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## ISSUES OF THE COLLECTIVE WILL OF LEGAL ENTITIES

**Abstract.** The *article aims* to determine the issues of collective freedom of will of legal entities. The task of research is to find out about the functioning mechanism of the collective will of legal entities and its differentiation from the will of employees and authorised representatives. **Research methods.** General scientific and unique scientific methods of cognition are applied: logical (deduction and induction, analysis and synthesis, abstraction and comparison); hermeneutic (regarding the understanding of scientific texts); formal-dogmatic. **Results.** In contrast to psychology and philosophy, the study of collective will in law has yet to become widespread. The article analyses signs of a legal entity to show that all of them are related to the collective will of a legal entity. The paper shows that legal entities have a particular form of free will, which is displayed in signs of a legal entity: 1) organisational unity; 2) registration by the requirements of current legislation; 3) availability of civil legal capacity and legal capacity; 4) the opportunity to act as a plaintiff and a defendant in court; 5) property separation of a legal entity; 6) the independent civil liability of a legal entity; 7) participation in civil circulation on one's behalf. **Conclusions.** The freedom of will of a legal entity is the unification of the will of employees (representatives, founders, members, participants) of a legal entity to represent its interests, make and implement decisions on its behalf regarding participation in civil legal relations by taking actions or inaction, ordering sub-objective civil rights and the performance of duties, as well as the possibility to bear legal responsibility for them. A legal entity's collective will consists of individuals' individual will (representatives, employees, founders, members, and participants). The individual will of a person is absorbed by the collective will of a legal entity when performing official duties and representing interests. Such an individual will be exercised in the interests of a legal entity, in good faith and reasonably. All signs of a legal entity are related to its collective will.

**Key words:** free will, legal entities, collective will, the autonomy of will, signs of a legal entity, civil legal capacity, legal capacity.

### 1. Introduction

When studying the issue of free will, jurisprudence, psychology, and philosophy focus on its personification and connection with a specific physical person. Of course, free will is inherent in natural persons and manifests itself during the realisation of their rights and obligations by them. Freedom of will is the basis for all branches of law. Without freedom of will, the principles of freedom of contract, justice, voluntariness, etc., cannot exist. Even public law cannot be imagined without free will: criminal law is directly related to issues of intent and awareness of one's actions, international law is the embodiment of the public will of the state, which is a manifestation of the individual will

of citizens by delegating the right to represent the interests of society. However, there is an urgent question about the functioning mechanism of the collective will of legal entities and its differentiation from the will of employees and authorised representatives. The public will of the state is also an embodiment of freedom of will, which the state implements through its organs. All this leads to the need to define the collective free will of legal entities.

In contrast to psychology and philosophy, the study of collective will in law has yet to become widespread. Research on collective cognition is also surging across cognitive sciences and allied disciplines, motivated in part by global challenges such as the pandemic,

spread of misinformation, and climate change and by the unprecedented rate at which digital networking platforms and social media have transformed communication and collaboration (Bak-Coleman & other, 2021; Marsh & Rajaram, 2019).

## 2. Theoretical principles of defining legal entities' collective will

A legal entity is an organisation created and registered by the procedure established by law, which is endowed with civil legal capacity and legal capacity, can be a plaintiff and a defendant in court and is created by combining persons and (or) property. (Yanovyts'ka & Kucher, 2014, p. 74). The specificity of a legal entity as a participant in civil legal relations is reflected through its characteristics.

The signs of a legal entity include the following: 1) organisational unity; 2) registration by the requirements of current legislation; 3) availability of civil legal capacity and legal capacity; 4) the opportunity to act as a plaintiff and a defendant in court; 5) property separation of a legal entity; 6) the independent civil liability of a legal entity; 7) participation in civil circulation on one's behalf (Tserkovna, 2016, p. 3).

Each of the above signs is related to the collective will of a legal entity. However, first of all, it is necessary to define the conceptual apparatus.

Will is one of the functions of the human psyche, which consists primarily of self-control, control of one's actions, and conscious regulation of one's behaviour. Will is the absence of restrictions, privilege, freedom, and independence. Will is the right to dispose of something at one's discretion. (Volya, 2018).

Skakun O.F. defines will in the legal sense as a socially determined state of mental regulation of the subject's behaviour based on his desire and ability to consciously choose the goal of activity, ways and means of their achievement. Will in law means: a) manifestation of the will of participants in social relations, which, being regulated by law, acquire the form of legal relations; b) an essential element that determines the essence of this type of law as a fixation of fixed or sanctioned voluntary efforts of the ruling forces, reflected in the constitution, laws, and legal norms. (Skakun, 2001, p. 441).

