

Opinion on Legal Entity – Sustainability Nexus

Tüzel Kişilik ve Sürdürülebilirlik İlişkisine Bir Yorum

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Abstract

The persons capable of exercising legal rights are not only human beings. Aside from the real persons, there are societies and institutions that could also be right holders. We could hear every day about a Municipality starting up a construction transaction, a club making a contract with a football player, a University reaching to a decision, a Foundation awarding a scholarship. The main reason for the establishment of such organizations is the limited life period of a human being. The shortness of lifespan is an impediment in reaching some goals that will necessitate longer time periods. Followingly people unite or gather their assets in order to maintain such goals that exceed the life period of human beings as associations and foundations¹. As a result, legal systems acknowledge legal personality to others besides human beings and this serves maintaining sustainability.

Keywords: Legal Entity, Sustainability, Corporation, Real Persons, Corporation Objective, Disregard of Legal Entity, Historical Evolution of Legal Entity.

Öz

Hukuki açıdan haklara sahip olan ve haklardan yararlanma yetkisi bulunanlar, sadece gerçek kişiler değildir. Gerçek kişilerin yanısıra dernekler, vakıflar ve tüzel kişiliği bulunan şirketler gibi hak ve fiil ehliyeti olan tüzel kişiler mevcuttur. Gerçekten de her gün bir belediyenin inşaat sözleşmesi kurduğunu, bir spor kulübünün bir futbolcu ile sözleşme imzaladığını, bir üniversitenin bir karar aldığını veya bir vakfın öğrencilere burs verdiğini duyarız. Bu tip kurumların meydana getirilmesinin arka planında, insan yaşamının süresinin sınırlılığı olgusu yatar. Yaşamın kısa olduğu gerçeği, daha uzun zaman aralıklarına ihtiyaç gösteren amaçlara ulaşılmasında bir engel olarak ortaya çıkar. Bu sebeple, insan ömrünü aşan amaçları gerçekleştirebilmek için gerçek kişiler ya da malvarlıkları; dernekler, vakıflar, şirketler gibi tüzel kişilikler altında örgütlenmektedirler. Kısacası, hukuk sistemleri gerçek kişiler yanında diğerlerine de tüzel kişilik tanımak suretiyle, sürdürülebilirlik kavramına destek sağlamaktadırlar.

Anahtar Kelimeler: Tüzel Kişilik, Sürdürülebilirlik, Anonim Ortaklık, Gerçek Kişiler, Şirket Amacı, Tüzel Kişilik Örtüsünün Aralanması, Tüzel Kişilik Kavramının Tarihi Gelişimi

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1 Oğuzman/Seliçi/Oktay-Özdemir, pp. 261; Özsunay, pp. 6; Gönen, pp. 5.

Introduction

Legal entities are artificial persons that have legal personalities besides real persons. Legal order recognizes legal entities, to be subjects of law and to have the capacity to acquire rights. Replacements that take place among the real persons at the organization of the legal entities do not make a change in the continuity of legal persons. It does not make an impact on the presence and duration of a legal entity. For this reason; legal entities provide a much convenient tool in reaching the goals that require longer time periods. Secondly by the formation of legal entities, more economical sources could be obtained and through this wealth, some targets could be reached much more easily.

It will not be wrong to state that companies as legal entities play a crucial role in the world economy and they operate all around the globe. What are the main objectives of companies? Is the company an “extremely varied, inclusive and open-ended concept”²? The aim of this article is to examine the nature of legal entities, the logic behind the concept of legal entity and how does a legal entity create a tool for reaching out to the corporate objective. The corporate goal is the maximization and sustainability of an entity³.

The aim of every company is to keep up their wealth and gradually expand it. The other essential target is to make sure that the functioning of the company is sustained. All the companies and other sorts of legal entities establish their own goals. Establishing the objective of a legal entity is crucial. It creates the guidelines for the partners, shareholders or the members in the execution of their functions. For example the shareholders of a company have the incentive to maximize profits and this gives rise to the economic growth of the country as well as the globe.

It could be asserted that a company creates optimal value for all the parties regarding the companies' transactions. The companies (corporations) create and distribute wealth and value. The essential point is that, the duration of a company or another legal entity is not limited to a certain period of time just like the lifespan of real persons. The legal entities serve in the maximization and sustainability of the corporate objectives. There is an effort to maximize the entity. This is the aim of enhancing the company's wealth. The second and most influential effort is to sustain the company and to ensure its survival throughout time⁴.

