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*Dedicated to the 75th birthday anniversary of the outstanding representative of Georgian civil law – Professor* ***Tevdore Ninidze***

# Phenomenological Inquiries into Gerhart Husserl's Scientific Work "The Subject of Law and the Legal Person"

*The scientific work presented by Gerhart Husserl is devoted to the concepts of the ontological nature of the subject of law and a legal person. The author analyzes their specific features using a phenomenological approach and offers original findings.*

*According to the study, the subject of law is regarded as part of the real sphere, while a legal person is seen as an abstract (legal) phenomenon. Gerhart Husserl believes that the subjectivity of law is determined by factors of self-consciousness and personal identity; the subject of law has an individual will, full autonomy, and moral responsibility. As for a legal person, it is considered an artificial construction; its will is determined by collective decisions, and its freedom of action is limited by certain rules. In addition, the responsibility of a legal person is solely legal in nature. The intentionality acting on the subjectivity of law is aimed at one's own consciousness, while a legal person has a functional load. Thus, according to Gerhart Husserl, the distinction between the concepts of the subject of law and a legal person is expressed in their ontological nature, the foundations of origin, specificity of will, scope of autonomy, nature of responsibility, various skills and circumstances.*

***Keywords****: Subjectivity of Law, Real Space, Legal Status of Person, Fiction, Authority, Legal System, Individual, Legal Possibility (posse-posse)*

## 1. Introduction

Gerhart Husserl's scientific article "The Subject of Law and the Legal Person" can be considered one of the outstanding works in the philosophy of law. The research is interesting from different points of view, but its significance for law is particularly noteworthy. The article highlights the multifaceted nature of the problem of distinguishing between the subject of law and the legal person. The author introduced a new term "legal person" into the legal space and compared it with the term "subject of law", thereby attempting to establish differences between the legal and real spheres.

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Taking into account the above discussion, the purpose of the research presented by Gerhart Husserl is to understand the concepts of the subject of law and the legal person in a new way, to distinguish them from each other, and to determine their place in the legal system. To achieve this goal, the author set the following tasks:

- To study the essence, real nature, and role of the subject of law in society;
- To define the concept of legal person and its place in the legal system;
- To analyze the interaction between the subject of law and legal person;
- To investigate the nature of subordinate and coordinate law, de facto authority, the rule of law and the essence of sovereignty;
- To clarify the interrelationship between the categories of subjective right, permission, and possibility;
- To reconsider the traditional understanding of such concepts of civil law as legal capacity, representation, and legal entity.

Methodologically, Gerhart Husserl employs a phenomenological-logical approach to the analysis of legal phenomena. Phenomenology allows for a new understanding of self-consciousness, intersubjectivity, intentionality, and other circumstances. He criticizes the limitations of scientific and objective approaches while emphasizing the need for rehabilitation of the lifeworld. In this context, a detailed description of human existence is interesting, where the subject acquires an embodied form and is organically connected to its social or cultural environment.[1]

Phenomenology is not a strictly structured system. It is considered a philosophical method of thinking. Phenomenology tries to free itself from traditional approaches and limitations, and to interpret various phenomena or concepts innovatively.[2] In essence, phenomenology not only establishes a new direction in legal research but also uses methods of reduction, description, and interpretation to understand the characteristics of legal phenomena or to solve subject problems when studying law.[3] In phenomenology, the meaning of various phenomena is determined not only verbally or empirically but also according to eidetic thinking,[4] i.e., according to the essence ("eidos") of phenomena. In general, with the help of eidetic thinking in phenomenology, the author tries to determine the essence of specific phenomena and their characteristics. It is aimed at achieving not just empirical, but a priori (pre-experiential) knowledge. The method of eidetic thinking allows us to go beyond our subjective experiences and achieve objective knowledge about various events (phenomena).

At the same time, the work focuses on the intentional nature of consciousness, specifically highlighting how our consciousness evaluates legal concepts. Intentionality implies that consciousness is always directed towards some object; our thoughts or feelings are always about something. It is through this intentional approach that the unique nature and significance of both the subject of law and

1 *Zahavi D.*, Phenomenology, Basics, 1st Edition, Routledge, 2018, 1-2.
2 *Moran D.*, Introduction to Phenomenology, Routledge, 2000, 4-5.
3 *Pantykina M. I.*, Phenomenological Methodology: Experience in Law Research, Yekaterinburg, 2008, 242 (in Russian).
4 *Husserl E.*, Articles on Renewal, "Questions of Philosophy", No. 4, 1997, 120 (in Russian).

the legal person in the legal system become possible. Accordingly, it demonstrates how legal concepts operate and what impact they have on everyday life. The work presented by G. Husserl also presents historical aspects of the issues discussed.

