CONTROVERSIAL ASPECTS REGARDING APPOINTING AND REVOKING THE LEGAL ENTITY ADMINISTRATOR

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Abstract
Having as main objective the analysis the provisions of Company Law and the New Civil Code regarding the management of a trading company by a legal person, the study offers several solutions to a number of controversial issues with strict reference to two aspects: appointing and revoking the legal entity administrator. Can the administrator be any entity with a legal personality or just a trade company? Is the administrator subject to legal requirements of good repute, characteristic to a representative natural person? Can the legal person fulfill the president position in a collective administrative body? Can he be revoked ad nutum? Regarding the administrator legal person representative, may the company revoke the administrator, on its own? There are several questions outlining the juridical status of the administrator legal person, and to which the paper tries to find answers, introducing some jurisprudence solutions, comparative law issues and controversial doctrinal views.

Keywords: *administrator revocation, appointing the administrator, honorability, legal person, permanent representative.*

Introduction

In the current legislative framework, established by the Law on trading companies no. 31/1990 and by the New Civil Code, as we shall see later, it is undeniable that the position as a trading company administrator shall be performed by a legal entity administrator. But, both normative acts are limited strictly to allowing such a possibility, without detailing what should be the appointment method, the conditions that should be met and how to revoke the administrator legal person.

In the silence of the law on trading companies, in the approach taken, it has been tried to indentify some problems that may occur, in practice during the company's life span related to the aspects like appointing and revoking the legal entity administrator. Namely: what would be the appointment procedure through the constitutive act or by the ordinary general assembly decision, if the legal entity administrator must meet the honorability conditions and independence requested by the law for the appointment of the administrator and to what extent he could be appointed chairman of the collective administrative bodies? Regarding the revocation of the legal entity administrator two issues are put under discussion, if the legal entity administrator mandate can be revoked ad nutum or only in the context of failure to meet certain duties expressly stipulated in the management contract signed with the company and if the legal representative of the legal entity administrator can be revoked by the associates of the managed trading company.

In addressing these issues solutions from judicial practice, the views often divergent outlined in theory are considered, and also a corroborated interpretation of the legal texts on trading companies, at times poor, with the provisions of the New Civil Code on the usage capacity specialty (art. 206) and the trader quality (art.8 para.2) but also of the Criminal Code on criminal liability of the legal person. While making use of the lawmaker's inconsistency in drafting legal texts, and also of the legal void regarding a number of issues related to the appointment and revocation of the legal entity administrator, the study attempts to cover the gaps and the legislative inadequacies.

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The possibility for a legal entity administrator to exercise its administrative powers and to represent a trading company has been relatively recent introduced in the Romanian legislation, the aspects regarding its appointment and revocation have been subject to only few specialty papers and only isolated in relation to the overall context on managing a trading company[1]. But the practical impact of the proposed solutions is to be related to the provisions of the New Civil Code with general applicability for any legal person who considers the managing opportunity by another legal person. Although Law 31/1990 is limited to mentioning such a possibility expresis verbis such a possibility only in regards to the joint stock companies, starting from the principle provision of art. 209 para (2) of the New Civil Code, in what follows we will try to offer arguments in the sense that also in other types of companies the administration and representation duty can be assigned to a legal person.

1. The current legal framework on the possibility to appoint the legal entity administrator

Law 31/1990 on trading companies, in its original form, didn't contain any provisions that would allow the appointment of a legal person to the administrator position. Also, the law made no difference between legal and natural persons, as administrators of trading companies. In addition, at that time, major part of theory argued that, considering the way the company law was drafted it actually was in support of this legislative act that the administration would be done by a natural person. The conclusion follows mainly from the interpretation of the legal provisions, which didn't expressly provided the possibility of exercising the administration duties for a trading company by a legal person, and on the other hand from the legal prohibition that the incapable or dishonorable persons to exercise the administrator duty, prohibition that only concerned natural persons. However, rarely[2] it was admitted that based on logical argumentation where the law didn't prohibit, it allowed, a legal person to exercise the administrative mandate of a trading company under the provisions of Law no. 31/1990.

