

# The associative forms in Romania following the new Civil Code, republished in 2011

Lecturer PhD **Angela MIFF**<sup>1</sup>

## **Abstract**

*During time, the association has evolved as a form of socio-economic organisation in order to perform non-professional or, by case, professional activities. The legislative sources have emphasized, in time, the variety of the ways of manifestation of the association among different law subjects – physical and/or legal persons. The new Civil Code (2009), republished in 2011, in force since the 1<sup>st</sup> October 2011, fundamented on the monist approach of regulation, as the common-law norm for all the domains that the letter and the spirit of its provisions refer to, regulates the contract of association, in chapter VII of the 5<sup>th</sup>Book; apart from the general norms applicable to all such contracts of association, the present code replaces the former civil society without legal personality with the present simple society and, also as a novelty element, transposes the regulation of the silent partnership from the former framework of the Commercial Code (1887, abrogated almost in totality) in the section 3 of the same chapter VII, the 5<sup>th</sup> Book of the code. The elements that are similar with the former regulation outline the continuity aspects in the conception of these juridical institutions in a modern approach that transposes aspects which were clarified by the jurisprudence or the legal doctrine.*

**Keywords:** association, associate, right, liberty, simple society, associative forms, the silent partnership.

**JEL Classification:** K19, K22, K40

## **1. Introduction**

Association has represented, since older times, a form of socio-economic organisation with the purpose of performing non-professional or, by case, professional activities. The legislative sources have emphasized, during time, the variety of the modalities of manifestation of the association among different law subjects - physical persons and/or legal persons.

The legislative confirmation, as a fundamental principle of liberty and of the association right, is stated both, at the international level, in international treaties and conventions, as well as in the national legal system of the states. So, in the context of the international law, can be invoked, as example, the Universal Declaration of the Human Rights (1948)<sup>2</sup>, art.20 (at the global level), or the Convention for the protection of the Human Rights and the Fundamental Liberties,

---

<sup>1</sup> Angela Miff - Faculty of Economics and Business Administration, University „Babeş-Bolyai” Cluj-Napoca, România, angela.miff@econ.ubbcluj.ro

<sup>2</sup> The Universal Declaration of Human Rights (1948), adopted by General Assembly of the United Nations, resolution no. 217 A (III) of 10<sup>th</sup> December 1948, states in art.20: “(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association. “

art.11 (at the regional European level)<sup>3</sup>. In the national system, the statement of the associative forms brings in view, first, the provisions of art.40 of the Constitution, revised in 2003, according to which the citizens are entitled to exert, within the law, the right of association in political parties, unions, trade unions *and other associative forms*. The constitutional legal norm also indicates the limits of the exertion of this important right<sup>4</sup>.

The association, in its diversified forms of manifestation as an expression of the right to association<sup>5</sup>, represents a modality of collaboration and cooperation between persons for achieving a purpose for - profit or, by case, non - profit, and is part of the private law domain. Due to the fact that, in the last years, at the legislative level there have been significant changes, in our country, as a consequence of entering into force of the new codes for the regulation of the private law and also public law relations, we would like to outline, for the beginning, some aspects that emphasize the impact of the new Civil Code, republished in 2011, on the private law domain.

## **2. The impact of the Civil Code, republished in 2011, on the private law domain.**

### **The associative forms between tradition and present days**

The entering into force of the Civil Code, republished in 2011, and of the Law no.71/2011 for the implementation of the new code, marked, as we consider, *the unification of the private law* around the civil law branch, with the consequence of eliminating the former and traditional distinction between the civil law branch, on one hand, and the commercial law branch, on the other hand.

The legislative solution was founded on *the monist conception of the regulation* according to which, in a unique code, were subsumed legislative segments that interested the entire aria of the private law, including those concerning the relations and the professionals of the economic activities named,

<sup>3</sup> The Convention for the protection of the Human Rights and the Fundamental Liberties was ratified by Romania through Law no.30/1994, which in art.11 disposes that any person has the right to a free and peaceful association, including the right to constitute trade unions with others and to be affiliated to unions for the protection of their own interests.

<sup>4</sup> Art.40 "Right of association" of the Constitution, revised in 2003, states: "(1) Citizens may freely associate into political parties, trade unions, employers' associations, and other forms of association. (2) The political parties or organizations which, by their aims or activity, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional. (3) Judges of the Constitutional Court, the advocates of the people, magistrates, active members of the Armed Forces, policemen and other categories of civil servants, established by an organic law, shall not join political parties. (4) Secret associations are prohibited".

<sup>5</sup> From the jurisprudence point of view, the former Supreme Court of Justice, comm. div., by decision no.511 of 3<sup>rd</sup> November 1994, stated upon the setting up of the trading companies, in the conditions of Law no.31/1990, in the sense that "it is dominated by the principle of the liberty of association of the physical and legal persons. The limitations brought to the liberty of association, by the imperative legal norms, should be strictly interpreted", in the *Law Review* no.4/1995, p. 73.

until recently, commercial activities. So, the normative configuration of the code emphasizes this conception that can be observed, at least formally, on two directions: the regulation domains and the legal terminology<sup>6</sup>.

### 2.1. The regulation domains

The unification of the private law was achieved by incorporating within the contents of the code of some civil regulations which had, after the second world war, a distinct formal existence<sup>7</sup>, outside of the old Civil Code, as well as by transposing some rules and principles that came from the former commercial legislation; but, it should be observed that the last ones are now applicable *upon all the professionals irrespective of the professional sphere* where they perform their activity (professionals in the economic activity, free-lancers, etc.).

So, the family law as well as a part of the special civil laws, for example, in the estinguished prescription matter or concerning the civil status of the natural and legal persons, were included in the new Civil Code, republished in 2011, being regulated by similar rules but with a higher level of complexity<sup>8</sup>.

The former commercial law, recognized as a distinct and autonomous branch within the private law domain, until the moment of entering into force of the new Civil Code, republished in 2011, was - as a consequence - reduced to a set of special regulations, adopted before, mainly, in matters of companies, trade register, competition, insolvency, credit institutions, insurance, tourism, transportation.

The international private law domain<sup>9</sup> is now comprised in the new Civil Code, republished in 2011, the 7<sup>th</sup> Book, art.2557 – art.2663. It should be noted that the mentioned regulations of the code are applicable subsidiarily if the provisions of the international treaties to which Romania is party to, the European Union law or the regulation of the special laws *do not prescribe otherwise*; in other words, the characteristic of regulation as being of common law is maintained in comparison with the special norms contained in other legal sources, the applicability of the mentioned norms of the code being subsidiary or in completion of the special norms in that certain matter, if these are compatible.

