Doctoral dissertation summary

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This paper thought as a doctoral dissertation and entitled "Study on the judicial entity with special regard to association structures in civil and commercial matters", stands as a scientific approach of this category of legal subjects, with the aim to overtake general and specific elements that are part of their participation to the judicial life.

In the contemporary stage, the interceded or foreseen amendments at normative level regarding this category of rights and obligations owners do not succeed in filling in the gaps and averting the inconsistencies still defined in a hesitant manner and through approximations.

With a view to provide unity and continuity to the paper, I have structured it into two titles, each with three chapters, through which I aimed at researching the reasons established by choosing this topic and setting a material body with a logical flow of thought. In addition to those, the "Conclusion" part has the objective to synthesize the main follow-ups and proposals of its content.

The first title, as indicated by its' name, "The institution and the discontinuance of the existence of legal entities as associative structures", look into the diversity of the aspects these legal operations imply – constitution and discontinuance – characterized by a high level of complexity, that comes as a result to the correlation of related volitional and legal elements.

Thus, fist chapter entitled "Theoretical aspects regarding the establishment of the legal entity", generically analyses the concept of legal entity. Such an approach could not have ignored mentions related to the institution and evolution of this law themes category, but furthermore to the impact of the main theoretical aspects on their juridical nature. Regarding the normative side, I underlined the fact that the present stage is defined by a plurality of regulations through which the legal status is identified in order to have the diversity of these entities. In addition, although the Civil Code Project, as a joint framework foreseen in this matter, represents an evolutional step, it is still to be criticized with regard to content aspects, reason for which I considered it beneficial to further adopt a general normative that could set a minimum reference framework, adjusted to present realities, however without enforcing a unification trend.

The identification of the concept of legal entity with every organizational structure that, established within the rules of general and special regulations, becomes owner of rights and obligations, has set the advantageous framework for some definitions regarding categories of legal entities governed by public or private law or those characterized by normative interferences of private or public law. And not at last, the classification of legal individuals, in particular, in relation with the role played by the will of its member(s) within the juridical institution mechanism, or in subsidiary, in relation with the presence or absence of the businessman quality, embodied the starting point for the direction of the scientific approach towards the category of the associative type legal entity within the commercial and civil law field.

The second chapter, entitled "The establishment of legal entities of the associative type" has as objective the underlining the connection that exists

between the freedom to associate, the institutional elements of every legal individual and the actual ways to finance the analyzed law themes, each of those forming separate sections.

Thus, through the first section we followed the role of freedom of association within the institution stage of associative structures, implicitly of those of the legal entity type. Starting from a brief general theory of fundamental liberties and rights that has allowed the categorical framing of the freedom of association and the setting of its normative rank, the analysis was aimed at the constitutional image of this right and its relation with other rights and freedoms. The jelled ideas are those that state, on one hand, that the effective establishment of a legal individual of a associative type can be sometimes preceded by the exercise of the freedom of association and, on the other hand, that the legal entity can be a owner of the freedom of association, o rapid normative acknowledgment of this quality being mandatory.

In the second section entitled "Constitutive elements of any legal individual", through the three subsections it embodies, judicial, general and particular aspects were underlined, regarding the patrimony, the self-standing organization and the objective of the analyzed law themes.

Each of these essential constitutive elements, established through the dispositions of Article 26 point e. of Decree No 31/1954 regarding natural and legal entities, benefits from a minimum mandatory regime. This is indicated by the normative acts subsequent to the businessmen and non-businessmen categories, being subject to a verification through the content of the constituency acts of every such legal entity of a associative type, these standing for the main framework of expression.

A focus was set on the setting out the term patrimony and some of its specific structural elements, like intellectual property, commercial fund and social capital, the sphere of legal entities for who these concepts become operable being not always determined by the presence or absence of the businessman quality With respect of judicial characters of patrimony, although the common ones still stay valid, established by the legal literature and set through regulatory dispositions, I have also looked into the shads given by the attribute of a legal individual of the owner of the patrimony.

The section dedicated to the self-standing establishment of legal entities of the associative type has caused the accomplishment of some conceptual confinements, especially the identification of some peculiarities regarding ruling, decision-making, administration and representation bodies, but also regarding management examination, when taking into account the analyzed categories. The relation that takes shape between the wills of the members that form the legal entity and its own will, also underlining the necessity of avoidance of a confusion between judicial individual and the will of the rightful subject, the latter being only one of its aspects, namely the one of full judicial capacity.

Regarding the aim, the assessment of the normative acts that rule every category of legal entities has emphasized the trend to set a global aim, whose mandatory character would determine its' particularity in the individual acts of establishment of every such legal entity through which the setting, organization, amendment and ceasing of the activity is assured. The interpretation of the object of activity as a incarnation of the aim has allowed to observe and detail some consequences it generates over the lawful subject category taken into account within this paper. In addition, the legislative institution of the scope as one of the constitutive elements of any legal entity

implies, with a view to acknowledge its validity, the conformity with a series of cumulative conditions, not explicitly established from a legislative point of view, but outlined in the judicial literature , respectively to be illegal, determined and in line with public interest.