Later, based on the provisions or art. 139 (legal text introduced by Government Emergency Ordinance no.31/1997, currently repealed)[3] the Law on trading companies expressly allowed for a legal person to be appointed or elected as the administrator of a trading company, provided that the rights and obligations of the parties shall be drafted in a management contract.

In the current legislative context, the issue regarding the management of the trading company by a legal person is no longer an issue, related to the provisions of art. 153^{13} para.1 and 2 (introduced by Law no.441/2006) according to which *" (1) the managers of the joint-stock company, in an unitary system , or the members of the management, in a dual system, shall be legal persons.*

(2) *A legal person may be appointed administrator or member of the supervisory board of a joint-stock company. (...)"*

Therefore, the law (art. 153^{13} para.2) expressly allows a legal person to be appointed administrator or member of the supervisory board of a joint-stock company. If among the Board of directors, respectively the supervisory board can be both legal and natural persons, in respect to the

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[1] Emanoil Munteanu, "The legal status of joint-stock companies' administrators", *Commercial Law Magazine* 4 (1997): 122-123; Marius Şcheaua, *Company Law no. 31/1990 commented and annotated*, (Bucharest: Publishing House Rosseti, 2002): 313; D.M. Daghie, "Theoretical considerations on the appointment of the administrator," *Commercial Law Review* 5 (2010).

[2] C.I. Stoica "Exercising the administrative duties in a trading company by a legal entity administrator", *Commercial Law Review* 1 (1995): 87-91. The author claims that "*if the associates or shareholders, as appropriate, agree that their company will be managed by a legal person, they can do so either through the constitutive acts or subsequently through the General Assembly's decision*".

[3] According to art. 139, in a previous regulation *"(1) A legal person may be appointed or elected administrator of a company, (...)".*

managers of the joint-stock company, in unitary system, or the members of the management, in the dual system can only be natural persons (art. 153^1, para. 1).

At the same time, in the current legislative framework, established by the New Civil Code[4], the legal person is also an administrative body, which by law, by constitutive act or statute is empowered to act in relations to third parties. Indeed according to art 209 para.(2) *" has the status of administrative bodies….the natural or legal persons who, by law, constitutive act or statute are empowered to act in relation to third parties, in the name and on behalf of the legal person"*. Thus, when regulating, in principle, the afore mentioned legal text, the New Civil Code, indirectly, besides the qualification as an administrative body, generally recognizes the possibility of a legal person to be appointed administrator of another legal person.

2. Practical issues concerning the appointment of a legal entity administrator

2.1. With reference to the fact that legal texts above alleged are relevant in the field of joint-stock companies, ***a first problem*** arises, namely: if for the other types of trading companies- the limited liability company and the general partnership- the administrator position can be assigned to a legal person?

Provided that the legal regulations applicable to the administrators of limited liability companies and general partnership make no distinction, **we consider that both the natural and legal person can be appointed as the administrator of the company[5]**. Moreover, to the extent to which the lawmaker would have wanted to exclude the legal person from the administrative duties of the trading companies, he would have expressly prohibited through a provision of the law.

The conclusion follows also from the provisions of art. 81 corroborated with art.7 letter. e) which regulates the administrators' identification data, needed to be mentioned in the constitutive act of the general partnerships and of limited liability companies, separately, both for administrators and for legal entities administrators.

Indeed art. 153^{13} para.2, regulating the possibility to appoint a legal entity administrator for the company, is placed among the provisions on joint-stock company[6], but, compared to the provisions of art. 209 para.(2) of the Civil Code **we appreciate that the failure to regulate this possibility for the other types of companies is just an inadvertence[7]**, so that together with the entry into force of the Civil Code, art. 153^{13} para.2 of Law 31/1990 has general applicability.

2.2. Noting only in a general manner that: *"the legal person can be appointed administrator or member of the supervisory board"*, art.153^{13} para.2 of the Law raises ***a second problem***: which of the legal persons could exercise the administrative mandate? In other words, can any entity with a legal personality be an administrator?