---

<sup>6</sup> Angela Miff, *Business law. The regulation of the tourism activity in Romania (Dreptul afacerilor. Reglementarea activității de turism în România)*, The Foundation for European Studies Publishing House (Editura Fundației pentru Studii Europene), Cluj-Napoca, 2012, pp. 23-24.

<sup>7</sup> The international private law relations formed the regulation object of a distinct special civil law, after 1990, namely the former Law no.105/1992 on the regulation of the international private law relations, published in the Official Gazette of Romania, Part I, no.245 of 1<sup>st</sup> October 1992, abrogated in present. The entire abrogation of the normative act took place as a consequence of the entering into force, at the date of 15<sup>th</sup> February 2013, of the new Civil Procedure Code, republished in 2012.

<sup>8</sup> Angela Miff, *op.cit.*, pp. 23-24.

<sup>9</sup> The international private law relations are, in the meaning of art.2557 par.2 of the Civil Code, republished in 2011, the civil relations, the commercial and other relations of international private law with foreign element.

The domains regulated by the Civil Code, republished in 2011, are grouped in seven books, which gather the entire area and the tipology of the juridical relations that can be established between physical persons and/or legal persons of private law: the legal status of the physical and legal persons (the 1<sup>st</sup> Book); the family relations (the 2<sup>nd</sup> Book); the legal regime of the goods, the private and the public property, the legal regime of the administration of the assets of another person (the 3<sup>rd</sup> Book); the inheritance [the legal succession and the will] (the 4<sup>th</sup> Book); the juridical obligations – the contract, the unilateral juridical act, the civil legal responsibility, the legal regime of the special contracts (the 5<sup>th</sup> Book); the prescription (the 6<sup>th</sup> Book); provisions on the international private law (the 7<sup>th</sup> Book).

Naturally, the law contains transitional provisions, as a consequence of the complexity of the legislative transformation process, such as those which refer to the solutions of the conflict in time between the old law and the new law, for instance, when the legal norm states that the acts concluded - before the entering into force of the Civil Code, republished in 2011 - by the associates of the former civil society without legal personality are governed *by the law in force at date of their conclusion* (the rule of the application in time of the law stated by the Latin adagio “*tempus regit actum*”).

Other transitory provisions stated, for example, on the temporary application (1<sup>st</sup> October 2011 – 15<sup>th</sup> February 2013) of the dispositions of the Commercial Code (1887) referring to the probation<sup>10</sup> of the juridical obligations assumed by the professionals entrepreneurs in the economic activities, as well as the set of legal norms of the former Civil Code (1864) concerning the probation of the juridical acts<sup>11</sup>, or of some norms of the Law no.105/1992 regarding the international private relations<sup>12</sup>, that were maintained as applicable up to the moment of the entering into force of the new Civil Procedure Code, republished in 2012, that is up to 15<sup>th</sup> February 2013.

## 2.2. The legal terminology

From the point of view of the terminology, the legislator provides forms of legal terminology that express the same contents of the notions settled before. The new legal terminology has the purpose of reflecting the monist approach of regulation, by adapting the language with the present legislative realities.

The expressions „commercial acts” and „commercial facts” are replaced by the syntagm „*activities of production, commerce and services*”, but this one expresses, in essence, the same contents of the expression settled before<sup>13</sup>. Regarding the designation of the category of goods that are represented by abstract

<sup>10</sup> Art.46, art.55 - art.58, art.907 – art.935 of the Commercial Code (1887), abrogated in present.

<sup>11</sup> Art.1169, art.1174 and art.1206 of the former Civil Code (1864), abrogated in present.

<sup>12</sup> Art.34 – art.35, art.148 – art.181 of Law no.105/1992, abrogated in present.

<sup>13</sup> Art.8 par.2 of Law no.71/2011 for the implementation of Law no.287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, no. 409 of 10<sup>th</sup> June 2011..

elements, the word used before („non-corporeal”) is replaced by the expression „intangible”.

The syntagm “person with or without patrimonial purpose” is replaced with the expression “legal person with or without profit purpose” (pro-profit legal person or, by case, non-profit legal person); the references to the “civil society without legal personality” are considered to be made to the “simple society”<sup>14</sup> and the syntagm “civil society with legal personality” is replaced with the expression “society with legal personality”.

The reference to the „traders” in the normative acts that were enacted before, but are still in force, should be considered to be made to *the physical persons or legal persons who are under the obligation of the registration in the trade register*, according to Law no. 26/1990, republished in 1998<sup>15</sup>; the terms „trader” or „traders” are subsumed by the notion of the professionals and regard the professionals who are performing an activity of the enterprise kind with pro-profit purpose by performing activities of production, commerce or services<sup>16</sup>. The professional person as defined by art.3 of the Civil Code, republished in 2011, gathers the categories of the: trader, entrepreneur, economic operator and other persons authorized to perform *economic or professional activities*<sup>17</sup>.

Even if the new legal context requires the unification of the legal language (by eliminating the attribute „commercial” from the expressions that indicated the sphere of application of the special commercial law) by proposing the unique and equalizing term „professional”, the factual and legal realities indicate the necessity and utility of making *a distinction between the different categories of professionals*, useful for outlining *the specialized domain in which each professional category performs* under the specific and special regulations.

### **2.3. The legal perspective of the code in the matter of the societies**

Regarding the topic of association seen as the associative relation, in the terms of the code, the association is mentioned only in a few segments that concern the relationship between persons: the co-property,<sup>18</sup> the simple society<sup>19</sup> and the silent partnership (sleeping association).<sup>20</sup>

On the other hand, the expressions „associate” and „association” - as an organization group,<sup>21</sup> are much more present in the sphere of the code’s regulation (approximately 134 times mentioned) in matters of: the legal regime of the legal

---

<sup>14</sup> Art.7 letter a) of Law no.71/2011.

<sup>15</sup> Art.6 of Law no.71/2011.

<sup>16</sup> Angela Miff, *Business law. The regulation of the tourism activity in Romania (Dreptul afacerilor. Reglementarea activității de turism în România)*, op. cit., p. 23.

<sup>17</sup> Art.8 par.1 of Law no.71/2011.

