

Artículo de investigación

Conceptual idea to optimize institutional typological series of organization and legal forms of legal entities

Концепция оптимизации институциональной системной типологии организационно-правовых форм юридических лиц

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Abstract

The concept of a legal entity's organization and form is introduced in a meaningful aspect. The existing typology of Russian enterprises/firms as legal entities in its organization and forms' context with an emphasis on commercial organizations is given. There are defined priority discriminatory aspects of the Russian enterprises' organization and legal form, that means for commercial organization.

An assessment is made regarding the applied intuitive-empirical method of these subjects of juridical relations' organization and legal forms existing typology forming and, accordingly, its non-optimization by the set and institutional characteristics. The conceptual idea to transit in the direction to optimized institutional series of the enterprises' organization and legal forms is formulated. A general methodological scheme for forming of the optimized institutional series of them is proposed.

Keywords: Institutional series, legal entity, optimization, organization and legal form, typology.

Аннотация

Введено в содержательном плане понятие организационно-правовой формы юридического лица. Приведена существующая типология российских юридических лиц в разрезе их организационно-правовых форм с акцентом на коммерческие организации. Определены приоритетные дискриминирующие аспекты организационно-правовой формы российского юридического лица - коммерческой организации.

Аргументирована оценка относительно применённого интуитивно-эмпирического метода формирования существующей типологии организационно-правовых форм этих субъектов правоотношений и соответственно её неоптимизированности по множеству и по институциональным характеристикам. Сформулирована концептуальная идея перехода к оптимизированному институциональному ряду организационно-правовых форм юридических лиц. Предложена общая методологическая схема формирования их оптимизированного институционального ряда.

Ключевые слова: институциональный ряд, оптимизация, организационно-правовая форма, типология, юридическое лицо.

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Introduction

For a historically long period, legal entities have been the basis of the developed countries' national economies, at least since the first industrial revolution that caused mass machine production. Some studies even propose to introduce societies' development level indicators, depending on the contributions correlation of the individual producers and manufacturing organizations. There is no doubt that in the so-called predominantly agrarian developing countries, taking into account their climatic, socio-political, mental and other restrictions, the legal entities' share in the economy is unlikely to be deliberately dominant. Therefore, this indicator seems quite representative in terms of content. However, caution and accuracy in evaluative realities should be observed here, because in the postindustrial society the value and contribution of the most intelligent individuals, subjects of legal relations, who are creative individuals or working remotely or at a distance (means, of course, not their creative activity's technical or dislocation aspect).

Meanwhile, in a post-industrial society, collective forms of production will inevitably continue to exist in the foreseeable future.

For legal entities in all countries, there is established an external legal regulation of their operation in the form of the so-called legal entity's organization and (or &) legal form. It applies to the main life cycle stages of these subjects of legal relations: pre-constituent, constituent, operational, liquidation, and post-liquidation.

Most often, the typological diversity of the legal entities' organization and legal forms is enshrined in legislative acts, and most of all in coding types of the Civil Code of the Russian Federation. This picture, in particular, is observed in relation to the United States of America, Switzerland, Germany, Russian Federation and many other states and subjects of international law.

However, almost everywhere the typology of legal entities' organization and legal forms is a product of complex recursive procedures for harmonizing the legislative authorities positions, executive authorities and the business community, and sometimes even wider, of society as a whole. Such state of affairs is largely due to the regulatory legal norms predominant evolutionary development and the democratic

institutions primacy, which are far from always being ideally corresponding to the management's scientific foundations due to the subjectivity inevitable introduction.

As a result, the typology of legal entities' organization and legal forms is far from optimality, because its transformations are not prepared and implemented on a scientific basis and, moreover, mainly sporadically and empirically, in accordance with spontaneously arising initiatives. More often even formal feasibility studies of legislative innovations during these transformations cannot be identified. Moreover, far from exceptional cases, innovative legislative activity is a component of legislative and executive government branches activity simulation.

