Legal Person Subject to Civil Law

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Abstract: The legal person, now a distinct institution in its own right, regulated as such in the Romanian Civil Code, is the result of a long process of modernisation of Romanian legislation, but also of its harmonisation with international regulations which unanimously recognise the legal person as a subject of law. The notion of legal person was born in private law and has been and is used in all branches of law. Legal persons are distinct subjects in civil law or commercial law legal relationships. The legal person is a subject of law with a wide scope in the legal circuit. Commercial companies, autonomous companies, companies, are participants as legal persons in private law relationships.

Legal persons are the entities provided for by law, as well as any other legally-established organisations which, although not declared by law to be legal persons, fulfill all the conditions provided for by the Civil Code and the relevant legislation.

The present article aims to present the specific rules for the establishment and functioning of a legal person, as well as issues related to classifications and constituent elements, and to their liability for legal acts or deeds performed.

Keywords: *legal person, state, company, legal liability, legal subject, capacity to use, capacity to exercise, identifying attributes.*

How to cite: Macsim, C. (2021). Legal Person Subject to Civil Law. *Logos Universality Mentality Education Novelty: Law*, 9(1), 13-23. <https://doi.org/10.18662/lumenlaw/9.1/52>

1. Introduction

Any civil legal relationship is based on a social relationship, whether patrimonial or non-patrimonial, but it is governed by the rule of civil law. Social relationships are formed on the basis of interaction between persons, representing individual and social aims and interests.

However, people do not act in isolation but come together in groups to achieve different social, economic, cultural or political interests. These elements, which motivate the group to act, enable it to participate in the civil circuit as a person in its own right, with its own patrimonial responsibility.

In the literature, the legal person has been defined as “a subject of law participating in legal relations in its own right, having its own civil liability, a group of people with a well-defined organizational structure, having patrimonial independence and pursuing a goal in accordance with public interests” (Stătescu, 1970, p. 365).

According to another definition, a legal person is “that subject of civil law which is constituted by the group of people (or natural person) who meets the conditions established by law for acquiring this quality” (Răuschi & Ungureanu, 1995 p. 239).

The new Civil Code also speaks of two categories of persons, namely natural persons and legal persons. Book I “On persons” contains some general provisions common to the two categories of persons called “subjects of civil law”.

Thus, according to the provisions of Art.1 para.25, “subjects of civil law are natural persons and legal persons” and according to para. 3 “a legal person is any form of organisation which, meeting the conditions required by law, has civil rights and obligations”.

Of course, the new Civil Code also clarifies the constituent elements of the legal person in a separate article, Article 187, according to which any legal person must have an independent organisation and its own assets, assigned to the achievement of a certain lawful and moral purpose, in accordance with the general interest, and according to Article 187188, legal persons are the entities provided for by law, as well as any other legally established organisations which, although not declared by law to be legal persons, fulfil all the conditions provided for in Article 187.

We note therefore that legal personality allows participation not only in civil legal relations, but also in legal relations of another nature, conferring on the community (or the individual) not only the quality of subject of civil law, but also of subject in labour law, administrative law, financial law (Lupan, 1992, p. 209).

Legal persons constitute the vast majority of collective subjects of law and their frequency as subjects of law is incomparably higher than the frequency as subjects of law of other collective subjects of law.

As legal persons, we can list: the State; administrative-territorial units; bodies of the legislative authority; the Presidency of Romania and bodies of the executive authority; bodies of the judicial authority; the Constitutional Court; other State legal persons, i.e. State economic agents and State institutions; political parties; trade unions; employers' organisations; cooperatives and their unions; companies regulated by Law no. 31/1990; agricultural companies; associations and foundations; religious cults, etc.

According to the Administrative Code, legal personality is conferred by law to the administrative-territorial unit (county, city, including municipality, commune) - Administrative-territorial units are legal persons of public law, with full legal capacity and their own patrimony (art.96), the ministries which are legal persons governed by public law, have their headquarters in the municipality of Bucharest and are headed by ministers (art.54) and the Prefect's Institution which is a public institution with legal personality, with its own budget, subordinate to the Government and the legal capacity of the Prefect's Institution is exercised by the Prefect or his legal substitute (art.265).