Moreover, one of the main merits of the research is that the scientific article addresses the concepts of the subject of law and legal person in an interdisciplinary context. Thanks to the interdisciplinary approach, many aspects of legal phenomena from the fields of legal theory, philosophy, and sociology are organically combined.

## 2. Law and Society

The author considered the subject of law as part of the real sphere. This is natural, as he believed that when law is viewed as a social institution, it becomes clear that historical rationality operates in human existence. In fact, the concept of the historical development of law and society (community), and their interconnection, resembles the ideas of Friedrich von Savigny and the historical school of jurisprudence.[5]

In general, society plays an important role in protecting justice. Gerhart Husserl expands the ethical principle of Immanuel Kant (categorical imperative) and transfers it from the individual to the social sphere. Thus, this idea gains universal significance at the social level. For G. Husserl, the concepts of society, justice, and law are intertwined; law emerges in society, and the legal community must ensure justice and its operation in the social world. The transcendental idea of justice is expressed in the fact that the constitution imposes legal restrictions on state activities; a person becomes a dictator if they simply refuse to acknowledge that legal restrictions exist. However, it can be said that if the law does not impose legal barriers and transcendental restrictions that G. Husserl sets for the law, these restrictions cannot have a legal nature.[6]

Thus, according to G. Husserl, the constitution is a bridge between the ideal (justice) and reality (law of society). By providing this validity to justice, G. Husserl notes that it is not just a social construct, but a universal principle that underlies and makes possible our understanding of right and wrong in society. For G. Husserl, law and justice are not abstract ideas, but they exist and develop in society. The task of legal professionals is not only to create or enforce laws but to ensure that these laws truly reflect and are implemented in accordance with the principle of justice.

Law, as a transcendental sphere, is abstract in nature. Law regulates factual relations. Law is an expression of the will of any society. Law is created by people for human life and action. It has a social function. In order to fulfill this goal, law must become timely. The timely nature is a process that is reflected in the act of law application. The creation of law is possible only through the creation of an act of permanent normative protection of the subjects of law. This process goes beyond ordinary, material reality and has a somewhat transcendental, metaphysical aspect.[7]

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5 https://www.geni.com/people/Gerhart-Husserl/6000000011571359886 [02.11.2023].

6 https://www.geni.com/people/Gerhart-Husserl/6000000011571359886 [02.11.2023].

7 *Wolf E.*, Recht und Welt. Bemerkungen zu der gleichnamigen Schrift von Gerhart Husserl (Sonderdruck aus der Festschrift fur Edmund Husserl), Zeitschrift für die gesamte Staatswissenschft/ Journal of Institutional and theoretical Economics, Bd. 90, H. 2, 1931, 332-333.

A subject can participate in the experience of the world to the extent that they are a member of a community, while the ego is considered only a part of the social sphere. For Husserl, transcendental subjectivity is at least partially dependent on transcendental intersubjectivity.[8] E. Husserl describes consciousness as always "directed toward something." Every conscious act has an object, regardless of whether this object actually exists. Husserl focuses on the interdependence between acts of consciousness and their corresponding objects, which is called the noetic-noematic structure. Phenomenology is directed towards overcoming the traditional division between subject and object, but this happens through a deeper understanding of subjectivity. Husserl tries to deepen Descartes' approach by focusing not only on the thinking subject but on the entire structure of consciousness. Phenomenology creates a new field in philosophy based on the structures of consciousness and their meanings. Husserl's approach contains a paradox: he attempts to overcome Cartesianism[9] by radically rethinking the Cartesian project.[10]

In addition, the article demonstrates how law is related to social reality or life. It emphasizes that the subjects of law are people who participate in social relations, have a certain social status, and possess rights and obligations defined by this status in society.[11] However, G. Husserl considers a legal person as a legal construction that has no direct connection with these social relations and becomes legally significant only after it is legally considered (recognized). Husserl criticizes this position and believes that law should more thoroughly account for the phenomenological aspects of social life. In his opinion, the purpose of law should not only be to create legal constructs, but also to regulate existing social relations, taking into account the real social context.[12]

