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Considerations over the Institution of the Legal Entity in the Romanian Law

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Abstract
Development by expansion of the territorial area of activity deployment allows the legal entities to be commercial companies, associations or non-profit foundations, syndicates etc. setting up of branches, of some structures with legal personality respectively, different from the legal entities that set them up.
Birth and life of these structures, their activities characterized by dynamism and flexibility have been controlled through legal norms took over truncated from foreign legislations and tailored to a new legal reality, created post-communism.
The purpose of this study is an analyze of the legal person branch institution within the lacunar and terse legislative template applied to it.

Keywords: *associations, foundations, syndicates, non-profit, branches*

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According to the definition in the Explicative Dictionary of the Romanian, Language, subsidiary is an institution, company, association, organization run and controlled by a central unit (Explicative Dictionary of the Romanian). This definition has not been taken in this meaning by the Romanian legislation in the field of legal entities, in which we can meet the situation of some subsidiaries that are not controlled by their mother-organization or subsidiaries that do not have legal status.

Commercial Company's Subsidiary

For commercial companies, the legal framework is given by Law no.31/1990, Company law (Company law, Monitorul Oficial no. 1066/17.11.2004). Thus Article 42 of Law no.31/1990 states that "Subsidiaries are companies with legal status and are established in one of the forms of company listed in art. 2, namely general partnership company, limited partnership company, joint-stock company, joint-stock limited partnership company or company with limited liability under the conditions provisioned for that form. They will have the statutory of the form of society in which they were established". Other details of the relationship between the mother-company and the subsidiary are not in Law no.31/1990, Romanian law being limited to this definition. Compared to Romanian law, the definition provided in the legislation of other countries stipulate clearly the conditions in which a company is considered a subsidiary. Thus, in the Companies Act in the UK (Companies Act, art. 1159), since 2006, Article 1159 has provided that a company is considered a subsidiary of another company in case the latter holds the majority of voting rights or is a member of the shareholders having the right to appoint or remove a majority of the Board, or a member of the company that controls, under an agreement with other members of the majority, the voting rights in the subsidiary.

The same approach is also found in French law (Law no.66-537/1966 art. 354) in which a company is considered a subsidiary of another company where more than half of the joint-stock is owned by another company. In the European law, a subsidiary is defined in Directive 2011/96/ EU regarding common tax regime for mother-companies and their subsidiaries in Member States (Directive 2011/96/ EU). Thus, in Directive "subsidiary" shall mean that company whose capital includes the holding of at least 10% of another company located in another Member State, directive taken over by the Romanian Fiscal Code by defining the subsidiary of a Member State in article 24 paragraph 5 letter b.

Romanian law did not take over these definitions of a Romanian company subsidiary, the notion of subsidiary being given up to the companies made up by mother-company which gives the name of the subsidiary. Not even the new Civil Code clarifies the regulation of the relations between the subsidiary and its mother-company, the only reference to the existence of this legal entity being in Book VII on the provisions of international private law, where Article 2580, paragraph 3 says that "The organic statute of the subsidiary is subject to the law of the state in whose territory it has established its own premises, regardless of the law applicable to the legal entity that established it". Neither in the Order no. 2594/C/2008 approving the Detailed Rules on the keeping of commerce registers, the record and the release of the information register can we find more information regarding the establishment of the relationships between mother-company and its subsidiary. The only specifications refer to the fact that the subsidiary company can be added, but without being compulsory, the name of subsidiary, according to the registered legal entity's options, the remaining conditions for the registration of the

subsidiaries regulated by art. 93-97 but not providing additional conditions on the establishment of a subsidiary.