The aim of this article is to examine the concept of legal entity, the crucial elements of the concept, the historical evolution, the theories trying to explain the nature of legal persons, different sorts of legal entities and finally the disregard of legal entity principles. By the maximization and sustainability of the legal entities objectives, the legal entities serve to maintain justice, peace and strong institutions. For the sake of realization of the before mentioned goal, the concept of legal entity is studied below in full details.

2 R. Clark, pp. 17.

3 Keay, pp. 615.

4 Keay, pp. 619.

People coming together in order to form a society of people, and assets gathered together to form joint estate are accepted as subjects of law. However it is essential to state that to be regarded as legal entities, the abovementioned society of people and estate, both have to carry some crucial elements.

I. THE CRUCIAL ELEMENTS OF LEGAL ENTITY

In order to be acknowledged as legal entity, the presence of an organization towards a permanent purpose and the organization being recognized as a legal entity by the legal order are obligatory.

A. PERMANENT GOAL ELEMENT

Legal entities, in order to achieve results that transcend a person's power, incline towards the execution of common benefits rather than personal benefits. This permanent goal may be the meeting of a common economic benefit or providing for the immaterial interests which may be summarized as ideal goals. Legal entities that are formed in order to meet economic benefits are called companies if their main purpose is to gain and share profit. General partnerships, joint stock companies, corporations and limited companies are different types of companies.

A common benefit is a general benefit that goes beyond a single person's benefit. The common benefit can be a monetary benefit such as making profits and sharing it among the shareholders or it also can be a moral benefit.

There are other sorts of legal entities whose main purposes are not distributing the profit to their shareholders; such as the associations and the foundations. Unions and political parties may also be accepted in the frame of legal entities with similar ideal goals.

The purpose of a legal entity must possess two specialities in all legal entity types. The purpose must be of perpetual quality. Accordingly; only communities of assets and communities of people with consistent goals may survive as legal entities. To be admitted as a perpetual goal, the activity necessary to reach the goal must be of constant feature. The goal that is going to be reached does not necessarily be of perpetual nature. For example the assignment of assets in order to establish a foundation for the purpose of improving a drug in finding a cure for a desperate illness, is possible. The goal of such a foundation is perpetual, because the scientific research vital for the development of a curing drug will necessitate a long time. At the moment of the finalization of the essential drug, the purpose is achieved and the perpetuality of the activity needed is no longer significant. In other words following the realization of the foundation's goal, it is not important if the activity necessary is completed or not. This is not influential on the perpetual quality of the legal entity. To start off a foundation or an association for the sole purpose of establishing a school, is also a frequently observed example in practice. However in the cases of establishing educational foundations or associations for the sake

of helping the poor, both the activity performed in order to fulfill the goal and the realization of the goal needs perpetuity⁵.

If the established society of people or assets do have a temporary goal; than there is no need for acknowledging it as an independent holder of rights. It is not probable and logical to see an association or a foundation established just to provide food for a dinner invitation.

Moreover; the aim of the legal entity must be of distinct nature. The aim of the legal entity must be materialized in the document (charter of an association, deed of a trust, articles of corporation) constituting the memorandum of the mentioned legal entity⁶.

B. ORGANIZATION ELEMENT

A legal entity is totally a different person than the real persons or the assigned assets composing it. It has a separate and independent identity acknowledged as a legal entity. In order to reach the goal, a legal entity must have the mandatory organization which will declare it's will as the holder of rights. The organs of a legal entity give birth to the organization element.

Mandatory organs are designated in various ways according to the type of the legal entity by the legislative authorities. Not having the essential organs lead the group of persons or the group of assets to be unsuccessful in the establishment of a legal entity or it will lead to the termination of a valid legal entity. Through the organs, a legal entity may continue operating as an independent person. An uncoordinated society may not be the holder of rights. A group of people watching a movie, researchers studying at a library, a group of fans watching a football game are all groups that have met coincidentally. These groups will not be accepted as legal entities by the legal order, because they all suffer from the lack of a permanent organization⁷.

The autonomy of a foundation or a society is against the members of the society composing itself. The legal entity makes legal transactions with the third parties as an independent holder of rights. The acquired assets of the legal entity do not merge with the personal assets of the members or the shareholders. Similarly, a foundation that is a group of assets assigned to fulfill a goal, has a separate identity than the real person assigning his assets in order to realize a permanent and an ideal goal. Independence is the outcome of acknowledging legal entity, to a group of real persons or assets.

