Corporate Law's Legal Relationship

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Abstract

Legal relationship is a social relationship established between two or more natural or legal persons, regulated by a specific legal norm (for example: sale-purchase, exchange of goods, provision of services, performance of works, etc.).

Given the particularities of corporate law, we consider that, from the definitions of legal relationship found in the specialized literature, a very high adaptability in also defining corporate law's legal relationship is the one according to which legal relationship is a social relationship which aims at satisfying material interests or interests of a different nature, regulated by legal norm, in which the parties appear as rights-holders, and correlatively, of mutual obligations, met, if necessary, with the support of public force. The professionals bring particularity to legal relationships, which become corporate law's legal relationships.

The research would like to examine the characteristics of corporate law's legal relationships and the legal position of the professionals in this relationships.

Key words: corporate law, norms, legal relationships, law subjects, professionals
J.E.L. classification: K22

1. Introduction

The creation of any legal relationship is conditioned by the simultaneous existence of the following premises: legal norm, subjects of law and legal facts. The first two are considered general or abstract premises, and the third, respectively the existence of a legal fact, is considered a special, specific or minor premise.

Legal norms regulate the conduct of the subjects, either by conferring a right or by imposing an obligation. Thus, legal norm makes a major contribution to the creation of corporate law's legal relationships, determining the capacity of the participating subjects of law, their rights and obligations and the circumstances in which the legal relationship is triggered.

Legal relationship involves making a connection between the general and impersonal plan of the legal norm and the concrete plan of reality, in which the parties are determined and have certain well individualized rights and obligations (Boroi *et al*, 2011, pp.34-35).

The subjects of law are represented by the natural and legal persons participating in the legal relationship, rights and obligations holders having a legal capacity. In order to create a legal relationship, the participation of at least two persons who, thus, become rights and obligations holders in the respective relationship is necessary. Generally, in private law, the rights holder is called a creditor, while the obligations holder bears the name of debtor. There may also be legal relationships characterized by the fact that one of the subjects is the exclusive rights holder, while the other becomes the exclusive obligations holder. It is worth mentioning the relationship of corporate law formed in the field of taxation, in which the creditor is always the fiscal body, with the right to collect taxes, and the debtor is the taxpayer, who is obligated to pay the taxes.

2. Theoretical background

The theoretical concepts presented in this paper deal with the general regulatory framework of business law, namely: the New Romanian Civil Code, special commercial laws, the Constitution, commercial practices, principles of law, doctrine and the judicial precedent. The synergetic approach in humanitarian knowledge has found its theoretical reflection in the works of researchers cited.

3. Research methodology

The analytical method has become the main method of the given research which is related to the legislative changes. The purpose of this analysis consists in presenting the novelties to the regulation of the business law legal relations generated by adopting the New Romanian Civil Code dealing with the relations between the professionals and the other business partners.

The following interpretation methods of such rules of law were used: the synergetic method and the teleological interpretation method.

4. Findings

4.1. Characteristics of corporate law's legal relationship

A corporate law's legal relationship cannot be created only by the existence of subjects of law between which it is formed and of the legal norms that regulate it. The creation of such a legal relationship also depends on a legal fact, respectively the existence of a circumstance triggering it.

Such a circumstance may depend on the will of the subjects of the legal relationship (human actions) or it may be independent of it (events).

Human actions are classified into actions performed with the intention of producing legal effects, i.e. to create, modify or terminate a legal relationship (legal acts - the conclusion of a contract, the registration of a company, etc.) and actions performed without the intention to produce legal effects, but which the law nonetheless links to the production of such effects. Legal facts, in their turn, may be lawful legal facts (for example, the creation of a scientific work that gives rise to a copyright) or unlawful legal facts.

Events represent the facts produced in the absence of any human will, to which the law attaches legal significance, their production being linked to the creation of legal relationships. In the doctrine, events are subclassified into biological facts (birth, death, a natural person reaching a certain age) and physical facts (floods, earthquakes, thunderbolts, earth displacements).

The legal relationship has a social character in the sense that it can be established only between natural persons, between legal persons or between natural and legal persons (Pop *et al*, 2020, p.21)

Not all social relationships are legal relationships, as not all are regulated by legal norms. For example, the religious, political, friendship or collegial relations do not fall into this category.