<sup>18</sup> Art.653 of the Civil Code, republished in 2011.

<sup>19</sup> Art.1908 (the association concerning the social rights and their cessation) of Civil Code, republished in 2011.

<sup>20</sup> Art.1949, art.1951, art.1952, art.1953 of the Civil Code, republished in 2011.

<sup>21</sup> Francesco Galgano, *Diritto privato*, the 10<sup>th</sup> edition, CEDAM Publishing House, Padova, 1999, p. 633.

person, the legal regime of the personal assets of the persons, the regime of the associate's contributions, the co-property upon the common parts in the condominiums with more floors or apartments, the legal regime of the association of proprietors, the association contract (memorandum of association), the simple society, the silent partnership (the sleeping association), the agency contract, the nationality of the legal person and the sphere of application of the national law upon the international private law relations.<sup>22</sup>

The associations, as a collective form of organisation, include also the societies as juridical forms through which manifests the exploitation of an enterprise having for an object pro-profit or, by case, non-profit activities.<sup>23</sup>

From the normative perspective of the new Civil Code, republished in 2011, amended and completed, the system of the societies is structured into two categories: *the simple societies* (regulated by the code, including the unincorporated societies and „*de facto*” societies<sup>24</sup> that are assimilated to the simple society) and *the special societies/companies* (regulated by the special laws). Unlike the simple society constituted exclusively in the conditions of the Code, the special societies/companies are set up in the conditions stipulated by the special laws for the performance of the economic activities or for the performance of other professions.

Finally, the regulation of the code – as a common law norm<sup>25</sup> – distinguishes between *societies/companies with legal personality* and *societies/companies without legal personality*.<sup>26</sup> More specifically, the option for setting up a society/company with or without legal personality is attributed to the associates on the condition that the society/company with legal personality set up by the associates should follow the form and all the conditions stipulated by the special law that states upon its legal personality. The society/company acquires the legal personality from the date of its registration/incorporation in the trade register or, by case, in other public register designated by the special law, except the cases in which the law provides otherwise.<sup>27</sup>

The typology of the societies/companies implies criteria like the form, nature or the subject of the activity mentioned in the constitutive act.<sup>28</sup> Although

<sup>22</sup> For instance, it can be invoked art. 196, art. 198, art. 199 (the nullity of the legal person), art. 205 (acquiring the capacity of use by the legal person), art. 348 – art. 349 (the contribution in kind of common assets and the legal regime of the contribution), art.650 (the exclusive use of the common parts of a collective housing unit), art. 656 (the access to the main assets areas), art. 659 – art. 660 (the setting up of the proprietors' association), art. 1881 – art. 1954 (the association contract/the memorandum of association, the simple society, the sleeping association/the silent partnership), art. 2073 (the agency contract), art. 2571 (the nationality of the legal person) and art. 2581 (the domain of application of the national law).

<sup>23</sup> For the distinction between the associations and the societies/companies concepts, see, Francesco Galgano, *op. cit.*, pp. 633–642, pp. 673–677.

<sup>24</sup> Art.1893 of the Civil Code, republished in 2011.

<sup>25</sup> Art.1887 par.1 of the Civil Code, republished in 2011.

<sup>26</sup> Art.1881 par.3 combined with art.1883 par.1 of the Civil Code, republished in 2011.

<sup>27</sup> Art.1889 par.3 of the Civil Code, republished in 2011.

<sup>28</sup> Art.1887 par.2 of the Civil Code, republished in 2011.

the regulation of the new Civil Code, republished in 2011, set up a unique conception, by eliminating the dualism between the Civil Code and the Commercial Code, the new code states upon some differences of legal regime - necessary in some ways – by taking into account the status of professional or non-professional of the participant persons in the juridical relations.

The types of the societies/companies, according to the form criterion, are emphasized in the mentioned segment of regulation of the code and distinguishes between the following societies/companies: a] simple societies; b] sleeping association (silent partnership); c] general partnership; d] limited partnership; e] limited liability company; f] joint-stock company; g] limited partnership on shares; h] cooperative companies; i] other type of society/company regulated by law.

The types of societies/companies mentioned by the common law are regulated, by case, within special laws that may establish supplemental conditions for their setting up. Thus, the general partnership, the limited partnership, the joint-stock company, the limited partnership on shares and the limited liability company are regulated, in detail, by the Company Law no.31/1990, republished in 2004, amended and completed, that qualifies itself within the segment of the special laws, as well as, for example, Law no.1/2005 on the organization and functioning of the cooperative that states on the legal regime of the cooperative companies.<sup>29</sup> But, the norms concerning the regime of the joint-stock company, as stated by the Company Law no.31/1990, republished in 2004, represent the „common law” in this matter in comparison with legal norms from other normative acts, for example, the Law no.93/2009 on the non-banking financial institutions which establishes the setting up of the non-banking financial institutions, that are under the general regime, in the form of the joint-stock company, indicating the Company Law, but also regulating derogatory special conditions for the minimum limit of the registered capital, the type of the contributions (only monetary contributions), the shares (only nominative shares) and even limitations concerning its activity.

The interpretation of the dispositions of art.1 par.1 of the Company Law no.31/1990, republished in 2004, amended and completed, which state that „In order to perform pro-profit activities, the physical persons and the legal persons may associate and set up companies with legal personality according to the provisions of this law.” might suggest the present qualification of the law’s provisions as being the common law norm for all the companies with legal personality and pro-profit purpose. Though, we consider that the normative act remains in the category of the special laws.

A critical opinion in the sense that the two regulations – of common law and of the special laws – juxtaposes cannot be sustained because each of them have a specific function. The common law norms, gathered in the new Civil Code, republished in 2011, that designs the configuration of the association contract (constitutive act) of the society/company, completes or even supplements the lack

---

<sup>29</sup> Law no.1/2005 was published in the Official Gazette of Romania, Part I, no.172 of 28<sup>th</sup> February 2005.

of specific regulations in the special laws which state upon the modalities of performing some pro-profit activities or, by case, non-profit activities.