In fact, law is localized in the area of ideal, a priori legal regularities (A. Reinach, G. Husserl). This dimension is not equivalent to the world that "ought-to-be". Law belongs to the "material a priori world" (E. Husserl), whose objects have a special ontological status. Law recognizes polysubjectivity in the phenomenological understanding. Classical natural law consists of monosubjective constructions based on the individual. However, the phenomenology of law proceeds from the fact that in law, which represents a correlative connection of rights and obligations (A. Reinach, N. N. Alekseev), the participation of at least two subjects is always implied. They are the bearers of these rights and obligations. In G. Husserl's philosophy of law, these two subjects are joined by another unconditional component – the legal society, which consists of "legal like-minded people". Their common will can give meaning to any right and obligation. The "material legal a priori", being the fundamental regularities of law, acquires real significance not in itself, but only as a result of a certain external event (fact). This "external" event can be a social act (according to A. Reinach), a normative fact (with N. Alekseev) or a special (unusual) case (in G. Husserl concept).[13]

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8 *Zahavi D.,* Husserl's Phenomenology, Translator: *Gonashvili G.*, Tbilisi, 2016, 166 (in Georgian).

9 Cartesianism, as a philosophical movement, is associated with the concepts of the French scientist René Descartes. For him, the importance of mind and logic in acquiring knowledge, the only undoubted evidence in the form of the ability to think, and so on, are paramount. The name of this doctrine also comes from Descartes' Latin name.

10 *Moran D.*, Introduction to Phenomenology, Routledge, 2000, 16.

11 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 130.

12 Ibid., 193-194.

13 *Stovba O. V.*, Temporal Ontology of Law, Dissertation Abstract, Kharkov, 2017, 15 (in Russian).

## 3. Private Law and Personal Autonomy

According to Gerhard Husserl, every individual can have a personal, private sphere and a system of values based on their individual will[14], views, and own rules of existence. A legally organized society can treat a person's private sphere differently. Sometimes it fully recognizes and legally protects their personal sphere, and sometimes it does not.[15] The degree of legal recognition of the personal sphere is directly proportional to the essence of a legal person. The more an individual's sphere is recognized, the more fully the status of a legal person is expressed. The main function of society is to legally recognize the private sphere of the individual and express this in a legal concept. Thus, in G. Husserl's theory, the relationship between the individual and society is crucial for properly understanding the concept of a legal person.

The personal sphere[16] is considered to be a space that provides the individual with more freedom than the public or legally regulated sphere. Private autonomy of the parties is also a basic principle of private law and gives the subjects of private law relations the authority to perform any actions not prohibited by law, including those not directly provided for by law. This idea is noteworthy for private law, where property rights, privacy, and personal autonomy are recognized.[17] These rights exist only insofar as they belong to specific subjects. A right is not abstract in nature, as it cannot exist separately from the subject. In civil law, a right is always associated with a specific person. It is the attribution of a right to a specific subject that gives the right its legal character.[18] For example, property rights do not imply an abstract concept, but rather someone's right of property to a specific good.[19] If we cannot say whose right it is, then it loses its legal significance.

Therefore, instead of saying that in private law, an individual simply acts for their interests and the law only regulates their actions, the author notes that the individual is considered an active participant and executor of the law. For example, if an individual acquires or sells property, or acts in private law relations, they are not only using the law but also are themselves creating legal reality. Their actions are not simply part of the personal sphere; they have corresponding legal consequences. This concept determines the responsibility of the individual in the legal system. In fact, in private law relations, individuals are not just "consumers" of the law; they are considered its executors and conductors (functioners).[20]

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14 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 159.

15 Ibid., 142-143.

16 See *Bichia M.*, Protection of Personal Life According to Georgian Civil Law, Tb., 2012, 121, 327; *Bichia M.*, The Danger of the Privacy "Disappearance" during a pandemic in the context of Globalization and the Grounds for its Legitimacy: an institutional analysis, Journal "Globalization and Business", №11, 2021, 44 (in Georgian).

17 See *Chanturia L.*, Introduction to the General Part of Georgian Civil Law, Tb., 2000, 57-58 (in Georgian).

18 On the essence and characteristics of rights, see *Brox H., Walker W.-D.*, Allgemeiner Teil des BGB, 30. Aufl, München, 2006, 318-319; *Bichia M.*, The Content of the Rights in the Civil Law, TSU "Law Journal", №2, 2023, 46; Bichia M., Legal Obligational relations, Handbook, 3rd edition, Tbilisi, 2020, 19 (in Georgian).

19 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 190.

