ROMANIA

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FACULTY OF LAW

HABILITATION THESIS

THE LIMITED LIABILITY COMPANY IN ROMANIAN AND ALBANIAN LAW WITH REGARD TO THE SINGLE-ASSOCIATE LIMITED LIABILITY COMPANY

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SUMMARY

Key words: *limited liability company, single-associate, unipersonal limited liability company, set up, operation, transformation, dissolution*

1. Introduction – motivation of choosing the theme, its necessity and actuality

Through our theme of doctoral research we have proposed a comparative look at limited liability companies, as they appear in Romanian law and in Albanian law, pointing out the common elements, constitution, functioning, transformation and dissolution as well as the elements of continuity but also emphasizing the aspects of specificity that distinguish between the two legal systems and which in the Romanian law are governed by the *Companies Law no. 31/1990* and in the Albanian law are mainly governed by the 233 articles of *Law no. 9901 of 14.04.2008 on traders and companies*.

The topic of our PhD dissertation was not an easy one because it requires extensive knowledge and approach to a diverse bibliography, not only in the field of Romanian and Albanian law, but also in the field of European law, which implies the comparative law aspects of the paper.

During the course of our work, we tried to deal with the chosen subject in a clear, concise manner, showing first of all, what is the situation of limited liability companies in general in internal law, Romanian, and Albanian, but with a special look at single-associate limited liability companies , which have certain specificities.

The chosen topic carried us to the land of the company law in Romania and Albania, as well as other European legislations, with which we tried to make a comparison, in order to emphasize the current status of single-associate limited liability companies within a wider, European frame.

The solutions (especially the different ones) found by the Romanian or Albanian legislators have been broadly highlighted, emphasizing the differences and highlighting the positive aspects that could serve as a basis for a European legal framework of company law.

We have found both the common background and the issues of difference (which we will outline below) that have best been reflected in the case-law solutions chosen by the national courts.

The reason why we chose this issue and attempted comparative treatment is due to the fact that, at the level of company law, limited liability companies are the most numerous in both Romanian and Albanian law, so it was necessary to treat this issue as a reflection in both legal systems, both in terms of the theoretical solutions addressed and from the perspective of the practice of national courts.

We consider that the topic of doctoral research is both current and extremely important as long as the largest number of legal entities, as a form of organization, is given by limited liability companies in both Romanian and Albanian law.

From our knowledge, there has not been a comparative approach to the subject in the two legal systems so far, so that our study reveals the necessity but also the specific features characteristic of the solutions chosen by Romanian or Albanian domestic law.

Being the first such study attempting to thoroughly deal with the issue of the company law in the two legislations, it will certainly have gaps that we will try to overcome in future editions of the paper we plan to publish.

2. The structure of the dissertation

Throughout our work structured in *two major parts (titles),* we aimed to present the defining elements of the limited liability companies in the two law systems, their specific organization, the issues related to the registered office, the patrimony or the purpose of the performed activity, as well as the aspects that lead us towards the monistic conception of the Romanian Civil Code, which came into force on 1 October 2011.

The PhD dissertation titled *The Limited Liability Company In Romanian and Albanian Law with Regard to the Single-Associate Limited Liability Company* is structured in two titles, in turn, consisting of chapters, sections and subsections.

Title I, intended for the limited liability company in Romanian law (mainly) but also in the comparative law (in the subsidiary), aimed at presenting the chosen issue, within the meaning of the structural elements of a limited liability company, which must take into account the associates and their ways of responding, the structure of the share capital, the manner of administration of the limited liability company, the aspects of the changes that may affect the articles of association, etc.

In the same title we also approached the issue of *the single-associate limited liability company*, as it is revealed to us in the Romanian domestic law, dealing with the issues of a historical or terminological nature, but also the nature of the single-associate limited liability company, ways of setiing up, operation, dissolution and liquidation. Here we also referred to *the rights and obligations of the sole associate*.

In the *first part of our paper* we also approached some *comparative law* issues in the presentation of the specific elements of limited liability companies (with several associates or with a sole associate) in the national legislation of some states such as France, Germany, Great Britain, Austria etc.