Also, in order to defend the interests of the administrative-territorial units, the mayor or, as the case may be, the president of the county council, stands in court as the legal representative of the commune, town, municipality or, as the case may be, the county and not in his personal name (art. 109)

The High Court of Cassation and Justice ruled that, in accordance with the provisions of Art.21 (1) of Law no. 215/2001 on local public administration, only the administrative-territorial unit has legal standing, having legal personality, and not the Local Council or the Town Hall, which are not entities with legal personality, but a deliberative body, i.e. the executive structure of the administrative-territorial unit, not having the capacity to use civil rights to be a party to the proceedings. (Decision No 1956 of 5 April 2012 delivered on appeal by the Second Civil Chamber of the High Court of Cassation and Justice).

In domestic law, the State appears as a collective subject of law first in legal relationships under constitutional law. The state can grant citizenship, approve renunciation of citizenship, withdraw citizenship, approve the establishment of residence in Romania for citizens of other states. The State is not a mere legal

person, but a sui generis legal person. In civil law relations, the State participates as a subject of law through the Ministry of Finance.

As subjects of law, the state bodies carry out several competences necessary to ensure constitutional rights, such as exercising state leadership in all areas existing in society, resolving issues concerning the merits and legality of the claims of some subjects of law against others, ensuring the legal framework necessary for the existence of public order and safety, otherwise being entitled to use the force of coercion.

Legal persons are distinct subjects in civil law or commercial law legal relationships.

The legal person is a subject of law with a wide area of diffusion in the legal circuit. Commercial companies, autonomous companies, companies, are participants as legal persons in private law relationships.

1.1. Classification of legal persons

Several criteria for classifying legal entities have been proposed in the literature. We are talking here about the previous regulation whose general framework was set by Decree 31/1954 (repealed by the Civil Code). At present, there is a classification provided for in the text of the Civil Code, but legal doctrine makes these classifications according to some implicit or explicitly specified criteria.

Therefore, from a dual perspective, legal persons can be classified according to several criteria:

1. depending on the applicable legal regime (art. 189 Civil Code):

a) legal persons governed by public law which are established by law; by exception, in cases specifically provided for by law, they may be established by acts of the central or local public administration authorities or by other means provided for by law (art. 191 Civil Code);

b) legal persons under private law which may be freely constituted in one of the forms provided by law (art. 190 Civil Code)

2. in relation to the nature of their purpose (art.206 Civil Code):

a) legal persons with a profit-making purpose;

b) legal persons with a non-profit purpose (nonprofit or not-for-profit); this classification is of interest from the point of view of establishment, the legal regime of the assets of the patrimony, as well as from the fiscal point of view; for certain categories of legal persons with a non-profit purpose, the law allows the carrying out of economic activities, to the extent that they are necessary or contribute to the achievement of the non-profit purpose; thus, Article 47 of O.G. no. 26/2000

provides that “associations, foundations and federations may establish commercial companies. The dividends obtained by associations, foundations and federations from the activities of these commercial companies, if not reinvested in the same commercial companies, must be used for the achievement of the purpose of the association, foundation or federation”, and art. 48 of the same normative act provides that “associations, foundations and federations may carry out any other direct economic activities, if they are accessory and closely related to the main purpose of the legal person” (Boroi et al., 2019, p. 250).

3. by their nationality:

- a) Romanian legal persons - this category includes legal persons that have their head office in Romania and are incorporated under Romanian law;
- b) foreign legal entities - those with their main office outside the country's borders, constituted according to the law of the place where they have their headquarters and which, under the conditions of Romanian law, also carry out their activity on the Romanian territory.

