

LAWFUL AND DETERMINED PURPOSES - REQUIRED FOR LEGAL PERSONALITY OF SPORTS STRUCTURES IN ROMANIA

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Context

It is well established that not every group of natural persons is (or may become) a legal entity that would give it a distinct legal personality. To acquire the status of a legal entity, a group must fulfil *three essential conditions*, and according to Art. 26 (e) of Decree no 31/1954:

(1) an independent structure; (2) a distinct patrimony of its own; and (3) a distinct and lawful purpose. All these conditions have to be *cumulatively* observed, and the non-fulfilment of any of them may lead, in principle, to the rejection of legal personality. The status of legal personality is important for a multitude of reasons in Romania, such as to ensure that sports activities are carried out only under the supervision of qualified and competent sports structures. And, due to Romania's impending EU membership (in 2007 or 2008), the country's integration in EU sports organizations will depend substantially on well-functioning local sports structures.

Discussion

The main purposes underlying the existence of a legal person may be *economic, patrimonial*, such as gaining profits, but may also be non-*patrimonial* or charitable, i.e., as would be the case with charitable associations, unions of artists, professional associations, sport structures (with legal personality), trade unions, associations and foundations, etc. This purpose may correspond to the general and public interests of society, of a particular social category, or even to those of the members of the afore-mentioned associations, of those constituting the legal person, provided that such interests are *lawful*, i.e. do not contradict the imperative legal norms and public order. The scopes of activities of the legal entity must be *specified* and *detailed* within its by-laws or statutes for the sole reason that legal entities in Romania do not enjoy the general civil law capacity (as in case of natural persons), but they have a *special legal capacity*, limited to concluding legal acts corresponding to their scopes of activity. Therefore, the courts generally deny the existence of legal personality where the scopes of activity are so vaguely indicated and imprecise that they could not indicate the limits of such legal capacity, or in case of associations or foundations, their legal existence is not recognized if the necessary correlation is lacking between the respective patrimony and the scopes of activity it will serve.

In this context, we have to mention that, pursuant to *Law no 69/2000 on Physical Education and Sports*, PE and sports activities would have to fall within the detailed scopes of activities of sports structures (and not in that of business associations in general, except for joint stock sports companies, i.e., Inc., Corp., etc.). Until the enactment of the regulations regarding the establishment of sports structures, some activities, such as *physical exercise practiced for the purposes of maintaining a proper physical condition (fitness)* fell within the scopes of activity of some types of commercial companies as well – although, pursuant to the explanatory text of the Romanian Classification of Economic Activities Code (CAEN), Class 9304 on Activities of physical condition maintenance referred to something other than sports activities, i.e. “activities pertaining to a good physical condition, such as: services offered by public baths, saunas, solariums, steam baths, spas, centres for weight loss and massage”.

This subterfuge relating to so-called sports activities, is generally carried out solely to generate profits, ignoring the negative consequences arising from sports activities improperly conducted or administered by unqualified persons. This was (and still is) possible because the law did not (and still does not) explicitly require the competent authorities' approval for the functioning of such business associations having a scope of activity connected to health activities. So, one of the essential conditions for acquiring legal personality by business associations, i.e. *the lawful character of the scopes of activity* was altered. Of course, for such reasons, there are restrictions on merchants to indicate their scopes of activity. To this end, Article 287 of *Law no 31/1990 on Commercial Companies* provides that “the activities that cannot form the scope of activity of a commercial

company are to be established by the state”. Besides the lists of activities which may not be carried out by such companies, there are other restrictions stemming from certain normative acts, from the relevant jurisprudence and not only from governmental decrees”.

Implications

The carrying out of certain PE and sports activities by business associations other than so-called joint stock sports companies results in numerous negative consequences, because the Romanian National Sports Agency cannot exercise its supervision, competence and obligations on such business associations. Nevertheless, the legality of excessive marketing of PE activities (obtained by tolerating their existence, undisturbed by those who should ensure the maintenance of the legal order – and by applying legal sanctions) received legal justification through the issuance of Order no 601/26.11.2002 by the President of the National Commission for Statistics regarding the updating of the classification of the activities of the national economy (CAEN), which entered into force on 1 November 2003. Therefore, by invoking the fact that the updating process took into account the provisions of EC Regulation no 29/2002 amending Regulation 3037/1990 regarding the classified list of the activities within the EEC (NACE Rev. 1.1. (art. 2) Class 9304 on Activities of physical condition maintenance included the additional language: “centres for physical [body] maintenance (fitness)”.

It is necessary to make the following specifications:

1. According to the provisions of Law no 69/2000 on PE and Sports in Romania (specifically, Art. 2(3) and (5)), “Education and sports comprise the following activities: PE, sports for the public-at-large, professional sports, *fitness*;
2. Practicing physical education and sports is a right of each individual (a right which must be protected and guaranteed) which can be exercised without discrimination and which is guaranteed by the state. The exercise of this right is free and voluntary and is performed independently or within *sports associative structures*. From these provisions it follows that fitness activities have to fall solely within the scopes of activities of the sports structures regulated in Title IV, “Sports Structures” of Law no 69/2000 – according to *the principle of the specialty of capacity of the legal persons*.

Therefore, the afore-mentioned Order no 601/2002 issued by the President of the National Commission of Statistics must be revised to take into consideration the necessity of protecting natural persons – persons practicing fitness - in light of the provisions of Law no 24/2000 regarding the technical norms for the drafting of legal statutes (as amended by Law no 189/2004), so that the rights of those persons practicing fitness within a business association structure will be protected and the effective management of these business associations will be ensured.

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- Law no 272/2004 regarding the protection and promotion of the rights of the child

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