GENERAL REPORT ON SUBJECTS IN THE MATTER OF LEGAL GENERAL THEORY OF LAW

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Abstract:Any legal relationship has its source in acts of reason and subjects the legal relationship can only people, either individually or grouped in organized forms may enter law relationships among themselves and with the state, with state bodies, organizations economic or non-governmental organizations, the condition being that they possess legal capacity, capacity utilization, capacity, to holders of rights and obligations.
Key-words: legal relationship, subjects, legal capacity, rights, obligations.

Before beginning an analysis of the problem of subjective rights holders, it must draw the attention to the fact that, often, using notions of person in a legal sense, of law subject and personality is confused. We understand by the notion of law subject a right holder. By juridical personality we understand the ability of being active or passive holder of subjective rights and obligations recognized by the objective right of each person. A person in a legal sense designates any entity capable of being the subject of rights and obligations, or, in a broader sense, by legal functions.[1]

Any legal relationship is rooted in acts of reason. The right, cannot, therefore be, but only a rational order in society by systematizing activities that may occur in it. The right is thus the result of man's rational thinking. If we want to clarify the relation between law and civil law issues, we are obliged to refer to the relationship between man and righteous. Man-made law, the law, is not in itself a source of legal relations; under conditions determined by the legal standard of objective law, it must always intervene a social fact, producing certain legal effects, consisting in birth, modification or termination of specific civil legal relations. Law and legal subjects are, therefore, distinct concepts,

[1] Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănișor, *General theory of law*, ed.a-2-a, București, ed,C.H. Beek, 2008, p. 313.

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but closely interrelated; subjects of law cannot exist without the legal norm and legal norm appears to be the work of law subjects.[2]

Only people can be subjects of legal relations, either individually or grouped in organized forms. The State recognizes and protects people with such a quality, if needed by achieving specific credentials of the rightholders in various legal relations. The legal report's analysis in various papers, meets both the notion of ''subject of legal relation "and the" subject of law ".

Man is the subject of law; he participates in legal relations as a holder of rights and obligations under this quality recognition by rules of law. This ability of law recognized by human rights, of having legal obligations and rights, is called legal capacity. The law fixes both the moment of legal ability and its scope, the volume of rights and duties that can make the content of a legal relationship.[3]

Existence of a legal order requires at least two people. From a legal point of view, people may be individuals or individual subjects or legal entities collective subjects, the most numerous being legal persons.

Some subjects of legal relations may have rights, others may have obligations, or they might have both rights and obligations in a corollary. There are, then, legal relations where only one of the subjects is individualized, and on the other hand the holder of the obligation is undetermined and is represented by all other persons who must refrain from impeding in any way the exercise by the holder of the subjective right.For example, in a report of property, the holder of the subjective right is able to exercise unfettered prerogatives that the law grants him, while all others (erga omnes) are bound by the abstention from any action that would prevent him to enjoy his property. It can be seen that, while the owner is individualized, the other undetermined subjectis, individualizing only when the breach of its obligation prescribed time abstention.

A similar situation is found in its criminal law branch, where for example, holders of subjective rights (right to life, physical integrity, dignity, etc.) are individualized and

[2] Ernest Lupan, Dana A. Popescu, *Civil law, individual*, Bucureşti, ed. Lumina Lex, 1993, p.5-6.
[3] Nicolae Popa, *General theory of law*, universitary course, ediția 3, Bucureşti, ed.C. H. Beek, 2008, p. 218-219.

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those of obligations are unidentified, they personalizing when committing an offense, which gives rise to criminal legal relationship.[4]

Only people may be subject to legal relationship either individually, as individuals, or organized into different groups as collective subjects of law.

In order to be subject of law, the individual must have legal capacity. This designates the general and abstract ability of a person to have rights and obligations in the legal relationship. Legal capacity is governed by legal rules within each branch of law. We can therefore distinguish a legal capacity civil, criminal, administrative, etc.

Legal capacity is general, when it is not visated by a specific area and special when referring to a specific area, branch institution (ex. The legal capacity of military, of civils, etc.). Typically, organizations have a special legal capacity, because it is created for a specific purpose, being precisely their jurisdiction.