20 Ibid., 186-187.

In this regard, the fields of permission (Dürfen) and capability (Können) are brought to the forefront. G. Husserl considers permission as the basis of legal authority, by virtue of which the subject has the right to act in a certain direction.[21] Permission determines what is allowed and what is not. Accordingly, it also sets the limits of freedom and is considered an important element of legal autonomy. As for capability (Können), this is the factual potential for a subject to perform certain actions. Capability is the basis of legal capacity and reflects what a person is actually able to do. When the law attributes a right to a specific person, this is not just an abstract permission. This process transforms a person's personal interests and values into legally recognized and protected property. As a result, this field becomes for the authorized subject not only what they are allowed to do but also what they can actually perform from a legal perspective. The author argues that the subject's right includes both abstract permission and real, legally recognized ability to act within the scope of this right.[22]

Legal capacity (posse-posse) implies the ability to exercise this capacity. It includes the ability of the subject to have rights and obligations, and the abstract possibility that precedes the emergence of specific rights and duties.[23] The subject of law differs from other subjects in this aspect. The idea of legal capacity creates a theoretical basis for determining legal capacity. It clarifies how a subject can have legal possibilities that have not yet been realized. However, the concept of legal capacity can explain how different categories of subjects (individuals, corporations, states) can become subjects of law.

Law recognizes the individual's freedom and their central role in defining the subject of law.[24] Gerhart Husserl separately distinguishes the individual, whose status in private law is determined not only by their material property but also on the basis of a broader concept that includes all kinds of socially valuable relationships. This idea expands the understanding of what is "valuable" in law. Private law concerns not only things but also relationships between persons and the rights and obligations arising from these relations.

Thus, law is a complex balance between abstraction and reality, and legal categories sometimes do not coincide with social reality. In this way, it recognizes that the legal status of an individual is determined not only by their material assets but also by social connections, reputation, skills, and other intangible aspects that have social value. This concept conveys a holistic (complex) approach to private law, where the individual is not just an economic agent but also a complex social being with multifaceted relationships. In this sense, the subject of private law is defined by two aspects: (1) they have the ability to have rights and (2) to take on obligations. The individual is understood as a free and valuable being. If we disregard this concept, it will lead to both the loss of individuality and the destruction of society itself, as society consists of free individuals. The purpose of law is considered not to subordinate the individual to society, but to protect and regulate individual freedom through norms. The rights of the individual and the possibilities of their implementation stem from two foundations: on the one hand, from their will and individual choice, and on the other hand, from the

21 Ibid., 169-170.

22 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 189.

23 Ibid., 180-181.

24 See *Bichia M.*, Methodological Problems of Civil Law, Tbilisi, 2023, 149 (in Georgian).

legal system that grants the subject legal status.[25] This concept is very important, since it emphasizes the relationship between individual freedom and legal regulation in private law.

Law respects the private sphere of an individual. If a person voluntarily exchanges or sells a good, only in this case does the law intervene in their individual sphere to ensure that this exchange is carried out legally. Accordingly, the law regulates the transfer of values when people voluntarily agree that these values become "public" by moving from the sphere of one person to the sphere of another.[26] The law must ensure that the transfer is voluntary and that the receiving party becomes the full owner of this value. Thus, the law balances the relationship between personal freedom and public order. Accordingly, the main purpose of law is to regulate disputes and provide people with legal means to protect their interests. Private law recognizes personal autonomy; a person is considered a free being and acts on their own responsibility.[27] Accordingly, coordinative law is focused on respecting and protecting the personal spheres of the individual. The legal system does not disregard the protection of personal spheres and does not imply the devaluation of this sphere at the normative level. Coordinative law is based on the principles of equality and mutual respect. The personal autonomy of each individual must be recognized and protected by law.[28] Private life is an essential part of autonomy, and vice versa, autonomy cannot exist without a private sphere. The loss of private life creates a threat to the violation of fundamental human values.[29] Law supports the protection of personal autonomy and the maintenance of each individual's free space. As for subordinate law, it invades its autonomous spheres and does not respect the individual's personal space; subordinate law tries to completely control the individual's personal sphere. Therefore, the author warns that the law can be transformed into an instrument that not only regulates public behavior but also tries to control the private sphere. However, according to G. Husserl, this is a fundamental change that contradicts the true purpose and essence of the law.[30]

Special attention is given to the idea of respecting the individual, which is based on their legal recognition. At the same time, this idea encompasses protecting dignity, recognizing autonomy, equality, considering it as the basis for legal responsibility, and more. The law perceives individuals as dignified and empowered subjects. Recognizing them as part of the law (as a legal partner) means respecting their personhood,[31] which is closely related to the idea of protecting the individual's dignity and respecting them.[32] In addition, recognizing autonomy relates to the ability of a person to make

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25 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 166.