Legal literature took over, in defining the company's subsidiary, attributes provided by either French law, focusing on the state of dependency between mother-company and its subsidiary, although, as noted above we do not meet the requirement of economic dependence of the subsidiary in Romanian law. Logical legal arguments, resulting from the practical modality by which companies initiate the establishment of subsidiary companies made legal literature consider this relationship of addiction of the subsidiary to mother-company mandatory. This argument stems from the fact that it is inconceivable that a company sets up a subsidiary for the development of territorial or material area of operation of the activity without the control of the company that has founded it. Thus, the definition frequently used at present considers the subsidiary of the trading company as "a company organized as a self-reliant company, with legal status, economically dependent on the founding company that owns most of the capital" (Belu Madgo, 1998: 33). Economic dependence of the subsidiary to mother-company as a feature of the subsidiary was taken over by most legal literature, the logical and legal argument regarding the purpose of the establishment of the subsidiary leading to the adoption of this approach, the subsidiary considering “that it is constituted, modified or taken over mother-company to achieve the group interests”, the way to achieve this goal being achieved by the economically dependence to the mother-company by acquiring control on the subsidiary company (David, Piperea and Stanciu, 2014). In this regard, Ioan Mizga’s example is revelant. He consider that “the subsiadiry is constituted by the parent –company in order to develop the business of the latter. The branch relationship with the Parent company is one of special dependence (Mizga, 2011). Another example is that of Ioan Bacanu who sees the subsidiary as being “a company on it’s own legal entity , but economically dependent of the Parent company because the latter owns tha capital or at least a majority of it that gives control” (Bacanu, 1998: 107).

We consider that these two definitions are not consistent with the stipulations of the Commercial Companies Law, art. 42 of Law no.31/1990 strictly provides that subsidiaries are "commercial companies with legal status and establish themselves in one of the forms of company listed in art. 2 and under the conditions set for that form. They will have the legal status of the form of society in which they were established".

Or, in case the legislature did not foresee additional conditions for the establishment of a subsidiary, as they were provided in other legislation (i.e. French law, British law, etc.) we do not need to keep in mind other conditions for the establishment and development of an economic activity. The subsidiary can be set up to be the only one by the mother-company, in which case we speak of a sole shareholder company or with other partners or shareholders. In the event that mother-company is a limited liability company with sole shareholder, we consider that the subsidiary cannot be established under the regime of a limited liability company with sole shareholder. In this regard are the provisions of article 14 paragraph 2 of Law no.31/1990 prohibiting the establishment of a limited liability company with a sole shareholder by another limited liability company consisting of one person, the law making no distinction if it is person or entity.

The subsidiary has a full legal autonomy from mother-company provided by law. Mother-company control is strictly economic in nature and arises from the part of capital which it owns. “Mother-company will direct the subsidiary activity only through voting at the general meeting of the shareholders, not being able to directly impose their will by

binding decisions for the subsidiary" (Scheaua, 2002: 67). As long as this control is maintained through most capital control we have a subsidiary as defined by legal practice.

The question is whether we have the sbsidiary in the case in which the other associates or shareholders with different stakes acquire in time from the mother-company social parts or actions which to be determined to have majority control of decisions in the company in general meeting. In this case, we have or do not have a subsidiary in the situation in which the only legal conditions for the establishment of a subsidiary are those established by article 42 of the Commercial Company Law. The answer can only be yes, the loss of the quality of associate or shareholder in the subsidiary by its mother-company does not result in dissolution of the company, the cases of dissolution being limited provided under article 227 of the Commercial Company Law, this situation not being provided.

The only situation in which the loss of the associate or shareholder quality in the subsidiary by the mother-company would result in the dissolution of the company is that in this situation should be expressly provided for in the articles of the establishment act of the subsidiary, thus fulfilling the provisions of articles 227 letter g of Law no. 31/1990.

If there is no such provision in the establishment act, the major associations, even if they are in a company called subsidiary can continue their work independently of the mother-company.

Thus, we believe that a legal definition which respects the legal provisions is that a subsidiary represents a company organized as a stand-alone commercial company with legal status under private law, acquired under Law no. 31/1990 and Law no. 26 / 1990 (Capățână, 1994:86). Since the subsidiary is an independent legal entity with distinct patrimony from the founding company, it will not be bound by its obligations nor will the mother-company be held by the subsidiary obligations. Governing bodies of the mother-company have no quality to hire the subsidiary nor will the governing bodies of the subsidiary represent the founding company (Georgescu, 1946:66).