The new Civil Code, republished in 2011, legislates the association contract (constitutive act) of the society/company in Chapter VII (art. 1881 - art. 1889) of Title IX „Different special contracts” of the 5<sup>th</sup> Book „About obligations”, by outlining the essence of the association contract, namely, generating an obligational juridical relation between the associates. Evenmore, this legal relationship between the associates does not only deal with dividing them into creditor and debtor in such a relationship, but it is a more complex relation that expresses the common intention of the associates (*affectio societatis*), mutual interests for the purpose of performing an activity together and taking the responsibility for the consequences.<sup>30</sup> *Affectio societatis* or the common intention of the associates to set up a legal entity, with the purpose of performing together a pro-profit activity, is essential for *the associative forms of the company type*.

The distinction between the associative forms may be noticed from another perspective, too. By taking into account the activity object, these forms can be pro-profit (with patrimonial or lucrative purpose) or non-profit forms of association. The new Civil Code, republished in 2011, does not consistently use the terms „association”, „associative” „society”, „company”, the lack of consistency can be easily noticed in the regulation of the associative forms in the 5<sup>th</sup> Book, Chapter VII, which sets up the legal regime of simple „society” in section 2 and of the sleeping „association” (silent partnership) in section 3. But, in art.1888, where the association forms are mentioned,<sup>31</sup> the sleeping/silent „society” is stated at letter b.<sup>32</sup> Moreover, the simple society/company can be considered the successor of the former civil society without legal personality from the old Civil Code (1864) while the sleeping association – as a juridical institution – was taken from the Commercial Code (1887) and transposed, with amendments and completions, in the common law norms. However, we can notice that, at least apparently, the new code legislates two associative forms without legal personality and pro-profit (with lucrative purpose) but without a criterion of distinction between them that could be an argument to determine the associates’ option.

---

<sup>30</sup> Art. 1881 par.1 of the Civil Code, republished in 2011, states: “Through the contract of society two or more persons take a joint obligation to cooperate for the performance of an activity and to contribute by their contributions in money, in assets, in specific knowledge or services, with the purpose of dividing the benefits and mutually using the results”.

<sup>31</sup> According to art. 1888 of the new Civil Code, republished in 2011, “According to their form, the societies can be: ...”.

<sup>32</sup> In the legal doctrine, the sleeping association (silent partnership) was considered in different ways, as a company (an improper form of company) or as a contract (the contractual nature being emphasized). The jurisprudence stated that the sleeping association (the silent partnership) should be considered as an improper form of company, The High Court of Cassation and Justice, commercial division, decision no. 713/2005, source: Indaco Law 4.Professional, Jurisprudence.



### 3. The associative forms in the non-profit activities domain

The associative forms for the non-profit activities domain are subsumed to the exploitation of an enterprise by the professional persons. In the sense of art. 3 of the new Civil Code, republished in 2011, the exploitation of an enterprise includes, the performance in an organized, systematic manner, *of a pro-profit activity* by one or more persons as well as the performance, in the mentioned conditions, *of a non-profit activity*.

The non-profit activities are destined, as it is known, for the purpose of achieving community or general interests of the groups of persons and for satisfying non-profit interests. The form in which these are settled is represented, as a rule, by the associations or, by case, the foundations. However, it cannot be excluded the possibility of the performance by these non-profit associations, within the law conditions, temporarily or occasionally, directly or through a company set up by the association (as a founder associate), of certain economic activities that should be in close connection with the object or the purpose of the association or in order to sustain its activity<sup>33</sup>. In the mentioned case, the normative act states upon the condition – regarding the possibility of the associations and foundations to set up companies (from the category of those mentioned by the Company Law no.31/1990, republished) – of reinvesting, in the same companies, the dividends or, if contrary, it is compulsory that the dividends should be used for achieving the purpose of the association or foundation.

The jurisprudence of the European Community Court of Justice<sup>34</sup> stated that a non-profit entity “that administers a pension insurance fund destined to complete a basic mandatory regime, regulated by the law with a non-compulsory character and functioning according to the principle of capitalization, represents an enterprise in the sense of art.85 and the following of the treaty. The non-compulsory affiliation, the application of the principle of capitalization and the fact that the services depend only on the value of the paid contributions of the beneficiaries and the financial results of the investments made by the entity responsible for the administration of the fund, imply the fact that this entity performs an economic activity, being in competition with the life insurance companies. The pursuit of a social character, the absence of the non-profit purpose, the solidarity comandments, or those norms concerning especially the restrictions to which the administration entity is subject to when it comes to achieve the investments, do not erase the economic character of the activity performed by the administration entity.”<sup>35</sup>

---

<sup>33</sup> Art.47 – art.48 of Government Ordinance no.26/2000 on the associations and foundations.

<sup>34</sup> European Community Court of Justice Decision no.67/1999 of 21<sup>st</sup> September 1999 in the case Albany International BV versus Stichting Bedrijfspensioenfondstextilindustrie, concerning “the mandatory affiliation to a sector pension fund – The compatibility with the competition rules – The qualification as enterprise of a sector pension fund” and the cited jurisprudence. Source: Indaco. Law 4 Professional, Jurisprudence.

<sup>35</sup> Idem, regarding the case on the Decision of the French Federation of insurance companies, etc.

It is true, as it was stated in the legal doctrine, that the lucrative character or the patrimonial character concerns the essence of the civil society without legal personality (regulated by the former Civil Code) because of the fact that its members (the associates) follow the purpose of obtaining benefits to be divided between them; but the notion of pro-profit character does not have to be understood as referring exclusively to the achievement of monetary benefits (profit),<sup>36</sup> because the benefits obtained may be of another kind (a patrimonial kind). In such cases, the civil society having a patrimonial purpose does not become a non-profit association.<sup>37</sup>

The non-profit association forms that can be observed in the social area, with a significant presence, are the associations and foundations. The legal regime defines them as non-profit legal persons,<sup>38</sup> founded on the basis of a contract of association (constitutive act) and the articles of association, concluded in authenticated form or atested by a lawyer, with respect of the minimum set of clauses, under the sanction of absolute nullity. The specific non-profit purpose, the minimum number of the associates, but also the fact that the contributions brought by the associates are not refundable are only some of the elements that make possible the distinction between the non-profit associations and other associative forms.

The setting up of the association with legal personality represents the usual,<sup>39</sup> the common form, but the Government Ordinance no.26/2000, invoking the constitutional right to association, stipulates the possibility of the physical persons to constitute an association without legal personality if the purpose can be achieved by the associates<sup>40</sup>.

The particularities of the foundation in comparison with the association,<sup>41</sup> as non-profit associative forms, reside, for instance, in the possibility of setting up the foundation by the act of will of a single person, or the setting up on the basis of a juridical act made in case of death, or the condition of establishing, through the law, of a minimum value of the initial patrimony of the foundation.