In general, legal capacity is unique. In the branch of civil law there are two aspects: legal capacity of use and legal capacity of exercice.[5]

Capacity of using is the general and abstract ability, recognized by the law of all people to have rights and obligations. The capacity of utilization is obtained, in principle, at birth, not conditional on mental integrity.

As an exception, the ability to use of a person may begin even before birth, being affected by how the condition that the fetus was born alive – due to the principle,, infans conceptus pro nato habetur quoties de commodis ejus agitur" "(conceived child should be considered designed as born, whenever it comes to its interest).

Exercise capacity is the ability of the person recognized by law to exercise its rights and to assume obligations within the framework of concrete legal relations.

Recognising the exercise capacity by the legislator, takes into account certain objective data about the opportunity to appreciate the person who knows the significance of his actions and the ability to anticipate the consequences of his actions.

Thus, in order to acquire the ability to exercise, two conditions must be met: the existence of capacity utilization and the existence of discernment. It is presumed to be indiscriminate and thus deprived of legal capacity, minors under 14 years and mentally

[4] Carmen Popa, *General theory of law*, Bucureşti, ed. Lumina Lex, 2001, p.236.
[5] Ion Craiovan, *Elementary Treaty of general theory of law*, Bucureşti, ed.ALLBeck, 2001, p. 246-247.

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deficient or alienated placed under judicial interdiction. Minors between 14 and 18 law recognizes a limited legal capacity, and with achievement of 18 years, exercise capacity is full.

It follows that the individual may be capable of utilization without having legal capacity. So the person who has legal capacity has involved that kind of use.[6]

Legal subjects (its individual or organizations), having legal capacity, don't automatically occur as bearers of rights and obligations determined concrete legal relations; they appear as holders faculty recognized by law to have rights and obligations in the future.

Legal capacity analysis, from the standpoint of theory of law, involves considering the characteristic features circulation of participation in all branches of law. Legal Capacity category substantiation of theory of law is a legal aspect of legal scientific methodology; for this reason, the approach can not be limited to a science branch; he must highlight the significant qualities of being a subject of law in all legal relationships and to put aside individual differences, insignificant event in a legal capacity or in another branch.

In view of all forms of manifestation of legal capacity, in legal theory, it was concluded that the classification of legal capacity can be achieved in general ability and special ability. General legal capacity is the ability to participate as a holder of rights and legal obligations, in principle, in all legal relationships, without the fact that the law conditions such a participation on fulfillment of some qualities. Special legal capacity is the possibility recognized by the law to participate as a subject of law, in relation to certain conditions to be met (eg: collective civil law issues, administrative law state bodies etc.).[7]

After the conduct of legal relations, as individual actions or activities as collective actions, the subjects of legal relationship may be classified as: individual subjects and

[6] Radu I.Motica, Gheorghe Mihai, *General theory of law*, București, ed.All Beck, 2001, p.210 – 211
[7] Nicolae Popa, *General theory of law, ediția 3*, București, ed.C. H. Beck, 2008, p. 220 – 221.

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collective subjects. Individual subjects are,in civil law, individuals, and in constitutional law, citizens, etc. Collective subjects are, also, considered variable, as branches of law.[8]

The subjects of juridical reports classified in: individual subjects – person, as subject – and colective subject. This clasification takes into account by the fact that the human activity can take place in the form of individual and collective actions. Collective subjects have their fundamental in real existence of the collective form of activity.[9]

The phisical person designate the individual, conceived as a bio-psycho-social entity, to whom the law recognizes the ability to participate in the legal life, becoming legal subject of legal relations.

The individual has the longest range of participation in the sphere of legal repport and concerns: state citizens, foreigners and stateless persons, as human individuals.

In principle, citizens of the country can participate in all legal relationships, rejoicing in this sense by the general legal capacity.