The signs of a legal entity are related to four concepts that are close in meaning: freedom, will, civil legal capacity and civil capacity. These categories are not identical and require determination.

Freedom in law is the possibility of behaviour not prohibited by law and the absence of coercion, except in cases provided for by law.

Will, in law, is the ability to control one's actions and manifestation from the outside,

conscious regulation of one's behaviour, which is not limited to the legally defined possibility of behaviour.

Civil legal capacity is a normatively determined possibility of a person to be the bearer of personal rights and obligations.

Civil capacity is the ability to dispose of one's rights and bear responsibilities.

Thus, these concepts can be divided into active and passive. Freedom and civil legal capacity should be classified as passive because they only allow for specific behaviour and potential participation in legal relations. The will and civil capacity are possibilities for active use in one's rights and opportunities. Will is the active use of freedom; legal capacity is the active use of legal capacity.

In a broad sense, free will is reduced to the answer to whether a person is free to make decisions or whether they are predetermined. Freedom of will in civil law is the ability to consciously, freely and independently make and implement decisions regarding participation in civil legal relations by taking actions or inaction, disposing of subjective civil rights and performing duties, and bearing legal responsibility for them.

## 3. Interrelationship between freedom of will and individual characteristics of a legal entity

After defining the concept of free will, we can establish its meaning for the characteristics of a legal entity.

Organisational unity can be defined as legal opportunities granted by law within the established corporate and legal forms of existence of a legal entity to determine and develop a system of internal ties of the elements that make up its structure to ensure their unity and the ability to act as a subject of civil relations (Blaschuk, 2005, p. 44). Organisational unity, being one of the main features of a legal entity, is a means of ensuring coordination of the interests of persons included in the construction of the internal organisational unity of a legal entity and interested in assigning the results of the legal entity's activity; determines the order of formation of bodies of a legal entity, their competence mediates the unity of elements that make up the internal structure of organisational ties of a legal entity (Romaniv, 2021, p. 119).

The specificity of a legal entity lies in the fact that it is an association of people, a collective, whose activities aim to achieve a common economic goal. Therefore, thanks to organisational unity, the external expression of the will of a legal entity occurs through an authorised person but on behalf of the company. Today, the concept of the autonomy of the will of a legal entity has yet to receive extensive research.

However, attempts to understand it can still be found in the works of Soviet civilians, in particular, O.O. Krasavchikov.

Registration by the requirements of the law is the second sign of a legal entity. The emergence of a legal entity requires the agreement of the will of several participants in the legal relationship. First, the founders' will is agreed upon, which involves determining the name, organisational and legal form, title, founding documents, roles, rights and obligations, and the internal structure of the future business entity. After it, the free will of the founders must be directed to the submission of documents for the registration of a legal entity. All of the above is an active form of free will because it takes place voluntarily and requires a direct expression of will. If the founder of a legal entity is one person, then he is guided only by his own free will. After submitting registration documents, there is a need to reconcile the will of the founder(s) with the public will of the state. The public will of the state is implemented through a system of bodies in state registration: the Ministry of Justice of Ukraine and other subjects of state registration (On state registration of legal entities, natural persons - entrepreneurs and public formations, 2023, Art. 5). This construction can be depicted as follows: the founder(s) express free will in the founding document by applying for state registration of a legal entity, and the state implements public will through the registration authorities by approving or refusing state registration.

The third sign of a legal entity is the presence of civil legal capacity and legal capacity. The specified categories determine the legal personality of a legal entity as a general prerequisite for participation in civil legal relations. According to its role in the mechanism of legal regulation, such legal personality acts as a means of fixing the possibility of the involvement of a legal entity in civil legal relations - recognition of its ability to be the bearer of personal rights and obligations determines its general legal position, which is established by the norms of law (Artykulenko, 2019, p. 6). I.M. Kucherenko emphasises that civil legal capacity and legal capacity are the main features of a legal entity, which allows us to say that this entity (organisation) is the subject of civil legal relations (Kucherenko, 2011, p. 36).

Civil legal capacity is related to equality before the law and ensures that individuals have equal opportunities to possess rights and responsibilities (de Beco, 2021). V.M. Parasyuk and M.V. Parasyuk noted, 'Unlike natural persons, legal entities are not living beings and therefore do not have a genuine will, but they have a united human will and united

human power in a specific direction determined by the purpose of creating a legal entity. As a result, the possibility of being a subject of law is recognised as a legal entity' (Parasyuk & Parasyuk, 2018, p. 140). The civil legal capacity of a legal entity assumes that it a priori possesses certain rights and obligations. Civil legal capacity is a passive property that does not require the expression of free will.

