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"legal person"

SCIENTIFIC

COORDINATOR

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paper*"legalperson"*addresses the historical evolution, the different theoretical conceptions, the regulation, constituents and a variety of other issues that punctuate the existence and functioning of basic institutions of civil law - a legal person, harnessing information provided by literature (Romanian and foreign), and relevant case law on the latest legal regulations in force. He stressed that the theme chosen donned a profoundly multidisciplinary aspects of which have been addressed in the realm of several legal disciplines: civil law, commercial law, labor law, constitutional law, administrative law, by virtue of legal persons, in their great diversity exists in various fields.

the structure of the paper are found eight chapters.

the paper begins with a brief **introduction** on the evolution of philosophical theories of the theory of fiction from theory to reality businesses and the role increasingly greater role played various categories of legal persons in contemporary society.

by **Chapter I.** - ***General considerations regarding the origin and evolution of the concept of "legal person"*** **-** aims to familiarize with the main aspects of the legal person institution, bowing from the origin and evolution of the term, the first theoretical approaches on defining the concept the «legal», delimitation in relation to the concept of «natural» to secure better legal person in the role of civil circuit and beyond. An important section of this introductory chapter is focused on classification of legal entities by different criteria found in the literature are described the main features of various types of legal entities and how to regulate these collective structures, given that some of them are governed by rules of other branches of law (constitutional law, administrative law, commercial law, labor law).

In **Chapter**II, entitled ***Freedom of association and the foundation of formation of legal persons***is to accomplish a complex study on freedom of association, historical evolution, shaping and protection of the freedom of association in terms of fundamental human rights, dedication terminology of "freedom of association" in the Romanian Constitution, as well as international sources of affirmation of freedom of association.

freedom of association is a fundamental principle, deeply rooted in contemporary legal reality. The normative framework on freedom of association consists of constitutions and national legislation, but also the many legal regulations concerning the rights and fundamental freedoms. Even if, in the fundamental law, the prerogative of the legal person to be the holder of freedom of association is enshrined expressly it is pointed out that special regulations expressly specifies that freedom of association applies to both individuals and legal entities. In this regard, we propose **the law ferenda** a modification normative, ie constitutional recognition explicit legal entity as holder of the right of association, which would ensure such equality real and effective in this area for all subjects of law, individual and collective.

In Section 2 of this chapter, another topic analyzed the relation between freedom of association and other rights and fundamental freedoms: the right to dignity, the right to work or freedom of labor and free choice of profession, economic freedom, freedom of assembly, freedom of association, freedom of belief, freedom of contract, the right to strike, mostly rights and freedoms that socio-economic domain, but there are also other rights that interfere with freedom of association. Freedom of association are in different categories of relationships with other fundamental rights and freedoms, namely: part-whole relationship, relationship or inter-relationship intermediary. For example, between human dignity and freedom of association ratio is established from the general to the particular, from part to whole, as well as between freedom of

association and the union general. If the exercise of elements of the content of certain freedoms is implied from the terms of freedom of association, without limitation or overlap with them, it can be seen whether there is an interrelation, as in the case of binomial freedom of association - freedom religious. Beyond the possible connections or partial overlap involved in determining the actual content of different fundamental rights, it should be stressed that the common aspects are not likely to cancel individual character, specific and distinct, each as viewed individually.

By knowing the current state of legislation Romanian law Association, by detailing the content of freedom of association, by reference to EU rules and regulations of other countries on how to guarantee freedom of association by analyzing the holders of this right content and its limitations and the report of freedom combination with other rights and freedoms, this chapter is of particular importance given the diversity numerically and legal forms they may take legal persons category.

Chapter*III*. ***Establishment of legal entities*** analyzes the constituent elements of any legal person - heritage, purpose, self-reliant organization as mandatory minimum scheme outlined legal rules regarding the establishment of legal persons. They also discussed the prerequisites for creating corporate, foundation and limits of freedom of association (general and specific), different ways of establishing a legal entity.

With regard to the limits of freedom of association, the importance of studying all this is obvious considering the numerous acts legislation adopted under conditions imposed by the transition from communism to capitalism and, more recently, the constraints of the economic crisis. Even if they have not always had the expected result, many changes and additions to Law no. 31/1990, Government Ordinance no. 26/2000 on associations and foundations,

the Labour Code, the Civil Code etc. followed, at least from the point of view of the legislator, flexible civil relations, trade and employment and their adaptation to the labor market dynamics, providing conditions for business development, improving professional performance, harmonizing Romanian legislation with the provisions of European Directives. No doubt, however, that, especially in times of crisis, all such legislation provided a new vision of the legal status, some of them introducing over-restrictive conditions on the establishment of different categories of legal persons. For example, if the Union Law no. 54/2003, now repealed, it was envisaged that it takes a minimum of 15 employees, not necessarily in the same unit, the current regulatory framework (Social Dialogue Law no. 62/2011) requires a number of at least 15 employees in the same unit to form a union. Considering that this is a limiting excessive right of association trade union **law ferenda** propose returning to the previous regulation that provided a minimum of 15 employees.