According to the legislative changes introduced by Law no. 44/2006, art.81, letter b) of Law no.31/1990 provides as identification data for the legal persons, including administrators or members

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[4] Law no. 287/2009 of the Civil Code, published in the "Official Gazette", Part I, no. 505 of July 15th, 2011, pursuant to Art. 218 of Law no. 71/2011 for the implementation of Law no. 287/2009 of the Civil Code ("Official Gazette", Part I, no. 409 of June 10th , 2011).

[5] In a contrary opinion, the possibility for managing a trade company by a legal entity administrator is limited only to the joint-stock companies. Consequently the author states distinctly that one of the conditions to be appointed as an administrator for the other types of companies, is being a natural person. See D.M. Daghie, *quoted work*, 97.

[6] For a contrary view, see Stanciu D. Cărpenaru, *Romanian Commercial Law*, VIII th Edition (Bucharest: Universul Juridic, 2008): 232. According to the author, Law no. 31/1990, in its current form, allows the appointment as administrator of a legal entity, but only for the company joint-stock. Prior to the amendment, the appointment of an administrator legal person was allowed in any trading company, regardless of their legal form.

[7] Stanciu .D. Cărpenaru, Cătălin. Predoiu, Sorin David, Gheorghe Piperea*, Company Law. Review on articles* (Bucharest: C.H, Beck Publishing House, 2006): 325. To decide otherwise would mean to empty the content of art. 7 letter. e), and in addition, among all companies, the joint stock company is the one that requires best, professional administration through a specialized legal entity.

of the supervisory board: the name, head office, registration number in the National Trade Register of the sole registration code. Since these are identification data specific for traders**, we consider that the Law takes into account only the legal entity as "administrator-legal person"[8].**

At the same time, the legal person, appointed administrator or member of the supervisory board, must comply with the specific conditions imposed by the specialty principle legal capacity of the legal person. Starting from this principle, regulated in art 34 of Decree no. 31/1954[9] on natural and legal persons, according to which the legal person can only have those rights that meet their main scope established by law, constitutive act or statute, the administrator- legal person must have within the object of activity this management activity. Since this is a commercial activity based on mandate contracts and not on isolated commercial activities, the legal person-administrator is, necessarily, a commercial company, whose main scope and activity is the management of trading companies[10]. Otherwise, a commercial company which hasn't stated amongst its object of activity the activity of managing other companies, could not carry out such activity, without infringing the specialty principle of the legal capacity of the legal person.

In other words, the provision of art. 61 related to art.73^1 shall apply to the legal entity administrator, in the sense that cannot be administrators the "persons which, by law, are incapable". In this case, the legal entity administrator's capacity must allow the representative (natural person) appointed by him, to conclude any legal act needed for carrying out a commercial activity having as a main scope obtaining profit. Thus, termination of the legal capacity of the legal person by dissolution, dissolution followed by liquidation, reorganization entails the revocation of the right to manage. In the new Civil Code, yet the speciality principle of the legal capacity is regulated only in terms of the legal person with non-profit activity. Thus according to art. 206 para. 2 "the legal persons with non-profit activities may have just those rights which are necessary to meet their scope set by law, by the constitutive act or by statute", for the legal person in general the new legal provisions giving the plenitude of civil rights and obligations. In this sense, art. 206 para.1 states that" the legal person may have any rights and obligations, except those which by their nature or by law, can only belong to the natural persons". Considering that a legal person, among which the commercial company, in fact, can only have rights and obligations specific to its scope and can only carry out those activities that meet the goals of the object of activity provided in the constitutive act, we believe that the specialty principle of the legal capacity should find a well deserved legal regulation on all the legal persons, without any distinction.

