

REFORMING THE CIVIL STATUS OF A PERSON IN THE ROMANIAN CIVIL LAW

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Abstract:

I tackle in the pages of this paper, a theme that is essential for the legal life, because it refers to the human dimension of these and is at the essence of the law to prescribe human behavior.

We insist upon the legal condition of a person, as it has evolved in time reflected in the legal rules, with roots which go down to the Roman law. Of course, after a retrospective look at the institution of a person, seen individually or as participant to a collective matter of law, we will anchor at the shore of the current legal Romanian realities which are marked by the recent regulations of civil law or of civil procedure.

I answer thus, to the actual acute need of careful and meticulous analysis of the new regulations compared with the old one, in order to discern the dimensions of the private civil law, for persons in particular.

In the light of the monistic conception upon the regulations of relations in the sphere of the private life, we try to identify the innovations which give shape and precision to the reform of this field, meant to face the internal challenges or the international ones. We bring into discussion the two dimensions of the legal status of a person: the internal dimension, supported by the national standards and the international dimension drawn by regulations which is addressed to the relations with foreign elements.

Key words: civil status, person, legal capacity

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I. THE PERSON IN THE ROMANIAN CIVIL LAW

A. Conceptual explanations

The entry into force of the new legal regulations, especially in the sphere of the civil right (substantive and procedural), introduced us in the ambience of a genuine reform by recoding, particularly in what concerns the overall conception upon the unitary regulation of the private law relations [8-9]. For reasons of post modernization and globalization, taking into account the significant changes which took place in the legal rules of the social dynamism, has been imposed a reassessment and resize of the traditional legal institutions on which are constituted the theory and practice of the civil law and continuing with family life, business, labor reports and those with foreign elements.

B. Outlining the legal condition of a person

This reality calls to a comparative analysis of the new provisions with the old ones, to discern the area of the civil law in the sphere of privacy. It is interesting though, to identify the inclination of the current legislature toward conservatism or novation, in other words, if overall the regulations of the private life represent a breakthrough offering a chance to reform the field so as to face the challenges of internal order or international circumstances.

In the light of the proposed objectives, the current study focuses on the legal condition of a person, as it evolved in time, reflected by the regulations with roots down to the Roman law. The most important specific prior regulations are those provided by the Civil Code and his special regulations which completed, modified and updated it. Therefore in order to provide a precise, correct and complete contour of the legal person's condition, are necessary some explanations regarding the concepts with which we work: the person in the civil law, the monistic conception, the common core of the civil right regulations belonging to the other areas of privacy.

The concept of person comes from the Latin “persona” and meant in the old days, a mask wore by the ancient actor on the stage. Put in the theory and practice of the law, this word suggest the participation of the man as an “actor” on the stage of the social and legal realities, either individually or as a participant to a collective subject of law. The person is an ubiquitous entity in the entire legal system, although took a more pronounced contours in the civil law. There is no area of the legal life and branch of public or private law, in which the legal or natural person to not represent the human support (individually or collective), of the multiple and various legal relationships.

Of course, each of the reminded branches, subjects of law, embodied by persons bear the specific imprint upon the relations of law, civil law, providing the mutual fund in regulating this institution.

From here appears the need of a careful, thorough analysis of the new regulations concerning the person, strongly marked by the monistic conception on the regulation concerning the private life.

Looking back firstly at the provisions of the old Civil Code with an impact on the legal status of a person, we note that that this provided a fragmentary and incomplete regulation of the person’s institution. In its original version, the old Civil Code contained some depositions concerning more the natural person, in the Book I “About People”. The legal person had some summary and sporadic regulations such as those on the social contract. One explanation would come from the fact that the French Civil Code of 1804 which served as a primary source of inspiration for the Romanian Civil Code, the legal person was neglected.

Therefore, was necessary a legislation which to detail the aspects which shape the legal status of a person, analyzed individually or as a collective subject of law [1-5]. This explains the abundance of regulation from the year 1954 concerning the natural and legal persons. Among them are particularly relevant the normative acts which developed the problems outlined in the Book I of the Civil Code of 1864.

It is about the systematization in a Family Code, of the legal norms which regulated the relations from the sphere of family life. In addition to other issues aiming the legal and natural person, was adopted the Decree no.32/1954 on natural and legal persons. Both laws were enacted by the Decree 32/1954.