“Numerus Clausus” principle is valid in legal entities which means; that it is not possible to create a new type of a legal entity by the free wills of the parties besides the types of legal entities regulated by the legal order. If it is not enacted by the law, it will not be possible for the groups of real persons and assets to acquire rights. There is also another rule valid for all sorts of legal entities and that

5 Dural/Öğüz, pp. 211.

6 Akünal, pp. 11.

7 Oğuzman/Seliçi/Oktay-Özdemir, pp. 262; Gönen, pp. 6.

is “the ultra vires rule”. According to the mentioned rule, it is prohibited for a legal entity to make transactions outside the scope that is regulated at its certificate of formation⁸.

In the case of the deficiency of the aforementioned elements, the group of real persons or the assigned assets will not be accepted as legal entities. The ordinary partnership will not have a separate personality, will not be an independent holder of rights. Numerus clausus principle also leads to the loyalty to the type principle. Based on this, to differentiate the structure of a legal entity or to create other legal entities functioning at different zones than what legal order has regulated, is completely impossible⁹. When there is non-existence of a legal entity, than there is no capacity to have rights.

II – THE HISTORICAL EVOLUTION OF LEGAL ENTITY

If we look at the evolution of legal entity, a time has come when social phenomena gave rise to the need of creating such a concept. Followingly the modern law order has acknowledged personality to a group of real persons and a group of assets. The structure of legal entities in different legal systems and the information about its evolution will provide us ease in understanding current legal entities.

A. DURING ROMAN LAW PERIOD

The concept of legal entity came out too late and did not blossom out as expected. During the Roman Empire period, the socio-economic requirements were not crucial yet, and the concrete and practical logic of the Romans was too far away from the abstractive theoretical logic that was needed for the establishment of a “legal entity independent from real persons”¹⁰.

Legal entity in Roman law came into existence following the first periods, however it was not organized systematically. The first legal entity in Roman Law is the State of Rome (populous Romanus). The State of Rome is the verbalization of all the Roman citizens and for this reason it is a union of real persons whose members constantly keep on changing. The State of Rome was acknowledged as a person by the legal order and it was capable of exercising rights and the state was under the obligation to fulfill his debts. The State of Rome had assets of his own (Aerarium Romani) and had the capacity to perform all the transactions needed. The State of Rome is an important model because it is an example for the subsequent legal entities. The few legal entities recognized by the Romans except the State of Rome, were the associations that appeared in the form of regional organizations, social or religious societies or professional unions (collegia). Some political communities were also admitted as legal entities and their activities were regulated in the frame of public law.

Some private law legal entities were formed in Roman law such as “collegium”s which were professional unions initiated by the craftsmen and trademen and “solidas” priests coming together to conduct

8 Özen, pp. 184; Hager, pp. 593.

9 Serozan, pp. 29.

10 Serozan, pp. 16.

ceremonies for the gods and to celebrate the feasts. These associations reverted to political unions during Augustus Period. These societies composed of real persons, had the capacity to acquire rights and had organizations apart from their members. Legal entity of the Roman Law era, also had one other speciality. The members of the legal entity were not personally responsible for the debts of the legal entity. This is still pretty much the same in today's notion of legal entity ¹¹.

It is obvious from the documentary of Iustinianus era that, following the death of a person; his estate which has not yet been acquired by his heirs, did have some sort of a legal entity (*hereditas iacens*) ¹². However it was not possible for the societies of assets to have an independent legal personality such as the foundations, according to Roman Law. Romans with the intent of making charity works, were used to the idea of transferring some distinct assets to a person or an institution ¹³.

Following the 5th and the 6th Century AD., the assets allocated to religious and charitable works (*pieae causae, pia corpora*), without belonging to a person or an institution, were regulated by the organs of the church in an independent manner ¹⁴. This legal structure is close to the notion of today's foundation but, the assets did not have a separate legal entity and therefore it was not possible to acknowledge it as foundation.

B. DURING GERMANIC LAW PERIOD

The evolution of the concept of legal entity is slightly different in Germanic Law. In the frame of the collectivist worldview of the mediaval age, the status of a real person was evaluated according to his existence in guilds, chambers, and similar people unions. These guilds did not possess an independent legal entity apart from the real person members composing them ¹⁵. These unions were administered through the unanimous decisions of the members who had equal rights and every member was responsible of all the conducts that were carried out by the other members. The unions that had religious, occupational and other sort of characteristics, had collective ownership (*Gesamteigentum, Eigentum zur gesamten Hand*) on the assets that were included in the above said relationship. Because of the lack of the concept of legal entity, that sort of relationship could be admitted to have a resemblance to ordinary partnership of today.