This state of affairs is fraught with many extremely negative consequences, including the emergence of severe financial and economic crises, for example, correlated with stock collisions, which, in particular, were noted during the global economic crisis of 2008. It is no secret that, for example, each new innovation in the Civil Code of the Russian Federation gives rise to a painful period of Russian legal entities' institutional adaptation, which, as a rule, stretches for a period of 1-5 years, largely paralyzing the national economy and creating prerequisites for mass violations and vulnerabilities. A catastrophic phenomenon is observed: the period of legal entities' contingent institutional adaptation is significantly longer than the period between the specialized legislative innovations emergence. In management theory terms, this phenomenon is known as the "bounce of management", when the managed object is so inert that it is unable to fully respond to the managing system effects. It is well known that in frames of "bounce of management", an acceptable effective management occurrence is not obviously physically feasible.

Naturally, such a situation in the field of scientific development and managerial practice regarding the formation of a typology of legal entities' organization and legal forms is unacceptable.

Accordingly, the formation and reforming of the legal entities' institutional regulation should be:

- optimized sufficiently in content;

- optimized by implementation time points.

At least the following categorical subjects are interested in its fundamental improvement:

- business community members as a whole;
- state bodies and regional government (including municipal government), and, in some cases, interstate governance bodies;
- legal entities' directorates and legal entities units' (or divisions', departments', etc.) administrations;
- legal entities' participants;
- legal entities' counterparties (subcontractors and customers);
- in some cases, legal entities' competitors within the country and abroad, justifiably afraid of getting into crisis industry environment;
- legal entities' "ordinary" employees;
- society members, means the corresponding state's population.

Moreover, there is reason to argue that it is impossible to single out uninterested persons or interested persons in status quo maintaining (unless, of course, the interests of crimocratic society's small part are taken into account).

Thus, economic management special sphere should be outlined, the institutional framework management sphere, which is an important and indispensable public administration component.

Unfortunately, in the field of substantiating the typology of legal entities' organization and legal forms, there is a lack of scientifically based design decisions that could at least nearly resemble exhaustive ones in nature.

Accordingly, the problematics of system typology optimization of organization and legal forms concerning legal entities is relevant for many countries, including those especially with an unstable institutional environment such as Russia.

Theoretical basis

When forming reform proposals, one should proceed from the fact that in the field of legal entities' institutionalization, intelligent management technologies should be used.

Therefore, for the declared thematic conceptual constructions it was considered expedient to use

a multidisciplinary theoretical complex, including the following theories and scientific directions:

- system analysis;
- general control (management) theory;
- theory of state and regional governance;
- jurisprudence;
- organization theory;
- institutional theory;
- evolutionary theory;
- optimization theory;
- theory of sets;
- information theory;
- programming theory;
- gemological theory, etc.

Thus, in theoretical terms, the study must be carried out at the "junction of complex of sciences".

Methodology

Structural interpretation of universal management methodology is presented (Dmitriev, Novikov, 2019a). Design of institutional systems allows interpretation as a local version of management.

Results

Legal entity's organization and legal form concept introduction

Unfortunately, in the Russian Federation legislation, including the Civil Code, the term "organization and legal form of a legal entity" is widely used, but it is not defined meaningfully anywhere. Out of the three well-known determining methods (essentially, by manifestations, by options), the worst option is chosen, the last of the listed options: based on lists and actually a haphazard introduction of a certain semantic set of organization and legal forms is introduced.

Moreover, very term is unstable, so the paragraph 3 of the article 50 of the Civil Code tells about "the form", and in the paragraph 1 of the article 54 of this Code "organization and legal form" 3 is already mentioned.

Accordingly, it is necessary to proactively introduce a definitive innovation, because without it, a discussion of the institutional object, its structure and characteristics would be objectless.

It is proposed to understand a legal entity's organization and legal form a special relationship type between the legal entity, its founders and participants (so-called "triangle of ties"). By the way, the concepts of "legal entity's founder" and "legal entity's participant" are also not actually defined in the Russian legislation and, moreover, in many regulatory structures they are mistakenly considered synonyms. However, the problem of the institutional "structure" of a Russian legal entity is complex and deserves a separate in-depth scientific consideration.