Even if it is subject to legal norm, legal relationship retains its social character, considering that legal norm has precisely the role of guiding human behavior.

Legal relationship has a double volitional character, since, on the one hand, it is regulated by a norm promulgated on the basis of the will of the state expressed by the legislative body, and, on the other hand, the legal relationship is born out of the will of one or all of the parties, to the extent that they express their willingness to create, modify or terminate this relationship.

For example, a legal relationship having as its premise a sale-purchase contract will be created as a result of the express manifestation both of the concurrent will of the buyer and the seller, and of the will of the state, expressed in the legal norms on the matter. The will of the parties must, however, be fully consistent with the will of the state expressed in the legal norm.

Corporate law's legal relationship is characterized by the fact that the parties may have a position of legal equality, when we refer to relationships governed by private law norms, in the situations in which business relationships are concluded, modified or terminated (for example, contracts). (Căzănel, 2019, p.6).

At the same time, in a corporate law's legal relationship we may talk about a position of legal subordination of the parties when we refer to the relationships governed by public law, respectively the legal relationships in which one of the parties is the state or its representative bodies (Trade Register Office, Fiscal Administration, etc.).

For example, the natural or legal person professional trader cannot operate an enterprise legally or start his/her activity without registering in the trade register, without fiscal registration and payment of the taxes generated by his/her business activity.

Also, subordinate legal relationships are established between certain companies with special status and public, administrative, regulatory, supervisory and control authorities, established in specialized fields, such as the Insurance Supervisory Commission, which has the duties of authorization and supervision of insurance companies, the National Securities Commission, which is the competent authority in the field of the capital market, the National Bank of Romania.

A corporate law's legal relationship contains the following elements:

The subjects of the legal relationships are represented by persons who are rights and obligations holders between which these relationships are established. The subjects may be natural persons (each individual) or legal persons (collective of individuals, who have their own organization, their own patrimony and a purpose in accordance with the general interests of the society).

The content of the legal relationship is made up of all the subjective rights and obligations that the subjects of the respective legal relationship have.

The object of the legal relationship is the conduct of the parties, i.e. the actions or inactions to which the parties are entitled or obligated (Terré *et al,* 2005, pp.9-11).

Within a legal relationship, two categories of subjects of law may participate: natural persons and legal persons. The quality of natural person belongs to the man, viewed individually, as rights and obligations holder.

In addition, subjects of a legal relationship may also be the collectivities of individuals, i.e. the legal persons. For example, the (ex-commercial) companies established under Law no. 31/1990 on companies, state institutions in the field of education or culture, political parties, unions.

In order for a collectivity of people to have the quality of legal entity, it must cumulatively fulfill the following three conditions:

a) to have its own organization, i.e. to have specified: its internal structure, the organization of the governing, administration and control bodies, as well as their duties, the way in which it is created and in which it can be terminated as a subject of law;

b) to have its own patrimony, distinct from that of the natural persons that make up the legal person;

c) to have a determined, lawful and moral purpose, in accordance with the general interest, which corresponds to the object of activity of the legal person.

4.2. Subjects specific to corporate law

Until October 1, 2011, the date of entry into force of the current Romanian Civil Code, the main subjects of corporate law were the traders, as defined by art. 7 C. com./Commercial Code.

With the entry into force of the current Civil Code/ C. civ., the legislator extends the sphere of corporate law subjects, the main category of participants in business life being, at present, professionals.

According to art. 3 paragraph (2) C. civ., "all those who operate an enterprise" are considered professionals, and according to paragraph (3), "the systematic exercise, by one or more persons, of an organized activity consisting of the production, administration or transfer of goods or provision of services, whether or not for profit, constitutes the operation of an enterprise".

By business we mean any organized or accidental economic activity, exercised for the purpose of generating profit.

The notion of business lato sensu includes both organized businesses themselves ("business enterprises"), including certain enterprises of some non-trader professionals (freelancers), and occasional businesses that are not conducted in an organized and continuous manner.

Stricto sensu, by business we mean only those economic enterprises established in order to make a profit. As a result, we thus exclude the activity of non-governmental organizations (associations and foundations), occasional businesses and, arguably, freelance enterprises (Nemes *et al*, 2020, pp.25-26)

Considering the difficulty of using the legal criterion for determining the sphere of professionals, the legislator, by Law no. 71/2011 on implementing the Civil Code, indicates the main categories of professionals.