Another problem with the subsidiary is the form of organization - the subsidiary must take the same form as the mother-company. The answer is negative, the subsidiary can be in any form of organization referred to in article 2 of Law no.31/1990, in other words, if mother-company is organized as a limited liability company, the subsidiary may be a corporation, or any other form as provided by art. 2 of Law no.31/1990.

The subsidiary of the nonprofit association

The situation of non-profit associations subsidiaries estblised under Ordinance no. 26/2000 is less regulated. Ordinance no. 26/2000, article 13 on associations and foundations referrs to the fact that the association may establish subsidiaries, as territorial structures, with a minimum number of three members, own governing bodies and a patrimony distinct from that of the association. Paragraph 2 of Article 13 shows that subsidiaries are entities with legal status, which can end in their own name, legal acts under the conditions established by the association in the establishment act of the subsidiary. They can sign legal acts of disposal, in the name of the organisation, only based on the prior decision of the association board. As a way of existence, it is made at the decision of the general assembly of the association, acquiring its legal status from the subsidiary registration in the Register of Associations and Foundations. To register the subsidiary in the Register of Associations and Foundations the representative of the association will submit the application form, together with the decision to set up the subsidiary in authentic form or certified by a lawyer, the status, the establishment act in

original or certified by a lawyer, the attorney documents for the headquarters, and the initial patrimony to the court in whose territorial constituency the subsidiary is to have its headquarters.

The only restriction we meet on the establishment of the subsidiary is related to the name, art. 7 para. 34 Order no. 26/2000 stipulating that it is prohibited, under penalty of absolute nullity of the establishment act and of the statut as subsidiary, to have a name other than that of the association or foundation that constitutes it. The legal relations between the subsidiary and its mother-association, as in the case of commercial companies, may be regulated only by the statute of the association, the law providing that affiliates can undertake legal acts in their own name as provided by the association through the conditions in the subsidiary's establishment act. But to the companies, where the mother-company control over the governing bodies is accomplished by holding the majority of the share capital, in the subsidiary we can not have such control. Since the subsidiary consists of at least three members, not being about the status of a shareholder in the non-profit associations, the subsidiary's control by the governing bodies of the mother-association is almost nonexistent.

The purpose of the subsidiary to expand in territory its mother-association's activities by setting an organizational structure with legal status is put into difficulty by the impossibility of controlling the decision at the general meeting of the subsidiary by the mother-association. Although law does not require it is normal that all founding members come into the same category of members with equal rights and obligations. This status of the founding members does not exclude other categories of members - adherents, sympathizers, supporters or members of honor with or without full or limited voting at the general meeting. The equality of the founding members, of asocitatiei and of the subsidiary, lies in the provisions of article 4 of the ordinance, article showing that "The association is a legal entity of three or more people, according to an agreement, pooling and with no right of returning the material contribution, their knowledge and labor contribution to realise some general interest tasks, of some communities or, where appropriate, in their private non-patrimonial interest". In practice, one may not establish subsidiaries in which to provide the voting right of the mother-association as a founding member of the subsidiary, as having qualified right in comparison with the rest of the members (minimum of two). The existence of some relations of control by the mother-association in the subsidiary's status can be changed by the other founding members at any time after the establishment, without the mother-association's possibility to modify the decisions adopted by the General Assembly of the subsidiary.

Basically, in the field of non-profit associations one cannot insert clauses in the subsidiary's establishment act that cannot be later changed by the members of the subsidiary with or without the mother-association's approval, except the name and the possibility of setting up of other subsidiaries by the subsidiary itself.

The only connections of a subsidiary to its mother-association is the decision of establishment and the name, change that was introduced by Law no. 22/2014 and which dooes not clarify the relationship between the subsidiary and its mother-association. According to this article (article 7 paragraph 3 index 4 of Ordinance no.26/2000 modified) it is forbidden, on the penalty of absolute nullity of the establishment act and of the status, that a subsidiary or branch bear another name than that of associations or foundations which constitute it. This ban lacks legal basis, violating the constitutional right to free association provided by article 40 paragraph 1 of the Constitution, which guarantees freedom of association of Romanian citizens.