2.3. A final issue raised in theory[11] was whether the administrator/ member of the supervisory board- legal person can be appointed chairman of the board of directors, respectively of the supervisory board? The question arises considering at least two aspects: a legal person may be appointed administrator or member of the supervisory board of a joint-stock company (art. 153^{13} para.2), and the board of directors appoints amongst its members a chairman of the board (art 140^1 para.1 thesis I) respectively the supervisory board chooses among its members a chairman of the board (153^{13} para.5).

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[8] In a contrary view it is considered that a non-profit legal entity may act as an administrator of a commercial company, since the Law does not prohibit expressly, but that the law when it introduced art. 139 (in the previous regulation), did not take into account NGOs , but trading companies (Marius Şcheaua, *work quoted*, 313.

[9] Decree regarding the natural person and legal person published in BO no. 8/30 January 1954 was repealed upon the entry into force on October 1st of the New Civil Code - Law no. 287/2009.

[10] Specifically the constitutive act of the administrator legal entity shall provide as object of activity also the operations listed in Class 7022 CAEN Code - "*business consulting activities and management*".

[11] C.I. Stoica, *quoted work*, 87-91.

Considering the provisions of the French law[12] where a legal person cannot be the chairman of the board of directors, it has been argued that the legal person cannot be appointed chairman of a board of directors. However, **in relation to the provisions of the law on trading companies, that do not prohibit, not expressly and not indirectly, the appointment of a legal person for the chairman of the board of director position, respectively supervisory board, we consider this to be possible. This, especially since these boards elect their chairman among its members and the legal entity can be legally appointed as a member of these bodies.**

3. Legal terms regarding the appointment of the legal entity administrator

3.1. in the previous form of the law (art. 139, repealed by law no. 441/2006) the statute of the legal entity administrator was very well outlined. Therefore, the law on trading companies required legal persons, in order to be appointed administrator, they were supposed to meet the special conditions required for the administrator natural person (in this sense art.139 para.1 was referring to the conditions provisioned by art.138). Also, on the modality for appointing the legal entity administrator, art.139 para.2 stated that, the rights and obligations of the parties were established through a management contract.

Under these aspects, the current regulation of art 153^{13} para. 2 is deficient. In respect to the manner for appointing the administrator-legal person, the law no longer contains any provisions in this sense, and is limiting itself to state that the legal person may be appointed administrator, respectively member of the supervisory board. **Compared to the regulation on appointing the administrator- natural person, and in the silence of the law regarding the appointment of the administrator-legal person, we believe that for the same reason, the appointment by constitutive act or by decision of the general assembly shall also apply to the administrator-legal person.** Consequently, the administrator- legal person may be appointed by constitutive act, during the set up of the company or later, during the company's existence, by the decision of the general assembly, and exercise its duties under the provisions established in the instrument of appointment. Having as main attribution managing the activity of the company, in the name and on the behalf of the trading company, the mandate given to the administrator-legal person is a remunerated one. Of course, it is possible to conclude a contract (management) between the commercial company and the administrator natural person, contract that will become an annex to the appointment agreement.

An important clause in the administrator- legal person's appointment agreement is the one regarding the appointment of the natural person, permanent representative of the latter. Thus, according to art. 153^{13} para.2, thesis II, once appointed administrator or member of the supervisory board (of a joint-stock company) the legal person is bound to appoint a permanent representative, natural person. And as far as the permanent representative is revoked, the legal person is bound to appoint a replacement.

3.2. In respect to the permanent representative, the law expressly provides that "he is subject to the same conditions…as an administrator or a member of the supervisory board, natural person action on his behalf", without referring to the conditions that the legal entity administrator should met. In this context, shouldn't the legal person meet also certain similar conditions to those to which the natural person is subject to? In the silence of the law we believe that he is subject to the same conditions as the natural person, with certain particularities.

Separately from the citizenship condition for the natural person, among the identification data of the administrators, that the constitutive act should contain, art.81 letter b) of the Law lists for the

[12] French law explicitly prohibits to legal persons to hold the position of chairman of the board of directors (Article 110 of Law no. 66-537 from 24th July 1966 on commercial companies), only the natural persons receive recognition for such rights.

legal persons the **nationality**. Therefore, the legal entities administrators can be both legal persons with Romanian nationality and foreign legal entities. Of course, through the constitutive act the possibility to appoint as the administrator of a foreign legal entity can be limited. In regards to the **honorability of the legal person-administrator**, in theory[13], it has been argued that it can only affect its permanent representative, to whom the provisions established for the administrator- natural person shall apply.

