The Impact of New Civil Juridical Institutions on Business Environment

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Abstract

Knowledge, application and interpretation of the limits in which the trade can be carried out in accordance with current legislation ensures investments security and stability of business relationships. The professional and the enterprise are two technical terms that replace the words merchant and commerce actions. The economy of the text of the law necessarily requires the determination of the differences between the professional and the simple individual, and those between the firm and the simple activity. The doctrine on this matter is still in the process of conceptual clarification and deepening of the legislative novelty elements.

Keywords:
professionals, enterprise, principle of ability’s specialty to use legal entity, contractual unpredictability.

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1. GENERALITIES REGARDING NEW CIVIL JURIDICAL INSTITUTIONS PECULIAR TO THE BUSINESS ENVIRONMENT

The legal norms influence essentially the conditions under which companies in Romania operate as well as the strategies, tactics and predictability. The information provided in this project can offer a clear picture of the significant elements in the evolution of the firm and a consistent view on the legal foundation of the business.

Lately, in Romania occurred several legislative changes that culminated with the appearance of the new codes – of public interest in this project being the rules of the Civil Code. The business environment currently faces both a new language completely different from that used previously, and the essential changes relative to the activities that it operates. In the current state of knowledge in the field, nationally and internationally, based on the most recent references in specialized literature, we note that the issue addressed includes several disciplines, namely economics, civil right and business law. If branches of law deal strictly with defining, establishing structures and implementing rules and also their interpretation, an economic perspective requires the discussion on the extent to which the economic act is influenced by the new rules.

The civil law revolutionized the deployment of business relations, based on key elements of the existence of the legal person - the most common category of professionals - passing through the renaming of legal institution of the professional trader as the professional that acts within the enterprise and providing legal value to the theory of the unpredictability². There are of course changes with a lower scale but which do not require interpretation or application problems in the transition phase between the two civil codes.

2. THE ABILITY OF USING A LEGAL ENTITY

The ability to use the legal entity, i.e. its ability to have civil rights and obligations, was regulated in the old rules by art. 32 and art. 33 of the Decree no.31/1954 and was strictly limited to the subject of the memorandum signed and registered at the Trade Register. Thereby business relationships developed outside these limits became void. The risk of violating these provisions was represented not only by the annulment of operations, but also by the risk of administrative sanctions. The doctrine legitimated these rules by the principle of

ability’s specialty to use legal entity. According to Professor Gheorghe Beleiu\(^3\), between the purpose of the company, in particular, or the one of the legal entity, in general, there is a total overlap with the object of activity.

According to the New Civil Code (NCC), the ability to use includes any civil rights and obligations, except those which, by their nature or according to the law, belong only to individuals. Tamara Ungureanu\(^4\) shows that not even the new legislation exempts a legal person from the sanction of absolute nullity, but the activities considered in applying this sanction are only those which may belong to the individual. The strict identification of the types of activities that entail the nullity is a challenge for the researcher inclined to clarify thoroughly the legal text.

### 3. THE PROFESSIONALS AND THE ENTERPRISE

Professor Stanciu Cărpenaru\(^5\) opines that the professional is the natural or legal person that pursues an activity continuously, assumes a risk, has a patrimony of affectation and is subject to registration and approval.

The simple individual does not belong to any of the categories of professionals and therefore is not obliged to meet any of these requirements.

The professional is a business owner and can be found in the following categories:

- Natural persons carrying out economic activities independently (authorized natural persons, individual businesses, liberal professions);
- Private law entities (companies, autonomous administrations, civil societies having legal personality);
- Unincorporated business entities (pension funds, investment funds, groups of companies).\(^6\)

The enterprise requires an organized business, i.e. a systematic activity of production, trade or services, developed by entrepreneurs at their own economic risk.