We also addressed *the issue of the European company*, as well as *the ways of setting up a foreign limited liability company in Romania* (issues regarding the subsidiary and the branch of the companies).

Somewhat *in the mirror, the second title of our paper* addressed the issue of limited liability company and single-associate limited liability company this time from the perspective of the Albanian law.

Thus, *in the first chapter* we have generically presented the issues regarding the formalities of setting up a limited liability company in the Albanian law, the issues regarding the associates and the duties they share, how the share capital is structured, but also the way in which their actual management is made.

The second chapter of the second part followed in detail the specific constitutive elements of the limited liability company in the Albanian law, from the history of this type of company at the level of the legislation in Albania, to the extensive presentation of the Albanian law no. 9901/2008 on traders and companies, then going to the stage of setting up the limited liability company and registering it at the National Registration Center.

In the third chapter of the second part of our dissertation we focused our attention on the functioning and the organs of the limited liability company, dealing in detail with the General Assembly of the Associates/Shareholders, the issues regarding the liability of

the associates towards the company and its creditors, as well as matters concerning the administrators, starting with their appointment and dismissal, with the presentation of their rights and prerogatives, as well as their duties and tasks.

The fourth chapter of the second part of the doctoral dissertation is intended to analyze the dissolution and liquidation issues of limited liability companies in the Albanian law, containing the general conditions under which the dissolution may take place, as well as the procedures applicable to the liquidation of the solvable companies, ending with a few references to insolvency proceedings.

In the final part of the doctoral dissertation we drew the conclusions of our comparative law research and initiated several *proposals of lex ferenda*, both regarding the Albanian legislation in the field and the Romanian legislation, trying to point out the advantages/disadvantages of setting up, functioning, modification and the dissolution of the limited liability companies in the two legal systems, while attaching, in the form of annexes, two models of articles of association used in the limited liability company registration procedures in Romania and Albania.

3. Relevant elements and inovative aspects of the dissertation

We emphasize that, throughout our doctoral research, the approach of limited liability companies in the Romanian and Albanian law, with particular regard to those legal entities that have only one associate, was made in a comparative manner with strong pluri-angular analysis, which reveals the qualities and flaws of the two legal systems from the perspective of the lawmaking of limited liability companies.

The analysis of Law no. 31/1990 of the Romanian law and Law no. 9901/2008 of the Albanian law brought to our attention both the common regulatory elements and the solutions of difference adopted by the two legislators.

The analysis was not only from the perspective of the two law systems but we tried (and, hopefully, we have succeeded) to make a wider approach, from the perspective of the European law, which is useful in creating the overall picture of what today's limited liability companies mean at European level and what percentage they hold among legal persons.

In most cases, the treatment of the subject was straighforward, clear, simple and coherent, precisely in order to create the reader (be him/her specialist in the field or neophyte in the sphere of company law) the whole image, correct and, hopefully, complete, of what today mean limited liability companies in Romanian and Albanian legal reality.

In each of the two major parts of the paper (the one for Romanian law and the one for Albanian law), we tried to make a comparative presentation, *in the mirror*, pointing where the viable solutions adopted by one legislator or another were, and pointing out gaps and inaccuracies in both laws.

We have found at the level of the two laws both common and *bonding issues* and also *difference issues*, which were best reflected in the case-law solutions chosen by the national courts and to which I have referred or have detailed them where we considered it necessary to support the legal concepts with judicial practice.

As far as limited liability companies in the Romanian and Albanian law are concerned, we have analyzed in detail in the course of our paper the similarities and differences between the two legislations, but we will reiterate in the following lines, in a succinct, concluding manner, the most important aspects.

Regarding the setting up of companies, there are several stages to be followed. Thus, in the first stage, the availability of the name of the company is checked and this name is reserved, in Romanian law the evidence of availability of the name is released on the spot, for the payment of a fee of 72 lei. In Albania this stage also lasts very little, as in Romania (less than a day) but is done online, for a fee of 0.7 euros.

Subsequently, the share capital must be deposited with the bank according to the articles of association. This stage does not involve costs (other than the share capital itself) and involves the depositing of the share capital with the bank, which will issue a proof that will be filed with the rest of the registration file with the Trade Registry. The bank to which the share capital is deposited does not necessarily have to be a bank where the future company will open its accounts and through which it will carry out the financial-fiscal activities. In Albania, an application for registration of the Registration Certificate is submitted and the unique registration number is filed with the National Registration Center, which usually lasts one day and costs about 0.7 euros.

