THE CONCEPT AND LEGAL NATURE OF CORPORATE ORGANIZATIONS

INTRODUCTION
This article is devoted to the analysis of the concept and legal nature of corporate organizations.

LITERATURE REVIEW / STATE-OF-ARTS / RESEARCH BACKGROUND
Despite the fact that the criterion for the classification of legal entities in the Russian Federation into corporate and unitary organizations was incorporated into Russian civil law relatively recently, the concepts of "corporate organizations" and "corporations" have been known in domestic and foreign civil science for a long time. (KOVALEVA, 2021, p. 188-189; CORPORATE, 2017; GONCHAROV et al., 2020d, p. 55-57; AFONIN, 2020, p. 430-442)

In this regard, it seems necessary to research the legal nature of corporate organizations in Russia and abroad, as well as the evolution of the content of the concepts of "corporations" and "corporate organizations" in Russian law, as well as in the legal systems of foreign states and international law.

METHOD ALSO CALLED MATERIALS AND METHODS OR EXPERIMENTAL METHODS
This article in the process of cognition of state-legal phenomena were used: a) general scientific methods (formal-logical, systemic, structural-functional, concrete-historical); (GONCHAROV, CHIMITOVA, 2020, p. 86-95; GONCHAROV et al.2021a, p. 23-29; GONCHAROV et al.2021b, p. 410-416) b) general logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); (GONCHAROV et al.2021c, p. 15-22; GONCHAROV et al.2021d, p. 1-6; GONCHAROV et al.2020a, p. 93-106) c) private scientific methods (technical and legal analysis, specification, interpretation, etc.) (GONCHAROV et al.2020b, p. 78-90; MOROS, GONCHAROV, 2020, p. 114-128; ZAPRUTIN et al.2020).

MAIN PART
In addition, it should be noted that the actual emergence of corporations as a type of legal entity occurred long before the institutionalization of the concepts of "corporations" and "corporate organizations" in law. The very legal nature of the emergence of legal entities in human history is directly related to the attempt to combine the efforts of individual individuals, their property, connections, opportunities in order to profit from the development of new markets for goods, trade routes, etc. The main merit of the development of the structure of a legal entity belongs to Roman lawyers, who based it on the various unions of Roman citizens that existed before the appearance of legal entities with very broad goals: religious (sodalitates, collegia sodalicia); professional (fabrorum, pistorum); managerial (collegia apparitorum); humanitarian, for example, for the organization of mutual aid (funeral
corporations, collegia funeraticia); entrepreneurial, for example, joining the efforts of entrepreneurs working for the state (collegia publicanorum), etc. (ALESHENKO, 2021, p. 110).

However, these prototypes of a legal entity were not, in fact, legal entities in the modern sense, since the property of the participants of such associations remained in the ownership of each participant, or was transferred to one of them (or a third party) for the implementation of certain commercial transactions that were conducted on behalf of all participants of this community.

At the same time, the prototypes of corporate organizations even passed a kind of analogue of state registration. In particular, in ancient Rome of the era of the republic, the consent of the state was not required to start the activities of the associations described above. With the centralization of power and the strengthening of the power of the emperors, several legal acts were issued (in particular, the law of the emperor Augustus "Lex Julia de collegiis"), according to which these communities required the permission of the Senate to start their activities. And only communities of a religious and humanitarian nature did not require prior permission from the authorities, but had to comply in their activities with a number of specific rules.

However, as the institution of legal entities emerged, the term "corporation" became predominant in the designation of legal entities created in Europe for the purpose of making a profit. First of all, corporations began to be understood as various forms of association of merchants and artisans in the form of guilds. At the same time, the idea of corporations was well received by the institution of the church. Thus, within the framework of the activities of the Holy See, numerous monasteries, chapters, orders, brotherhoods were created in the image and likeness of the Roman colleges. A number of authors note that in the Middle Ages there was not a direct, but indirect borrowing from Roman law in terms of the corporate organization of the efforts of individuals. (HURST, 1970, p. 3-8)

The initial forms of corporations that developed in Europe in the Middle Ages were maons, as well as all kinds of partnerships and associations built on a share basis (in the production of flour, mining, etc.). In addition, the states of Europe, for example, in Genoa, began to play an active role in the creation of the maons. The states established the maons, provided them with legal status and powers, for example, to collect debts to the state. These rights were of a share nature (divided into shares). Shares could be traded on the market, selling freely. When buying a share, the owner became a member of the maon, starting to receive interest from his income. Thus, the maons became the prototype for the most important form of corporate organizations - joint stock companies. At the same time, other forms of corporations were actively developing, for example, corporations that were actively used in the field of maritime trade until the 18th century.

