

## Legal relation between legal subjects regulated according to the Civil Code of the Republic of Albania 1994

**Mikena Karati**

*Tirana Business University College, Albania*

**Prof. Dr. Endri Papajorgji**

*Epoka University, Albania*

### Abstract

Civil law regulates our capacity to have rights and obligations in civil circulation. It defines us legally what does it mean to be subject to the law and what does it mean to exercise your civil rights? So, what does it mean when we study human as a subject of law in civil law we see it as a legal personality, as a type of subject that carries rights and obligations in civil circulation and is able to change them and I contract through legal action and to a third party. While in other fields outside of civil law such as philosophy, psychology, sociology etc. we look at man with a completely different lens.

**Keywords:** Civil law, civil traffic, legal personality, the right, obligations.

### Introduction

Civil law uses several such concepts of legal capacity, when we talk about legal capacity<sup>1</sup> we understand that it is the ability of a subject of law to be a subject of law, to have rights and obligations in civil circulation, to be the holder of rights or obligations. On the other hand, civil law regulates another concept which is the legal capacity to act<sup>2</sup> which means that you can really have the legal capacity to be the owner of the right but if you don't complete it some legal conditions you are not able to exercise those rights. For example, a 10-year-old child can't realize the contract of sale of the apartment, despite of the fact that he owns it since they passed it on by inheritance. So, he is able to have rights in civil circulation, but since he does not have the ability to act, the law does not allow him to alienate rights or create legal actions in civil circulation for the alienation of rights with others.<sup>3</sup> Which means that civil law, not only regulates our ability to have rights and obligations in civil circulation, but it defines us juridically that it means to be subject to the law and that it means to exercise the civil rights that you have. So, the totality of rights and obligations that are created between the subjects of law with the aim of regulating them according to the law either the expectations of one party or the expectations of the other party, constitute what is called a legal relationship.<sup>4</sup> What I want to emphasize is that, when we talk about the legal relationship between subjects for example (the rental contract that they have signed with each other) it is a relationship that differs from a social

<sup>1</sup> Article 1 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>2</sup> Article 6 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>3</sup> Article 8 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>4</sup> Civil Code of the Republic of Albania 1994 (updated 2016).

relationship, friendship that two subjects have with each other. So, starting from the definition of what we mean by legal relationship, we come to the conclusion that according to the law there is no interest if two subjects have a friendly relationship but for the law, it is of interest how they regulate the property rights and obligations, whether of a non-property nature among them. For example, for the law, it is important how two subjects regulate the law that one party is the lessee to take the thing against the right of the other party, the lessor to rent it. So, despite of the fact that within this legal relationship there is also a relationship of friendship between them, this is indifferent to the law.

### **1. Conditions for a legal-civil relationship to exist.**

Undoubtedly, the first condition for a legal relationship to exist is precisely the existence of the subjects of law. So, legal-civil relations entitle civil rights and obligations exclusively to the subjects of law. These are the subjects that the law recognizes as legal personality, knows the ability to enjoy the rights, to have the rights, to be the holder of rights and obligations.

The way civil law has regulated the relationship between subjects is different from the current civil code. In the civil code of Zog of 1929,<sup>5</sup> part of this civil code was also the family code, which regulated marriage, adoption, parental responsibility, dissolution of marriage, divorce, the food obligation, i.e. all these institutes that are regulated by family law today<sup>6</sup>.

With the civil code of 1994 that we have today, only some aspects of the part of family law are regulated, although the family code was approved later in 2003. While comparing with the Italian civil code,<sup>7</sup> we noticed that family law is incorporated there, that is, in the same way that followed the civil code of Zog.

### **2. Elements of the Legal-Civil Relationship and the differences between them.**

In the Republic of Albania, the first element of the legal relationship are the subjects who are the bearers of civil rights and obligations.