In numerous inexpertly formed sources, in Russia the legal entities' organization and legal forms correlates with the so-called form of ownership. This is even observed at Report summary of Rosstat: Russian Federal Statistics Service (Distribution, 2019). However, ownership forms in relation to a legal entity cannot exist, because according to the jurisprudence basics, at least the dominant number of the world's countries, legal entities cannot be an object of ownership or any other type of property law in any of the components context (possession, use, and disposal).

Russian legal entities' existing typology in their organization and legal forms context

In the Russian Federation, several legal entities' classification distinctions are applied, and the following distinctions are primarily introduced:

- by legal capacity;
- by product specialization (by subject of activity);
- by location, it was previously used to link the legal address (Russian and non-Russian) to the administrative-territorial division;
- by commercial nature (non-commercial and commercial);
- by organization and legal form;
- by the status of "strategic".

The first two distinctions and the last one with the organization and legal form specifics, as a rule, are not rigidly corresponded.

Accordingly, for profit organizations the rule should be maintained:

- properly declared purposing an having a goal as systematic extraction (receipt) of profit;
- distribution of actually obtained profit among participants.

Now we are going to immediately note two fundamental points:

- consideration should be exclusively directed to Russian legal entities, because it is verbally impossible to influence non-Russian legal entities' organization and legal form (it is possible to implement typological prohibitions at the legislative level, although such a measure would be in clear contradiction with the entrepreneurial activity freedom principle);
- organization and legal forms' typology fundamentally depends on the legal entity's essence, if it is a non-profit or commercial organization.

As it is known, in Russia a non-profit organization can be created in an arbitrary organization and legal form with a number of prohibitions, namely:

- absence of calls for the violent existing constitutional order overthrow;
- absence of calls for strife (racial, national, religious, social, and sexual), etc. (Dmitriev, Dergunov, 2004; Dmitriev, Yekshembiev, Lubaeva, Koval'kov, Minaev, 2013).

It is generally known that there are insufficiently systematic legislative norms with respect to non-profit organizations in Russia, although the sporadically transformed Federal Law "On Non-Profit Organizations" (Federal Law, 1996) applies. However, the mentioned non-profit entities' organization and legal forms are just a kind of examples, replacing, for example, the "fund" with, for example, the "FUND", it is possible to get out of its regulations' scope without the slightest effort.

Therefore, to build and even more optimize the continuum power set typology is seen as fundamentally counterproductive, although the idea of making typological typical, recommended, stereotyped, etc. organization and legal forms of non-profit organizations fits well with the considerations and designs set forth below.

Accordingly, let us dwell on the existing organization and legal forms of Russian commercial organizations.

The corresponding existing typology is reflected in Figure 1, and approximately 5 years existing

typology is represented in Figure 2. The unitary enterprises' organization and legal forms are now defined in Federal Law "Civil Code of the Russian Federation" (Federal Law, 1994) by blanket, which means through reference to the Federal Law "On State and Municipal Unitary Enterprises" (Federal Law, 2002).

This is an extremely dubious legal construct, because the Civil Code of the Russian Federation unequivocally postulates the typological diversity of separations – legal entities as the commercial organizations' organization and legal forms reflected in this de facto Federal Constitutional Law.

A significant technical detail, at the initial formation stage of Russian Institutional law, organizational and legal forms' naming was borrowed from foreign legal spaces and the history of pre-revolutionary Russian Law. From here came some unusual and dual naming constructions. Translated into English, they can give rise to erroneous interpretations, so, in particular, joint-stock companies are not corporations at all with a minimally strict interpretation. Therefore, there is no clarity: is "Aksionernoye Obshchestvo" a "Corporation" or "Joint Stock Company" in English and in an abroad reality? Can there be correct and understandable combinations for "Public Joint Stock Company" and "Non-public Joint Stock Company" in the English version in this case? It is impossible not to mention that in reality, in modern Russian conditions, a number of institutionally illegal commercial organizations operate with a legally unacceptable organizational and legal forms, among which, first of all, the so-called Federal State Unitary Enterprises, Joint-Stock Companies without specifying their publicity/non-publicity and Insurance Joint Stock Companies.

Not only component dynamics is visible, but also hierarchical. The classification ordering basic principles are not maintained in relation to the latter.