The 17th century was characterized by the rapid growth of companies ("Dutch East Indies" in 1595, "Anglo East Indies" in 1613, French in 1628). This provoked the explosive growth of corporations across Europe. The locomotive of the processes at that time was the Dutch companies, which consolidated a kind of standard in the organization and activities of corporations, which consists in: the leading role of the state in the formation of corporations; the emergence of share capital, which began to circulate according to certain rules; separation of the property of the corporation from the property of its founders; the presence of corporate management bodies.

States began to adopt regulations governing the activities of corporations. For example, King James II of England adopted in the first year of his reign a charter recognizing the East India Company as a monopoly on trade with India, as well as the status of a corporation. However, the initial period of institutionalization of corporations in the legal system of states was characterized by a high level of autonomy of corporations, which had a peculiar status of vassals of the sovereign, controlled territories, in which they even conducted rule-making activities, were engaged in economic activities. And only by the middle of the 18th century, most corporations (companies) began to operate within the framework of some kind of legal form (partnerships, trust companies, joint-stock companies, trusts, etc.). (GONCHAROV, KUDRYAVTSEVA, 2021, p. 10-11)
A number of states, in particular France, were characterized by stricter state control over the activities of corporations, when the state appointed a special official to each corporation - a state agent. But, at the same time, the management of corporations increasingly took place through the adoption of decisions by the shareholders themselves through the development and adoption of internal corporate acts. France, starting from the end of the 17th century, became a trendsetter in the regulation of legal relations with the participation of corporations. The French Revolution and the reign of Napoleon brought new impetus to the development of corporate law. At the beginning of the 19th century, the Code de commerce came into force in France, where the institution of joint-stock companies was regulated in detail, subdivided into joint-stock partnerships created by authorized state bodies and joint-stock limited partners, which were created without the permission of the government and were led by special governing bodies of the joint-stock company.

Gradually, corporations in Europe became completely controlled by the state, both from the point of view of the institution of state registration of their creation, and in terms of determining the rules for their subsequent activities. New forms of corporations appeared: in France (in 1863), Germany (in 1900), Austria (in 1906) and England (in 1913) - limited liability partnerships; in the United States - trusts and public corporations, as well as branches and subsidiaries that are formally independent legal entities.

During this period of time, the understanding of the content of the term corporation was developed, by which they began to understand a kind of legal entity engaged in commerce, the property of which is divided into a certain number of shares that are freely traded on the stock exchange, and for which the owners receive either strictly fixed income (privileged shares), or conditional income (depending on the efficiency and profitability of the company).

In Russia, attempts to create corporations have been carried out since the time of Peter 1. On October 27, 1699, he also adopted a decree that proposed the creation of trading companies on a foreign model. In 1706 and 1711, several more similar laws were adopted. It was only in 1715-1717 that private entrepreneurs began to show interest, however, when the first project of the trading company was approved in 1739, there was no desire to participate in the company. The first joint-stock company (corporations) in the Russian Empire is considered to be the Russian Trading Company in Constantinople, established on February 24, 1757. Its creation was initiated by the Venetian merchants, who in 1749 applied to the Senate of the Russian Empire with a request to allow trade between Venice and the Russian Empire through the Mediterranean and Black Seas.

Subsequently, several more joint-stock companies (corporations) were established: the Persian Bargaining Company (1758), the Joint-Stock Issue Bank (1762), the Russian-American Company (1798) and others. Most of the provisions of the laws governing the activities of such corporations were borrowed from foreign regulatory legal acts (for example, the provision on the authorized capital, which was split into shares in equal parts). Unlike foreign states, in the Russian Empire, the management of corporations was not regulated and was largely left to the mercy of their participants.

A significant shift in the development of the institution of corporation fell on the reform of civil legislation carried out by M. Speransky, who to a large extent used foreign legislation.

Based on the Code of Laws of the Russian Empire, the partnership was made up of two or many comrades who wished to act unanimously and on behalf of everyone. A limited partnership consisted of two or many comrades, with the involvement of one or many investors, who entrusted the first known amounts of their capital. A company in shares was formed by combining a known number of private contributions of a certain size into one common joint capital, which limits the scope of action and responsibility of each of these companies. A labor artel was recognized as a partnership formed for the production of certain works or trades, as well as for the administration of services and positions, personal labor participation, at their common expense and with their mutual responsibility. A society was recognized as a combination of several persons who, having no goal of making a profit from conducting any production, chose a specific goal as the subject of their aggregate activity, and a union - a union of two or more such societies, at least through their representatives.
Analyzing the above provisions of several laws, we come to the conclusion that only companies on shares corresponded to the essential characteristics of a corporation. Neither partnerships, nor companies, nor unions were corporations due to the dependence on the composition of the participants and the lack of full responsibility of the participants for the debts of such persons. Companies on shares were a transitional form between partnerships and those joint-stock companies (corporations) that were formed by the middle of the XX century in Europe and in the USA.