In certain limits, it can have the quality of legal subject, foreigners and persons without citizenship, the reglementating competence of these relations belonging to international public law.[10]

The quality of legal subject is attributed and recognized to human by the state, through legal regulations concerning his condition. In order that person participates in a legal relationship, he must have legal capacity. Legal capacity means general ability and abstract ability of individual to have rights and obligations in the legal relationship.

Subjects of juridical report could be both individuals and juridical persons. In this context, the terme of „person" has a technical sense than the ordinary language, designating not only the person but also a social group. The word „person" indicates a characterique that is commun also to the individual, but also to the social group, ie. that of subject of right and obligations. The individual is accepted as a holder of rights and obligations, as it is a rational being endowed with free will, capable aware of their rights and the obligations, which aims to be pursued by his conduct, by his actions. In modern

[8] Nicolae Grădinaru, I. Mihalcea, Tiberiu Savu, Mihaela Agheniței, Florentina Dorobanțu, *General theory of law*, Bucuresti, Editura Independența economică, 2005, p. 97.
[9] Anita Naschitz, *Theory and technique in the process of law creation,*București, editura Academiei, 1969, p. 88.
[10] Radu I.Motica, Gheorghe Mihai, *General theory of law,*, București, ed.All Beck, 2001, p. 211-212.

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society, the quality of legal subject is recognized to any individual, without discrimination, restraint of legal capacity being allowed exceptionally and this, only as protection of the individual.[11]

Instead of persons of individual law subjects, there are legal collective subjects. Those subjects can be classified as: the state, state authorities, juridical persons.

The state is subject of law in the following juridical reports: in the sphere of international law, in the sphere of constitutional law, in the field of property relations.

The state is the subject of international law, either directly on the basis of treaties, conventions which they conclude with other states, other than those concluded by certain organizations to import or export. Those treaties and conventions suppose the complying, the conclusion and implementation of their principles of law, universally accepted and international recognized.

The state is the subject of law in the constitutional relationship as holder of sovereignty in legal relations on the territory of the State, acting on creating new provinces or regions, or redistribution or division of administrative-territorial. In the case of the federal state also law subjects and component states are law subjects. Between the federal state, on the one hand, and the member states, on the other hand, there are born legal relations in many areas, which are subject to special regulations.

The state is subject and the right ownership of means of production. It must be said, however, that concrete legal relations in the civil circuit, there are state organizations that actually have the right to direct operational management of property assets of the state. State law appears as right subject in those foreign trade, when they are concluded commercial representations in the name of the state.[12]

Public authorities - legal subjects. In the process of realizing the law, participation of authorities - the legislative bodies, government bodies, organs of justice - is performed in relation to the power reserved by the Constitution and laws of organization and functioning of each category of bodies and each body part. Vested with competence, these subjects participate as carriers of state authority in one area or another. As subjects

[11] Sofia Popescu, *General theory of law*, Bucureşti, ed. Lumina Lex, 2000, p. 228-229.
[12] Dumitru Maziliu, *General theory of law, ediția a-II-a, revizuită și adăugită*, Bucureşti ed.All Beck, 2000, p.307-308.

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of law, public authorities fulfill at least three categories of skills: the exercise of state administration in various fields, solving the problems of the legal claims of legal subjects over others and ensuring to the constraint state where necessary, restoring order violated recover damages. Parliament is the subject of constitutional law in relations concerning, for example, election or revocation of the government, control of the activity of some organs etc

In the field of public social order, defense and free exercise and unhindered constitutional rights of citizens, of the defense of public or private property and the state order, they participate as subjects of law, prosecution and the Interne Ministery and Administrative Reform. These organizations participate in the name of the State in legal complexe relations, by material and procedural law, where there is manifested the state authority, expressed in volume of rights conferred to the organs and causing them numerous skills and procedural guarantees as well as special control sistem. Analyzing the authorities participation at legal relationships, we can retain that specific to this participation is the fact that their rights in comparison with other topics, constitute at the same time, also their obligations. If the person may dispose by the exercise of its rights, in return the public authority is obliged to exercise rights (Financial organ is obliged to apply and collect tax, the court is obliged to solution the case which has been vested, the prosecuting authority is obliged to act for the discovery of a perpetrator, etc.).[13]

Legal persons are collective people, with organizational self-reliant (implying a definite structure), their own assets, distinct from the members that make it up and in agreement with the general interests of society, that should not contravene to the morality and public order.[14]

The legal entity is a social entity self-contained organized, with its own patrimony and a determinant purpose in accordance with the general interest, which has its own legal existence and it is capable, as such, to be subject of legal reports.