Another stage consists of the registration of the company at the Trade Register Office in Romania, which takes about 3 working days and involves the payment of about 350 lei. In Albania, employees are registered in the Employee Regional Registry which lasts one day and for which no fees are charged.

Subsequently, the Romanian legislation provides for the registration for VAT purposes (Value-Added Tax), all other formalities for registration and taking into account, which are transmitted by the Trade Register Office and are automatically operated from the registration of the company at the Trade Register, including the assignment of the tax code in about 3 working days, free of charge. In Albania, it is registered at the Municipal Income Office, which lasts one day and costs between 268-322 euros.

According to the Romanian law, it is then made the registration of the employees' contracts in REVISAL – the online Labor Inspection service on the spot, through an online procedure. While in Albania the purchase of printed items such as invoices from the tax authorities lasts one day and involves a cost of 2.5 euros.

Regarding the stamp, as of 23.07.2015 the Romanian companies are no longer obliged to apply the stamp on the documents submitted to the authorities or which are concluded in the relationship between the companies[1]. While in Albania it is necessary to manufacture the stamp of the company that is usually done in one day and it costs 21.5 euros.

Although the procedure for registering a limited liability company in Albania is shorter in duration, which is a real advantage, it is firstly more expensive than in Romania, and secondly it involves several state institutions in the post-registration procedure at the trade register, which is likely to accentuate the bureaucratic element.

Regarding *the rights and obligations of the associates*, it is worth mentioning that article 6 of Law no. 31/1990 provides for the prohibition of acquiring the status of founding associate for several categories of persons[2]. A similar prohibition is not found in the

[1] According to Government Ordinance no. 17/15.07.2015 regarding the regulation of fiscal-budgetary measures and the modification and completion of some normative acts.

[2] Article 6 of the Law no. 31/1990 provides that: persons who, according to the law, are incapable or have been convicted for offenses against the heritage by failing to trust, corruption, embezzlement, forgery, evasion, provided by Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for measures to prevent and combat the financing of acts of terrorism, republished, or for the offenses provided by the present law.

Albanian law except for the associates of the board of directors or the supervisory board of a company and for the representatives of the associates in the general meeting.

Both legislations provide for *similar provisions* regarding the right of associates to participate in benefits and losses, in proportion to the share of participation in the share capital. Both legislations provide for a different way of dividing the company's benefits through the articles of association.

The Albanian legislation, however, has some special provisions in the case of establishing additional prohibitions to distribute profits to associates, making this distribution, in addition to the existence of a real profit according to the law set uped on the basis of the fiscal balance sheet, of two other aspects, namely:

- the assets of the company can fully cover its debts;
- the company should have sufficient liquid assets to settle its maturity obligations over the next 12 months.

To this end, the administrators issue a solvency certificate, which expressly confirms that the proposed distribution of dividends meets these additional requirements, otherwise being forbidden to issue such a certificate and, moreover, is expected to respond personally to the company for the authenticity of this solvency certificate, including if ihe/she negligently releases it without meeting the conditions.

Administrators will therefore be liable for the restitution of dividends to the company if they issue (out of negligence or in bad faith) the solvency certificate.

. *As a comparison*, the Romanian law limits the possibility of liability to the company only for the associates (so not for the administrators as well) who have received dividends, known or, in the circumstances, they had to know the existence of irregularities only in the procedure of establishing the profit according to the law or of the actual distribution of dividends.