By the development of the cities after 1200 AD., the concept of legal entity made great progress in Germanic Law. Throughout this period, cities have started to differentiate from the personalities of their citizens and started to become independent, preterhuman existences that proposed sustainability. This outgrowth gradually led to the organizational structure of the cities and the organs to be established.

11 Gönen, pp. 11.

12 Umur, pp. 415.

13 Özsunay, pp. 7.

14 Dural/Öğüz, pp. 220.

15 Pedrazzini/Oberholzer, pp. 154.

Germanic Law was a stranger to the notion of foundation at the early stages; however by the acquisition of Roman Law in Germany, on the assignment of assets for the achievement of religious goals, the church's function in the governing of the assets, reached to a degree far beyond accomplishing that charity goal. The church was admitted as an administrative organ and this led to the idea that the assets allocated to religious purposes were regarded as foundations ¹⁶.

C. DURING ISLAMIC LAW PERIOD

The first thing that comes to mind when we speak about legal entity in Islamic Law is, “beytu'l mal” (the general treasury of the state). Beytu'l mal is not the same as the personal assets of the President of the State, and it has a unique legal entity which represents the interest of the community in public property. Beytu'l mal in this context could become a creditor or a debtor, had the capacity to be a party in legal proceedings, or could even be appointed as an heir, if no successors were found following the death of a person ¹⁷. During all these activities, trustee of the beytu'l mal, represents it in the name of the President of the State ¹⁸. Besides the treasury of the state, legal entity of the state is also acknowledged. The President of the State in this regard, could bind the citizens of the state and the subsequent presidents, by the international treaties he became a party to.

Since the beginning of Islamic Law up till now, the only legal entity that maintained its existence is the foundation. The foundation during the realization of its target, is represented by the real person (trustee), authorized to make transactions in the name of the foundation itself.

The companies in Islamic Law offered great variations. Types of companies were determined according to the kind of the capital that was invested in it. The mentioned companies however; did not possess legal entity and they were in the form of ordinary partnerships. The partners of these ordinary partnerships were held personally liable from the transactions of the stated company and there were no representatives appointed for the abovementioned transactions.

III. THE NATURE OF LEGAL ENTITY

During the 19th century, a few theories have evolved regarding the nature of the legal entities. However we are only going to dwell upon the Fiction Theory (Fiktionstheorie) that was asserted by the Romanist legal experts, and the Reality Theory (Realitaetstheorie) that was asserted by the Germanic jurists. There were no extensive regulations regarding the legal entities in the Codes at this period. Jurists of this era, have tried to reach up to distinct conclusions about legal entity by contemplating in the frame of the legal entity theory approved by their legal environment ¹⁹. Nowadays, the concept of legal entity is regulated in the Codes in full details, and the legislators of

16 Dural/Öğüz, pp. 221.

17 Gönen, pp. 11.

18 Hatemi, pp. 37-40.

19 Akünal, pp. 13.

the present time do not abide by one theory and create solutions according to the accepted theory instead; they make regulations that satisfy their legal policies and social needs. For this reason the discussions over the theories and the importance of the related researches, diminish with each passing day.

A. FICTION THEORY

This theory was claimed by Romanists such as Savigny, Puchta and Windscheid and is also called as assumption theory or fictional personality theory²⁰. This theory is based solely on the idea that; only human beings could be in possession of rights. Accordingly; the practical needs have led the system to provide other entities aside from the human beings to obtain rights where the ownership of an asset belonging to a certain person or a group of people could not afford a satisfactory solution. Just because of this reason, the legal order has designed legal entities as artificial beings to be the answer to all the problems that came forward.

Fiction theory takes off from the view that; only real persons could be the owner of rights and could be held liable for debts. Societies composed of people or groups of assets could obtain rights through the assumption of the legislator that; these groups were presumed to be humanlike in the field of law²¹. In situations when there is a right that does not belong to a specific real person, in order to use the concept of right, the jurists need such a fiction. From this point forth, a right that does not belong to a specific person could belong to a society of real persons or a group of assets.