Article 7 paragraph 3 index 4 of the Ordinance no.26/2000 was introduced by Law no. 22/2014. According to article II of this law, it was regulated that the subsidiaries were forced modify the name within two years, if at the time of the adoption they had a different name from the mother-association; in case of nonfulfillment of the obligation they will be dissolved by law, and finding dissolution will be realized at the decision of the court in whose jurisdiction the subsidiary's office is located.

This absolute nullity does not fit within the scope of protection of the general interests provided by Civil Code in article 1247. At the same time it violates the right to freedom of association in the Constitution. Given the fact that mother-association may not seek the dissolution of a subsidiary, the argument stated above, namely that lack of majority in the General Assembly, why doeslaw allows the legal dissolution of the subsidiary for a different name from the mother-association. Such sanction is not to be met in companies where the control of the mother-company, at least in practice, is established.

Let's suppose that an association sets up a subsidiary in 2012 under a different name than that of the mother-association and it is registered in this Registry of Associations. In 2014, the mother-association dissolves due to the inability to convene the general meetings or board, if this situation lasts longer than one year from the date when that must have been constituted. What general interest should be protected fo the subsidiary to have the name of the mother-association if there was no mother-association? Or what if the governing bodies of the association do not agree with the return of the subsidiary's name to the association's one and oppose to the name change? Ordinance no.26/2000 in art.55 does not provide grounds for dissolving a subsidiary in case the mother-association dissolves. Thus, by this ban, although freedom of association is stipulated by the Constitution, although the subsidiary has legal status and its own management, although, as we have shown, the regulating of the relations between the mother-association or mother-company and the subsidiary are to be freely regulated by the shareholders or associates through the statute of the subsidiary, the legislature considers that the biggest problem in terms of the subsidiary of the association or foundation is the existence of a different name of the subsidiary from the mother-association one, and sanctions this difference with the nullity of the legal status and of the establishment act of the subsidiary bearing a name other than that of the association or foundation that constitutes it.

It is not about using a prohibited name by using terms that would generate confusions with state institutions (police station, emergency, consumer protection, etc.) but a legal name, which was permitted by law and was reserved by Ministry of Justice, which does not affect the social relationships of the citizens. What could the purpose of such a drastic sanction of dissolution of law be, and why does the legislature consider the need for protection of such interest as being of public policy and not private, we cannot answer, but we consider that a future amendment of the legislation in the field of associations and foundations should consider deleting this provision, which sooner or later, in the situation in which they will not be removed in a future legislative change, will be appealed to the Constitutional Court for violating the right to free association.

The subsidiary of a nonprofit foundation

The situation is not much different from the association in the case of the foundation organized under Ordinance no.26/2000. The foundation's subsidiary is an entity with legal status that can conclude in its own name, legal acts under the conditions

established by association thorough the establishment act of the subsidiary. But if in the case of the association's subsidiary a prerequisite is that at least three founders, in the case of the foundation the conditions stipulated by article 18 of Ordinance no.26/2000 for the establishment of the foundation's subsidiary refers to the allocation of the subsidiary's patrimony, based on the decision of the board and on the appointment of a board of directors composed of at least three members. Within the foundation, the governing and management body is the board of directors, which is also the one who decides the establishment of subsidiaries. Changing the component of the board according to how their designation is established by the foundation's status or if it cannot be changed according to the conditions established by status, the component modification can be made by court.