4. by their headquarters:

- a) legal persons established in Romania;
- b) legal persons established abroad;

5. according to the mode of establishment, the new Civil Code distinguishes three categories of persons:

- a) persons constituted by the act of establishment of the competent body (such as administrative-territorial units, bodies of state power, state institutions, autonomous regions and companies with state capital),
- b) legal persons constituted by the act of incorporation of those who constitute them (such as the majority of companies with private capital, except limited liability companies which can be constituted by a single person, cooperative organizations, associations)
- c) legal persons constituted in any other way provided for by law (such as limited liability companies with sole shareholder or testamentary foundations) .

2. Constitutive elements of the legal person

The legal personality of a given collective presupposes that a minimum number of constitutive elements have been met, without which the collective cannot become the holder of this new quality which detaches it from the individuality of the members who make it up (Stătescu, 1970, p. 370).

Every legal person must have an organisation of its own and its own assets, assigned to the achievement of a specific lawful and moral purpose in accordance with the general interest (Article 187 of the Civil Code);

The new Civil Code has retained three legal constitutive elements of the legal person proposed by civil law doctrine and practice

1. *self-organisation* is the constituent element of the legal person, which requires that its internal structure, the composition of its governing bodies, its powers, and the way in which it is terminated are specified.

The self-organisation is established either by the act of the State body establishing the legal person or by its statutes or instrument of incorporation. Thus, Law 31/1990 (Article 5) on companies provides as a constituent act: the company contract, the articles of association or the act of will of a single person, depending on the type of company to be set up.

2. *own patrimony condition which allows the legal person to participate in its own name in legal relations* and to incur its own liability. The legal person's assets are distinct from the assets of other persons, natural or legal, including the assets of the persons who make up the legal person in question; - it consists of two sides: the active side representing all the rights of the legal person and the passive side representing all the pecuniary obligations of the legal person, regardless of their contractual or non-contractual nature (Boroi et al., 2019, p. 251).

3. *a lawful and moral purpose*. The existence and pursuit of such a purpose constitutes the very *raison d'être* of the legal person. The purpose is that which will ultimately define the extent of the legal person's capacity for use, according to which the validity of the acts which it will conclude will be analysed (Stătescu, 1970, p. 372).

The purpose of the legal person may be economic, patrimonial, such as making a profit, but it may also be non-patrimonial, aimed at satisfying interests of a non-economic nature that can be evaluated in money, as in the case of charitable associations, unions of creators, professional or sports associations, trade unions, foundations, etc.

3. Capacity of the legal person

Legal persons, like natural persons, have the capacity to use and the capacity to exercise rights, which together make up civil capacity, part of the legal capacity of the collective subject of rights.

The legal person's capacity of use has a number of specific characteristics of its own, namely legality (which means that it is established only by law), generality

(those rights and obligations that the legal person may have in order to achieve the purpose established at the time of establishment, which is expressed in the principle of speciality of capacity of use), inalienability (the legal person cannot renounce it, cannot alienate it or transfer it) and intangibility (which represents its certainty that it cannot be restricted except in the cases and under the conditions established by law) (Räuschi & Ungureanu, 1995, p 259).

According to the provisions of Article 205 of the Civil Code, the capacity of use of a legal person is the capacity to have subjective civil rights and civil obligations, regardless of their source.

The beginning of the legal person's capacity of use is the date of registration in the case of legal persons subject to registration (Article 205 paragraph 1 of the Civil Code) and, in the case of legal persons not subject to registration, from the date of the deed of establishment, from the date of authorisation of their establishment or from the date of fulfilment of any other requirement provided by law (Article 205 paragraph 2 of the Civil Code). There is also an anticipated capacity of use, provided for in 205paragraph 3 of the Civil Code, according to which legal persons subject to registration may acquire rights and assume obligations from the date of the act of establishment, but only to the extent necessary for the legal person to come into existence validly.

A legal person may have any civil rights and obligations, except those which, by their nature or according to the law, can only belong to a natural person (art. 206 para. 1 Civil Code).