A formal, almost unsystematized, extremely chaotic description of Russian commercial

organizations' organization and legal forms can be found in the Civil Code of the Russian Federation, and in the systematized description version for the version shown in Figure 2 (Dmitriev, Dergunov, 2004; Dmitriev, Yekshembiev, Lubaeva, Koval'kov, Minaev, 2013).

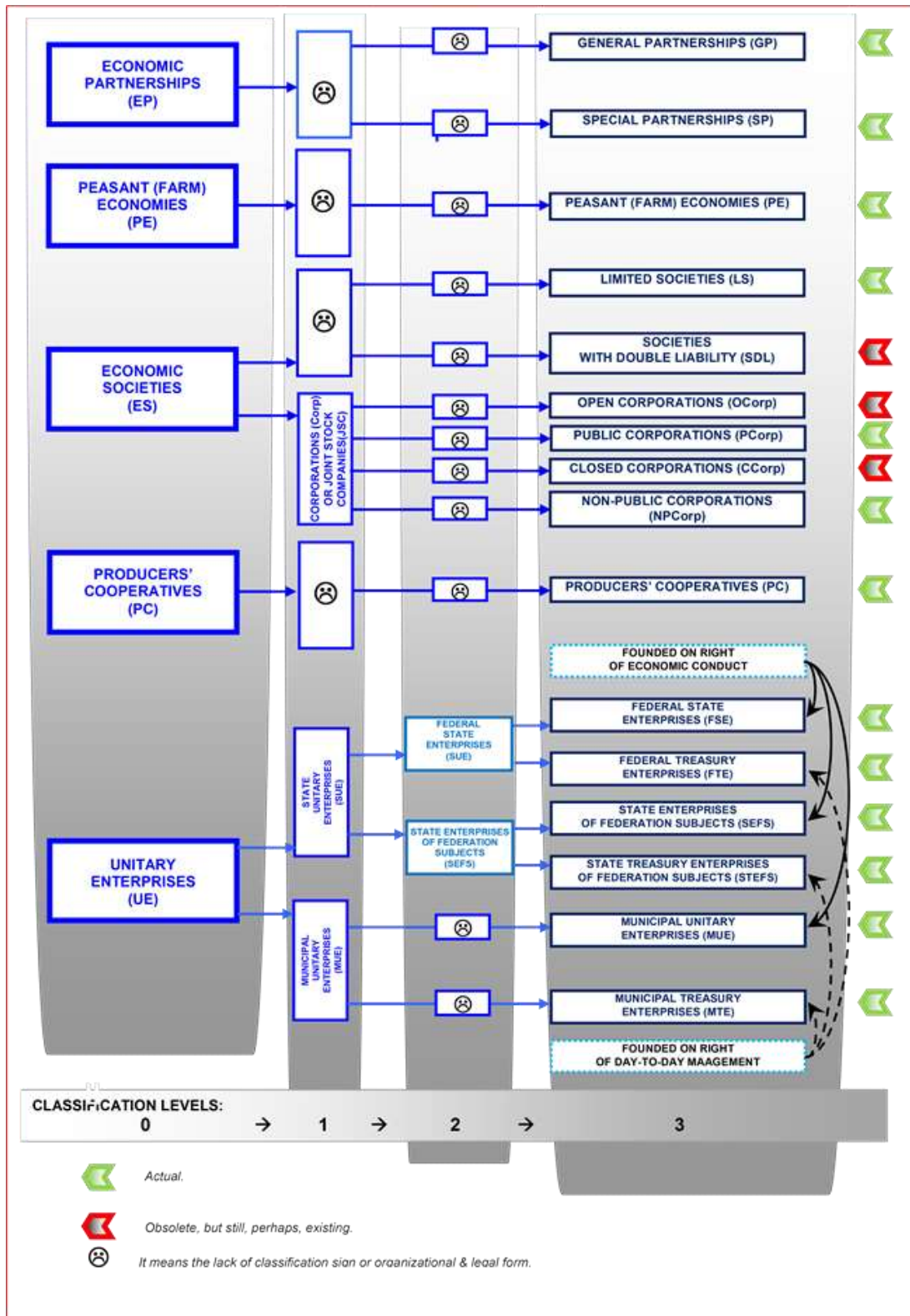
Priority discriminatory aspects of organizational and legal forms of Russian legal entity – commercial organization.