Valorizing the previous regulations, and the positive or negative doctrinaire opinions concerning the subjects of Civil law, the new Civil Code accorded the two law subjects a common fund of regulations in a special title (Title I, Book I “About people”). For the first time, the two subjects of civil law receive legal definitions taken from the specialized literature. The natural person is defined as “the man seen individual, as a holder of rights and civil obligations” (art.25. al.1), and the concept of legal person is “any other form of organization, which meeting the conditions required by law, is a holder of civil rights and obligations.” (art. 25. al. 2).

Likewise, the new Civil Code, through Book II (art.258-534), abandons the regulatory solution in a new Code in the sphere of family life (as in the old regulation). In this way, it comes back to the previous law of year 1954 of regulating the vast majority of the matters concerning the family in the new Civil Code.

As for the old institutions, related to the relations concerning the person and family relations, restructured in a revised logic, were added inexistent institutions in the old Code of the family or in the special regulations aiming the person, such as: family home institution, the engagement institution, matrimonial choice, divorce by mutual consent, etc.

The features which define the new Civil Code addressed to this area are: the coherence, simplicity and logic with which are based the main institutions regarding the status of a person and family life. The restructuring and relocation of the matter was made by capitalizing the regulations, of the doctrine and previous practice through some “loans” from certain foreign regulations which served as sourced of inspiration and by updating some traditional Romanian institutions, harmonized with the international rules of the analyzed field.

To those outlined above, it can be concluded that the monistic theory which attempts to assure a unitary character of the private law, does not have such a massive impact in what concerns the legal relations concerning the persons and family life, which were separate once and are now reintegrated in the new Civil Code, redesigned, restored on the foundations deeply rooted in the realities of the present. By comparison, the monistic conception is more visible where apparently or even succeeded to mark an end of the dualism between the commercial and civil law, in the evolution of the Romanian legal system [3].

What should be noticed about restoring to “source” of the regulations concerning the persons and the family relations is a different situation of these regulations towards the norms of commercial law. These later regulations were subjected to a separate treatment, while the persons and family relationships became subject to some norms from a common core with the civil law. Moreover, during the communist regime, the norms of the Commercial Code and in general, in the legislation of this kind, have resisted those provisions which have not contradicted the existing political order. The norms concerning the persons and the family relationships were fundamentally reconsidered, Book I of the old Civil Code being replaced with the legislation of the year 1954 to which we referred above.

We cannot conclude this summary, regarding the impact of the monistic theory upon the persons and family relationships, without noticing that for the persons and family relationships the new Civil Code provides fewer aspects for the natural person and more for the legal person, such as: the companies, the insurance companies, the credit institutions, the national companies, the corporate companies, etc.

C. Human personality and civil legal capacity

As I said above, subjects of the reports of civil relations can only be the people as individuals or as a community. But the people can't become subjects of law unless the state recognizes this quality by proper legal regulations. Through the norms enacted in this regard, the state recognizes to the persons a general and abstract ability to acquire rights and to assume obligations through the legal reports to which are subjected. It is shaped, the legal personality whether we consider the individual human or the collective subject of law.

After a principle universally accepted, the legal personality is recognized to every human being on the planet, at least from the modern times, since this principle was correlated with the proclaiming of the judicial equality of all individuals, often contradicted by the social realities of life and even some regulations.

In relation to the generality of legal personality, it should be added that this is independent by the level of bio-psychical development, by the degree of maturity or acquiring a life experience (especially legal). Therefore, certain categories of persons, although don't have the capacity to exercise their rights are related to legal personality. It highlights thus, the correlation between the legal personality and the legal capacity of a person.” If the legal person states (admits) a general ability to participate to the legal relationships in this area, the capacity specifies for everyone the conditions of this” [4].

From those outlined above, can be identified several principles that we name, because these will be treated in a separate study. It is about the principles which govern the legal personality of the man and his legal capacity, namely: the principle of judicial civil legality, the generality principle of civil legal capacity, the principle of inalienable civil capacity; the principle of civil inviolability; the principle of equal civil capacity; the universality civil capacity principle.

D. The condition of the person in civil relations with foreign elements.

We cannot end this process on the legal status of a person without offering some explanations related to the condition of the person in private international law, based on the specific of this branch.

In essence, the private international law is a branch of the Romanian legal system, which regulates the relations of civil law, which include a foreign element. As shown, what can be removed from the old regulation and also from the content of the new Civil Code with foreign elements, the international private law contains rules governing the not only the civil law relationships but also relations from other branches of law belonging to this, and which are coming back to the new Civil Code greatly improved (quantitative and especially qualitative). We consider: family law, commercial law to some extent labor law, the regulations concerning the persons.