Most of the associate's general rights are *similar* in both laws. However, there are also *some major differences* between the two legal systems, some of which were adopted by the Romanian legislator with the entry into force of the new Civil Code on 1 October 2011, as follows:

- the associate cannot compete with the company on his/her own account or on behalf of a third person, nor can it make an operation that may be damaging to the company or on its account;
- the associate cannot take on his/her own account or on the account of a third person an activity that would lead to the company being deprived of the assets, benefits or specific knowledge to which the associate has been bound;
- the benefits resulting from any of the activities prohibited under the above provisions belong to the company and the associate is held for any damages that may result;
- the associate dissatisfied with a decision taken by a majority of votes may challenge the decision in court within 15 days from the date it was taken, if present, and from the date of the communication, if he/she was missing. If the decision has not been communicated to him, the time limit shall run from the date on which he/she became aware of it but no later than one year after the date of the decision;
- the 15-day period referred to above is a limitation period;
- provisions on the liability of apparently unrelated assoaciates in the previous regulation. Thus, any person who claims to be associated or deliberately creates

to a third party a convinging belonging is in this respect held responsible in front of asset-faith third parties, just like an associate; the company will only be liable to the third party if it has been given sufficient reasons for considering ihim/her to be a new associate if it does not take reasonable steps to prevent the third party from being misled by knowing the mistreatment of the alleged partner;

- the innovative provisions are introduced by the new Romanian Civil Code and on occult associates; thus, ocult associates respond to asset-faith third parties as apparent associates.

As far as *the principal obligation of the associates* is concerned, it is to ensure the management of the limited liability company through the General Assembly of the Associates, which has the essential tasks with regard to the functioning of the company.

Concerning *the contribution to the setting up of the company*, a major difference between the laws of the two countries is that, in Romania, according to article 11 of Law no. 31/1990 ammended and republished, the share capital of a limited liability company may not be less than 200 lei and it shall be divided into equal shares, which may not be less than 10 lei. While in Albania the minimum amount of social capital is 100 lek (about 3.30 lei), ie much lower than in the Romanian legislation, thus encouraging the setting up of new companies.

The contribution of the associates to the share capital can be in cash and in-kind, the latter being optional. Since money is indispensable for the commencement of commercial activity, cash contributions are required to form a trading company, regardless of its form. The in-kind contribution may concern certain real estate (buildings, installations, etc.), movable tangible assets (materials, commodities, etc.) or incorporate (receivables, trade, etc.). These contributions are made by transferring the corresponding rights and the actual handing over of the assets to the company if it comes to assets.

The input may consist in passing on property to the company or just to the right to use the asset. Unless otherwise stipulated, assets become the property of the company. It is understood that if the transfer of the right of ownership has been agreed, the asset will enter the patrimony of the company, the associate not having any right over it anymore.

Consequently, the asset will not be tracked by the creditors of the associate, and upon the dissolution of the company, the associate will not be entitled to the return of the asset, which is the asset of the company.

If the contribution relates to a asset or a movable asset, the relationships between the associate and the company are legal relationships similar to those between the seller and the buyer. Regarding the transfer of ownership of the asset, Law no. 31/1190 amended, provides that the asset becomes the property of the company "from the time of its incorporation in the Trade Registry". Therefore, if the asset is lost before the company is registered, the risk is borne by the associate; he/she will be forced to bring into the company another asset or an equivalent cash contribution. The asset that is subject to the in-kind contribution must be valued in money to determine the value of the shares or the associate's share in return for the contribution. This assessment is made by associates or, when expressly provided for by law, by authorized experts.

If the asset subject to the in-kind contribution was brought into use by the company, it is assumed in the doctrine that relations between the associate and the company are governed by the usufruct rules. As the company acquires only a right of use, the associate

remains the owner of the asset and, in that capacity, upon the dissolution of the company, is entitled to the return of the asset.

The in-kind contribution may include embedded movable assets such as claims, patents, trademarks, know-how, etc.

The differences between the Albanian legislation and the Romanian one regarding the contribution to the share capital[3] are as follows:

- in the Romanian law, the assessment of the property can also be done by the parties' agreement, whereas in the Albanian law the expert's assessment is mandatory;
- the Albanian legislator's duty to regulate in detail the regime of in-kind contributions is higher (for example, non-consumable goods are not allowed, claim compensation is not allowed between the associate and the company for the contribution, and finally the exercise of the right of retention of the associate is forbidden in relation to the debtor company, when it comes to charging an asset).

There is also *a significant resemblance* to the presumption that, in the absence of any indication, the good is considered property.