26 Ibid, 152-153.

27 See *Khubua G.*, Theory of Law, Tbilisi, 2004, 208 (in Georgian).

28 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 147.

29 *Demirsoy N., Kirimlioglu N.*, Protection of privacy and confidentiality as a patient right: physicians' and nurses' viewpoints, Biomedical Research- India, Vol. 27, Issue 4, 2016, 1437-1438; *Bichia M.*, The Idea of protecting Privacy from its Origin to the Present, Revaz Gogshelidze's 65th Anniversary Collection, ed. *Khrustali V., Meparishvili G.*, Tbilisi, 2022, 454 (in Georgian).

30 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 153-154.

31 Ibid, 176.

32 *Martini S.*, Die Formulierung der Menschenwürde bei Immanuel Kant in: Vortragsskript eines im WiSe 2005/06 gehaltenen Referats im Rahmen des rechtsphilosophischen Seminars "Die aktuelle Werte-Debatte"

decisions and act independently. The personal sphere creates a foundation for people to develop their identity and be autonomous in their individual needs, demands, or life plans.[33] The idea of respecting the individual is considered as the basis for legal responsibility, which means that the individual is a responsible subject.

Individuals should have their own space, where they are completely free. Regulating everything leads to the transformation of the law into violence that interferes with everything. True justice requires individuals to be free agents who voluntarily agree to general rules because they understand their importance. This is possible when people have a space where they govern themselves. Therefore, personal autonomy cannot be opposed to law, but can be considered as its necessary foundation. Typically, a person is part of the law and is subject to its norms, but maintains certain autonomous areas in which the law does not interfere.

## 4. Subject of Law

Gerhart Husserl examines the social nature of law, through which he tries to define the real nature of the subject of law. It is characterized by the following features: the subject of law is distinguished by personal qualities, is a member of a legal society, has a personal legal precondition, and possesses subjectivity of a permanent nature. Let's characterize these qualities that highlight the real nature of the subject of law:

- The essence of the subject of law **is defined by personal qualities**, which include personal identity, the ability to make decisions and take responsibility for oneself.[34] Personal identity is characterized by unique characteristics that give the subject of law the ability to be responsible for their own actions, perform actions, and make decisions. The subjectivity of law is defined not only by legal but also by ethical norms. The fact is that an individual's moral values and ethical standards play a big role in determining their status. Also, the subject of law bears social responsibility towards society. This **includes the fulfillment of social duties**,[35] which ensures legal order and stability. Additionally, personal qualities also determine how the subject of law relates to other subjects in the legal system. These relations include entering into contracts, fulfilling obligations, and protecting rights. The law recognizes the subject of law, but this does not necessarily mean that they must have legal rights and obligations.
- The subject of law is considered a **member of the legal society**. This means that they have relationships with other members of society according to legal norms. An individual or other person that possesses personal qualities and is legally an active member of society is considered

bei Prof. Klaus Adomeit (Freie Universität Berlin), 2005/06, 5-7; *Bichia M.*, Scope of Civil Legal Concept of Dignity, TSU "Journal of Law", №2, 2014, 11.

33 *Rössler B.*, Der Wert des Privaten, Frankfurt am Main, 2001, 274; *Bichia M.*, The Idea of Protecting privacy from Its Origin to the Present, Revaz Gogshelidze's 65th Anniversary Collection, ed. *Khrustali V., Meparishvili G.*, Tbilisi, 2022, 455 (in Georgian).

34 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 183, 208-209.

35 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 143.

a subject of law.[36] Consequently, they act as part of this society and possess a legal status associated with this society. They have the ability to perform functions in the legal society. The subject of law protects and fulfills legal norms. This ensures the maintenance of legal stability and order. Subjectivity of law includes the **general status of a person**[37]**,** which is granted to an individual only when a legal society exists. The status of a subject of law is determined solely by the existence of the person.

- Subjectivity of law includes a **personal legal precondition.**[38] This is the personal prerequisite for transformation into a legal person, meaning the person is an active participant in the legal system and legally active.
- To grant the status of a subject of law[39], only the existence of a natural person (human) is necessary.[40] In fact, the subject of law is considered a necessary precondition for the permanence of legal relations. Thus, subjectivity of law is of **a permanent nature** and does not undergo change.