Article 1, the first chapter of the Civil Code in the Republic of Albania, starts with natural persons<sup>8</sup> which are people, to be distinguished from juridical persons<sup>9</sup> which are organizations, particularly formations which the law recognizes to create another subject, therefore, this is the reason why we change the last name, we do not say with natural persons but with juridical persons, it means they are people that this kind of quality is known because of the law, not because they are naturally like that. So, this article provides that each of us enjoys the opportunity to say differently and exactly our possibility to have civil rights and obligations is the concept of legal capacity. At the moment when these rights and obligations that we have and we start exercising them, this is related to the concept of the ability to act.

<sup>5</sup> Civil Code of Zogu 1929 / Commentary on the Civil Code Baltasar Benussi (Title II and Book IV of the Civil Code).

<sup>6</sup> Family Code in Albania (updated 2015).

<sup>7</sup> Italian Civil Code 1942 (updated 2020).

<sup>8</sup> Chapter 1, Article 1 Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>9</sup> Chapter 2, Article 24 Civil Code of the Republic of Albania 1994 (updated 2016).

Article 2 analyzes that indeed we have legal capacity, but who has legal capacity, when does legal capacity arise and how does legal capacity expire? Then we see that the civil law provide for the natural person a starting moment of the legal personality and an ending moment. So, as a rule, legal capacity<sup>10</sup> it starts with the birth of the person and usually ends with the death of the natural person. Which means that only people who are alive have rights.

In the types of subjects of law, in addition to physical persons, there is another category of subjects and personalities of law, which are legal persons.

Legal persons, unlike physical persons, are not natural creatures because only humans are like that, but they are legal creatures necessary for social organization or economic organization that people do in civil circulation is given a kind of legal personality. In order for legal relations to develop, it is a kind of necessity in the civil circulation that such formations of legal subjects exist. For legal persons, "life" in the literary sense is regulated differently by Article 2 of the Civil Code, which regulates the life of a natural person by determining the moment of birth and death. In the case of commercial society, in order to contract as a limited liability company or commercial society in general, it will be necessary to go through several administrative stages (Foundation Act, statute, licensing, registration in the national business center)<sup>11</sup> in order to mark the beginning of the "life" of the legal person. Also, for the organization of some other forms of juridical persons, some other modalities will be needed, for example, if an association needs to be created, there must be at least 5 people according to the law, to create a statute, to create the act of establishment and after notarizing the documents, it is necessary to register in the "Judicial District Court" of Tirana.<sup>12</sup> So, for each of the juridical persons there are different ways of how they are created.

In this way, our Civil Code to properly understand the legal relationship between subjects made a kind of main division of the juridical person into public juridical persons and private juridical persons<sup>13</sup> through this division, we see how diversified their field of activity is. Public juridical persons<sup>14</sup> are classified in institutions created directly by the constitution, for example (Assembly, Court, Constitutional Court, council of ministers, ministries, Albanian Supreme Audit Institution, People's Advocate) and we need this division in order to see the legal personality that these institutions have, otherwise we understand the totality of the competencies that it has.

But on the other hand, there are also institutions that are created by law, not only by constitution for example (General Directorate of Taxes, General Directorate of Customs). Therefore, since they are created by law, the source of determining the totality of competence will be the law and in order to understand if an act is within their competence, we must check the act of their establishment, the law or the constitution. On the other hand, normative by-laws can create public legal persons, for example, the decision of the Council of Ministers can create a specific institution for a specific issue. So, case by case, different normative acts that are in the hierarchy

---

<sup>10</sup> Article 29 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>11</sup> Law No. 9901, dated 14.4.2008 Company Law / Article 39,40 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>12</sup> Article 54, 56 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>13</sup> Article 24 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>14</sup> Article 25 of the Civil Code of the Republic of Albania 1994 (updated 2016).

of the Albanian legal order can give life to institutions or state institutions or even to public entities.

Private legal persons<sup>15</sup> are divided into profitable private legal in other words, traders who carry out commercial actions with the aim of profit, and on the other hand, private legal persons that do not perform commercial activities for the purpose of profit. They can do market actions because they can make supplies or they can contract rights but the purpose of these actions is not profit, unlike a limited liability company, say, or a joint stock company.