The vertical integration of the associations or the foundations is possible, also, through their association in order to constitute a federation, as an entity with

<sup>36</sup> The profit was defined as an earning/gain evaluable in money, Stanciu D. Cărpenu, *Romanian commercial law (Drept comercial român)*, All Beck Publishing House, Bucharest, 2002, p. 154.

<sup>37</sup> F. Deak, St. Cărpenu, *Civil and commercial contracts (Contracte civile și comerciale)*, Lumina Lex Publishing House, Bucharest, 1993, p. 229.

<sup>38</sup> Government Ordinance no. 26/2000 was published in the Official Gazette of Romania, Part I, no. 39 of 31<sup>st</sup> January 2000.

<sup>39</sup> The legal personality of the association is acquired from the moment of its registration in the Register of associations and foundations kept by the court of first instance in whose jurisdiction is located the registered office of the association.

<sup>40</sup> Art. 5 par. 2 of Government Ordinance no. 26/2000.

<sup>41</sup> For a presentation of the relevant aspects concerning the associations and foundations following the Government Ordinance no.26/2000, see, Raluca Dimitriu, „Discussions regarding the Government Ordinance no.26/2000 on associations and foundations” („Discuții în legătură cu Ordonanța Guvernului nr.26/2000 cu privire la asociații și fundații”), in *Law Review* no.5/2000, pp. 3-24.

legal personality from the date of the registration in the Register of the federations kept at the court of law (the tribunal) that has the jurisdiction over the registered office of the federation.

The sphere of the non-profit associations also gathers entities with or without legal personality.<sup>42</sup>

For example, we could invoke the professional associations like those set up by the cooperative companies having for an object the activity of information, the reference material and the professional specialization of the cooperative members, as well as advertisement for their specific services and products.<sup>43</sup> Thus, the associations of the cooperative companies are non-profit legal persons set up by cooperative companies of the same type or of different types in the purpose of representing and promoting the interests of the members (associates).<sup>44</sup>

#### 4. Pro-profit associative forms

The new Civil Code, republished in 2011, states upon *the common legal framework* for everything that represents the exploitation of an enterprise with pro-profit or non-profit purpose, being what was designed to be as the common law in this matter. The materialization and the particularization of the associative forms where, for instance, economic activities are performed, remain in the area of regulation of the special laws.

We may observe that, for the economic domain, from the beginning of the 1990's, the associative forms, legally designed for putting into practice the possibility of organising by free initiative the economic activities, were kept, in principle, as a pattern, but their regulation, in time, has been subject to some amendments and completions for the purpose of adapting them to the criteria and conditions of the European Union law and, also, for the purpose of simplifying the procedure and eliminating the disfunctions observed in the authorization procedure.

Thus, at the beginning of the 1990's, the Decree-Law no.54/1990 on the organization and performance of some economic activities by free initiative<sup>45</sup>, represented the normative act which opened the possibility of organising by free initiative of the small enterprises with a number of maximum 20 employees, of the pro-profit associations with a maximum number of 10 members, the family

---

<sup>42</sup> The professional associations, the associations of the condominium proprietors' regulated by Law no. 230/2007. So, the association of the proprietors represents an autonomous and non-profit form of association of the majority of the proprietors in a condominium constituted on the basis of an association agreement (art. 3 letter g)-h).

<sup>43</sup> Art. 6 letter c) of Law no. 1/2005.

<sup>44</sup> Title III, art. 89 – art. 104 of Law no. 1/2005.

<sup>45</sup> Decree-Law no. 54/1990 was published in the Official Gazette of Romania, Part I, no. 20 of 6<sup>th</sup> February 1990. Art. 4 stated the possibility of setting up small enterprises by the initiative of one or more associated persons, for that purpose; art.20 mentioned the setting up of the pro-profit associations (with lucrative purpose) of maximum 10 members, on the basis of a contract of association (memorandum of association). The initiators of these forms of organization were designated as "entrepreneurs", but the legal norm outlined, judiciously, the distinction of these from the other persons included in the category of employees of the enterprise.

associations and of the activities performed independently by physical persons. The small enterprises and the pro-profit associations were associative forms set up on the basis of an association contract (memorandum of association), as well as the family association which, at least formally, did not require a contract of association, but they were, in essence, an associative form between the members of a family for the purpose of performing some economic activities together.

Later, these forms for the performance of the economic activities by the individual entrepreneurs were adapted, in the subsequent legislation, Law no.507/2002,<sup>46</sup> Law no.300/2004<sup>47</sup> and Emergency Government Ordinance no.44/2008,<sup>48</sup> keeping within this pattern the organisational forms subsumed to the category of the individual entrepreneurs. However, apart from Law no. 507/2002 and Law no. 300/2004 which regulated only two such organisational forms, namely the family associations and the authorized physical person, the actual regulation institutes three organisational forms – the individual enterprises, the family enterprises and the authorized physical person. Among these three mentioned forms, the ordinance obviously states, the necessity of concluding the set up agreement act only for the family enterprise that gathers the members of a family for the purpose of the performance of the economic activities. The set up agreement act of the family enterprise, mentioned by Emergency Government Ordinance no. 44/2008, concluded in written form as a validity condition (*ad validitatem*) shows, in a simplified manner, the characteristics of an association contract.<sup>49</sup>

The fact that these above mentioned organizational forms of doing economic activities are placed in the individual entrepreneurs' category may be explained through the legislative solution of maintaining them within the sphere of *the organizational forms without legal personality*, that is, organizational forms of entrepreneurial kind, without the possibility of generating a distinct subject of law.

Still, generally speaking, the economic activities are performed within associative forms that are recognized, by the law, as having legal personality. Among them we can especially mention the companies regulated by the Company

---

<sup>46</sup> Law no. 507/2002 on the organisation and performance of some economic activities by the physical persons was published in the Official Gazette of Romania, Part I, no. 582 of 6<sup>th</sup> August 2002.

<sup>47</sup> Law no. 300/2004 regarding the authorization of physical persons and of family associations for the performance of the economic activities independently was published in the Official Gazette of Romania, Part I, no. 576 of 29<sup>th</sup> June 2004.

<sup>48</sup> Emergency Government Ordinance no. 44/2008 on the performance of the economic activities by the authorized physical persons, individual enterprises and family enterprises was published in the Official Gazette of Romania, Part I, no. 328 of 25<sup>th</sup> April 2008.