Fiction theory by acknowledging this presumption, reaches to some conclusions. Accordingly for the acquisition of legal entity status of the societies composed of real people or the groups of assets, the free will of the legislator is needed. The legal entity does not have an inner will and for this reason, it does not have the capacity to act. It is not possible to imagine a legal entity to obtain rights or to be held liable for the debts by it's own actions just like a real person does. Such transactions could be performed by real persons acting on behalf of that legal entity, through representation. Following the non-acceptance of the legal entity's capability to have his own transactions; it will not be possible for a legal entity to cause harm to another by it's unlawful misconduct. It will not be wrong to state that; there will be no tortious liability of legal entities according to the above-mentioned theory.

Legal entities, just like the real persons who are permanently incapable, may acquire rights and get into debts through executing their capacity to act by their representatives. None the less, the lack of it's own will and own actions, will cause the legal entity not to be accepted as liable for the tortious acts of it's representatives.

20 Gönen, pp. 15; Quintana, pp. 379.

21 Özsunay, pp. 8-9; Gönen, pp. 15; Oğuzman/Seliçi/Oktay-Özdemir, pp. 265.

B. REALITY THEORY

The reality theory that was asserted by a German jurist named Gierke, alleges that legal entities are alive social beings. According to this theory; groups of real persons or assets are present as real creatures in the society. Legislators do not create them, they acknowledge them²². Groups of real persons or assets are already present in the society as a social phenomenon. For this reason it is not possible to invent them; it is only possible to admit them as social entities.

The reality theory by accepting legal entity as a social and real being, also admits that, a legal entity exists without being dependent on the wills of the legislators²³. By defending the abovementioned view, it is possible for a legal entity to have a will of its own that is separate from the wills of the real persons composing it²⁴. Legal entities are different than human beings (real persons) because; they do not possess tangible assets. Because legal entities exist as social phenomena in the society, it is not appropriate to qualify them as artificial beings created as a result of a fiction. Legal entities have the capacity to act just like the real persons and they have organs not any different than human beings. A legal entity carries on its activities through its organs. Followingly the activities of real persons that compose the authorized organ of the legal entity, are also the same as the activities of the legal entity. Unlike fiction theory, the organs do not act as representatives and this brings us to the conclusion that a legal entity must be held responsible of its tortious acts.

A legal entity has the capacity to act through its organs. The transactions of the real persons having the characteristics of an organ of a legal entity, will be considered as the transactions of the legal entity. This is the same when the organ gets involved in a tortious act. The tortious act of the organ, is the tortious act of the legal entity.

The theories regarding the nature of the legal entities have affected the legislators in making regulations about all sorts of legal entities. Reflections of the reality theory can be observed in Swiss Civil Code and in Turkish Civil Code. Adopting free formation system in establishing associations in Turkish Civil Code, having the unlimited capacity to have rights and obligations just like the real persons with the exclusion of the rights which are intrinsic to human beings, performing the capacity to act through their organs and the legal entity being responsible for the tortious acts of the organs, could be named as examples of the reflections of reality theory. However it will not be the whole truth to state that the legislators attach themselves to one specific theory and make regulations concerning the principles of the legal entities accordingly²⁵. The legislators, instead of choosing one theory and setting up the Codes according to that basis, consider the needs of the society and try to arrange provisions that do not contradict the legal policy they embrace. From this viewpoint, it is possible for the principles that take place in the Codes to have traces of both theories simultaneously.

22 Tuor/Schnyder/Schmid/Rumo-Jungo, § 15 N. 9.

23 James, pp. 219.

24 Suojanen, pp. 394; Machen Jr., pp. 258.

25 Dural/Öğüz, pp. 223.

One of the two theories that have been summarized above is not solely sufficient in finding out satisfactory solutions to all the problems arising from the regulations dealing with legal entities. It will be more accurate to clarify the legal nature of the legal entities by the principles coming from both theories. After completing the legal regulations dealing with legal entities all around the world, today the importance of the historic theories seem to diminish.

IV. TYPES OF LEGAL ENTITIES

It is possible to examine the notion of legal entity in two main divisions. First one of these divisions is; public law legal entities and the second one is private law legal entities. If hesitation exists about the identity of a legal entity, then the legal entity is doomed to belong to the public law legal entity group.