Regarding the scope of freedom of association, relevant is the differentiation mentioned by the new Civil Code legal entities which divides into two broad categories: legal persons of public law and legal persons of private law (art. 189 of the Civil Code.).

in connection with the *general procedure for the establishment of legal*persons,which is detailed in Section 2 of this chapter after the presentation of the individual constituents, we have examined ways of establishing a legal entity referred to in art. 194 NCC, the formality of registration of a legal entity identifiers collective entities in the circuit general legal effects of obtaining legal personality.

Chapter*IV.* ***Organization and operation of legal persons. The capacity of the legal person*** contains an introductory part is analyzed under the concept

of legal capacity, scope and structure of the civil capacity of the legal person (binomial capacity use - exercise capacity).

Civilian, as with individuals, comprising the distinct ability use and exercise capacity, each of which is analyzed in a separate section.

the section dedicated capacity use have treated issues such as concept and legal characters, beginning capacity using the legal entity content capability using the legal entity, sanction non-compliance with rules on capacity use entities collective termination capacity using the legal entity.

Unlike individuals, on which content capacity utilization are not different according to different categories of individuals as this would constitute discrimination, content capacity using the legal entity shall submit vary according to the category to which it belongs (eg, content capacity use of a legal person who is simultaneously a state body will be different from that of a company, that of a trade union or at a foundation). Emphasized that the ability to use different content even if the two legal entities belonging to the same category of legal persons is determined by the purpose for which each of them was established [Art. 206 par. (2) NCC]. These specialty ability to use applicable to legal entities and refers only to the acquisition of individual rights and civil assumes civil obligations by concluding legal documents by order generic legal entity established by law in the categories of legal persons, and the actual purpose of each legal entity, established based on the free will of the people who took the initiative of setting up a legal entity by articles of incorporation or statutes.

In the section dedicated exercise capacity we addressed issues such as concept, beginning legal capacity of the legal person content exercise capacity of subjects collective law, functioning legal person, the penalty infraction of the rules on exercise capacity entities collective termination of legal capacity of the legal person.

Unlike the time of onset of the ability to use full legal person, who it is enshrined in art. 205 NCC, early exercise capacity remains controversial, not legally enshrined. Given the ambiguous wording of art. 209-210 NCC **ferenda law** need to be specified explicitly in the new Civil Code, a legal entity that, once established, enjoy full legal capacity since it was founded, even in the absence of the administrative designation.

Another idea that must emphasize is that if for breaches of the rules on capacity using the legal entity, the penalty is absolute nullity, regarding infringement of the rules on capacity of a legal person ae show a diversity of views on the sanction that is imposed to be applied: absolute nullity, relative invalidity, unenforceability. Given the lack of a legal text in principle to provide the legal consequence of such violations **of law ferenda** consider it necessary to include in the Civil Code of express provisions whereby to order sanctioning the relative nullity of the legal documents concluded in breach of the rules on capacity the exercise of the legal person because, on the one hand, disregarded a provision governing a condition substantive legal act (capacity) and, on the other hand, it is the interests of legal entities, which is why it must be give it able to confirm them.

Chapter*V. the reorganization of the legal entity* is dedicated to regulate modes of reorganization of legal entities, and the general principles of the legal transaction involving one or more legal entities whose effects creation, modification or termination thereof. It pointed out that, according to a law or another notion of "reorganization" can have different meanings: internal reorganization of legal entities, representing a restructuring applicable to a single subject of civil law (Emergency Government Ordinance no. 30 / 1997 reorganize autonomous, Law no. 15/1990 regarding the reorganization of state economic units as autonomous as companies); procedure applicable to the

debtor legal entity in order to pay its liabilities as scheduled payment of claims (Insolvency Law no. 85/2006); the operation of one or more collective entities that exist or arise through this transaction concerning the effects creation, modification or termination thereof (art. 232 NCC). Given this latter sense, irrelevant competent body to decide on the reorganization.

In addition to the merger, division and transformation, as important means of reorganization that occurs only in cases prescribed by law and are reviewed and a number of special situations transformation, then when a person ceases to exist concurrently with the establishment in its place to another legal entity, namely: the transformation of the legal entity under Law no. 15/1990 and transformation of sports***clubs.***

As regards the effects of reorganization are depicted a number of extremely important issues such as: the effect of extinction effect creative way communication, the extent of liability of legal persons undertaking in transmission of contracts, rights and obligations transmission date. An important issue is the situation contracts concluded in consideration of the legal entity reorganized. Also, in terms of circuit patrimonial assets and liabilities, has particular relevance when the transfer of its effects for parties and against third parties, at which differs depending on the type of legal entity (Art. 242 C. civ.). Art. 243 of the Civil Code. law governing creditor or any interested person to attack the opposition acts that decided that reorganization.

Chapter*VI.* ***Liability of legal*** liability covers all forms of legal entities - civil, administrative and criminal. Besides a number of preliminary considerations concerning liability institution, the first section includes aoverviewof historical the evolution of philosophical and legal concepts concerning liability for legal entities. Whatever the legal nature - fantasy or realistic legal entity supporters -atribuită different theories, different structures

relevant collective recognition as a self-contained entity, independent and seen to its members as individuals and their ability to commit illegal acts with a higher or lower social danger. A controversial idea reflected in various different philosophical and legal concepts outlined over time is the criminal liability of legal persons.