\(^5\) Stanciu Cărpenaru, *Tratat de drept comercial*, Ed. All Beck, București 2011, pg. 186

\(^6\) Maria Dumitru, Camelia Ignatiecu, *Dreptul afacerilor. Raportul juridic de drept al afacerilor. Contractul*, Ed. Hamangiu, București 2013, pg. 59
4. THE CONTRACTUAL UNPREDICTABILITY

The unpredictability is the situation where, as a result of unforeseen circumstances by the parties at the time of concluding the contract, the balance between their benefits is considerably disjointed, and the damaged party has not assumed the risk of such events.\(^7\)

The legal institution of unpredictability has been analyzed in the reference volume of Professor Ion Deleanu called "Legal Fictions". Subsequently, the legislature intended to place the factual realities of this situation under the protection of the law. Thus, through the art. 1271 of NCC, is stipulated the possibility for the court to review a contract or rebuild one damaged by unpredictability.

The new legal institutions will hardly be accepted by the business environment which has a discipline of business operation based on its object of activity and a specific language mastered and understood over time, in some way, and the character almost sacrosanct of the contract will generate controversy between investors and their lawyers and between the latter and theorists.

The originality of this theme can be revealed from different perspectives based on the one hand, on the approach of new concepts, little analyzed in the Romanian doctrine, and on the other hand, upon the approach focused the correlation between legal institutions and business.

The research that we propose comes as a response to the interrogation about the place and role of legislation in the economic life, starting also from the models established in other legal and economic systems. For example, the German law and the Austrian one have never restricted the possibility of a company to carry out under the law the activity of interposing in shifts, considering that specifics of business sometimes requires immediate reactions which cannot be provided by the investor, namely the opportunity of a profit you might gain in a business relationship aiming an activity not included in the constitutive act.

The absence of predictability, in turn, is recognized in all European legal systems, except common-law system countries, France and Belgium, and until 2011, Romania.

In this context, the NCC editors had to choose between the isolated posture of the Romanian private law, of the exclusion of the contractual unpredictability and align it with that of the European legislation.

We appreciate that the usefulness of new legal concepts outruns the minuses invoked by practitioners, meaning in which the approach of this topic

\(^7\) Gabriel Tiţa-Nicolescu, *Excepţiile de la principiul obligativităţii efectelor contractului prevăzute în noul Cod civil*, în Pandectele române nr. 11/2012, pg. 24

\(^8\) Ion Deleanu, *Ficţiuni juridice*, Ed. All Beck, Bucureşti 2005, pg. 222
from the perspective of business relationships can alleviate the difficulties in assimilating them. In the economic area the promotion of the national interest requires economic security.

One of the internal factors that affects this goal is the legislative policy which must aim at the coherence and compliance with the law, objective whose achievement would generate a more dynamic national business environment, which will become more attractive to Romanian and foreign investors. Consequently, it would create the foundations of growth in living standards and the development of social security.

The membership of European Union imposed the alignment to Community law, NCC taking inspiration from the principles of European contract law, and the UNIDROIT Principles 2004 applicable to international commercial contracts. Promoting the national interest in globalization and regional integration can only be achieved in a balanced economic context, based on modern clear consistent and stable legislation, which can ensure the predictability of economic development strategies in the short, medium or long term.

The legislative revolution, represented by the adoption of new codes into essential materials of the law had become imminent. The introduction into N.C.C. of numerous commercial law rules, specific to the application in business, provides a solid foundation for the investors, too often faced with regulatory change.

The same argument is the base for supporting the increasing of the attractiveness of foreign investments, whose result will be the development of international economic relations. Business development is subject to the legal and, in its turn, determines the stability of social relations.

As the excessive taxation legally founded generates evasion, also the lack of a solid legal support, steady and intelligible generates a fragile business environment without opportunities.9

On the contrary, a coherent and constant legal framework ensures economic development and, ultimately, increases the social security.

The contractual field, but also the one of defining essential elements of commercial matter, enhance the applicability of this work for economic professionals.

The theme proposes debating concepts that under the guise of arid legal institutions hide a true image of major implications of the right in the business field.

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9 Nadia Cerasela Aniței, Roxana Elena Lazăr, Evaziunea fiscală între legalitate și infracțiune, Editura Lumen, Iași 2013, pg. 42
The practitioners initiated in terms of the major advantage generated by these rules, will find enough tools to defend their rights in contractual disputes or negotiations.

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