A. PUBLIC LAW LEGAL ENTITIES

Public law legal entities are entities that are entitled to use public power (force) in the fulfillment of public duties. Usage of public force is exclusive to transactions performed in public law area. Confiscation is such an example. However when a public law legal entity interacts with another personality in a private law transaction, no public force could be used. In a private law transaction, public law legal entities are in equal position with the other personalities (real persons or private law legal entities). In a lease contract where a public law legal entity is the lessor and a real person being the lessee, both parties to the agreement shall be treated equal.

Public law legal entities could be founded by an administrative transaction or by an administrative authority provided by the law. The procedures of the public law legal entities are subject to public law principles. Public law legal entities could be divided in two categories. Public administrations and public institutions. Public administrations are established in order to satisfy public service. Local administrations are public administrations founded to satisfy the mutual needs of the city, the municipality, or the village community and both the foundation principles and the decision-making bodies are regulated by the Codes and the decision-making bodies are elected by the voters.

Public institutions are institutions with legal identity, that supply public service. The organization of a public institution contain personnel and assets, which are allocated to public service. Because the public institutions are also public legal entities, they could be established by a Code or by the authority provided by a Code. Universities, Bars, Bar Associations, Notary Associations, Chamber of Commerces and etc. are examples of public institutions. With the condition of non-profit sharing goal, Universities established by the foundations which are under strict oversight and auditing of the State, are acknowledged as public legal institutions²⁶.

26 Öğüz, pp. 123; Oğuzman/Seliçi/Oktay-Özdemir, pp. 268; Dural/Öğüz, pp. 226.

B. PRIVATE LAW LEGAL ENTITIES

Private law legal entities are bodies established by a private law legal transaction. Which private law legal entities to be founded are determined by the regulations in the Codes. The legislator binds a legal entity founding result, to the declaration of wills intended to create the types of legal entities determined by itself. If the legislator does not acknowledge a group of real persons or assets as a legal entity, than it will not be possible to warrant them legal personality.

Unlike public law legal entities, private law legal entities do not possess the right to use public force. Although public law legal entities could be founded with an administrative transaction or an administrative authority provided by the law; the private law legal entities could be founded by a legal transaction. Because “*numerus clausus principle*” (closed number principle) is valid in the establishment of legal entities, only the sorts of legal entities predicted by the Codes could be established through legal transactions. It will not be possible to assign legal personality to groups²⁷. Private law legal entities are associations, foundations, corporations, unions and political parties.

It is possible to examine the private law legal entities in two sections: Societies of real persons and societies of assets. We could count associations, corporations, unions and political parties as members of societies of real persons. Foundations on the other hand are societies of assets. Another classification could be made according to the goals, the legal entities try to reach. The legal entities trying to reach the goal of making profit and sharing it amongst it's members are; corporations (legal entities with economic goals). We could name joint partnerships, limited partnerships, joint stock corporations, trade unions as legal entities with economic goals. Trade unions differ from corporations for their target of satisfying and maintaining the economical interests and needs of their members regarding maintenance and profession, through mutual aid, solidarity and guaranty. This differs from the profit making and sharing target of the corporations; but it still is an economic target for a legal entity.

Legal entities that do not try to reach the goal of making profit are: associations and foundations. Associations are societies of real persons that do not have the aim of sharing gain. In short, associations are groups of real persons without economic goals. Foundations are groups of assets with legal identity assigned to a distinct purpose. Unions and political parties do not have the goal of sharing gain either. Although unions try to maintain and keep the economical interests of their members, they do not try to make profit. A political party's main target is to overtake the government and because the political parties do not belong to the state organization, they do not possess the quality of public law legal entities.

V. DISREGARD OF LEGAL ENTITY THEORY

We may also call this theory: “piercing the corporate veil” or the “alter-ego doctrine”. This theory has evolved in Anglo-American legal systems and passed on to continental law habitat and it has a

²⁷ Akünal, pp.7; Hatemi, Nr. 37.

vast importance especially in company law. Even though the name of the theory contains the “legal entity” word; it’s the main application area is focused on company law²⁸. A few applications of the theory in associations and foundations could also be observed, but we would rather focus on the corporate law zone.

The theories trying to explain the nature of legal entity (the fiction theory and the reality theory), also had influence on English and American legal systems. During the periods when the notion of legal entity came to existence in England and in United States, it was acknowledged as a fictional being that was born as a result of legal difficulties²⁹.