When a legal entity participates in civil legal relations, it realises the collective will due to its civil capacity. This active expression of will is aimed at creating rights and obligations. In this case, there is an association with such a sign of a legal entity as participation in civil circulation in one's name.

Let us consider an example. A legal entity concludes a supply contract signed by the director. In this case, the director expresses the will of the company, but in fact, this transaction is an expression of his own will (he can refuse the agreement) and other employees (lawyers expressed their will due to the content of the contract, accountants – due to financial conditions, etc.). The will of a legal entity combined with the free will of all persons related to the contract's conclusion. This is the collective freedom of will of a legal entity. The specificity of the expression of free will in such legal relations is related to the coordination of the individual will and the will of a particular entity, which carries out the collective will of the economic entity through an authorised person.

Let us consider this statement as an example of a credit contract. The parties' free will is aimed at agreeing, but approval depends on the will of the person making the decision. So, the individual will shows the collective will of the financial institution. The contract's conclusion depends on which person will represent the counterparty. Moreover, although *de jure*, the employer's will prevails over the will of his employee (because the party to the contract is the business entity itself), *de facto*, the conclusion of the agreement depends on the individual will of the institution's representative.

A person authorised to conclude a contract on behalf of a business entity must act in its interests, realising collective will. However, an authorised person can work in his own interests. For example, when he agrees to issue a loan due to corrupt motivation.

A similar situation arises about the possibility of a legal entity acting as a plaintiff and a defendant in court. The ability to be a plaintiff and a defendant in court is one of the elements of a person's civil legal capacity, which the Civil Code of Ukraine defines (Shyska, 2014). When a legal entity acts as a plaintiff or defendant in court, it represents its

interests, not those of the owner or employees. On behalf of a legal entity, its owner or bodies are authorised by his act by the company's charter or other constituent documents (The Economic Code of Ukraine, 2023, Art. 65). However, a legal entity cannot physically participate in the process and therefore does so through its representatives. A body or a person who, according to the founding documents of a legal entity or the law, acts on its behalf and represents its will. However, such a will is subjectivised through the individual will of the representative who independently decides the judicial process. At the same time, the representative's will is not unlimited because he is obliged to act in the interests of the legal entity, in good faith and reasonably, and not to exceed his powers (The Civil Code of Ukraine, 2023, Art. 92).

S. Rajaram said that myriad factors could determine the influence each can have on the other; for example, the characteristics of the individual in a network on the one hand and the properties of the network on the other hand (Rajaram, 2022). We see that the collective will of a legal entity is the total will of the people who represent it. This is a very complex phenomenon because the will of one team member affects another person's will; the process of transformation and change under the influence of external factors begins and becomes part of the collective will of the legal entity.

The ability to bear legal responsibility as a legal entity was called "delict capacity". Tort obligations were introduced to fulfil the legitimate purpose of protecting property and personal non-property rights and interests of individuals and legal entities, the state and other subjects of civil law, which is manifested by establishing the obligation to compensate property and moral (non-property) damage to a person who violated the prohibitions set by statute (Grunko, 2013, p. 101). In this context, we must clearly distinguish the delict capacity of a legal entity and its representatives as separate participants in legal relations. The legal responsibility of legal entities and their ability to act as plaintiff and defendant in court was investigated in detail by V.D. Prumak in work "Civil-legal liability of legal entities" (Prumak, 2005). Generally, a legal entity exercises a collective will in legal disputes, which combines the will of the legal entity, its representatives and the owner(s). Based on the position of V.V. Reznikova and O.V. Rossylina (Reznikova&Rossylina, 2016, p. 160), it should be noted that the procedural "roles" should be distributed as follows: the legal entity is the plaintiff/defendant / third party, and the representative of the legal entity is not a separate party to the process and must reflect the collective will of the legal entity,

which determines the vector of its expression of will.