In the Russian Empire, before the formation of the first trading companies and the reform of P.A. Stolypin's corporation was defined narrowly. Civil scientists have defined a corporation as a private union of individuals. This statement is consistent with the statement of N.S. Suvorov, who later became fundamental for many civilians, that the division of persons into two categories: physical and legal, which constitutes an inevitable belonging to all modern systems of private law, did not occur in Roman jurisprudence, but later.

With the development of partnerships and the separation of their type - a company on shares - the corporation was transformed into a form of a legal entity, although it possessed its characteristics, since it had the property of acting as a whole not only in external relations, but also in internal ones.

By the decree of the Central Executive Committee on 14.12.1917, banking in Soviet Russia was declared a state monopoly, and the largest nationalization took place. At the end of December 1917, the Supreme Council of the National Economy, established by the Decree of the SNC of the RSFSR of 05.12.1917, prepared a draft Decree on economic transformations, the first section of the decree contained norms on the nationalization of joint-stock companies. These changes in legislation were so significant that already in May 1918, the joint-stock foundation significantly slowed down due to the transition of the Soviet state to mass nationalization. In the subsequent period, joint-stock companies in their features were already similar to institutions.

After the end of the Civil War, there was a need to "revive" the economy. So, for the first time during the years of the new economic policy, in 1922, the first joint – stock company of the Soviet stage of Russia's development was established - the joint-stock company "Kozhsyrye".

The Civil Code of the RSFSR of 1922 (hereinafter referred to as the Civil Code of the RSFSR) in the 5th subsection "Joint-stock company (share partnership)" of section X in sufficient detail in 45 articles regulated relations associated with joint-stock companies and share partnerships.

From the content of the articles in the Civil Code of the RSFSR, in fact, an equal sign was put between share partnerships and joint-stock companies: "Joint-stock (or unit) is a partnership (company), which is established under a special name or form with fixed capital divided into a certain number of equal parts (shares) and for the obligations of which only the property of the company is liable". (KRYTOV, 2021, p. 132)

After the formation of the USSR in the 20-30 years of the last century, joint-stock companies were reorganized into state associations, and only by the end of the 80s of the twentieth century began the revival of the corporate form of doing business in the form of joint-stock companies and limited liability companies.

Summing up certain results, we came to the conclusion that in Russia for a long time joint-stock companies (corporations) were established based on the concession system developed by the state, even when in Europe they focused on other approaches and abandoned the concession system, in Russia it continued to operate, since it allowed them to exercise control in the areas of: 1) the penetration of foreign capital into important commercial and industrial corporations; 2) regulating access to sales markets (as well as preventing the formation or maintaining monopolies in the economy of the state and certain sectors of the economy); 3) limiting speculative activities and the creation of fraudulent corporations. (GONCHAROV, KUDRYAVTSEVA, 2021, p. 25)
CONCLUSIONS AND FURTHER RESEARCH

Summarizing the historical path of the corporation institute, which was passed from the medieval era to the modern time, we can draw a number of conclusions:

1. Corporations in different legal systems were formed as similar forms of association of individuals and capital. Legal regulation in different jurisdictions, as a rule, had the same legal basis, in the form of similar legal norms.

2. The name “corporation” in the structural designations of a legal entity had different meanings. Some types of legal entities received the mention of “corporation” in their name in the course of historical processes, and not by borrowing the construction of a corporation from Roman law.

The concept of corporate organizations was incorporated into Russian civil law relatively recently, with the adoption of Federal Law № 99-FL of 05.05.2014, when legal entities began to be classified in addition to the traditional criterion (classification as commercial or non-commercial) and began to be subdivided according to the criterion of classification as corporate or unitary. (ON, 2014) At the same time, the Civil Code of the Russian Federation establishes the following as the main criteria for classifying legal entities as corporate organizations:

1. the founders (participants) in them have the right to participate (membership);
2. they are authorized to form the highest governing body of the corporate organization. (CIVIL, 1994)

It should be noted that the founders (participants) of a corporate organization not only have the right to form the supreme management body of the corporation, but also to participate in its work, that is, to manage the corporate organization. Thus, in our opinion, a “corporate organization” in the Russian Federation should be understood as a legal entity whose founders (participants) have the right to participate (membership) in it and form its highest body.