During the era when the prevailing theory was the fiction theory, the legal entities did not have the capacity to act, and for this reason they needed representation to perform legal transactions³⁰. Following the dominance of the fiction theory came the reality theory into the stage. Common law system gradually accepted the reality theory in legal entities. The reality theory has led the jurists to reach to the conclusion that; there is a distinction in between the personalities of the legal entity and the personalities of the real persons composing that legal entity. So the legal entities and the real persons giving birth to the legal entities are different subjects of law before the eyes of judicial platform. The beforementioned distinction is called; “the veil of the legal entity”³¹.

The reality theory in Common Law did not last long. Today the current prevailing theory is still the fiction theory. Starting up with the idea that legal entities are nothing else but fictitious beings; it could easily be succeeded through the removal the veil of that legal entity and reach the real persons standing behind it. Disregard of the legal entity theory aims to examine the cases where the English and American Courts remove the veil of the concept of legal entity aside and hold the real persons behind it personally responsible³². The courts disregard the principle of distinction in between the legal entity and the real persons composing it, which is called as the “veil”, and in such rare cases, evaluate these two different subjects of law as a whole, as one legal identity.

Disregard of legal entity theory does not apply only to relations in between a legal entity and the real persons that compose it. In some cases when there are two irrelevant legal entities, the judges may choose to accept these as one legal entity instead of two. These situations are called as, “identicalness in between two different personalities”.

When the real person members of a legal entity act malevolently with the intention of getting rid of the personal liability and hide themselves beneath the veil of the legal entity; the creditors may pierce the veil and reach out to the real person members of the legal entity covering themselves beneath another mask³³.

28 Davies, pp. 102; Wormser, pp. 497.

29 Hoerber/Reitzel/Roberts/Lyden/Severance, pp. 893-894.

30 Laski, pp. 322.

31 Cary/Eisenberg, pp. 82.

32 Pickering, pp. 490.

33 Serozan, pp. 19.

Common Law System is a judge made law system and because of this reason, there are not enough written legal regulations regarding the piercing of the corporate veil theory. Judges that are actors in common law system decide to disregard the legal entity in some cases by investigating the previous relative cases. If the principle of distinction in between the legal entity and the real persons composing it, leads to the violation of the concept of legal entity, then there is enough cause to penetrate through the corporate veil of the legal entity by the competent courts³⁴.

However we should emphasize that; to qualify each time someone claims there is distinction in between the legal entity's personality and the real persons' personalities composing it as lifting the veil, and holding the real persons beneath liable without taking the legal entity into consideration first, will totally be against the idea of the acknowledgement of the legal entities by the legal order. English and American Courts mostly apply the rule of disregard of legal entity in joint stock companies with one shareholder. The main reason is the intertwining of the interests of the joint stock company and it's controlling shareholder and a second reason is the distinction principle causing a convenient situation for fraud against law³⁵. Disregarding the veil theory, could also be applied in cases where a legal entity is used as a mask in order to escape from the tax duties.

It is a common situation where real persons hide behind the independent structure of a legal entity just in order to reach to a solution prohibited by law or to get rid of a liability imposed by the legal order³⁶. The application of this theory must be realized with full accuracy and the specialities of the concrete case will be a milestone for the judge to disregard the legal entity when it is necessary.

CONCLUSION

The duration of an organization is not the sum of the lifespans of the shareholders of the mentioned company. It is a much longer period of time. Corporations are formed in order to enhance and maintain the interests of all the shareholders and all the investors who have advantage in the perpetual existence of the legal entity. This is all possible because of the fact that a legal entity is a different legal personality than all the real persons composing it. A currently valid corporation founded in the nineteenth century still has the same legal personality, but the real person shareholders who established the same corporation have changed throughout these years.

The concept of legal personality helps maintaining the interests of the shareholders and the investors to be maximized for long terms. Because the legal entities are there for a long time, the investors invest more in research, development, in local and broader communities.

The activities including social and environmental aspects of a company and its interaction with its shareholders could be defined as sustainability. It has economic, social and environmental dimensions. If a corporation has achieved sustainability over long terms, than the same legal entity is

34 Ruthven, pp. 3.

35 Fletcher, pp. 636.

36 Sağlam, pp. 153-162.

also maximizing its wealth. The companies must make sure that their wealth continues to grow, and they must adapt to the society and economy. This is the only way to achieve sustainability.

This article focuses on legal entities and especially the corporations as legal entities. The legal entities serve to strong institutions and they serve in the maximization of the wealth. In short legal entities are essential legal tools in achieving sustainability.

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