The management of the company[4] is done in both laws in a similar way, but there are also some significant differences:

- in Romanian law only, there are details of the liability of the administrators, in the sense of reference to the power asignment contract model, but also of the detailing of the cases of divisible/joint liability, as well as of the prohibition of cumulating the quality of the employee with the trustee;
- the non-compete, diligence and prudence obligations, loyalty, confidentiality, independence are detailed obligations of the administrators presented in the special law with the accession to the EU taking over the *bussiness judgment rule* in the American law – according to it, a business decision adopted in a presumed situation as being in the interest of the company, absolves the accountable manager, even if later it will prove that the decision was wrong (in the sense of harm to the trade company).

From the perspective of the Albanian legislation on limited liability companies with a sole associate, some relevant issues need to be mentioned. Thus, in case, for one reason or another, the number of associates decreases to one, this sole associate has the obligation to register at the National Registration Center the decrease of the number of members and his/her name, according to article 43 of Law no. 9723/2007. If this sole associate does not comply with this legal obligation, he/she will be personally held responsible for the company's commitments.

From the moment this registration of the reduction of the number of associates to one has been recorded at the National Registration Center, the company will continue its

[3] For details on the contribution to share capital in the Albanian law, please see Janet Dine, Michael Blecher, *The law on entrepreneurs and companies*, text with commentary, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH , Gent Grafik, Tirana, 2016, pag.45-46.

[4] For details on how to administer companies in the Albanian law, please see Janet Dine, Michael Blecher, *The law on entrepreneurs and companies*, text with commentary, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH , Gent Grafik, Tirana, 2016, pag.47-58.

activity as a limited liability company with a sole associate[5].

We also state that we subscribe to the opinion that[6] the wording of article 3 paragraph 1 of Law no. 9901/2008 from the substantial point of view is deficient and even meaningless as long as:

- to undertake *joint economic objectives* can only be the benefit of that company founded by two or more members, and not a limited liability company with a sole associate, when the economic objectives can only be particular, individual, and in no way common, for reasons of numeral order;
- a limited liability company can be set up with only 100 Lek[7], which implies a very low level of *contributions to the company*, which would in no way lead to the attainment of those programmatic *common economic objectives* that article 3 paragraph 1 of Law no. 9901/2008 refers to.

At the same time, the provisions of article 82 paragraph 6 are applicable (representing a special situation) and, in the case of limited liability companies with a sole associate [8].

The prohibitions on the right to vote of a sole associate, provided for by article 89 paragraph 1 and article 148 paragraph 1 of Law no. 9901/2008, aim in particular to avoid a conflict of interest between the associate and the company, taking into account the general principles stated in article 14, paragraph 1 of Law no. 9901/2008, according to which, when associates, members or shareholders exercise their rights, they must take into account the interests of the company, as well as the interests of the other associates, members or shareholders.

Special provisions regarding the limited liability company with a sole associate are those in article 81 paragraph 3 of Law no. 9901/2008. According to this paragraph, the rights and duties of the General Assembly in the case of sole associate companies will be exercised by the sole associate.

The decisions he/she will take will be compulsorily recorded in a decision register whose information cannot be altered or deleted.

Particularly, the following types of decisions will be mentioned in this register (but not limited to the following, the enumeration being an examplifying one):

- adopting the annual accounting statement and performance report
- profit distribution and loss coverage
- decisions on making investments
- restructuring the company or dissolving it

Any decision that is not recorded in this record of decisions concerning the limited liability company with a sole associate will be deemed null and void. This will not affect the company's liability towards third parties unless the company proves that the third parties knew or could know of the nullity of that decision.

With regard to limited liability companies with a sole associate, we recall the definition given by article 3 paragraph 1[9] of Law no. 9901/2008, which speaks about

[5]Art.71 paragraph 2 of the Law no.9901/2008.

[6]Thomas Bachner, Edmund-Philipp Schuster, Martin Winner, *The New Albanian Company Law*, Tirana, Botimet Dudaj, February 2009, nota de subsol nr.108, pag.92.

[7]A very small amount, approximately 3,30 lei.

[8] The situation is described by article 82 paragraph 7 second thesis of Law no.9901/2008.