For Russian commercial organizations the organizational and legal forms' representation is not carried out in a structurally typed kind, which does not allow to present them systematically and make comparisons.

Therefore, as a part of the study, it was deemed appropriate to introduce the following enlarged classification and identification template:

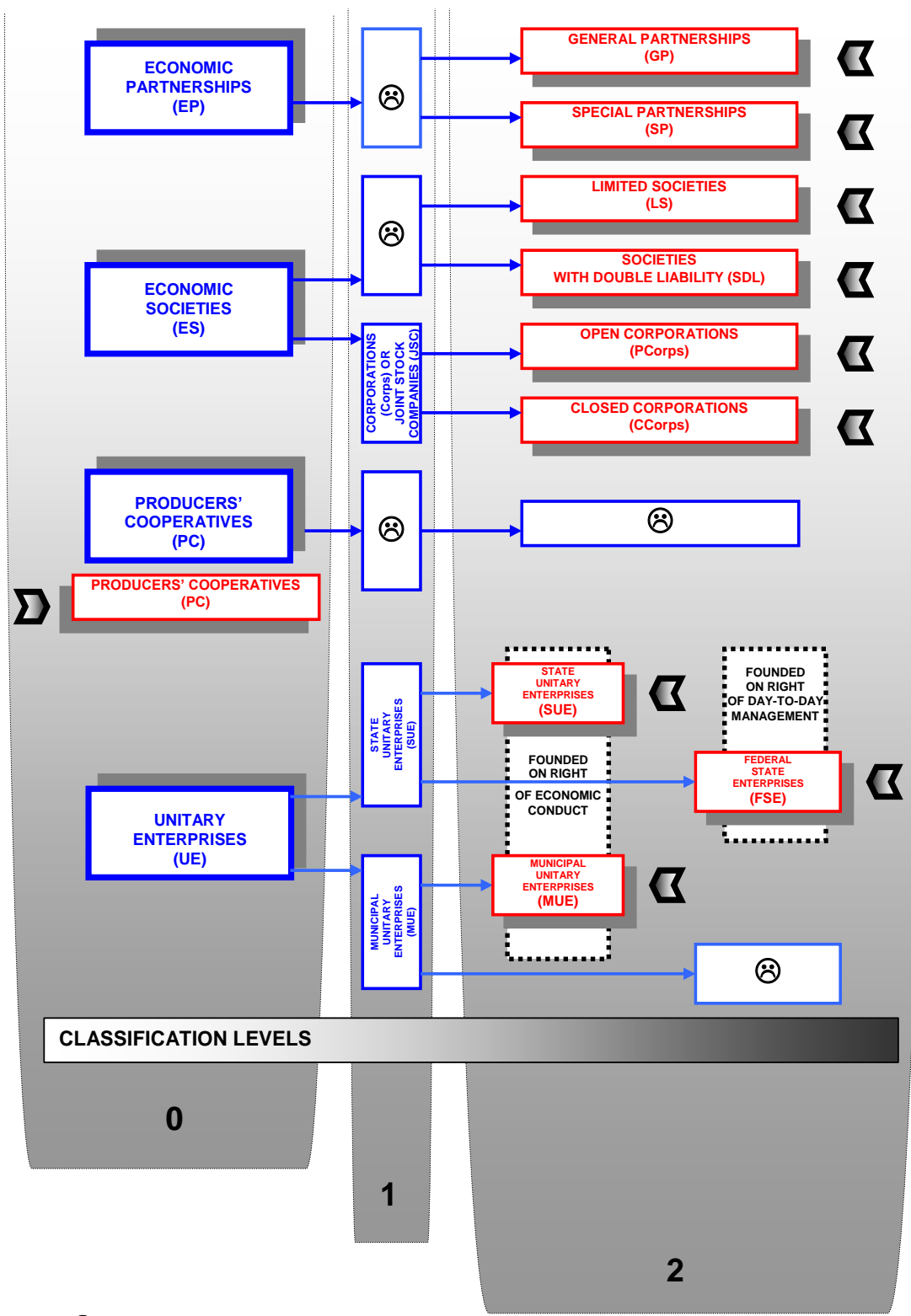
- founders' and participants' typology, as well as the resigning procedure from the legal entity's membership;
- the size and formation procedure by the founders, and changes in a legal entity's initial capital by its participants;
- general procedure for managing the legal entity's affairs by its participants;
- procedure for profits and losses distribution by its members;
- procedure for the participants' subsidiary liability emergence and implementation for the legal entity's obligations.