Civil legislation recognizes as subjects of law both capable persons and those natural persons who only have legal capacity. Therefore, even a person whose will is not valid for legal consequences, such as a minor,[41] is considered a subject of law, as they do not possess the full status of a legal person.[42] Consequently, a natural person cannot renounce their legal capacity.[43]

De facto authority is considered to possess real power, even though it may not be legally recognized. Accordingly, the concept of a subject of law is not limited to legal recognition but also includes the factual situation.[44] Moreover, the de facto government can be considered a legal entity due to its real power and influence, despite not being formally recognized. De facto authority confirms that legal capacity to act can exist based on the possibility of real action, even if this action is not formally recognized. Thus, legal capacity to act is not merely a matter of legal status but also encompasses real abilities and influence. Additionally, the de facto authority may use the institution of representation to achieve its own goals. This confirms that representation can exist in real governance, even if such governance is not formally recognized. De facto authority has an organized structure and exercises real power.[45] Therefore, it can be considered a legal entity, despite the absence of legal recognition. Hence, the concept of a legal entity includes not only formal but also factual aspects.

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36 Ibid, 133-134.
37 Ibid, 185.
38 Ibid, 191.
39 See *Bichia M.*, Methodological Problems of Civil Law, Tbilisi, 2023, 151 (in Georgian).
40 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 131.
41 See *Khetsuriani J.*, Functions of Civil Law, Tbilisi, 1995, 92; *Bichia M.*, Methodological Problems of Civil Law, Tbilisi, 2023, 157 (in Georgian).
42 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 168.
43 See *Hübner H.*, Allgemeiner Teil des Bürgerlichen Gesetzbuches, 2. Auflage, 1996, 77.
44 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 138-139.
45 Ibid.

In addition, an intentional approach applies to the subject of law. Husserl extends Kant's categorical imperative to the practical sphere of action and evaluation and reworks it under the influence of Brentano.[46] Unlike Kant, Husserl no longer prioritizes the "I should" over the practical "I can." Husserl formulates a new a priori law based on concrete human capabilities: nothing can be demanded of a person that they cannot do. Husserl reduces the priority of "I should" and focuses more on real human possibilities when making demands.[47] In contrast to the "classical" subject, the phenomenological "I" represents a unity of complex and constantly changing multiple forms of self. This is the determining reason why the concept of subjectivity needs to enter the thematic area of the "I." Husserl understands subjectivity as a form of conscious life, thanks to which the whole world has its meaning and existential significance, while the "I" is considered an object, as a human existing in the world.[48] This is the primary source of thoughts that fills the gap between consciousness and reality.

E. Husserl, the founder of the phenomenological method, shares Kant's idea that every human being lives under the categorical imperative. A worthy life is a life in accordance with evidence, the best science, and one's conscience. The "categorical imperative of reason" requires that life be "the best possible from the standpoint of reason, as regards all possible personal acts."[49] The concept of freedom is discussed by the prominent medieval thinkers Anselm of Canterbury, Eckhart Hochheim, and Nicolaus Cusanus in relation to the unrestrained freedom of human will. In Hegel's philosophy, the idea of freedom is connected to the understanding of man as a subject and the will. "My freedom gains value in relation to others, through which I become aware of my own freedom."[50] Here, the idea of intentionality is highlighted, which is also reflected in Gerhart Husserl's work under consideration.

## 5. The Legal Person

The author specifically examines the legal person as a specific legal phenomenon. To characterize it, Gerhart Husserl uses the method of comparison with the subject of law. As a result, G. Husserl identifies the following peculiarities of the legal person:

- The legal person is one who has a **legal status**, i.e., legal rights and obligations.[51] The subject of law does not necessarily have specific rights and obligations. The legal person can be a natural person (a human) or a legal entity (an organization). That is, the law recognizes the legal person as a subject who can conclude contracts, own property, and perform other legal actions.

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46 See *Varga A. P.*, Brentano's Influence on Husserl's early notion of Intentionality, Studia Universitatis Babes-Bolyai, Philosophia, 54, no. 1-2, 2008, 44-45.

47 *Crespo M.*, Husserl on Personal Aspects of Moral Normativity, Ethical Perspectives, 22, No. 4, 2015, 704.

48 *Husserl E.*, Paris Lectures // Husserl E. Selected Works, M., 2005, 349.

49 *Crespo M.*, Husserl on Personal Aspects of Moral Normativity, Ethical Perspectives, 22, No. 4, 2015, 707.

