization;

2) the totality of these entities is constant through time. Their configuration may change, but within the legal entity existence its internal hierarchy never disappears completely. Being reflected in the legislation, the typical elementary structure of an active legal entity includes the supreme body (that body adopts the decisions on establishment of a legal entity, approves the constituent document and solves other main issues on its management) and the executive body (which provides the current management of a legal entity and organizes its activity) as well as one or several functional units;

3) internal organizational elements of legal entities are always formally individualized. They have an official name, defined spatial confinement, special operating mode, etc. Formal individualization of the internal entities of a legal entity is obligatory because it allows to fix with them the necessary scope of powers, address the information to them, make control over their activity and so on;

4) the area of activity (functions), as well as a scope of rights and obligations of the management bodies and structural units of a legal entity (competence), is usually enshrined by the relevant internal provisions (individual acts), agreed with the statute of a legal entity and approved by a last one in due modus. Thus, the internal sphere of legal subjectivity of each organization is arranged properly for the most effective using of its potential;

5) the internal structures of the legal entities are hierarchical formations, headed by senior officials, and, as usual, the functional competence of the subordinated employees is well-documented (in the relevant employment agreements and job descriptions and, while stipulated by the legislation, in the civil contracts).

The separated units of legal entities, in comparison with their other units, apply the larger scope of the legal subjectivity, belonging a legal entity. They also obtain additional legitimacy attributes, which the ordinary internal units do not have, such as an identification code, bank account, personal seal, etc. The separated units require above mentioned attributes to maintain the autonomous mode of operation. As a result, the legislator in regard to such units conducts a targeted application of approaches, which are typical for defining the scope of legal subjectivity only for legal entities. In this connection I. Kucherenko specified that: “in some legal relations not only the legal persons, but their separated units without this status are recognized as subjects” [11, p. 35].

“But enough of dual personality” [12, p. 291]. In our view, although a degree of the legal subjectivity individualization of the branch offices and representative offices of the legal entity is very significant and even at most permissible in some cases (as for the internal structural elements of the legal entity), it, nevertheless, does not transform them into the persons, having own volition. Thus, we do not have any grounds to consider them the subjects of law. Besides, the legislator, from time to time, nominates them as the subjects of a certain activity, which does not contradict the above thesis in general.

4. Conclusions

1. The law nature of a legal entity implies the need for developing a number of local legal relations in the internal space of such subject of law, to which single-person and collective elements of its organizational structure are involved. All of them have a status of a participant (a party) in similar legal relations. Substantiation of this fact is confirmed by a letter of law (by the economic legislation of Ukraine, in particular).

2. The nature of a legal subjectivity potential, peculiar to an abstract structural unit of a legal entity, is specified by the fact that the unit acquires that potential due to developing the legal subjectivity of the organization as a whole. The management bodies and other internal structures of the legal entities do not have personal legal subjectivity. Because the own legal subjectivity of last ones in all dimensions of its existence is realized through the organizational structure of a legal entity. Accordingly, the structural elements of a legal entity do not have the status of subjects of law.

3. The essential features of the legal subjectivity status of a structural element of a legal entity include: first, the content and scope of rights and obligations of such formations (conditional “individual legal capacity”) is always limited under the list of functions, provided to them; second, conditional “individual active capacity” of a structural element of the legal entity is determined by the needs of the organization in general and interconnected with the ability to act in other its internal formations; third, the management bodies and units of a legal entity are operators of the active segment of its delictual capacity, but they are deprived of the opportunity to bear individual liability for the offences, committed themselves (their individual status does not support a segment of the passive delictual capacity of the legal entity).

4. Legal subjectivity individualization of the management bodies and units of the legal entity is their essential attribute which: a) creates a basis for effective internal corporate or administrative control over the activity of such formations and b) allows conducting the external regulation, regarding a volume of legal subjectivity of one or other internal structural elements of the legal entities with the aim, among the other, to implement the actual public interests in the activity of the last ones.

References

- [1] Artikulenko, O. (2018). Legal subjectivity of the legal entity: current challenges and unsolved issues. *Entrepreneurship, economy and law*, 6, 238–242.
- [2] Milash, V. S. (2014). Prospects for modernization of contractual legal relationships in the management. *Kharkiv*, 227.
- [3] Rudenko, M. P. (2015). Hospodarsko-pravovuy status strukturnykh pidrozdiliv subiektiv hospodariuvannya yak uchashnykyv vnutrishnohospodarskykh vidnosyn. *Naukovyi visnyk mizhnarodnoho humanitarnoho universitetu. Serii: Yurysprudentsiya*, 2 (18), 57–60.
- [4] Adriano, E. A. Q. (2015). Natural persons, juridical persons and legal personhood. *Mexican Law Review*, 8, 101–118. doi: <http://doi.org/10.1016/j.mexlaw.2015.12.005>
- [5] Borisova, V. I. (2006). Bodies of management of a legal entity as its institutional and functional representatives. *Law of Ukraine*, 6, 97–102.
- [6] Zubar, V. M. (2008). Iyurydychni osoby publichnoho prava yak uchashnyky tsvyvilnykh vidnosyn. *Aktualni problemy derzhavy i prava*, 43, 33–36.
- [7] Kravchuk, V. (2013). The concept of constitutional legal subjectivity. *Historical Law Journal*, 2, 71–74.
- [8] Taldykin, O. (2014). Pravosubiektnist fizychnykh osib: okremi aspekty. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnih sprav*, 2, 55–60.
- [9] Matselyk, T. O. (2013). Subjects of the administrative law: concept and system. Irpin: Publishing house of the National University of the State Tax Service of Ukraine, 342.
- [10] Shershenevych, H. F. (1910–1912). *General theory of law*. Moscow: Publishing house of brothers Bashmakov, 805.
- [11] Kucherenko, I. M. (2011). Concept and main characteristic features of the legal entity. *Almanac of law*, 2, 34–37.
- [12] Smith, B. (1928). Legal Personality. *The Yale Law Journal*, 37 (3), 283–299. doi: <http://doi.org/10.2307/789740>

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