However it has been suggested as a solution[14], in the absence of any provision in this sense of Law 31/1990, applying, by similarity the provisions of Law on management agreement no. 66/1993 (currently repealed) which in art. 4, point 2 and art. T section 2 established the conditions that were supposed to be met by a legal person to become "manager" (to have experience in the management field; to prove by acts their creditworthiness; should not be declare bankrupt; has not been sanctioned for breach of the legal provisions on taxation; should not appear on the list of managers who were revoked). In a contrary opinion[15], these conditions would concern also the administrator-legal person, only to the extent to which there would be an express reference of the Law on trading companies to the rules regulating the management agreement, and as Law no.31/1990 didn't comprise such a reference, the provisions of the management contract law could not be applied. Additionally, it was argued that managing the company by a legal person should have been made through its permanent representative, which was, in fact, the person who concluded juridical acts with third parties.

Following the recent amendments made to the Criminal Law[16], we appreciate that, since the legal persons is criminally liable for the offenses committed in achieving the object of activity or for the benefit or on behalf of that legal person, if the offense has been committed with the form of guilt provided by the criminal law (art.19^1 para.1), therefore, the provisions of art. 73^1 and art.6 para.2 are directly applicable. Thus, the legal person cannot be administrator/member of the supervisory board if he has been convicted for the offenses established by art. 6 para.2 law no.31/1990.

Consequently, **we don't believe that in a future regulation (*de lege ferenda)* would be necessary the express regulation of some morality conditions towards the administrator- legal person, since he is subject to art. 73^1 and art. 6 para.2 of the Law**. Thus, Law no. 278/2006 amending the Criminal code[17] adopted, in art. 19^1 , the solution on the criminal liability of the legal person, which can be invoked, in principle, for any offense. The lawmaker offered also guidelines for establishing the offenses that could lead to a criminal conviction of the legal entity, adding that the offenses must be committed while achieving the object of activity or in the interest or on behalf of the legal person. Therefore, all the more so, the offenses provided at art.6 para.2 of the Law 31/1990 fall within this limits, since the object of activity of the legal person- administrator is the management of the trading company.

Since no expressly stipulated distinction has been made between the natural person and the legal person, we consider that there are no impediments that, when appointing the administrator-legal person, some of the independence criteria of art. 138^2 para.2 of the Law should be considered, especially those stated at letter c) and e), respectively that they shouldn't have received form a company or a company controlled by it an additional remuneration or other advantages, other than those corresponding to its capacity of administrator, and should not have or had in the last year labor relations with a company or a company controlled by it, either in person, or as associated, shareholder, administrator.

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[13] V. Papu, "Becoming an administrator of a joint-stock company ", *Romanian Journal of Business Law* 7-8 (2004): 143-150.

[14] Marius Scheaua, *quoted work*, 193.

[15] V. Papu, *quoted work,* 145.

[16] Law no. 278/2006 for amending and supplementing the Criminal Code and to amend and supplement other laws (Gazette. No. 601/12th July 2006).

[17] Published in the Official Gazette. no. 601 of 12/07/2006.

3.3. At the same time, the administrator-legal person of a commercial company is also a trader, given both the manner for obtaining the legal personality, and the specific object of activity. In theory[18], the conditions necessary for a person to acquire the legal personality as a trader have been outlined, namely: to commit acts of trade, to perform acts and facts of trade as an ordinary profession carried out in his name.