In the case of activities that must be authorised by the competent authorities, the right to carry out such activities arises only from the moment of obtaining the authorisation in question, unless the law provides otherwise (Article 207(1) of the Civil Code), the sanction for failure to comply with this rule being that acts and operations carried out without the authorisations provided for by law are absolutely null and void, and the persons who have carried them out are liable without limitation and jointly and severally for all damage caused, regardless of the application of other sanctions provided for by law (Article 207(2) of the Civil Code).

According to Art.244 the legal person's capacity to use ceases when the legal person ceases to exist in one of the ways provided for by law (declaration or declaration of nullity, merger, total division, transformation, dissolution or dissolution or another way provided for by the constitutive act or by law)

The capacity of a legal entity to exercise its legal capacity is a component of the civil capacity of the legal entity, which consists in the ability to acquire and

exercise subjective civil rights and to assume and fulfil civil obligations, by the conclusion of legal acts, by its management bodies (Boroi et al., 2019, p. 258).

According to Art. 1 of the Civil Code 209, the legal person exercises its rights and fulfils its obligations through its management bodies, from the date of their establishment, unless a special rule for a particular category of legal person provides for another body. As an exception to this rule, Art. 2101 of the Civil Code. provides that until the date of establishment of the management bodies, the exercise of rights and the fulfilment of obligations concerning the legal person shall be carried out by the founders or by natural persons or legal persons designated for this purpose.

The management bodies shall be natural persons or legal entities which, by law, by their instrument of incorporation or by their statutes, are designated to act, individually or collectively, in the name and on behalf of the legal entity in dealings with third parties.

The legal person's capacity to act ceases with its capacity to use.

4. Identification attributes of the legal person

Like natural persons, legal persons participating in a legal relationship must be identified, which is done by identifying them. The need for individualisation is even more acute in the case of legal persons as distinct entities made up of groups of people. As a result, only the existence of identifying attributes will make it possible to distinguish a collective organised as a legal person from other collectives which do not have this status (Răuschi & Ungureanu, 1995, p. 245).

As a legal institution, the identification of the legal person must be qualified as a complex institution, because the legal rules that make it up belong to several branches of law (civil law, constitutional law, administrative law, etc.);

Our legislation, starting from the idea that a legal person is a social reality, behind which there is always an organised group of people, clearly establishes those essential elements that must be met for this group to acquire legal personality.

As a classification, the Civil Code and the relevant legislation provide for the mandatory existence of two categories of attributes:

a) general identification attributes: name, registered office, nationality, bank account, tax code or, where applicable, unique registration code;

b) identification attributes specific to certain legal entities: unique identifier at European level, commercial register number, bank register number, legal entity register number, telephone, telex, fax, e-mail, website, share capital, company, emblem, trademark.

According to the provisions of Article 231 of the Civil Code, all documents, regardless of form, issued by the legal person must include the name and registered office, as well as other identifying attributes, in the cases provided by law, under penalty of payment of damages to the injured party.

As a legal nature, the attributes identifying the legal person belong to the category of non-patrimonial personal rights. The identifying attributes have the following legal characteristics, specific to the category of rights to which they belong: enforceability *erga omnes*, being absolute rights, they are enforceable against all, inalienability, which means that they cannot be assigned by legal acts and the holder of these rights cannot waive them, imprescriptibility, both from an extinctive and from an acquisitive point of view, personality being closely linked to the person of their holder, and universality.

5. Liability of the legal person

The Civil Code establishes a double liability of the legal person, i.e. a liability for legal acts and also for legal facts.

As regards the first form of liability, according to Article 218(1) of the Civil Code, the legal acts performed by the management bodies of the legal person, within the limits of the powers conferred on them, are the acts of the legal person itself. In relations with third parties, the legal person is bound by the acts of its organs, even if these acts exceed the power of representation conferred by the act of incorporation or the articles of association (Article 218(2) of the Civil Code). There is also an exception to this rule, according to which the legal person is not bound by such acts if it proves that the third parties were aware, at the time the act was concluded, of the power of representation of the organ of the legal person. Mere publication of the act of incorporation or the articles of association of the legal person does not constitute proof of knowledge of this fact.