Changing the status of the foundation on the appointment of the board is the board responsibility under article 29 paragraph 2 letter of Ordinance no.26/2000, amending founders with changing powers only on the purpose of the foundation given that the purpose of the foundation was fulfilled or cannot be fulfilled. So, for the foundation's subsidiary, it can carry on further work in complete independence by unilateral modification of the subsidiary's status without being linked to the mother-foundation and without it to have the ability to control the subsidiary established to extend the territorial area of its activity, widowing the mother foundation of the patrimony made available for the establishment of its subsidiary. However, in practice, the method of appointment and change of the component of the board is the exclusive attribute of the founder or founders, with the possibility of a real control of the mother-foundation on the subsidiary. Being the same founder or founders of the subsidiary and of the foundation – the mother or even the mother-foundation of the subsidiary, we can speak of a relationship of more effective and safer decisional subordination between the subsidiary and the foundation than in the relationship between the mother-association with its subsidiary or its subsidiaries. As in the case of the association, the same name of the subsidiary and of the mother-foundation is compulsory, under the penalty of absolute nullity of the constitutive act and the status. In this case too, we support the argument from the case of the subsidiary that this sanction is unjustified and disproportionate to the protected interest, which is clearly a private interest which relates to the relationship between the mother-foundation and the subsidiary, and not to a general interest. Also this penalty is inconsistent, as shown above, with the right to freedom of association, being clearly a violation of constitutional provisions. Under above arguments we support the need to repeal this prohibition by the legislature.

The subsidiary of trade unions

The legal framework of the establishment and operation of trade unions is given by Law no. 62/2011 - Social Dialogue Law. This law does not provide expressly the possibility of setting up subsidiaries as forms of territorial organization with legal status. Not even the general frame – namely the Civil Code does not have such a rule on how to establish corporate subsidiaries - we could assume that unions are not allowed to set up subsidiaries as legal status created for developing the territorial area of activity. But neither the law no. 62/2011 nor the Civil Code prohibits the establishment of subsidiaries of trade unions. Freedom of association in trade unions is provided by art. 40 para.1 of the Romanian Constitution. Article 9 of the Romanian Constitution shows that trade unions, employers and professional associations are established and operate according to their statutes, under the law. The establishment, organization, operation, reorganization

and closure of the activity of a trade union are regulated by the statute adopted by its members, with the legal provisions according to art. 5 of Law no.62/2011. We must also mention the International Labor Convention no. 87/1948 on freedom of association and protection of the union right which provides for the right of trade unions to organize themselves.

Judicial practice advocates in this respect that the restriction of the right of association cannot be realized except by express legal provisions. As long as the law does not expressly prohibit the right of trade unions to establish subsidiaries as territorial structures with legal status, which means that trade unions may establish, in compliance with art. 6 para. 1 of Law no.62/2011, under the right of freedom of association subsidiary. Consequently, the courts of Romania granted the applications for setting up trade unions subsidiaries as territorial structures with legal status, which is in fact unions which, through the will expressed in the statute, are subordinated to the mother-union. But the ban to establish organizational structures with legal status is not a ban on the right to association and any limitation of this right. Law no.62/2011 enables individuals to establish or join a union, unions to affiliate with a union federation and confederations with federations. Federations or confederations can make from trade unions some territorial unions.

Thus, the existence of a subsidiary is not justified, i.e. a regional structure with legal status of a union when the organization and membership is expressly required by law. Moreover, in the same law, the social dialogue one, on employers' organizations the legislature has expressly provided for their possibility to sett up these territorial organizational structures with or without legal status. If the legislature had allowed the establishment of organizational territorial structures with legal status for unions, he would have provided expressly this way. We believe that based on the right to freedom of association and organization in the Romanian Constitution, trade unions and trade union organizations may establish territorial structures without legal status, the organization in structures with legal status in trade unions is expressly and exhaustively provided by Law no.62 / 2011.

The subsidiary of employers' organizations

The establishment of employers' organizations is governed by Law no.62/2011 on social dialogue. Art. 55 para.2 of this law stipulates that employers' organizations may establish their own territorial organizational structures, with or without legal status. This own territorial organizational structure with legal status is in fact known as subsidiary but can also bear a different name. Unlike associations and foundations established under Ordinance no.26/2000, in the case of subsidiaries of employers' organizations we do not have the requirement of the existence of the same name with the mother-employers' organization. The subsidiary of the employers' organization is established under art. 58 of Law no.62/2011, that requires employers' organization the decision of establishing the subsidiary, the process of setting up the subsidiary, its status, the senior executive member list, and the establishment proof. Since the establishment, organization, operation and dissolution way of an employers' organization or its subsidiary is regulated by the statutes adopted by its members lawfully, this status regulates the relations between the subsidiary and the mother-employers' organization without having, in this situation, legal limitations related to the minimum number of members of the management body to allow the subsidiary to adopt autonomous lines from its mother-organization.