At the same time, a legal entity indemnifies the damage caused by its employee during the performance of their labour (official) duties, and business associations and cooperatives compensate the damage caused by their participant (member) during the performance of entrepreneurial or other activities on behalf of the company or cooperative (The Civil Code of Ukraine, 2023, Art. 1172). This is confirmed by judicial practice, which links the responsibility of a legal entity for its employee with two conditions: 1) causing damage by the employee during working hours; 2) use of the property of a legal entity in the event of damage by an employee (Majorenko, 2019). At the same time, we proceed from the fact that the guilty person is recognised as a legal entity. That is, it was due to the will of the legal entity that the damage was caused. This construction can be explained as follows: a legal entity voluntarily hires an employee. It gave him an official task and property, so the employee will join the legal entity's collective will (when the employee performs official duties). Of course, the legal entity did not directly task the employee to harm someone. Still, it will create the causal link: if the legal entity had not hired the employee, he would not have caused harm as its employee. Even if the employee voluntarily and intentionally caused damage while performing official duties, at that moment, his individual will be realised in the context of the collective will of the employer. The consequence of such a situation may be regressive compensation to the employer. However, such a relationship will be related to the fact that the employee caused damage to the employer, who compensated for the damage caused by the employee to another person.

#### **4. Conclusions. State of scientific development**

The scientific doctrine has studied the concept of free will and the nature of legal entities. However, we cannot find any research about legal entities' collective freedom of will. Among the leading academics who studied these questions, it should be noted L. DeHaven-Smith (Collective Will-Formation: The Missing Dimension in Public Administration), O. Errichiello (Collective Forgiveness), J. Wood (The Collective Will and The Law), Alfred R. Mele (Surrounding Free Will: Philosophy, Psychology, Neuroscience), John Baer, James C. Kaufman and Roy F. Baumeister (Are We Free? Psychology and Free Will),

The issue of the collective freedom of will of a legal entity requires more detailed research, but the following conclusions can now be drawn:

1. The freedom of will of a legal entity is the unification of the will of employees (representatives, founders, members, participants) of a legal entity to represent its interests, make and implement decisions on its behalf regarding participation in civil legal relations, by taking actions or inaction, ordering sub-objective civil rights and the performance of duties, as well as the possibility to bear legal responsibility for them.

2. A legal entity's collective will consists of individuals' individual will (representatives,

employees, founders, members, and participants).

3. The individual will of a person is absorbed by the collective will of a legal entity when performing official duties and representing interests. Such individual will can be exercised in the interests of a legal entity, in good faith and reasonably.

4. All signs of a legal entity are related to its collective will.

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## ПРОБЛЕМАТИКА КОЛЕКТИВНОЇ ВОЛІ ЮРИДИЧНИХ ОСІБ

**Анотація. Мета.** Визначити проблематику колективної свободи волі юридичних осіб. Завданням дослідження є з'ясування механізму функціонування колективної свободи волі юридичних осіб та її відмежування від свободи волі працівників та уповноважених осіб. **Методи дослідження.** Застосовуються загальнонаукові та спеціальнонаукові методи пізнання: логічний (дедукція та індукція, аналіз та синтез, абстрагування та порівняння); герменевтичний (щодо розуміння наукових текстів); формально-догматичний. **Результати.** На відміну від психології та філософії, вивчення колективної волі в праві ще має набути значного поширення. У статті проаналізовано ознаки юридичної особи та доведено, що всі вони пов'язані із колективною свободою волі юридичної особи. У дослідженні показано, що юридичні особи мають особливу форму свободи волі, яка проявляється в ознаках юридичної особи: 1) організаційна єдність; 2) реєстрація згідно з вимогами чинного законодавства; 3) наявність цивільної правоздатності та дієздатності; 4) можливість виступати позивачем і відповідачем у суді; 5) майнова відокремленість юридичної особи; 6) самостійна цивільно-правова відповідальність юридичної особи; 7) участь у цивільному обороті від свого імені. **Висновки.** Свобода волі юридичної особи – це об'єднання волі працівників (представників, засновників, членів, учасників) юридичної особи для представлення її інтересів, прийняття та реалізації рішень від її імені щодо участі в цивільних правовідносинах, шляхом вчинення дій або бездіяльності, розпорядження суб'єктивними цивільними правами та виконання обов'язків, а також можливість нести правову відповідальність за них. Колективна воля юридичної особи складається з індивідуальної волі фізичних осіб (представників, працівників, засновників, членів, учасників). Індивідуальна воля фізичної особи поглинається колективною волею юридичної особи при виконанні службових обов'язків та представленні її інтересів. Така індивідуальна воля може реалізовуватись в інтересах юридичної особи, добросовісно і розумно. Всі ознаки юридичної особи пов'язані з її колективною волею.

**Ключові слова:** свобода волі, юридична особа, колективна воля, автономія волі, ознаки юридичної особи, цивільна правоздатність, дієздатність.

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