The penalty for violation of these rules is provided for in (Article 218(3) of the Civil Code), according to which clauses or provisions of the memorandum of association or the articles of association, as well as decisions of the statutory bodies of the legal person which limit or extend the powers conferred exclusively by law on these bodies are considered unwritten, even if they have been published.

As regards liability for legal acts, according to the law, lawful or unlawful acts committed by the organs of the legal person are binding on the legal person itself, but only if they are related to the tasks or purpose of the functions entrusted to it.

Unlawful acts also entail the personal and joint and several liability of the perpetrators, both towards the legal person and towards third parties (Article 219 para. of the Civil Code²).

Per a contrario, lawful or unlawful acts committed by the organs of the legal person which are not related to the powers or purpose of the functions entrusted to them will give rise to valid obligations only for the members of these organs, even if they were concluded on behalf of the legal person.

Compared to the previous regulation, which established the liability of the legal person only for those acts of its organs which were committed in the exercise of their functions, the current regulation is much broader, allowing the victim of the damage to claim the extended liability of the legal person for legal acts which are not exclusively confined to the actual, factual exercise of the functions entrusted to it, but have some connection with the powers or purpose of the functions entrusted to it.

Unlawful acts committed by the organs of a legal person therefore give rise to a double liability, that of the legal person, as well as a personal and joint and several liability of the perpetrators, both towards the legal person and towards third parties (Art. 219 para. 2 of the Civil Code).

According to Article 221 of the Civil Code, legal persons governed by public law are liable for the lawful or unlawful acts of their organs under the same conditions as legal persons governed by private law, unless otherwise provided by law.

There are a number of exceptions to this rule. Thus, unless otherwise provided by law, the State is only subsidiarily liable for the obligations of public bodies, authorities and institutions which are legal persons and none of these legal persons is liable for the obligations of the State (Article 224(1) of the Civil Code). Likewise, in civil relationships in which it is directly and directly the holder of rights and obligations, the State participates through the Ministry of Public Finance, unless the law establishes another body for this purpose (Article 223(1) of the Civil Code) and the administrative-territorial units are only liable in a subsidiary manner for the obligations of the bodies, institutions and public services subordinate to them, when they have legal personality (Article 224(2) of the Civil Code).

From the point of view of State liability for damage caused to individuals by infringements of European Union law, the decision of the Court of Justice of the European Union in *Francovich* and others is interesting. Thus, in the Court's view, the State is considered as a whole and may be held liable for damage caused to individuals by infringements of European Union law, regardless of whether the infringement at the origin of the damage is attributable to the legislative, executive

or judicial power. The competent national courts are obliged to apply the principle of State liability in order to ensure the protection of individual rights conferred by European Union law, taking into account the case-law of the Court of Justice.

References

- Boroi, G., Anghelescu, C. A., Nazat, B., & Nicolae, I. (2019). *Fișe de drept Civil* [Civil Law Fact Sheets] (4th edition, revised and added). Hamangiu Publishing House.
- Court of Justice of the European Union. (1991, November 19). *Hotărârea din 19 noiembrie 1991, Francovich și alții (C-6/90 și C-9/90, EU:C:1991:428)* [Decision of 19 november 1991, Francovich et al.]. https://curia.europa.eu/jcms/upload/docs/application/pdf/2009-05/tra-doc-ro-arret-c-0006-1990-200802171-05_00.pdf
- Lupan, E. (1992). *Drept Civil. Teorie generală*. [Civil Law. General Theory]. Editura Dacia.
- Răuschi, S., & Ungureanu, T. (1995). *Drept civil. Partea generală. Persoanele* [Civil Law, general part, natural person, legal person]. Fundatia Chemarea Iasi.
- Romanian Civil Code. <https://www.codulcivil.ro/>
- Stătescu, C. (1970). *Drept civil - Persoana fizică, juridică, drepturi in rem* [Civil Law, the natural person, the legal person, rights in rem]. Editura Didactică si Pedagogică.