This concept should be distinguished from the concept of “corporation” (especially in the current legislation) due to the fact that the Civil Code of the Russian Federation consolidated state corporations as one of the type of unitary organizations, which are not corporate organizations, since they do not meet the main criteria (signs), which the latter must correspond to. So, under state corporations, which are a type of unitary organization, the current legislation means a non-profit organization without membership, established by the Russian Federation on the basis of a property contribution and created to carry out social, managerial or other socially useful functions. (ON, 1996)

It seems that due to the fact that after the introduction of the criteria for classifying legal entities in the Russian Federation into corporate and unitary organizations in the civil legislation of the country, the concept of “state corporations” should be replaced, for example, by the concept of “state companies” to avoid confusion in terminology, by another concept for designating this type of legal entities.

REFERENCES

AFONIN, M. V.; LOBAZova, O. F.; KISELEVA, A. V.; TARASOV, YU. A.; GONCHAROV, V. V. (). Crowdfunding as financing method: potential and aspects of regulation. Revista Inclusiones, 2020, 54-2, p. 430-442. Available at: https://revistainclusiones.org/index.php/inclu/article/view/1768. Access: 30 May 2021.

ALESHENKO, K. I. (2021). Joint-stock companies in Russia. Monograph. Moscow. Available at: https://www.elibrary.ru. Access: 30 May 2021.

AMAGLOBELI, N. D.; ALEXY, P. V.; ILYUSHINA, M. N. (et al.); Corporate law: a textbook for university students studying in the specialty «Jurisprudence» / edited by I. A. Eremichev, E. A. Pavlov. 3rd ed., reprint. and additional Moscow: UNITY-DANA, 2017. Available at: https://www.elibrary.ru. Access: 30 May 2021.
CIVIL CODE OF THE RUSSIAN FEDERATION. Part 1: Federal law № 51-FL of 30.11.1994. (1994). Collected Legislation of the Russian Federation, 32, art. 3301. Available at: http://base.garant.ru. Access: 30 May 2021.

GONCHAROV, V. V.; GAVRILIEVA, N. K.; GOGOLEVA, N. I.; IGNATYEVA, O. V. & SHPINEV, I. S. Global constitutionalism as economic the basis for the universalization of national legal systems: socio-philosophical analysis. Laplage in Journal, 2021b, 7 (1), p. 410-416.

GONCHAROV, V. V.; AFANASEV, N. V. & SHPINEV, I. S. Joint-stock form of corporate control: features of the formation and functioning of its civil-law mechanisms. Laplage in Journal, 7(Extra-B), 2021c, p. 15-22.

GONCHAROV, V. V.; AFANASEV, N. V.; & SHPINEV, I. S. Joint-stock companies in Russia as the most important form of corporate organizations: the legal basis of organization and functioning. Laplage in Journal, 7 (Extra-B), 2021a, p. 23-29.

GONCHAROV, V. V.; CHABIEVA, T. S.; GURNINA, D. A.; KALYAKINA, I. M.; SARADZHEVA, O. V. & GAVRILIEVA, N. K. Joint stock companies as an object of public control in the Russian Federation: socio-economic and legal analysis. Laplage in Journal, 2021d, 7 (Extra-B), p. 1-6.

GONCHAROV, V. V.; KUDRYAVTSEVA, L. V. Legal regulation of corporate activities in Russia and abroad: monograph. Moscow, 2021. Available at: https://www.elibrary.ru. Access: 30 May 2021.

GONCHAROV, V. V; POYARKOV, S. YU.; MOROZ, E. F.; VOSTRIKOV, K. V.; KHASAEVA, A. I.; PAPBA, L. A. Autonomous non-profit organizations in Russia: objects or subjects of public control? Agrarian and land law, 2020d, 10 (190), p. 54-57. Available at: https://www.elibrary.ru. Access: 30 May 2021.

GONCHAROV, V.; ZALESNY, J.; BALASHENKO, S.; VASILEVICH, G.; & PUKHOV, A. (). On the Importance of Philosophical Principles to the Social Concept of Global Constitutionalism. WISDOM, 2020b, 16(3), 78-90. Available at: https://www.wisdomperiodical.com/index.php/wisdom/article/view/332. Access: 31 Mart 2021.

GONCHAROV, V.; ZALESNY, J.; BALASHENKO, S.; VASILEVICH, G.; & PUKHOV, A. The Place of a Person in the Ontological Principles of Global Constitutionalism. WISDOM, 2020a, 15(2), 93-106. Available at: https://www.wisdomperiodical.com/index.php/wisdom/article/view/333. Access: 31 Mart 2021.

