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ALBANIAN COURT PRACTICE ON THE INVALIDITY OF COMPANIES

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ABSTRACT: *Although the concept of the invalidity of company has been included in the law only in recent years, in practice, this change has encountered some controversy, particularly in the context of the comparison between the invalidity of legal acts and the invalidity under commercial law. Judicial practice, albeit limited to the number of issues on this aspect, has elaborated in detail the concept of invalidity by stating that, unlike civil legislation, the Law "On Business Organizations" establishes a number of specific rules that are deviated from the principles of the generality of the invalidity of legal transactions and, in particular, of contracts as mutual legal actions. Article 231 of the above-mentioned law provides that: "The invalidity of a company or an act that modifies the statute may only result from a particular provision of this law or those legally regulating the invalidity of contracts", while in paragraph thirdly, this provision cites: "The invalidity of acts or actions other than those provided for in the paragraph above may only result from a violation of a lawful provision or lawfulness in force for contracts."*

KEYWORDS: Albanian, Court Practice, Invalidity, Companies

Albanian legal framework, doctrine and jurisprudence.

Specific predictions of invalidity in commercial companies are not casual. The commercial company at its core represents a contract, which, due to its expansiveness and duration, is accompanied by specific features. The lawmaker here has taken into account the fact that a company established and registered in the register of companies has started to engage in activities, enter into legal relationships, or have entered into contracts with third parties by acquiring rights and assuming obligations. If the absolute invalidity, in terms of the consequences it would bring, would be treated as in civil law, this would bring about the nullity of all the activity of company, damaging, inter alia, the interests of third parties.

As can be seen from the quotation that you made to Article 231 of the law, there are two types of invalidity: about the establishment of the company and the invalidity of the acts or other acts of the company. Certainly, the invalidity of the founding of the company, which is related to cases of the appearance of the wills of the parties involved in the realization of founding acts, is the worst case of invalidity. It can only be caused in particularly severe cases related to disrespect of the basic rules of the founding of company.

In the case of the trial we are not pretended and we are not in such a case, but we mentioned it to emphasize that the legislator, even when it comes to finding the invalidity of the founding of the company, never takes into account the nullity of the actions committed by the company at the moment of this finding, as the court actually acted, turning the company into the original state. This legislation in the worst case, in the context of solving the consequences, only foresees the dissemination of the company and its introduction into the liquidation route. Otherwise, the issue of the acts issued by the bodies of the company during its activity would be treated, as would be the case in the judgment of the shareholder assembly, or the contract of sale of the capital quotas.

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Regarding them, in paragraph 3 of Article 231, the legislator has used the expression that their invalidity may result from "a provision of the law" as opposed to paragraph 1 where the term used is "only by a special provision of this law ". This different prediction shows that the lawmaker naturally limits the cases of the invalidity of these acts in excess of the paragraph 1.

By looking at all the provisions of the Law "On Business Associations" it is seen that the treatment he makes to the institute of the invalidity of the companies, or their separate acts is different from the institute of the invalidity of legal actions in general. In the traditional institute of invalidity, the existence of a cause of invalidity renders the legal action voidable. In legal actions absolutely invalid legal action is considered "null", so it can not cause legal consequences from the moment it is committed.

While in the cases of invalidity, the action remains ineffective from the moment of finding its cause by the court, by regulating the latter consequences that it has caused to this moment. Otherwise, it happens with the law "On Business Organizations". Self-rule in Article 234 treats this invalidity as reparable. This provision provides: "The court in charge of reviewing the lawsuit of invalidity is likely to set a deadline to allow the correction of the invalidity."

In the following paragraphs of this provision are provided in detail the steps to be followed to make correction, binding procedures also for the court by setting different deadlines to ensure the performance of all possible actions to avoid useless worthlessness. Thus, the law provides for the validation of a legal action which, at the moment when it is done, has been the existence of the causes for which the law has foreseen the invalidity. Of course, anticipating these opportunities by the lawmaker relates to his intention to establish a fair balance between respecting formal rules in the company's activity on the one hand and failure to return these rules to an obstacle to the normal functioning of company on the other.

It should be said that the foregoing invalids for the social societies, though due to the causes are approaching the absolute invalidity because they are related to non-respect of the legal provisions (which would traditionally be considered absolute invalidity), by the way of solving the consequences approach the relative invalidity. According to the abovementioned provision, but not only, the absolute shortcomings of the founding contract, and even more of the other acts of the company, can be corrected within the 3 year term of limitation, unlike the absolutely impermissible legal flaws that can not be corrected. This law goes even further when it foresees that these deficiencies are corrected by themselves after the three-year deadline for filing the lawsuit.

Referring to the concrete case, which is being considered in Decision no. 00-2010-197 (15) dated 19.01.2010 (Supreme Court), it has been found that the parties to the trial are in family relations among them; The defendants are the mother, the dead children and brother, and the other plaintiff's brother. According to the acts that are deposited with the Commercial Registry, all of these appear to be partners of the Trading Company "Al Dur Invest Sh.pk" - M.Sh, SH.Sh and G.Sh with a capital percentage equal to 25% each. M.Sh bought the company in 1998 from SV and AC citizens and thus with the Assembly Decision of 22.05.1998, M.Sh becomes the sole partner of the company with 100% of the capital shares and at the same time its administrator .