Such persons are called improperly << collective subjects >>. This agreement is fundamentally wrong. Not the collective of people associates in order to create a legal

[13] Nicolae Popa, *General theory of law, universitary course, ediția 3*, Bucureşti, ed.C. H. Beek, 2008, p. 224-225.
[14] Radu I.Motica, Gheorghe Mihai, *General theory of law,* Bucureşti, ed.All Beck, 2001, p.213.

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entity, appears as a matter of law, but the legal entity in its quality of subject of individual right. The teams have no rights. Only their legal personification creates rights, not those of the group, but of the organization that takes different personality in comparison with that of the group members.

It does not matter the nature of legal relations. Whether there are relations of private law or public, legal persons, social organizations that have the quality of being subject of legal relation, appear as legal entities, ie. as entities endowed with legal personality.

The characteristic elements of the legal person are, in terms of the general theory of law: independent organizing; its purpose in accordance with the general interest; own patrimony distinct from those of associations and legally distinct individuality.[15]

According to dr.Carmen Popa, the main categories of juridical persons are:
public juridical persons: state and its organs, administrative-territorial units
(County, city, town, village), prefectures, town halls. Since they can participate as legal persons in civil and commercial relationships, their legal capacity is higher than the other juridical persons.
b) mixed legal person created by law, but which whom they have competences and structures related also on private law: public organizations in the economic sector, where the initiative of creating belongs to the state, but by mode of action and management have private nature, commercial, as they are for example, autonomous administrations and companies, in which the state is the majority shareholder, professional associations established on the basis of professional activity of public interest and established by law (associations of lawyers, notaries, doctors, etc.).

c) Legal persons established by the will of private individuals, such as political parties established according to art.1 law nb. 27/1996[16], unions formed under art. 19 of Law 54/1991[17], associations and foundations that can be set up in accordance with O.G. nr. 26/2000[18] , companies formed under Law no. 31/1990[19] completed and modified by O.G.

[15] Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănișor, *General theory of law, ed.a-2-a*, București, ed,C.H. Beek, 2008, p. 320-321.
[16] Legea nr. 27/1996, publicată în M.Of. nr. 87 din 29 aprilie 1996.
[17] Legea nr. 54/1991, publicată în M.Of. nr. 54 din 01 august 1991.
[18] O.G. nr. 26/2000, publicată în M.Of. nr. 39 din 31 ianuarie 2000.

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no. 22/1997[20] (collective companies, limited partnerships, limited liability companies, joint stock companies), as well as handicraft, consumer credit established by their members by pooling the basis of their expressed consent of activity and means of production,etc.[21]

Legal personality does not exhaust the capacity of law subject to collective subjects, and there are collective subjects that are not legal entities (eg. The courts).[22]

It should be understood that there are only two ways to be subject of legal relations: either the quality of an individual or the legal entity. The concept of person in the legal sense is exclusive. Only if a reality is recognized by law as a person she can participate as such in legal relations.[23]

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[19] Legea nr. 31/1990, republicată în M.Of. nr. 1066 din 17 noiembrie 2004.
[20] O.G. nr.22/1997 publicată în M.Of. nr. 200 din 20 august 1007.
[21] Carmen Popa, *Teoria generală a dreptului*, București, Lumina Lex, 2001, p.245-246.
[22] Radu I.Motica, Gheorghe Mihai, *General theory of law*, București, ed.All Beck, 2001, p. 214.
[23]Dan Claudiu Dănișor, I. Dogaru, Gh. Dănișor, *General theory of law, ediția a 2-a*, ed.C. H. Beck, București, 2008, p. 324.

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