<sup>49</sup> According to art. 29 of the ordinance, „The constitutive agreement will mention the name and surname of the members, the legal representative, date of the conclusion, the participation of each member in the enterprise, the conditions of participation, the percentage quota for dividing the net income of the enterprise, the relations between the family enterprise' members and the conditions of their withdrawal, under the absolute nullity sanction.”

Law no.31/1990, republished in 2004, amended and completed,<sup>50</sup> which represent the legal framework under which the majority of the entrepreneurs made an option to perform their economic activities. The joint-stock companies and the limited liability companies were and still remain preferred as the first option of the future associates.

The law allows the free association of the physical persons and/or, by case, of the legal persons in order to perform pro-profit activities, the limits and the cases excepted being clearly regulated through imperative legal norms whose infringement is penalized.

The option of the future associates for one of the organizational forms accepted by the law is made, undoubtedly, by taking into account the recognized advantages and the possibility to fulfil the required conditions specific for each of the form of association.

If we refer to the companies regulated by the Company Law no. 31/1990, republished in 2004, amended and completed, firstly, it should be outlined their legal personality recognized by the law which offer the collective entity, which is set up through the association of its members, *the legal status of a subject of law distinct* from the associates; the unique exception, within the company types, refers to the limited liability company with a single associate that, even if it is set up by the act of will of a single associate, it is, like the other company types, a legal person, having legal personality.

Thus, the legal person generated at the end of the legal set up procedure can be identified as law subject by some identification attributes: the denomination<sup>51</sup> (or the business name/the firm, in the case of the professionals entrepreneur in the economic activity), the emblem (in case of the professionals entrepreneur),<sup>52</sup> the nationality,<sup>53</sup> the registered office,<sup>54</sup> the unique identification code,<sup>55</sup> the number of registration in a public register<sup>56</sup> (for instance, the trade register office for the professionals entrepreneur in the economic activities or, by case, another public register according to the type of the legal person); the legal

---

<sup>50</sup> The Company Law no. 31/1990 was republished [2] in the Official Gazette of Romania, Part I, no. 1066 of 17<sup>th</sup> November 2004 and, recently, amended and completed by Law no. 76/2012 on the implementation of the new Civil Procedure Code, republished in 2012.

<sup>51</sup> The denomination is a compulsory identification attribute for the legal person. The common law regulates the denomination of the legal person in art. 226 of the Civil Code, republished in 2011.

<sup>52</sup> The emblem represents an additional identification attribute with optional character and may be included in the expression „other identification elements” of art. 226 combined with art.230 of the Civil Code, republished in 2011.

<sup>53</sup> The nationality of the legal person is regulated in art. 225 of the Civil Code, republished in 2011.

<sup>54</sup> The registered office of the legal person is object of regulation in art. 227 of the Civil Code, republished in 2011.

<sup>55</sup> The unique code of identification is mentioned in the group of other identification attributes, in art. 230 of the Civil Code, republished in 2011.

<sup>56</sup> The number of registration in a public register is, also, mentioned in the group of other identification attributes, in art.230 of the Civil Code, republished in 2011.

person has a personal legal liability,<sup>57</sup> as a consequence of the same legal personality and of the status of subject of the civil rights and obligations, having a civil capacity and a procedural capacity<sup>58</sup> as subject in litigations in front of the courts of law, in the civil and economic area, in front of the public institutions and in relations with third parties (tiers).

The cooperative companies, the economic interest groups, the non-banking financial institutions, the credit institutions, the insurance companies, the companies in the transportation area and the tourism, etc., are entities that have legal personality which offer them an autonomous existence, with all the advantages and possible disadvantages.

Regarding, for instance, the agricultural activities, the special legislation states upon the possibility to perform them in various forms of association mentioned by Law no.36/1991 on the agricultural societies/companies and other forms of association in agriculture<sup>59</sup>: the simple association, the simple society, the agricultural company regulated by art.5 and the following from Law no. 36/1991 and the companies regulated by the Company Law no.31/1990, republished in 2004, amended and completed, and having an agricultural object.

Obviously, the simple association and the simple society are set up in the form of the simple society without legal personality, by respecting the contents of the contract of association for the simple society as it is regulated by the new Civil Code, republished in 2011.

The agricultural company represents a private associative form, with economic or pro-profit purpose and legal personality. Because the nature of this associative form was controversial and debatable, from the jurisprudence point of view, it can be invoked the decision no. 101/2000 of 6 June 2000, adopted by the Constitutional Court which stated that the agricultural companies, set up in the conditions stipulated by art. 5 of Law no. 36/1991, are private pro-profit societies/companies and the regulations which refer to the non-profit associations are not applicable to the agricultural companies as these have a lucrative character, that is, pro-profit character.<sup>60</sup>

Law no. 36/1991 stipulates, also, the possibility of the agricultural land proprietors to be able to choose, regarding their exploitation, from any of the company types stipulated by the Company Law no. 31/1990, republished in 2004, amended and completed.

The activities performed by the free-lancers were qualified as civil under the former legal regime, before the 1<sup>st</sup> October 2011, the date of entering into force of the new Civil Code, republished in 2011. In present, under the incidence of the

<sup>57</sup> The legal person has its own liability with its own assets for the obligations assumed, exception being the case in which the law provides otherwise – art. 193 “The effects of the legal personality” of the Civil Code, republished in 2011.

<sup>58</sup> The legal person has also a procedural capacity in the law suits in which participates as plaintiff or, by case, respondent or another procedural status (for example, as intervener).

<sup>59</sup> Law no. 36/1991 was published in the Official Gazette of Romania, Part I, no. 97 of 6<sup>th</sup> May 1991.

<sup>60</sup> The Constitutional Court’s decision no.101/2000 of 6<sup>th</sup> June 2000, published in the Official Gazette of Romania, Part I, no. 392 of 22<sup>nd</sup> August 2000.

monist conceptio, that is the foundation for the new regulations of the private law, the distinction between civil and commercial in the case of the legal qualifications of certain professions, acts, operations, activities, is no longer relevant, but the distinctive criteria are related to other aspects, for example, the activity object of the associative form without or with pro-profit purpose.

As mentioned above, the associative forms that gather the professionals in certain activity segments, as the free-lancers, enter the category of pro-profit associative forms, under the regulation of the special laws concerning the professions and, in completion, under the incidence of the common-law legal regime.