This template implies that in the general case, the classification features are operators (for example, the procedure for resigning from the participants' set), and in the particular case, characteristics (for example, the initial capital amount). Undoubtedly, when optimizing the organizational and legal forms' institutional typology concerning legal entities'-commercial organizations', the discriminatory operators' structure can be expanded and can be given a hierarchical character.



Source: author's own research

Figure 1. Existing typology of organizational and legal forms of Russian commercial entities



☹ it means the lack of classification sign or organizational and legal form

Source: author's own research

Figure 2. Previous typology of organizational and legal forms of Russian commercial entities

Scientific nature and productivity assessment of the intuitively empirical method used in Russia to create organization and legal forms typology for the legal entities

It was not possible to identify the tools for forming Russian legal entities' organization and legal forms typology description neither in accessible scientific sources, nor in the memoirs.

Based on many years' experience of (approximately from the late 1990s to the present) indirect expert involvement in domestic law-making processes, it can be argued that this typology was formed exclusively empirically based on:

- foreign prototypes of existing developed countries' civil codes such as the USA, Germany, France, etc.;
- sporadically initiated innovations in the Russian power structures upper echelons under the strong lobbying clans' influence.

No introduction signs of bringing scientific methodology of typology under consideration have been identified. In a remarkable degree, this applies to the legislative optimization toolkit. It is not news that the competence level of many Russian lawmaking subjects in the areas of system analysis, general management theory, applied semantics, etc. not overly tall. Moreover, the Russian Federation legislation is difficult even to be processed with standard hypertext technologies. Structurally, it is not designed for adaptation (even regarding the numbering of articles of laws).

A sufficiently detailed shortcomings description in this and other areas of Russian legislation is presented in past works of the author (Dmitriev, 2018; Dmitriev, Novikov, 2018b).

On the whole, existing organization and legal forms typology of Russian commercial organizations has, among other things, the following fundamental shortcomings specific for poorly organized systems:

- organization and legal forms are introduced according to the "as is" scheme with a certain empirical set, and their introduction has not been explained in any way, and moreover, it is not justified;
- organization and legal forms are not correlated with each other, although in some cases a partial hierarchy has been

introduced, even if it is extremely messy in scientific terms. Meanwhile, it is obvious that a limited liability company and a closed joint-stock company (and now a non-public joint-stock company) are characteristic special cases and differ only in the presence of fixing participation rights in the form of securities and shares;

- organization and legal forms are not organized and are not described as framework mechanisms for the legal entities' life cycle by operators of economic space;
- genesis of these forms is a sporadic, often overly dynamic process: in variety terms, naming, characteristics, etc.;
- these forms' composition and design do not have optimization signs or at least rationalization.

For the sake of fairness and understanding of the situation's severity, it should be noted that the managerial situation described above is apparently the modern world negative stereotype rather than a unique crisis-forming factor in the Russian economy.

Conceptual idea of transition to optimized institutional series of organizational and legal forms of legal entities

Studies have shown that to move from an unsystematic set of commercial organizations' organization and legal forms to an institutional set of ones is advisable.

In this area, it seems productive to creatively and correctly transfer concepts, including the so-called homological objects' series that, having arisen in organic chemistry, were after cultivated in the biology field (Vavilov, 1987), and then in the technology field, including the military sphere, and in other areas, including even perfumery.