In connection with the return to the "source" the question arose, whether incorporation of the regulations of international private law in the new Civil Code, marks the loss of independence gained once or by this was realized a reform or just an update of the existent private international law. The life and the judicial practice will offer in time a clear answer. In what concerns us, we choose the option of review on behalf of modernization of the existing international law. In the context in which we took into account the reports of civil law, broadly, these have in common the foreign element of whose presence removes those legal reports from the incidence of the internal law, in order to obey them so some principles of private international law.

I made these preliminary details because the status of a person in the private international law bears the mark of this branch of law that covers relations of civil right with foreign elements. These elements clearly separate the intern law (traditional or broadly seen) by the civil right with foreign elements. While under civil law are only the internal relations with patrimonial or non-patrimonial, in which the subjects are on equal foot, under the incidence of the private international law are general relations of civil law, marked by the presence of the foreign element.

The siege of the regulation for a person in the private international law is currently in the Book VII of the new Civil Code entitled "Provisions of Private International Law". Title II of this book is suggestively entitled "Conflicts of Law" and contains a chapter dedicated to persons. As in the internal law, also in the private international law the concept as such covers both the human being as an individual subject of law and also the legal person which falls within the broader area of the notion of collective law [7]. The proofs in this way are the provisions art.2572-2579 (concerning the natural person) and the art. 2580-2584 (regarding the legal person).

Both categories of persons are subjected in the same way to the subjects of internal civil law, to an essential condition, the presence of the civil legal capacity through which also in the private international law, to the persons is recognized by law the status of subject with rights and obligations.

What differs from the solutions offered by the national regulations is the specific manners to designate the applicable law, which cannot be indicated by the material or conflicting, law of a state to which the legal relationship is connected. Because the presence of a foreign element or elements puts the legal relation in connection with different systems, this thing which can generate a conflict between laws. Each of the regulations in connection with this report can express its current vocation to regulate that report, so including the condition of person-subject expressed by the private international law. The solving of such "law conflicts" can be made by juridical norms adopted by each state separately. These can be norms of material law, which provide specific solutions, direct, to the problems taken into question or can be conflicting norms which don't provide any solutions but only send to another law system which can be identified as solutions.

Regarding the legal status of a person, the new Civil Code as in the previous regulations, contains both material and conflicting norms. The need of a comparative presentation of the new regulations with the old ones sends us to the old Civil Code which in the matter under discussion included fewer regulations. A single item the art. 2 served as a source of regulation of the relations of private international law. We are interested in the legal status of a person, especially the paragraph 2 of this article which stated that "the relative laws for the status and capacity of persons are pursuing the Romanians, even if they have the residence abroad". The evolution of these regulations concerning the person in the private international law demonstrates that in this matter the legislative background was generally poorer than in other branches of law. The solving of such conflicts of laws had as armor the legal doctrine and the judicial practice which sustained strongly

the development of some new Romanian special regulations [2]. The efforts of the Romanian legislator materialized by adopting the law no. 105/1992 concerning the relations of the private international law, the person's condition being one of this regulation. But the mentioned law had another meaning that of the proclamation of "independence" of this law branch.

Currently, following the monistic conception on the regulation of monistic conception of private life, the norms of the private international law are returning to the new Civil Code, revised, and reformed in report with the new Romanian realities. [3-6] As for the person, the new Civil Code contains both material and conflicting regulations. For example we mention the art. 2572 which concerns the status and capacity of the natural person and states as applicable the national law, whether through special provisions is not stated otherwise. The national is applicable in the organic status of a legal person.

In what concerns the natural person, the field of application of the national law is defined by express regulations concerning: the beginning and end of personality (art.2573); judicial declaration of death (art. 2574); acquiring the coming of age (art.2575); the name (art. 2576); inherent human rights (art.2577); the protection of the adult (art. 2578); protecting others (art. 2579).

Similarly, the field of application of the national law, in the case of the organic status of a legal person is indicated by the art. 2581 which states: the ability of a legal person; the acquiring mode and loss of the associate status; the rights and obligations which are for the status of associate; the election; the competences and the functioning of the governing bodies of the legal person; its representation through their own authorities; the liability of a legal person and her bodies towards a third party; the modification of the constitutive acts; the dissolution of a legal person.

As for the recognition of a foreign legal person, the new Civil Code distinguishes between those people who have a profit or non-profit purpose.