The subsidiaries of political parties

Political parties according to art. 1 of the Law no.14/2003 as amended (Law on Political Parties) are political associations of voting Romanian citizens, which freely participate at the formation and exercise of their political will, fulfilling a public mission guaranteed by the Constitution. They are legal entities of public law. Art. 12 of Law no.14/2003 sets forth that political parties can have subregional organizations that have the minimum number of members required by statute, with the possibility of these bodies to represent the party against third parties at the local level and the possibility of opening accounts. We do not have the name subsidiary in Law no. 14/2003, this term being adopted by political parties in their statutes in terms of organization led by a central structure. Therefore, we cannot talk about the political party subsidiary in the direction of the organization with legal status, called subsidiary being given by the party statute, the correct term being local organization - county, municipal, town etc.

The subsidiaries of religious organizations

The legal framework on freedom of religion and the religious units of worship is given by Law no. 489 / 2006, republished in the Official Gazette no. 201/2014. Religious communities shall be free to choose the organizational structure that of cult, association or religious group. Cults and religious associations are structures with legal status, while religious groups are structures without legal status. Religious associations acquire legal status by registration in the Register of Religious Associations at the graft court in whose territorial jurisdiction they are established. According to art. 43 of Law no. 489/2006 religious associations can establish subsidiaries with legal status, the conditions being those for the establishment of a religious association, namely the registration act, the articles of association, the profession of faith and status, the documents for the headquarters and initial patrimony, the advisory opinion of the Secretary of State for Cults, and the proof of availability of name issued by the Ministry of Justice. There are no restrictions on the use of other names of the subsidiary towards mother-association, the only restriction being that the name not to be identical or similar to that of a church or other recognized religious association.

The organization and management is left up to the members.

In case in which the religious association has an activity of at least 12 years in Romania and the adhesions of a number of Romanian citizens residing in Romania at least equal to 0.1% of the population, it may require the recognition of the quality of worship. In order to recognize the status of religious association an application must be submitted to the State Secretary for Cults where besides the above mentioned evidence it must submit a confession of faith and the status of organization and functioning, including: the name of religion, its structure as a central and local organization, the driving, management and control way, the representing organs, the way of establishing and dismantling of cult units, the status of its employees, and the provisions of that specific cult. Within 60 days of the filing date, the State Secretary for Cults submits the Government the documentation for recognizing the cult, accompanied by its advisory opinion, drawn on the submitted documentation. Within 60 days from the receipt of the notice, the Government shall decide on the application, by decision of recognition or by motivated rejection. On the subsidiaries of religious cult in the Law no.489/2006 we find, for the first time in Romanian legislation, the subsidiary title with and without legal status. Thus, art.14 para.2 of the law, we have the provision according to which religious

establishments, including their subsidiaries without legal status, are established and organized by cults according to their statutes, rules and canonical codes.

Conclusions

The diversity of regulations of intern law generates, as we have shown, confusion about the definition of subsidiary as an organizational structure with legal status, economic dependent of the founding company. Thus the different regulations of the legal entity's subsidiary depart from the economic enterprise's subsidiary with legal status but which can be completely independent to the subsidiary of a cult unit without legal status.

Romanian law legislature aimed to leave a free way of action for the structures with legal status that can lead to strict formalism which is about establishment without real later economic or organizational control. In other words, in most cases the subsidiary, as oranizational structure that aims territorial expansion of the activity, represents only an extension of the territorial area by only using the name of the founding organization. The interpretation of the status of economic dependence is done by fiscal institutions through reference to the status of the affiliated person and not to the name of the subsidiary. Thus, in terms of tax authorities what is important is not the name of the subsidiary but the transfer price at which the tangible or intangible goods are assigned, or if service is provided between the persons defined as related parties.