### 5. The simple society and the silent partnership<sup>61</sup>

The new Civil Code, republished in 2011, regulates two associative forms in the 7<sup>th</sup> Chapter regarding the association contract: that is, the simple society (2<sup>nd</sup> section) and the sleeping association/silent partnership (3<sup>rd</sup> section).

The simple society regulated by the new Civil Code, republished in 2011, generally corresponds to the former civil society without legal personality regulated by the former Civil Code (1864),<sup>62</sup> being an associative form without legal personality.<sup>63</sup> But, distinct from the former legislation, the present Code states explicitly upon the possibility and institutes the norms that should be observed for the case of the societies that acquire legal personality. Moreover, the simple society may be subjected to transformation into a society with legal personality, without being subjected to a dissolution and liquidation procedure, but having the obligation to respect the background and form conditions mentioned by the special law regarding the association form or society/company that the associates agreed upon. In addition, the present legal regime states upon the joint and indivisible liability of the associates and of the society/company newly set up for the debts of the simple society, this aspect representing a novelty element, too.

From the perspective of the new Civil Code, republished in 2011, the society/company is defined by its contractual nature, more exactly, by the contract of association as the agreement through which two or more persons undertake the mutual obligation to cooperate in order to perform an activity and to bring their contribution in money, goods, specific knowledge or services, with the purpose of dividing the benefits or to make use of the results, the associates having, also, the obligation to take the responsibility for the losses in the agreed quota, or, if contrary, according to their participation to benefits. It may be considered that the actual legal regime of the society/company notion, within the common law

---

<sup>61</sup> The sleeping association or the silent partnership in the former regulation – brief characterization, see, Angela Miff, *Business law. Volume I Introduction to business law*, second edition, Sfera Juridică Publishing House, Cluj-Napoca, 2009, pp. 132-134.

<sup>62</sup> The former Civil Code (1864), abrogated in present, legislated two types of civil societies, namely, the universal societies and the particular ones, but the universal societies didn't have a practical incidence.

<sup>63</sup> Art. 1892 par.1 of the Civil Code, republished in 2011.

regulation, is more complete as a result of the influence of the legal doctrine's definitions given under the incidence of the regulation in the old Civil Code (1864).

By comparing these associative forms – the simple society and the former civil society – we can identify a certain set of elements and features which emphasize the continuity elements within the present regulation.

The simple society is founded and remains only a contract of association concluded *intuitu persoane*, consensual, synallagmatic, comutative, onerous and pro-profit,<sup>64</sup> characteristics which, also, used to define the former civil society without legal personality. From the perspective of its form, the contract being consensual is legally concluded by the simple agreement (*solo consensu*) of the parties/associates, the written form being necessary only *ad probationem*,<sup>65</sup> exception being the cases, mentioned by the law, when the authenticated form is compulsory *ad validitatem*, when imovables or real rights regarding these are brought as a contribution by the associates. But, if a society/company with legal personality is set up, the association contract has to be concluded in the written form and to mention the associates, their contributions, the juridical form of the company, its object, the name of the firm and the registered office of the company, under the absolute nullity sanction. The rule of symmetry of the juridical acts impose the observance of the same formalities when the contract of association is modified.

Regarding the contribution of the associates, the code allows all types of contributions – in money, in kind – movable and imovable assets, tangible and intangible, in services and specific knowledge. As a consequence of bringing their contributions, the associates – as owners of the interest parts - have the right of participation to the benefits and the obligation to assume the losses. As distinct from the old Civil Code (1864), that stipulated the absolute nullity sanction<sup>66</sup> of the lion clauses according to which one or more associates are exonerated from their participation to the losses or by which an associate is entitled to obtain the totality of the benefits, *the solution consecrated by the new code facilitates and simplifies the practice* furthermore because such a clause through which an associate is excluded from the benefits or exonerated from the losses, is considered *unwritten*, and so, does not generate any legal effects, therefore there is no need for initiating certain formalities.<sup>67</sup> As an exception, the associate who brought a contribution in services or specific knowledge is not certainly bound, according to his/hers contribution, to participate to the losses if such an exception *was specifically stated* in the contract of association.<sup>68</sup>

The sleeping association was, in the former regulation of the Commercial Code (1887), and remains, in present, a contract which does not generate an entity

<sup>64</sup> The pro-profit character or the lucrative purpose (patrimonial purpose) represents the essence of the civil society, as the legal doctrine emphasized, see, Francisc Deak, St. D. Cărpenu, *Civil and commercial contracts (Contracte civile și comerciale)*, op.cit., 1993, pp. 229 - 230.

<sup>65</sup> Art.1884 par.1 combined with art.1890 of Civil Code, republished in 2011.

<sup>66</sup> The former art. 1513 of the former Civil Code (1864), abrogated.

<sup>67</sup> Art.1902 par. 5 of the Civil Code, republished in 2011.

<sup>68</sup> Art.1881 par. 2 of the Civil Code, republished in 2011.



distinct from the associates, according to art.1951, being defined, by the new Civil Code, republished in 2011, as a contract through which a person grants to one or more persons a participation to the benefits and the losses of one or more operations performed. Generally speaking, this associative form maintains the features legally designed before: the consensual character, the non-public character of the association in relation with third parties (without describing the essence of the association), the lack of the legal personality, the lack of own patrimony, the lack of own firm name and of the registered office, the regime of the contributions, the functioning of the association according to similar rules, established by the clauses of the contract.<sup>69</sup>

The new Civil Code brought as a novelty element in the common law legal regime of the association contract, the stipulation *in terminis* of the sanction for the clause being considered as *unwritten* and, as a consequence, the lack of legal effects of the clause through which an associate is excluded from the participation to the benefits or to the participation to the losses, and regarding the sleeping association, the legal mentioning of the same sanction for the clause being considered *as unwritten* and the lack of the legal effects of that clause which states upon a guaranteed minimum level of the benefits for one or for more of the associates.<sup>70</sup>

### Conclusions

The new Civil Code, republished in 2011, amended and completed, and the law for its implementation<sup>71</sup> reflects a different modern approach, adapted to the present socio-economic and legal realities with the purpose of constituting a legal instrument to facilitate, for physical and legal persons, professionals or non-professionals, the access to a common law regulation, unique and unified, expressed in an updated legal terminology.