Given the importance of an accurate identification of professionals, in art. 8 paragraph (1) of Law no. 71/2011 on implementing the Civil Code the categories subordinated to the notion of "professional" provided by Article 3 C. Civ. are listed as examples: traders, entrepreneurs, economic operators, as well as any other persons authorized to carry out economic or professional activities, as stipulated by law.

As one can notice, the Romanian legislator indicates a very diverse range of categories of professionals, the sphere of professionals having a much broader content than that of traders.

The most important category of professionals is that of traders, whose typology is indicated by art. 6 of Law no. 71/2011 and art. 1 of Law no. 26/1990 on the trade register. From the corroboration of these legal texts it follows that traders are considered to be those who have the obligation of registering in the trade register, namely: the natural persons who trade as a profession, individually or within an individual or family enterprise, (ex-commercial) companies, autonomous authorities, cooperatives, state owned enterprises and corporations, interest groups with an economic character.

However, professionals are not limited to the category of traders. An example is given by the liberal (or regulated) professions reserved by law to persons authorized to practice such professions (lawyers, notaries, insolvency practitioners, mediators, doctors, tax consultants, accounting experts, architects, etc.). These professions and occupations are enterprises, and their holders are professionals, under the Civil Code (Căzănel, 2014, p.277)

In the category of professionals "any other persons authorized to carry out economic or professional activities" are incorporated, including those that are not for profit. Therefore, enterprises that are not for profit, NGOs (associations and foundations), sports clubs, religious cults, professional societies with legal personality, entities with or without legal personality exercising liberal professions, are found in the category of professionals. These entities may be employers, may be subject to (most of them) the insolvency procedure, may be subject to competition law and consumer law, similarly to a trader.

In the category of professionals not only natural or legal persons are included, but also certain entities without legal personality, such as joint ventures or economic interest groups, civil societies without legal personality.

5. Conclusions

The new Civil Code uses a concept of absolute novelty to separate the typically civil legal relations (relations between non-traders) from the commercial legal relations (the former patrimonial relations between two traders or between a non-trader and a trader). It is about "professional", a concept that we consider correct because it is comprehensive and covers all situations in which we deal with activities performed by individuals or legal entities that operate a business, whether it is profitable or not.

The exploitation of an enterprise is the systematic exercise, by one or more persons, of an organized activity that consists in the production, administration or alienation of goods or in the provision of services, regardless of whether it has a lucrative purpose or not.

The Civil Law, mainly the new Civil Code, is the source of commercial obligations. The civil law is also the core substance for commercial contracts. In order to refer to commercial obligations, the new Civil Code regulates "the activities performed by professionals" or "the activities carried out within an enterprise". Thus, the new Civil Code establishes rules for determining the price between professionals (art.1233), as well as criteria for assessing guilt in the case of professionals (art.1358). In addition, this normative act establishes a presumption of solidarity between the debtors of an obligation contracted in the exercise of an enterprise (art.1446), as well as the legal

delay in the execution of an obligation to pay a sum of money, assumed in the exercise of an enterprise activity (art.1523 paragraph 2 letter d), issues derogating from the rules regulated in civil obligations.

Other specific rules applied to professionals can be found as regards privileges (art. 2339 NCC) or the mortgage of the universality of goods (art. 238 NCC). In terms of contractual law, particular rules applicable to professionals occur in the sale-purchase contract (2 day-deadline for denouncing latent defects), in the rental contract, in the storehouse contract (the professional depositary who must take extra care of the goods stored according to art.2107 NCC).

Systematizing the above said, professionals, business owners, may be:

a) natural persons who carry out economic activities independently, respectively the traders - authorized natural persons, the entrepreneurs within the individual enterprise and the entrepreneurs within family enterprises, as well as the persons who exercise liberal or regulated professions;

b) private law legal persons: (ex-commercial) companies, cooperatives, autonomous authorities, civil societies with legal personality;

c) entities without legal personality: civil societies without legal personality (pension funds, investment funds, law firms, notaries, court executors), groups of companies.

Therefore, the obligations of professionals are, in fact, civil obligations, which have particularities specially provided by law.

6. References

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