[9] Article 3 paragraph 1 of Law no. 9901/2008. A company is set up by two or more natural and/or legal persons who agree to undertake common economic objectives through contributions to the company as provided for in its statutes. A limited liability company and a joint-stock company may also be set up by

companies in general, but also about companies with a sole associate.

At the same time, we can also meet the situation where a company had two or more associates at the time of setting up, but in the course of its activity, for various reasons[10], it can become a limited liability company with a sole associate, in the sense that the reduction the number of shareholders to one will not lead to the dissolution of the company[11]..

On the other hand, with regard to limited liability companies with a sole associate, the Albanian law is quite cautious towards the sole associate, which has justified the doctrine of affirming, in other respects, however, the Albanian company law shows a crushing distrust over single-member companies, which resulted in a number of discriminatory provisions, whose value is doubtful, not least because they are not easily circumvented[12].

We believe that just because a company at the time of its establishment has only one associate, or because later of the few assoaciates it remains with one, it does not mean that the interests of the sole associate will be 100% identical with the interests ofthe company in the sense of finding those ways to circumvent the law and to turn the company into a window to gain more or less licit profits. We also understand the reasons why the Albanian legislator preferred to treat separately the issue of limited liability companies with a sole assoaciate or single shareholder joint-stock company.

In this respect, of the rules specifically established for companies that have a sole assoaciate (or sole shareholder, in the case of joint-stock companies), we find the provisions of art. 71 paragraph 1 and art. 114 paragraph 2 of Law no. 9901/2008.

Thus, according to art. 71, paragraph 1, in case, for various reasons, the number of associates decreases to one, this sole associate has the obligation to register with the National Registration Center the decrease of the number of members and his/her name, according to art. 43 of the Law no. 9723/2007 regarding the National Registration Center.

If this sole associate fails to comply with this legal obligation, he will be personally held responsible for the company's commitments.

From the moment this registration of the reduction of the number of associates to one has been recorded at the National Registration Center, the company will continue its activity as a limited liability company with a sole associate.

A similar provision is also found in joint-stock companies through the text of article 114 paragraph 2 of Law no. 9901/2008[13].

Whether it is a limited liability company that remains with only one associate or a joint-stock company in the same situation, it is likely that the Albanian lawmaker's logic was to protect creditors by announcing the remaining of one assoaciate/shareholder within the company and his/her name at the National Registration Center.

We believe, however, that we do not offer increased protection to creditors through

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one person (one associate or joint stock company).

[10] Such as the sale of shares to a sole associate, the inheritance of an associate's shares by another associate, etc.

[11] Art. 187 paragraph 2 of the Law no. 9901/2008, which refers to the situation of the joint stock companies, but which must be understood as applicable also to the limited liability companies.

[12] Thomas Bachner, Edmund-Philipp Schuster, Martin Winner, *The New Albanian Company Law*, Tirana, Botimet Dudaj, February 2009, pag. 49.

[13] When the number of shareholders decreases to one, he/she will have to report this decrease to the National Recording Center. If the sole shareholder does not comply with this obligation, he/she will be held fully and personally responsible for the company's engagement in the meantime.

this form of publicity.

Probably for this reason it has also been stated in the specialized doctrine that the logic of this rule is difficult to see because the dangers for creditors do not depend to a significant extent on the fact that the company is, as a matter of fact, a single-member company, or that there is one second member with few social parte/ shares (eg 1%) and no influence on the decisions taken by the dominant member and/or the administrator [14].

It should also be underlined that this rule, as laid down in article 71 paragraph 1 of Law no. 9901/2008, is not in line with the twelfth directive[15] as regards the harmonization of national law with European law. As is also stated in article 3 of the Directive[16].

In other words, under very restrictive conditions, the sole associate can be held responsible for the company's commitments, and without resorting to the rule set out in article 2 paragraph of Directive 2009/102 / EC. This leads us to another proposal for lex ferenda of the Albanian law, namely to amend article 71 paragraph 1 of Law no. 9901/2008 in accordance with the European legislation in the field.

On the other hand, it is necessary to mention a difference that is not only of nuance, that is, the one that speaks about the involvement of the one who is to become a sole associate/shareholder, until the registration of the application at the National Registration Center.