According to art.7 index 5 section 26 letter c and d of the Fiscal Code (Law 277/2015 as amended) it is considered that a legal entity is affiliated with another person if at least it holds, directly or indirectly, including the holdings of affiliated persons, at least 25 % of the value / number of shares or voting rights to another legal entity or if effectively controls that legal entity or another legal entity affiliated with another legal entity if a person owns it, directly or indirectly, including the holdings of the affiliated persons, at least 25% of the value / number of shares or voting rights to another legal entity or if it effectively controls that legal entity.

The definition of affiliated legal entity is similar to the definitions of the subsidiaries in the legal systems of other european countries that focus not on the way of establishment, but on the character of economic dependence between the subsidiary and the mother-organization. Regarding the name subsidiary in tax law, the Romanian legislator has transposed the provisions of Directive 2011/96/EU, Common system of taxation for mother-companies and their subsidiaries from Member States referring strictly to the situation of the subsidiaries in EU member states which are located in another state than the state where the headquarters of the mother-organisations are. We considered it necessary to have a uniform definition of the subsidiary across the Romanian legislation as a stand-alone company with legal entity, economically dependent on the founding organization, the latter having the right to appoint or remove the majority of the administrative organs of the subsidiary. We also appreciate that in respects of non-profit foundations and associations established under Ordinance no.26/2000 it is necessary to eliminate the mandatory existence of the same name between subsidiary and mother-association or foundation, under the penalty of absolute nullity of the establishment act and statute, as being a rules that violates the right to free association provided by the Romanian Constitution.

References:

Belu Madgo M-L., (1998). Structuri societare. *Revista Drept Comercial*, (7-8), 33

Bacanu, I. (1998). *Republished commercial companies law no. 31/1990*, Bucharest: Lumina Lex Publishing.

Căpățână O. (1994). *Commercial companies*, Bucharest: Lumina Publishing Lex.

Companies Act, art. 1159. Retrived from: http://www.legislation.gov.uk/ukpga/2006/46/section/1159.

David S., Piperea Ghe., Carpenaru S., (2014). *Companies Law. Comment on articles*, Bucharest: C. H. Beck.

Directive 2011/96/ EU. Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:345:0008:00 16:en:PDF.

Explicative Dictionary of the Romanian. Retrieved from: https://dexonline.ro/definitie/filiala.

Georgescu, I. L.,(1946). Romanian Commercial Law, Bucharest: Socec&co SAR Publishing.

Government ordinance no. 26/2000 on associations and foundations, Monitorul Oficial no. 188/ 17.03.2014 art. 4, 7, 13, 18, 29, 55.

Law no. 31/1990 - Company law, Monitorul Oficial no. 1066/17.11.2004 art. 2, 14, 42, 227.

Law no. 62/2011 -Social Dialogue Law, Monitorul Oficial no. 625/31.8.2012, art. 5, 6, 55, 58.

Law no.14/2003 - Law on Political Parties, Monitorul Oficial no. 408/10.6.2015, art. 12.

Law no. 489/2006 – Law on freedom of religion and the religious units of worship, Monitorul Oficial no 201/2014, art 14, 43.

Law no.66-537/1966 art. 354. Retrieved from: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=18407E316A532C1F32A5FABC7B66EF12.tpdila17v_1?cidTexte=JORFTEXT000000692245&dateTexte=20001231.

Law no.66-537/1966 art. 354. Retrieved from https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=0DFD4C4EAC995217D629EEC328EDAFA0.tpdjo11v_3?idArticle=LEGIARTI000006280933&cidTexte=LEGITEXT000006068288&dateTexte=20001231

Mizga, I. (2011). Commercial Law, Bucharest. Retrieved from http://www.id-hyperion.ro/cursuri/cursuri%20drept/drept%20comercial_IV_SEM1.pdf

Order no. 2594/C/2008, Monitorul Oficial no. 704/16.10.2008

Scheaua, M. (2002). Commercial companies law no.31/1990 commented and annoted, Bucuresti: Rosetti Publishing.

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