That is, if designate a certain organization and legal forming terms of its jurisprudence (preferably legislative) regulation as **O&LF**, then there should sequentially arise:

- rational universal thesaurus of the organization and legal form description in the operators-regulations set form (for example, profit and losses distribution operator, resigning from membership operator, etc.) is a certain representation metalanguage concerning organizational and legal

forms of legal entity:
 $O\&LF \sim \{R_1, \dots, R_D\}$, where \sim is symbol of conformity; D is the metalanguage's descriptive components number. The metalanguage can be hierarchical with descriptive elements highlighted in the formalized rules form for objects, subjects and actions (for example, profit, participant, distribution). This metalanguage will be, in a sense, algorithmically identified framework for the legal entity's life cycle, basically, of course, for the operation stage, i.e. industrial and economic activities implementation. Such a description's example was given above, when highlighting priority discriminatory aspects;

- some optimized (including necessary and sufficient) series $O\&LF_1, \dots, O\&LF_N$, where N is a some "small" number, each n -th element of which is $O\&LF_n$ and is represented through a classifying characteristics complex, localized by numerical and non-numerical operator metalanguage constructions' characteristics R_1, \dots, R_D .

General methodological scheme for the generation the optimized institutional series of organizational and legal forms of legal entities

The general idea of implementing a methodological scheme for the formation of optimized institutional series of organizational and legal forms of legal entities was presented in relation to the general legislation case (Dmitriev, 2017; Dmitriev, 2018; Dmitriev, Novikov, 2018b; Dmitriev, Novikov, 2019a).

It is proposed to combine it with the idea of complex objects' block-modular design (Dmitriev, Novikov, 2019b).

As a result, an optimal series of complex operators' design methodology emerges, which describe organization and legal forms using information-advising systems and introducing a representative state indicators system.

Here, direct analogs to well-known conceptual programming constructions are found, including upward, downward, and counter.

Naturally, for the optimized institutional series, optimal hierarchization is already possible.

Implemented and unrealized similar projects

The results of the described development study were applied in the period of 1989-2019:

- while expertizing and expert formation of a sufficiently diverse and voluminous proposals set regarding the Soviet and Russian Civil legislation reform, including the Civil Code of the Russian Federation;
- in carrying out a number of feasibility studies of a large number of projects for the Russian legal entities' establishment and reorganization and so-called joint ventures, as well as Russian enterprises with partial foreign operational deployment;
- during the corporatization and re-corporation projects' development of lots of Russian high-tech industries' enterprises, primarily those related to the national aviation industry;
- during the implementation of diploma and dissertation projects' significant number, mainly within the educational process framework at Moscow Aviation Institute (National Research University).

Among those remaining far from resolving problematic issues were:

- system typology conditions formation for the legal entities' establishment and operation that affect the legal entity's organizational and legal form;
- legal entities' organization and legal forms institutional series analysis in the most developed countries and their correlation with these forms' Russian series;
- national institutional spaces' convergence impact study in the legal and economic globalization framework.

Conclusion

These considerations give rise to the following observations, conclusions and recommendations:

- legal entity's organization and legal form concept a is unacceptably often not introduced, implemented incorrectly or introduced enumeratively through implementations. The only correct way to define it seems in legal entity's meaning through the nature of

the relationship terms with the founders and members and their complex operation;

- organization and legal form significantly affects the legal entity's operation state and effectiveness, including in the financial and economic aspect;
- in many countries legal entities' existing typology, including Russia, in terms of their organization and legal forms as a whole, is the empirical activity unsuccessful managers' product, both in terms of achieved conditions and partly biased dynamics. It gives rise to significant damage, threats and crises;
- it seems appropriate to bring the scientific foundations into the institutional space design, including the Russian institutional space;
- it seems appropriate to optimize legal entities' institutional typology in the form of organizational and legal forms' optimized series;
- in order to ensure this optimization, the organizational and legal forms' representation operators' canonized metalanguage should be introduced and their set should be optimized for operating conditions in some legal spaces;
- from this conceptual idea indirectly follows the provision on the appropriateness of legal entities' organization and legal forms international unification;
- for the indicated task of legal institutional optimization formation and solution, information and consulting systems tools should be used;
- in local versions, the development results have been successfully tested.

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