The foreign legal person with lucrative purpose is recognized in Romania without any formalities. The imposed condition is that in the country of origin to have been legally established. However, the recognition of the non-profit legal entities is made by court order, with the approval of the Government. In addition to this must be met the following requirements: the persons to be valid constituted, according to the national laws, their purpose is to not contravene to the social and economical order of Romania; under the condition of reciprocity, the State whose nationality has the legal person to recognize in the same conditions the legal persons of Romanian nationality without non profit purpose.

Of course, must be respected the conditions of publicity of the judgment decision and namely the publication in the Official Gazette of Romania, and in a newspaper of wide circulation, with the possibility of exercising the appeal.

II. CONCLUSIONS

The limited space of this article made us to just outline the legal status of a person, as it is outlined in the light of the recent regulations of civil and international law (including the European Community law). I could see the print of a genuine reform by recoding, particularly on the overall conception of the unitary regulation of the relations of private international law. In this overall effort has been enrolled the reassessment and resizing of the person institution in the Romanian civil law analyzed as an individual subject or as a collective subject of civil law.

We took into account the fact that the person, as it has been presented above, represents the human support of the all law branches in which appear, are modifying, are transmitted or shut down legal reports. However, it must be noted a legal regime of the person, more clearly pronounced in the civil law. Therefore, the person theory from the civil right is constituted in a common source for the law theories, which bear the print of the social relations of regulation of the intern or international law. That is why anytime an aspect or another is related to the status of law, in a certain branch it is deprived by the legal support or the regulation is incomplete or obscure, the civil right will provide the solution.

Regardless the branch of law to which we relate the discussion and regardless of the person type the condition which is imposed for the participation to the legal life, is the presence of the legal

ability as an expression of the legal personality. Under this aspect, the civil right presents some specific notes, in particular for the principle civil legal capacity, which should be interpreted separately as they apply to the legal or natural person. Also the civil legal capacity as an attribute of the human being cannot form an object of some papers of alienation or waiver from its owner. It can be restricted just in the cases prescribed by law.

Speaking of the person as the subject of civil law, I considered necessary to point out the most important features conferred by the presence of the extraneous elements in relation to which this arise.

Of course, in these situations the subjects of law will be embodied by the legal and natural persons. But the regulations which govern the state are identified based on some principles of private international law which took shape in the practice of the international life and then appeared in the internal laws of the states, special regulations or in the Civil Code (such as Romania).

Whatever the core for regulating status of a person, in the right of the private international law, the legal condition is that this is subjected to a dualism of legal sources: rules of material law and norms of conflicting law.

ENDNOTES

- (1) *The fundamental source of the material civil law is the new Civil Code, has entered into force on first October 2011.*
- (2) *The civil procedural law was reformed by adopting the new Civil Code of Procedure, which entered into force on 15 February 2013.*
- (3) *For details on the status of the person in the Roman law, see M. V. Jakotă, ,edit. Fundației Chemarea, Iași 1993, p.72 și urm.*
- (4) *Please note that currently, the French law regulates a wide range of persons called I the French terminology "moral persons".*
- (5) *For the newer regulations of the legal status of a person see, G. Boroi, Drept civil. Partea generală, Edit. Hamangiu, București, 2010, p.346*
- (6) *If we refer to the Civil Code of 1864 we can't notice that on one side it proclaims the equality of humans before the law and on the other side it consecrates an inferior status of the woman to a man, of the worker to the employer or of the child to a parent. In time these inequities have been corrected so that now, the principle of equality in front of this civil law has a full legislative support and application in practice. For details see, G. Boroi, Drept civil. Partea generală. Persoanele, ed. a 4-a revizuită și adăigită, Edit. Hamangiu, București, 2010, p.400*
- (7) *Elena Iftime, Teoria generală a dreptului, Edit. didactică și pedagogică, Buc. 2013. P, 240. In the same context, must be distinguished the legal personality from the legal person. If the legal personality expresses "vocation" to be a subject of law, recognized by the legal persons and by the natural ones, the concept of legal person designates one of the species of persons, respectively the collective subject of law which has a certain form of organization and meets the conditions required by law, in order to have the rights and civil obligations . G. Boroi, op cit., București, 2010, p.398.*
- (8) *The concept of legal person does not covers the whole collective participation to the legal life. For more details see G. Vrabie, S. Popescu, Teoria generală a dreptului, Edit. „Șt. Procopiu”, Iași, 1993, p.36.*

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- [8] New Civil Code of Procedure
- [9] The new Civil Code