The new code emphasizes its regulation through a series of positive elements by imposing, in an organized manner, some principles and rules that before were recognized only in the legal doctrine or in jurisprudence. However, in different regulation segments can be observed incoherences, or even lacunas, or, sometimes, an insufficient regulation.

Nevertheless, it is proper to mention here that the new code represents *the common law in the private law relations domain* and, therefore it acts as a regulation that has the purpose to complete the special legal regulations (to the

---

<sup>69</sup> Art.1954 of the Civil Code, republished in 2011.

<sup>70</sup> The legal solution confirmed by the new Civil Code, republished in 2011, is inspired by the jurisprudence stated before, whose decisions established that a guaranteed minimum level of the benefits granted for one or more associates in the silent partnership (sleeping association) is an illicit clause. The regulation of the old Civil Code stated the absolute nullity sanction, in the former art. 1513. The High Court of Cassation and Justice, commercial division, decision no. 713/2005, source: Indaco Law 4.Professional, Jurisprudence.

<sup>71</sup> Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, no. 409 of 10<sup>th</sup> June 2011.

extent of their compatibility) or to supplement, by case, the lacunas from the special legal norms. Consequently, we believe that the code is not intended to substitute normativity segments which, naturally, belong to the area of some special laws.

In the regulation sphere, that concerns the object of the present study, we welcome the distinct regulation of the association contract in general, as presented in the introductory part of chapter VII, where the essential and common aspects are treated. However, we consider that the code's detailed regulation of the simple society and of the sleeping association (silent partnership) show some deficiencies and incoherencies that, in practice, may generate application and interpretation problems.

The simple society and the sleeping association are two associative forms without legal personality, having only a contractual nature and being only a contract whose conclusion does not generate a law subject distinct from the associated persons.

It can be noticed that the legal norm does not emphasize a certain element or distinctive criterion between the two forms of association that could support the option of the associates for any of these two forms, with the exception of the regulation sphere which is much more consistent in the case of the simple society (art.1890 – art.1948), in comparison with the sleeping association (silent partnership) that was treated only in six articles (art.1949 - art.1954).

Considering the legal norms of art.1887 combined with art.1889 par.4 of the new Civil Code, republished in 2011, the simple society represents *the common law form of society/association* even compared with the sleeping association (silent partnership) which is still preferred by the professional entrepreneurs in the economic activities, while the simple society will offer the contractual framework for developing other pro-profit activities. The performance of the non-profit activities remains within the sphere of activity of the associations and foundations, regulated by the special law in the field, and having a legal regime which may be completed with the common law norms.

As arguments for these conclusive remarks we present the rules mentioned by the code in the sense of stating upon the common law regulation's character, of the application of the rules concerning the simple society upon the relations between the associates of a society/company up to the moment when the legal personality of the entity is acquired.<sup>72</sup> Last but not least, we invoke the application of these norms, in completion and according to their compatibility, still regarding the sleeping association (silent partnership) whose regulation, in the third section of the chapter, states only upon those specific norms from which a derogation is not accepted (*specialia generalibus derogant*).

---

<sup>72</sup> Art. 1887 par.1 combined with art. 1889 par.4 of Civil Code, republished in 2011.

### Bibliography

1. Francisc Deak, Stanciu D. Cărpenu, *Civil and commercial contracts (Contracte civile și comerciale)*, Lumina Lex Publishing House, Bucharest, 1993.
2. Raluca Dimitriu, *Discussions concerning the Government Ordinance no.26/2000 on the associations and foundations (Discuții în legătură cu Ordonanța Guvernului nr.26/2000 cu privire la asociații și fundații)*, in the *Law Review* no.5/2000, pp. 3-24.
3. Francesco Galgano, *Diritto privato*, the 10<sup>th</sup> edition, CEDAM Publishing House, Padova, 1999.
4. Angela Miff, *Business law. The regulation of the tourism activity in Romania (Dreptul afacerilor. Reglementarea activității de turism în România)*, The Foundation of the European Studies Publishing House (Editura Fundației pentru Studii Europene), Cluj-Napoca, 2012.
5. Angela Miff, *Business law. Volume I Introduction to business law (Dreptul afacerilor Volumul I Introducere în dreptul afacerilor)*, second edition (ediția adoua), The Foundation of the European Studies Publishing House (Editura Fundației pentru Studii Europene), Cluj-Napoca, 2009.
6. The Universal Declaration of Human Rights (1948).
7. The Convention for the protection of the Human Rights and Fundamental Freedoms, ratified by Romania through Law no.30/1994, published in the Official Gazette of Romania, Part I, no. 135 of 31<sup>st</sup> May 1994.
8. The Constitution of Romania, revised in 2003, published in the Official Gazette of Romania, Part I, no. 767 of 31<sup>st</sup> October 2003.
9. The Civil Code (2009), approved by Law no.287/2009 and republished [1] in the Official Gazette of Romania, Part I, no.505 of 15<sup>th</sup> July 2011, amended and completed.
10. Law no.71/2011 for the implementation of the Law no.287/2009 regarding the Civil Code, published in the Official Gazette of Romania, Part I, no.409 of 10<sup>th</sup> June 2011.
11. Government Ordinance no.26/2000 on the associations and foundations, published in the Official Gazette of Romania, Part I, no.39 of 31<sup>st</sup> January 2000.
12. Decree – Law no.54/1990 concerning the organization and performance of some economic activities on free initiative, published in the Official Gazette of Romania, Part I, no.20 of 6<sup>th</sup> February 1990.
13. Company Law no.31/1990, republished [2] in the Official Gazette of Romania, Part I, no.1066 of 17<sup>th</sup> November 2004, amended and completed.
14. Law no.1/2005 on the organization and functioning of the cooperative, published in the Official Gazette of Romania, Part I, no. 172 of 28<sup>th</sup> February 2005.
15. The Supreme Court of Justice, comm. div., decision no.511 of 3<sup>rd</sup> November 1994, in *Law Review* no. 4/1995, p. 73.
16. Constitutional Court, decision no.101/2000 of 6 June 2000, published in the Official Gazette of Romania, Part I, no.392 of 22<sup>nd</sup> August 2000.
17. European Community Court of Justice Decision no.67/1999 of 21<sup>st</sup> September 1999 in case Albany International BV versus Stichting Bedrijfspensioenfonds Textielindustrie, source: Indaco Law 4. Professional, Jurisprudence.