As a result of entry into force of the New Civil Code, art. 8, para. 2, the terms "commercial acts" and "facts of commerce" will be replaced by "activities of production, trade or services". Although, he carries out commercial acts and facts (activities of production, trade or services) as his main field of action, the administrator don't become a trader because he doesn't carry out these activities in his name and at their own economic risk, but on behalf of the company they manage. Thus, the administrator-natural person meets only the first two conditions required in order to be a trader, which is not sufficient to acquire this status[19]. Of course, neither the legal entity administrator carries out services activities in its own name, but in nomine alieno for the managed company. But, since it is about commercial acts carried out on a regular basis and not isolated commercial acts, subsidiary to the main object of activity, the legal entity administrator is necessarily a trade company and consequently is a trader.

As a commercial company the administrator-legal person acquires the trader status from the very moment of its registration with the National Trade Register and without carrying out commercial acts (production activities, trade or services). Moreover, interpreting art. 6 of Law no 71/2011 for the implementation of Law 287/2009 of the Civil Code[20] are considered to be traders the legal person subject to the registration with the National Trade Register, according to art. 1 of Law no.26/1990 on the National Trade Register[21], thus including the legal entity administrator that carries out its activities as a trade company and is obliged to register with the National Trade Register.

4. Controversial issues on the revocation administrator legal entity

As shown above, the administrator or member of the supervisory board of a joint-stock company can be also legal person. Once appointed, the legal person is obliged to designate a permanent representative.

Pursuant art 153[13] para.2 of Law on trading companies, this permanent representative "it shall be subject to the same obligations and conditions and shall have the same civil or criminal liability as the an administrator or a member of the supervisory board, natural person, action in its own behalf (…) When the legal person dismisses its representative, shall be under obligation to appoint at the same time a substitute."

Unlike the previous regulations[22], the legal text no longer provides the obligation to conclude a management agreement between the managed company and the legal entity administrator on the rights and obligations. However, in order to exercise properly these rights and obligations, it is

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[18] Cărpenaru D. Stanciu, "Legal Regime of traders in the, Romanian commercial law", *Law* 6 (1992): 3.

[19] In early jurisprudence it has been agreed that the administrator-natural person is not a trader (Commercial Decision no. 19/September 2nd 1934, Muscel Court of Justice, in *Pandectele Române* (1935). It was considered that those who do not carry out commercial activities proprio-nomine cannot be considered traders, and thus the servants, trade peddlers, directors or administrators of joint-stock companies, their representatives cannot have this quality.

[20] According to art. 6 para.1 of Law no. 71/2011 " *within the content of the juridical acts, upon the entry into force of the Civil Code, the reference made to traders are considered to be made to natural persons, or as appropriate to legal person subject to registration in the National Trade Register according to art.1 Law no. 26/1990 on Trade Register*".

[21] In the accordance with art. 1 of Law no. 26/1990, with amendments and supplements, "*traders, before starting, trade ... before they start their activities are obliged to request the registration in the trade register ....*".

[22] Prior to the repeal by Law no. 441/2006, art. 139, which regulated the possibility for a legal entity to be appointed an administrator of a commercial company, it also stated that, in para. 2 "*the rights and obligations of the parties shall be determined by a management contract.*"

necessary that the legal relationship between the two entities should be written down in a contract, regardless of its name- administration contract, management agreement(most commonly used at present), or even contract of mandate.

The quoted text is likely to raise two issues. Primarily it would be on whether the right of a trade company to revoke ad nutum its administrator would apply also for the case of a legal entity administrator, and secondly concerning the representative of the legal entity administrator, if the company may be capable of dismissing him on its own.

4.1. Regarding the 1st problem, since the trading company is the one that appoints the legal entity administrator, the mandate being given intuitu personae, the company is entitled also to revoke this mandate. But, considering that between the two entities usually a contract is concluded where the rights and obligations are stipulated, in practice, it was considered that this revocation can't operate ad nutum, because the principal's right to revoke the mandate *"is not discretionary and not censorable, but a conditional right, within the limits well established by contractual clauses"*[23]. Similarly, in another case, it has been decided[24] that "*the contract concluded by agreement of both parties will cease under the conditions established for the contract termination. Therefore, the contracting parties and not the general assembly of the shareholders, have the power to set the termination of the management contract".*

Therefore, the revocation of the mandate of the legal entity administrator cannot be a revocation ad nutum, but a revocation under the conditions, limits and contractual clauses agreed upon with the managed company, reason for which in legal literature the revocation has been described as a cause for contract termination[25].