On December 10, 1999, the single partner decided to sell 75% of the capital to three new partners, respectively the mother and two brothers L.Sh and G.Sh. At this date, a contract for the sale of capital quotas was also drafted. Plaintiff M.Sh, with the lawsuit under trial, requested

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the invalidity of all acts, claiming that they were done without his knowledge and that the signature on his behalf set out in these acts was forged. As a derivative of this event, he has requested that the company return to the previous state and be declared a single partner.

The plaintiff wins the case at the Court of the Judicial District and at the Court of Appeal, which argued that on the basis of the administrative evidence and the expertise of the criminal expert, it results that the documents are forged and the acts have been affected by the invalidity of the legal action by turning the company thus in its previous state. The defendants A.Sh and K.Sh, the legal heirs of the de cujus L.SH, seeking revocation of the decision of the Court of Appeal and the Court of the Judicial District. The High Court has found that the company, created since 1996, has never stopped its activity and continues to function.

It also turned out that long before the lawsuit was filed, the claimant, unlike what he claims, was aware of the changes in the statute relating to the company's partners (one of them being four) and consequently other acts that preceded this change (the decision of the Assembly of Partners and the contract of sale of capital quotas). Thus the subpoena is administered a request dated 9 January 2004 signed by the plaintiff with the quality of the administrator of the company (whose signature has never been contested by him).

It is required by the court to reflect in the trade register the changes that had taken place after the death of L.SH, which owns 25% of the capital of the company, passing this share, as well as the rights and obligations arising out of it, to his heirs A.SH and K.SH. Along with this document in the court file, administered by the court, there is also a decision of the extraordinary assembly of the partners of the company on 27.01.2004, whereby it results that the three partners M.SH, G.SH and SH.S., remaining in the company after the death of L.SH, have approved the transfer of 25% of the capital of the two Respondents who inherit.

In such circumstances, in the analysis of the provisions cited above, it is concluded that despite a flaw in the acts of the company, the flaw associated with the lack of expression of the will by the plaintiff M.SH through the signature, the acts should not be considered invalid. This has been remedied by himself who has claimed through the manifestation of will in another form. Asked the court to transfer the deceased's share of the capital, the plaintiff at the same time approved the fact that L.SH was "de facto" until that time the partner of this company. As the court's error relates to the wrongful implementation of the law and the case does not need further investigation, the College assessed that together with the violation of both decisions to settle the conflict itself between the parties, by dismissing the claimant's indictment of the invalidity of acts company.

In my personal opinion, I think this is a well-reasoned decision of the Supreme Court under the Law of Time (No. 7638) and absolutely, a decision that is of great importance to some of the aspects that it addresses. One of the most important elements that lawyers, lawyers, judges, and law scholars have to consider is the difference between the invalidity of the founding and business acts of the company and the invalidity of non-commercial civil-law actions.

Law 9901 has a different regime for the invalidation of the foundation and another for the invalidation of the acts. The Invalidity of Establishment (Article 3/1) does not contain references to the Civil Code regarding the causes that may lead to the invalidity of a company; rather it defines the causes of the absolute and relative invalidity of the foundation exhaustively, with specific characteristics of the beginning of the production of ex nunc consequences and special statutory limitations.

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Finally, the invalidity regime of a company's business acts relies on the provisions of Law 9901 and / or the Civil Code, because a commercial contract may be declared invalid under the provisions of the Civil Code and / or Law 9901. Inter alia, the declaration of the invalidity of the foundation of the company does not result in the return to the previous situation, but only the demolition and liquidation of the company. The Supreme Court, in accordance with other consolidated positions of foreign doctrine and jurisprudence, has estimated by the law of time that the invalidity of the acts of the company even when it comes from absolute defect was repairable, it could be repaired by the persons concerned or by the Court ex officio, or in the cases provided for by law, it is considered self-corrected over a period of time. In my opinion, a constituent element of this decision is the distinction made from the point of view of the applicability of the norms of the Civil Code and the Law to Traders and Companies.

CONCLUSIONS

In a *stricto-sense* and literal interpretation, I would say that Article 3/1 of the Law provides in a tax-based manner cases of the invalidity of the establishment of a company, leaving no cause for the involvement of the cases provided by the Civil Code. Thus, by the contractor nature of company, more and more emphasis is placed on the legal personality of the company. The finding of the High Court in my personal opinion is right when it considers that even in cases where the courts find it appropriate to declare the invalidity of the founding of the company, the decision can not have the effect of restoring to the initial situation but in the worst case, in the context of solving the consequences, it may be decided to break down the company and introduce it into the liquidation path. In the Supreme Court's judgment, as a deduction, we can say that, although in the case of firm failure and disrespect of the form, these flaws, although in violation of the law, are reparable.

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