50 *Beriashvili M., Odishelidze G.*, The Idea of Freedom in Its Historical Development, in: Classics of the Philosophy of Freedom, from Plato to Heidegger, Editors: *Beriashvili M., Ieky U.R., Moizish B.*, Tbilisi, 2011, 11-12 (in Georgian).

51 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 133.

- In addition, **the legal person** is a member of society. Their membership means that they have specific **legal rights and obligations**,[52] which grant them a legal status. **Legal rights and obligations** may relate to property rights (ownership, management), fulfillment of obligations, conclusion of contracts, etc. However, in the author's opinion, the concept of a legal person should not be formed solely with the help of legal capacity; it is unacceptable to ignore sociological reality,[53] if only because the concept of a legal person is based on a sociological basis (subjectivity of law). This is understandable, since it operates in **sociological reality**.
- If a legal person **does not have certain qualities or significance, it loses its legal status**.[54] **The legal person is a more specific and stable status** that includes certain legal rights and obligations. It may lose its legal personality (legal status of person) under certain circumstances, but this does not mean that the subject of law ceases to function; subjectivity of law continues to exist.
- Subjectivity of Law is determined simply by the existence of a person and membership in the legal community. This is a necessary prerequisite for legal relations, but not sufficient. **For the acquisition of the status of a legal person, the existence of additional conditions is necessary**, in addition to the status of a person.[55] A legal person has the legal capacity to perform an action that produces a legal effect[56] and to establish legal relations with others. It is considered the bearer of rights and obligations. Its status goes beyond the ordinary quality of a person and includes additional legal capabilities, such as the ability to conclude transactions and perform actions (legal capacity), the ability to hold rights and obligations in legal relations (subjectivity of law), the ability to be liable for one's own actions (delict capacity), etc.

The legal person is one who has joined the legal community and, by the power of the order established by its own will, has the actual ability to perform something and the legal right to do so. One who is granted by the law only the sphere of social authority without legal authority is a subject of law (and not a legal person). The legal person has the capacity to subordinate the objects of law to its authority; such objects are subject to the legal power of another. The doctrine of the subject and will in civil law is fundamentally changing: first, as a result of the rejection of naturalistic psychologism, and second, on the basis of the specific concept of the legal person. The law-making action can be performed only by the legal person (and not by the subject of law), since only the legal person has the ability to influence the formation and development of the legal system. From this view,

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52 On the person as a subject endowed with rights and obligations, see *Adriano E. A. Q.,* The Natural Person, Legal Entity or Juridical Person and Juridical Personality, Penn State Journal of Law & International Affairs, Vol. 4, Iss. 1, 2015, 372; *Bichia M.*, Methodological Problems of Civil Law, Tbilisi, 2023, 151 (in Georgian)

53 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 142-143.

54 Ibid., 134.

55 In addition to legal capacity, on the existence of certain prerequisites for the exercise of other capabilities, see *Kochashvili K.*, Civil Responsibility for the Actions by a Person without legally valid will, "Methods of Law", No. 7, 2023, 96-99 (in Georgian).

56 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 199.

the structure of such fundamental concepts as capacity, representative authority, and legal entity is changing. The personal structure of legally acting persons has led to the separation of two main types of legal action: 1) when the individual acts as a representative of the legal community (i.e., acts as part of the legal system and as its will-bearer); 2) when the individual acts independently, "endowed with individual legal sovereignty". The first idea contradicts the second. Depending on how people act in the legal system (based on the principle of equality and cooperation or hierarchy), this concerns either coordination or subordination law.[57] Accordingly, these provisions are important for civil law and show the influence of the phenomenological approach in this area.

Consequently, the subject of law exists in **real space.** This is the physical existence of the subject in a real environment, which is not fictional. The legal **person is created in an abstract form,** as it is formed in a formal environment and, accordingly, exists **only in the legal** space. In Gerhart Husserl's doctrine, it is considered an **artificial construction.**[58] Moreover, the subject of law has **emotional and intellectual abilities.** These include the abilities to experience feelings, think, or comprehend. **In the case of a legal person, we do not have such abilities.** The subject of law is equipped with **the ability to have social relationships with others,** that is, to establish personal relationships and maintain or protect them. As for the legal person, it can **establish formal relationships** with others.[59] In this case, formalities are based only on legal relationships.