Commercial or profitable juridical persons according to the law on commercial companies approved in 2008 are divided into capital companies, personal companies, limited companies, joint stock companies, collective companies.<sup>16</sup> In Albania, there are not many private companies, so it is understood that the most attractive is the company with limited liability or joint stock and on the other hand, there are the subjects of non-profit private legal persons such as associations, centers and foundations.

Just as natural persons have a moment when their legal personality is extinguished, legal persons also have an eventual moment when they can eventually be extinguished.

<sup>17</sup> For example, in Article 199 of the Code of Civil Procedure<sup>18</sup> is predicted that when the natural person dies or when the legal persons end their rights and obligations are transferred to the subjects that have received these rights or obligations. This provision shows that as the natural person ends, so does the juridical person, and the law calls this type of legal moment the termination of the juridical person. The law, in this case the civil procedure, uses the concept of termination, but this termination has a different concept each of the laws that I said above, it is certain that the assembly, the council of ministers or the institutions provided for in the constitution will not end but they can end, but they can end, for example, legal persons that are governed by the law. For example, before we had the agency for the legalization of urban areas for the cadastre law, this institution was merged and the cadastre agency was created, precisely the adoption of the law according to article 199 of the code of civil procedure helps us to understand that the end of a legal person is the beginning of a new institution. With the introduction of the current law of 2018<sup>19</sup> the institution of the cadastre comes in the name and on his account, and the same thing for the natural person where the heirs come on his interests and on his account.

Also bankruptcy<sup>20</sup> of a subject according to the bankruptcy law, is nothing more than a fact that extinguishes the legal personality of a subject in civil circulation, or the liquidation of a business, is nothing more than a juridical way to end the life of a juridical person.

The second element of the civil legal relationship that the civil code deals with is its object. The content of the civil legal relationship is the totality of the rights and obligations that the parties have in a concrete legal relationship.<sup>21</sup> We understand the continuity of rights and obligations when the rights and obligations that the parties

<sup>15</sup> Article 26 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>16</sup> Law No. 9901, dated 14.4.2008 Company Law.

<sup>17</sup> Article 34 of the Civil Code of the Republic of Albania 1994 (updated 2016).

<sup>18</sup> Article 199 of the Code of Civil Procedure of the Republic of Albania (updated 2021).

<sup>19</sup> Law No. 111/2018 For the Cadastre in Albania.

<sup>20</sup> Law No. 110/2016 on bankruptcy in Albania.

<sup>21</sup> Civil Code of the Republic of Albania 1994 (updated 2016).

have with each other are reciprocal, are individualized and this right, on the other hand, is opposed or belongs to a specific obligation.

After this analysis, I must point out that there is always a legal cause on the basis of which the legal relationship arises. The legal cause is the third important element for the existence of the civil legal relationship.<sup>22</sup> In any case, for every created legal relationship there is a type of cause that creates it and we will investigate the cause in the existence of a legal fact that can be a natural event it can be an illegal cause, it can be the law itself, natural disasters or the will of the parties. Necessarily, the legal relationship as it has its subjects, the content and totality of rights and obligations always has a legal cause who created it, what changed it and extinguished it.

### **Conclusions**

From the above analysis, it was observed that the existence of the legal relationship depends on the subjects, the object and the legal cause. The harmonization and proper implementation of these elements regulates the relationship of the subjects between them. The subjects in the legal relationship are individually definable and the analysis of each subject leads us to conclude that the rights and obligations are exclusively for these subjects.

### **References**

- Civil Code of the Republic of Albania 1994 (updated 2016).
- Law No. 9901, dated 14.4.2008 Company law.
- Italian Civil Code 1942 (updated 2020).
- Civil Code of Zogu 1929.
- Law No. 111/2018 For the Cadastre in Albania.
- Law No. 110/2016 on bankruptcy in Albania.
- Commentary on the Civil Code Baltasar Benussi (Title II and Book IV of the Civil Code).

---

<sup>22</sup> Civil Code of the Republic of Albania 1994 (updated 2016).