Classification includes traditional tort and contractual liability tort. In turn, the Civil Code regulates two distinct types of responsibilities: in art. 1349 liability for damages caused by crimes and quasi-delicts (tort) and art. 1357-1371 liability for non-contractual obligations in their specific nature, by requiring the debtor to pay damages (contractual liability). In addressing the issue of tort liability, we went from art. 219-224 NCC governing the liability of legal persons of private law and legal persons of public law for licit and illicit acts of management in the functions entrusted. Regarding the liability of legal persons of public law, the starting point of the analysis was the art. NCC 221-222, emphasis on civil liability of the state and territorial administrative units (art. 223 NCC).

In terms of liability offenses we considered of particular interest in terms of topic, a number of contraventions It can be committed by legal entities (for example, health and safety), and the penalties for minor offenses (main and additional) legal persons. Analysis contravention liability of legal persons amounted opportunity to formulate a proposal **forlaw ferenda** the purposes of completingspecial provision of law governing situations contravention relapse, instituting severe penalties, depending on the seriousness of repeated offenses. Also, **by law ferenda** consider that, the sentence must be taken into account if the act was committed by a natural person or a legal person in order to establish harsher penalties for the latter.

The last section of Chapter VI presents specifics of the criminal liability of legal persons, legal persons may be held liable as legal persons exempted

from criminal liability, criminal offenses that may be committed by a collective entity criminal penalties applicable to legal persons.

Chapter VII is entitled ***Termination of legal*entities.** The first section anddentifică modes of termination of the legal person and secure the legal termination of its existence from provisions contained in the Civil Code and other laws such as: Law no. 31/1990, OG no. 26/2000 on associations and foundations, Social Dialogue Law no. 62/2011 (which repealed the Trade Union Law no. 54/2003 and Law employers no. 356/2001), the Political Parties Law no. 14/2003 etc.

The second section is devoted dissolution as a way of termination of the legal person established both common law and special laws: the dissolution of associations and foundations, dissolving consumer cooperatives and credit cooperatives, agricultural societies dissolution, dissolutionof companies, dissolution of unions, dissolution of legal persons of public law. In the category of persons are described and where comes the dissolution of law, circumstances and conditions in which dissolution may be ordered by court, where the dissolution may be ordered by decision of the members or their delegates, any prohibition on dissolution, special issues on its effects being known that they differ from case to case, governed by special legal rules.

For example, analyzing the law regulatory framework trade union (Law no. 62/2011), we found that neither it as the new Civil Code, moreover, does not list among the cases of dissolution, the shrinking number of members below the minimum legal. Given that a trade union can not be established under the law, than with a number of at least 15 employees in the same unit, an employee can be part, while only a single trade union organization with the same employer, **ferenda law** believe that it should be expressly mentioned in Law no. 62/2011 that reducing the number of union members below the minimum draw

dissolving the union if it is not resolved within a maximum period of 9 months. Also, **by law ferenda** we believe that the legislature should provide expressly that reducing the number of members of a trade union can not be the cause of dissolution if by the remains irrevocable judgment of dissolution, this number is fixed to the minimum prescribed by law.

the third section of Chapter VII deals with liquidation of legal entities consisting of the collection rights and enforcement of obligations which dissolved legal person has in relation to other subjects of law. Of particular importance shows the effects of termination of the legal person on civil legal relations (the destination of the assets after liquidation, the legal capacity of the legal person during the liquidation date of cessation of legal personality), but must not neglect the effects of this event Legal may have in plan economically and socially as a result of the abolition of legal persons having the status of traders or employers.

the last section of this chapter is dedicated invalid legal entity. Besides the classification of causes of nullity in cases of absolute nullity and relative grounds for invalidity is a matter of the legal invalidity of legal entities, due to the peculiarities they present it in relation to the legal invalidity of legal acts. Regarding the consequences of nullity - termination of a legal entity and its entry into liquidation (art. 198 NCC), stressed that absolute nullity and relative nullity of the legal entity does not produce any consequence on the legal documents concluded previously and on behalf legal person by its organs driving directly or through representation (art. 199 par. 1 NCC).

Chapter VIII - ***Conclusions and proposals ferenda law*** - includes personal conclusions and **proposalsferenda** submitted by the author oflaw.From legislation legal person, both the common law and the particular, this project doctoral research was an opportunity to formulate proposals

ferenda law which is aimed at improving the legal regime applicable to different types of businesses.

The bibliography is intended to complete thework.Since the issues addressed has a deep multidisciplinary character, the author has used a rich bibliography in various fields (history of state and law, philosophy of law, civil, commercial, constitutional, administrative, labor, human rights). Besides the books, handbooks, monographs, studies and articles published in specialized journals and collective volumes in Romanian and foreign languages they were consulted official documents updated normative acts, decisions of courts, the ECHR jurisprudence, The web websites.