## 6. Conclusion

Therefore, Gerhart Husserl believes that a subject of law and a legal person exist in different areas, and are consequently phenomena of different nature. The subjectivity of law is characterized by **its natural character**, namely by self-awareness or personal identity. A legal person belongs to the sphere of law and a fiction created by the legal system. Moreover, according to Gerhart Husserl, a subject of law can have **individual w**ill.[60] They have their own desires and goals. In the case of a legal person, individual will is replaced by **collective decisions**.[61] A person has their own values and interests which they can protect. The state recognizes these rights of an individual and grants them full legal status. Their essence stems from the personal freedom they had even before acquiring legal status.

Gerhart Husserl considers the subject of law to be autonomous,[62] meaning they have the ability to make decisions independently. The subject of law has full subjectivity and autonomy of consciousness. The **autonomy of a legal person is limited in nature**, as it makes decisions according to predetermined rules and restrictions (for example, a juridical person).[63]

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57 See *Wolf E.*, Recht und Welt. Bemerkungen zu der gleichnamigen Schrift von Gerhart Husserl (Sonderdruck aus der Festschrift fur Edmund Husserl), Zeitschrift für die gesamte Staatswissenschft/ Journal of Institutional and theoretical Economics, Bd. 90, H. 2, 1931, 345.

58 See *Husserl G.*, Rechtssubjekt und Rechtsperson, Archiv für die civilistische Praxis, 127. Bd., H. 2, 1927, 194.

59 Ibid., 168.

60 Ibid, 157.

61 Ibid, 196.

62 Ibid, 178-179.

63 Ibid, 168.

It becomes clear that in Doctrine of Gerhart Husserl, the subject of law **bears moral responsibility**, which is expressed in their ability to comprehend the moral consequences of their actions. The **responsibility of a legal person is only legal in nature**. In fact, legal rights and obligations are metaphorically reflected in the concept of a "person".[64] Maunes also noted that a person can have powers and obligations.[65] A legal person does not have a sense of moral responsibility.

According to the research, **the subject of law is characterized by intentionality,** which **is directed towards oneself and one's consciousness.** The subject of law is based on who you are internally, as a person. **A legal person is distinguished by its functional load.** That is, a legal person performs only specific legal functions. **In the case of a legal person, intentionality is directed towards the external world,** therefore it concerns a person's external legal status in society. It is granted a legally defined status and rights and obligations.

According to Gerhart Husserl, if subordinate individuals have the status of subjects of law, this does not imply that they simultaneously have the status of legal persons. The fact is that a pure dictatorship would recognize only one legal person – the dictator, who is the sole executor and implementer (functionary) of the will of the legal society. The rest of the people are considered only as subjects of law, as they are not completely excluded from the legal connection, but remain in a state of being under power. Therefore, being a subject of law is more general and necessary, while the status of a legal person is more specific and limited under dictatorship conditions.

Ultimately, the law recognizes both the legal person and a subject of law, but they differ from each other in their legal status and function. In Gerhart Husserl's opinion, the law should consider the real, phenomenological nature of the subject of law, while a legal person should be considered as a legal instrument established to achieve specific goals. The point is that a subject of law can be a member of the legal society who possesses personal qualities, while a legal person is a member of the juridical society who has specific rights and obligations (legal status) granted by law. A subject of law remains a member of the legal society, even if they may lose their legal status as a person. A legal person may lose their legal status.

In fact, the difference between the subject of law and a legal person is that the **category of legal persons is narrower than just subjects of law**. This is due to the fact that in order to be considered a legal person, additional criteria are established beyond being a subject of law. **Subjectivity of Law is the primary and necessary status**, while being a legal person is a higher and more specific legal status, which, along with the legal personhood, entails specific **rights and obligations**.

Thus, this study of Gerhart Husserl, employing phenomenological-philosophical and interdisciplinary approaches, should be of interest to representatives of legal theory and philosophy of law, as well as to scholars in sociology and civil law.

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64 See *Adriano E. A. Q.,* The Natural Person, Legal Entity or Juridical Person and Juridical Personality, Penn State Journal of Law & International Affairs, Vol. 4, Iss. 1, 2015, 370.

65 *Maunez E. G.*, Introduction to Law, 31st ed., 1980, 21; *Adriano E. A. Q.,* The Natural Person, Legal Entity or Juridical Person and Juridical Personality, Penn State Journal of Law & International Affairs, Vol. 4, Iss. 1, 2015, 370; *Bichia M.*, Methodological Problems of Civil Law, Tbilisi, 2023, 152 (in Georgian).

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