GONCHAROV, V.V. & CHIMITOVA, I.Z. Mezhnacional'noe soglasie kak perspektivnoe napravljenie strategicheskogo planirovaniya politiki nacional'noj bezopasnosti Rossii v regionax (na primere Respubliki Buryatiya) (Inter-Ethnic Harmony as a Promising Direction for Strategic Planning of National Security Policy in the Russian Federation at the Regional Level (on Example of Republic of Buryatia), in Russian). Comparative Politics Russia, 2020, 3, 86-95. Available at: https://www.elibrary.ru. Access: 31 Mart 2021.

HURST, J. W. The Legitimacy of the Business Corporation in the United States, 1780–1970. Charlottesville, 1970, p. 3–8. Available at: https://www.elibrary.ru. Access: 30 May 2021.

KOVALEVA, L. I. Joint-stock companies in the Russian Federation and abroad. Monograph. Moscow: «Sputnik+», 2021. Available at: https://www.elibrary.ru. Access: 30 May 2021.

KRYTOV, A.V. Joint-stock law. Training manual. Minsk, 2021. Available at: https://www.elibrary.ru. Access: 30 May 2021.

MOROS, Y. F. & GONCHAROV, V. (). Modern Dangers in the Development of the Russian Education System and Ways to Overcome Them: Socio-Philosophical Analysis. WISDOM,
2020, 15(2), 114-128. https://doi.org/10.24234/wisdom.v15i2.354. Available at: https://www.elibrary.ru. Access: 31 Mart 2021.

ON AMENDMENTS TO CHAPTER 4 OF PART ONE OF THE CIVIL CODE OF THE RUSSIAN FEDERATION AND ON THE INVALIDATION OF CERTAIN PROVISIONS OF LEGISLATIVE ACTS OF THE RUSSIAN FEDERATION: Federal law № 99-FL of 05.05.2014. (2014). Collection of legislation of the Russian Federation, 19, art. 2304. Available at: http://base.garant.ru. Access: 30 May 2021.

ON NON-PROFIT ORGANIZATIONS: Federal law № 7-FL of 12.01.1996. (1996). Collected Legislation of the Russian Federation, 3, art. 145. Available at: http://base.garant.ru. Access: 30 May 2021.

ZAPRUTIN, D.G.; NIKIPORETS-TAKIGAWA, G.; V. GONCHAROV, V.; DMITRIYEVICH SEKERIN, V. Evgenievna Gorokhova, A. Legal practice in the blockchain era: the use of electronic evidence. Journal of Gender and Interdisciplinarity, 2020, 1(01). Available at: https://www.periodicojs.com.br/index.php/gei/article/view/45/. Access: 31 Mart 2021.

The concept and legal nature of corporate organizations
Conceito e a natureza jurídica das organizações empresariais
Concepto y naturaleza jurídica de las organizaciones empresariales

Resumo
Este artigo é dedicado à análise do conceito e natureza jurídica das organizações empresariais. Os autores fundamentam a posição segundo a qual a institucionalização do conceito de organizações empresariais na legislação russa é uma condição natural para o desenvolvimento das pessoas jurídicas, tanto no mundo como um todo e na Federação russa. O artigo examina as etapas de desenvolvimento do conceito de corporações, estuda o conteúdo moderno deste conceito na Rússia.

Palavras-chave: Natureza legal. Organização corporativa. Comercial. Não comercial. Pessoas jurídicas.

Abstract
This article is devoted to the analysis of the concept and legal nature of corporate organizations. The authors substantiate the position according to which the institutionalization of the concept of corporate organizations in Russian legislation is a natural condition for the development of legal entities both in the world as a whole and in the Russian Federation. The article examines the stages of development of the concept of corporations, studies the modern content of this concept in Russia.

Keywords: Legal nature. Corporate organization. Comercial. Non-commercial. Legal entities.

Resumen
Este artículo está dedicado al análisis del concepto y la naturaleza jurídica de las organizaciones corporativas. Los autores corroboran la posición según la cual la institucionalización del concepto de organización empresarial en la legislación rusa es una condición natural para el desarrollo de las personas jurídicas tanto en el mundo en su conjunto como en la Federación de Rusia. El artículo examina las etapas de desarrollo del concepto de corporaciones, estudia el contenido moderno de este concepto en Rusia.

Palabras-clave: Naturaleza legal. Organización corporativa. Comercial. No comercial. Personas jurídicas.