The text of article 71 paragraph 1 of Law no. 9901/2008 refers to the obligation of the registration of the number of members and his/her name, which is to be registered at the National Registration Center, by the one who is to remain the sole associate. Although it does not last very long, this record can not be done instantly, which is why the sole associate is responsible, inherently, for all the commitments that the company has made until the time it has been able to register with the National Registration Center. From that moment on, the sole associate no longer responds in his name, responsible being the company.

In the case of joint-stock companies[17], the text has a slight difference in the sense that it is no longer related to the record of the decrease, but to his/her reporting and the name of the shareholder, but the aim is the same: the advertising and registration of this change at the National Registration Center. The shareholder who will become the sole shareholder will respond personally and in full for the engagements assumed by the company *in the meantime*, that is, from the time this change occurs and up to the moment of its reporting to the National Registration Center.

In none of the variants the sole associate/shareholder can avoid personal liability unless he/she has announced the decrease in the number of associates/shareholders at the National Registration Center.

However, once the formalities required by article 71 paragraph 1 or article 114 paragraph 2 have been carried out for the purpose of recording/reporting the decrease in the number of associates/shareholders and the name of the sole shareholder/shareholder, the

[14] Thomas Bachner, Edmund-Philipp Schuster, Martin Winner, *The New Albanian Company Law*, Tirana, Botimet Dudaj, February 2009, pag. 50.

[15] This is the Directive 2009/102/EC of the European Parliament and of the Council of the European Union of 16 September 2009 in the field of company law on limited liability companies with a sole associate.

[16] If a company becomes a sole assoaciate company because all its shares are acquired by one person, the indication of that fact as well as the identity of the single associate must be recorded in the file or transcribed in the register referred to in article 3 (1) (2) of Directive 68/151/EEC or be recorded in a register kept by the company and accessible to the public.

[17] Art.114 paragraph 2 of Law no. 9901/2008.

sole associate/shareholder will no longer be held personally responsible, but in the relationship with the creditors will be the limited liability company with the sole associate or the joint-stock company with sole shareholder.

In the specialized doctrine, a solution was also taken to remove the personal liability of the sole assoaciate/shareholder: the contract for the transfer of social parts/shares to the last associate/shareholder to make the conditional transfer until the filing of the application at the National Registration Center or even up at the time of actual registration[18].

On the other hand, another special aspect to be remembered is the one referred to in article 13 paragraph 7 of Law no. 9901/2008[19].

The rationality of the rules set out in article 13 paragraph 7 is not to put the company in difficulty by borrowing from it or by guaranteeing with its assets debts that the sole associate could have/contract in his/her own name .

On the other hand, the reverse of this rule makes it difficult to carry on the activity of a limited liability company with a sole associate, as long as the minimum capital is 100 Lek[20].

The company will have to borrow from the sole associate, but according to the provisions of article 13 paragraph 7, it cannot do so. In which case the only solution remains a loan from other potential creditors, which the sole associate must convince them of the necessity and profitability of such a loan.

4. Conclusions and lex ferenda proposals

We hope that the way in which our doctoral dissertation expose shows that we have not satisfied ourselves with a simple, one-sided look that reflects only the solutions of the national courts, but that we have gone to what might mean creating a common law in the matter and knowing the legislative stage at European level.

The analyzed case-law at each of the two parts of our paper has proved to be extremely useful in showing the options of national courts towards one or other of the proposed and documented solutions at doctrinary level, often nuanced and questionable.

Some of the proposals of *lex ferenda* that could be made in so many positive changes at the level of the Romanian company law would be:

- the insertion in the statute of a limited liability company with a sole associate of the mention that that company is *a limited liability company with a sole associate*. We would like to point out that the law in the matter only requires the use of the name of *limited liability company or S.R.L.*, the lack of such a mention resulting from the provisions of art. 7 paragraph 1 lit. b which provides for the compulsory indication of *form, name and location* without making a distinction as the company has one or more associates;

[18] Thomas Bachner, Edmund-Philipp Schuster, Martin Winner, *The New Albanian Company Law*, Tirana, Botimet Dudaj, February 2009, pag. 51.