The third section was set apart for the presentation of the concrete ways of establishment of the analyzed legal entities, as a natural order of the exercise of the freedom of association, where needed, and of integration of constitutive elements. Arguing the decayed character of judicial procedures established by the regulations now in force, I described the two proposed ways, respectively the way of institution through the act by-law of the relevant national body and the way of establishment of the legal entity by means of the act of foundation, determined by its' acknowledgment or authorization in line with the law.

Among these, the second way, specific to associative structures, has entitled the description of the particularities of the two stages I have identified and that show a mandatory and inter-conditioning character. Thus, the volitional stage, that achieves a unitary nature with respect to legal entities of associative type, is accompanied by the admission or authorization phase, from one case to another, these being or not seen of by a stage that assures the publicity of the newly so created law subject.

The looking into the admission and authorization concepts for this category of rights and obligations subjects was continued, regarding the ones subject to certification, by a delimitation in relation to the legal procedure that accessorizes the act of founding, respectively either to the enrolment in specific registers, or to enrolment in the relevant bodies legally established. No matter the situation, in what concerns the content, this stage indispensably foresees on one side, the exercise of the equality control over

acts of founding not within the legal department, and on the other side, the enrolment or actual enlistment, that consists of the technical-administrative operation of enrolment or enlistment in the specific registers, alternated by the drawing up of the enrolment or enlistment certificate.

The third chapter is aimed at presenting the question of the cease of the existence of legal entities of the associative type. From the actual modalities that can generate this judicial effect, I opted in favor of the run-down of the modality of dissolution, as main or sole stage of this mechanism and that has as consequence, where applicable, the enter into liquidation phase, respectively the disparity of judicial personality of the lawful subject.

Through dissolution effect, the legal entity usually goes into liquidation, in order to achieve the asset and/or the payment of liability, the normative acts, both general and specific, establishing also the legal behavior of the remaining goods after the liquidation process.

The conclusion disclosed by the scientific approach in this respect is that if at European common law level, both for civil and commercial law legal entities, deprived of a specific regulation, dissolution is always followed by liquidation, in what regards legal entities businessmen there are situations where the liquidation stage is not even legislatively established.

If the aim of the first title of the paper was to identify the essential aspects that reside in the establishment and ceasing of analyzed law subjects, the second title "Participation of legal entities of associative type in the judicial flow" has a complementary role, identifying relevant aspects of their own legal existence.

The starting point of the first chapter of this second title is the intention to research the bonds of the judicial capacity, with all its' forms, both the employment one and the exercise one. Going through the classical

analysis stages, regarding their commencement and finality, as well as their content, the investigation area of the chapter includes also controversial or seldom legally debated matters. I refer to some capacity situations of limited use, implicitly of adequate exercise capacity, that may come into act in specific situations, before or after the establishment of the legal entity; the time of the achievement and the exercise of the judicial capacity in relation to either the criterion of identifying of the representatives that are to act in situations with third parties, on behalf of the legal entity, or the condition of achievement of identification elements that must be mentioned in its legal actions; the subsequent penalties for breaking the regime, either special or general, marked out in a normative way in the matter of limited use capacity.

Thus, the benchmarking analysis of legal entities of associative type from civil and commercial law has shown that, with regard to businessmen, the aspect that shows a more extended area of the content of use capacity, determined by the particularity of these law subjects categories' scope.
Therefore, its content is drawn by means of rights and obligations that can come as a result of legal actions, legal facts, as well as different material operations, on the condition of their insertion into the scope of every legal entity, although these had not been identified within the activity object set in the act of founding , this no further representing a true restriction of the use capacity. As a matter of fact, the compilation of the conditions regarding the activity object is performed by businessmen in a more permissive manner, by setting a very broad activity object.

The second chapter refers to a quite broad approach realized on elements that ensure the reparation of the legal entity within the general legal framework, Therefore, the encompassing of every associative form of the legal entity type, as distinct participants in the diversity of legal

accounts, falls on the individualization attributes , both general and special, mandatory or optional, where the case, these assuring a diverse and highly particularized identification.

The scientific approach intended to identify the fact that, although the presence or absence of the businessman status turns to be irrelevant in this matter, there are still situations when this quality itself impress specific accents on some identification data, justified by the typology of the legal commercial relations.

The research of identification attributes has evidenced some inconsistencies and normative gaps that had generated doctrine contradictions and practical difficult situations. Not last, I have shown the nature of mandatory identification attributes for the abbreviated denomination and the permanent sign of political parties, but also of the number or code given in the special registers, established in line with the legislation, that assures an additional individualization for some categories of legal entities. Normative illustration of the meaning of transformation of the legal entity appeared also as a necessary consequence when taking into account the senses this judicial institution implies.

The last chapter looks into the question of the undertaking of criminal responsibility, when considering its actions or non-actions, having as implicate effect the acknowledgment of its quality of active criminal law subject of the crime. The presentation of the evolution though time this legal institution has had as natural continuity its regulatory approach within the national law system. The looking into the actual judicial system from the side of legal entities that can be criminally liable in the field of crimes that can embark on such a liability, of regulated criminal offences, as well as the legal entity approach as immovable subject of infraction, shows the

establishment of a necessary evolutional stage that mitigates the discrepancies between Romanian criminal law and European standards.

This doctoral dissertation ends by identifying the conclusions and proposals resultant from the examination of the selected theme that synthesizes the main follow-ups and detailed proposals, in fact, in its content, within the accomplishment of the scientific approach itself.