[19] Art.13 paragraph 7 of Law no. 9901/2008. A person who is at the same time sole associate/shareholder of a company may not be a party to loan or collateral guarantees to conclude with the company. Other contracts that he/she concludes between himself /herself and the company must be recorded in minutes kept at the registered office of the company. Failure to comply with this obligation must be considered an administrative violation and the administrator will be fined up to 15,000 Lek. If such an administrative violation is discovered during a check by the tax authorities in the field, the sanction will be determined by those authorities.

[20] Approximately 3.30 lei.

- according to the French regulation, we propose by *lex ferenda* to insert in the letter of the Romanian law the obligation to record the decisions of the sole associate in a special register of decisions, thus ensuring the advertising formalities towards third parties that may have some interest in the activity of the limited liability company with a sole associate. It would be welcome to introduce the legal obligation to enlist the decisions of the sole associate in a register of decisions taken by him/her [21] (because this obligation does not exist at the moment), a change that would be welcome precisely to protect the interests of third parties who can only exercise control over the way of opposition, the provisions of art. 132 of the Law no. 31/1990 regarding the ways of attacking the decisions of the general assembly of the associates are not applicable;

- in the case of a limited liability company with a sole associate, he/she can also perform the function of administrator, which can lead to patrimonial, criminal or even labor law liability. In principle, in the case of limited liability companies it is not necessary to appoint censors, and control of the management can be performed by the associate who is not the company's manager. If, however, the sole associate also fulfills the role of administrator, we consider *by lex ferenda* that the censors should be appointed to assist, guide and support the activity of the sole associate in the company's management operations;

- another feature of the functioning of the limited liability company is the fact that, when contracts between the sole shareholder and the company enter into contract, they must be concluded in written form[22] under the sanction of absolute nullity. In this respect, the wording of the 12th Directive is much more sophisticated, allowing the signatory States not to provide in their domestic legislation the obligation to draw up in writing the contracts between the sole partner and the company if these contracts relate to ordinary, for society. Thus, beyond the major importance of writing such contracts in writing (for the company, for the sole associate but also for third parties), it is welcomed that the Community rule exempts from this form the current company's operations, even if they are based on contracts concluded by the company with the sole associate, thus giving the prevalence of the principle of business celerity[23]. By comparing the internal text and the community norm, we propose by *lex ferenda* a different, more flexible and efficient regulation that keeps (up to a point) the obligation to observe the written form but also ensures the speed of decisions when it comes to business efficiency.

Among the proposals of the *lex ferenda* that we have revealed at the level of our paper, in connection with the Albanian law, we recall:

- the need to explicitly insert in the text of Law no. 9901/2008 the fact that both the agreement between the founders of the company and its statutes must be written in order to eliminate the lack of clarity of article 3 paragraph 1 of Law no. 9901/2008, the current wording of article 3 is deficient and even meaningless;
- the need for a future Albanian law regulating the status of traders and companies should take into account the creation of a concrete opportunity to cancel the decisions of the General Assembly of Associates that are contrary to the Statute or legislation;

[21] As is the register of hearings and deliberations in the case of joint stock companies (article 177 paragraph 1 letter b of Law no. 31/1990).
[22] Art.15 of the Law no.31/1990.
[23] Eugenia-Gabriela Leuciuc, *Regimul juridic al societății cu răspundere limitată*, Ed. Universul Juridic, București, 2018, pag. 274.

- the amendment of article 71, paragraph 1, of the Law no. 9901/2008 according to the European legislation in the field, because for the time being only in very restrictive conditions can the responsibility of the sole associate be assumed for the company's commitments, and without resorting to the rule set uped by the article 2, paragraph 2, of Directive 2009/102/EC;
- that the provisions of article 191 paragraph 2 could also be applied to the case where the General Assembly fails to designate an administrator, such a legislative change being a solution to the fact that the Albanian law has not established a solution to this problem. If the General Assembly sets two or more administrators, the basic rule is that they will lead the company together. However, there is also the possibility of derogating from this rule, by provisions of the statute or by resolutions established by the General Assembly.

The relevant case-law, both Romanian and Albanian, comes to double the theoretical presentation of the subject and to carry our research into practice, pragmatism and concrete solutions, because such a subject of doctoral research cannot remain at the (limitative) level of the theory.