However the doctrine[26] recognizes the company's right to revoke ad nutum the legal entity administrator, considering the principle of contractual freedom and of the binding force of the contract (pacta sunt servanda). In this respect, by contract, the parties may agree, at most, on an estimation of damages for the case where an irrevocable decision of the court would qualify the revocation measure as abusive, but their agreements regarding the circumstances and motives for which revocation may occur will be considered as unwritten.

4.2. With respect to the company's possibility to revoke the representative of a legal entity administrator, the opinions diverge. Thus, according to a 1st opinion[27] it was considered that even though the law doesn't expressly provide, the trading company may by itself revoke the natural person in question, since he is subject to " *the same obligations and conditions and it shall have the same civil or criminal liability as an administrator",* and it was even stated that by reference of the

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[23] December. no. 60/Ap from May 30, 1996, the *Commercial Law Review* 6 (1998): 93-94. In this case, the revocation measure did not target, an administrator, according to Law. 31/1990, but a manager according to the Law on management agreements no. 66/1993, but the principles are identical. Therefore, the court awarded priority to the contractual terms, considering that termination of the mandate occurs as a result of non-compliance to the contractual obligation: "by contract, it has been established as a cause for termination of the contract and dismissal of the administrator the failure to meet the contractual obligations, therefore it was not agreed upon a discretionary and uncensorable right of the mandate, but a conditional right, within well established rights for contractual clauses".

[24] December. no. 744/6.02.2002 of C.S.J. *Curierul Juridic* 11 (2003). " the termination of the management contract decided by the general assembly of shareholders is illegal, the provisions of Law no.31/1990 regarding the appointment and revocation of the administrators being inapplicable. The management agreement may terminate only based on the decision adopted by the commercial company and by the majority of the managerial board, under the terms stipulated by the contractual clauses, in this case, if it is proven that the contractual obligations haven't meet met."

[25] Emanoil Munteanu, *quoted work*, 122-123

[26] F. Ţuca, "Revocation of the company's administrator ', *Commercial Law Review* 6 (1999): 94-95. On the same line of ideas, see Dan Clocotici, "Commercial mandate", *Commercial Law Review* 11 (1996): 32 ("*the General Assembly of shareholders may revoke the administrator even without a clear and explicit proof on the fulfillment of the contractual obligations*").

[27] Idem.

law to the "obligations and conditions" to which the administrators in general are subject to, represent an evidence in the sense that the administrator (thus including the permanent representative- A/N) represents foremost the company's body.

In a different point of view, the juridical relationships between the legal entity administrator and its representative natural person are subject to the rules of a trust mandate. Given this particularity for the case of the management agreement termination by the managed trade company with the legal entity administrator it occurs by default a revocation of the mandate of the representative natural person in relation with the managed company[28].

We appreciate that the company, specifically the general assembly of directors may not revoke the natural person, permanent representative of the legal person- administrator or member of the supervisory board of the company. Firstly, because the general assembly can revoke only their own administrator or member of the supervisory board pursuant art. 111 para.2 letter b) of the law.[29] Second, even if the legal text (art.153[13]para.2) establishes *the exclusive competence of the legal entity administrator to revoke the permanent representative,* along with the obligation to appoint at the same time a substitute *("when the legal person is revoking its representative, it shall be under the obligation to appoint in the same time a substitute*").

Conclusions

In the approach taken we tried to analyze, based on the legal possibility of a legal person to perform administration duties for a trade company, aspects which define the status of the legal entity administrator the appointment process, the legal requirements for appointment, revocation from the administrator position. Summarizing the answers to the questions raised throughout the paper we can conclude the following:

Although the law on trading companies strictly regulates the possibility of a legal person to manage only a joint-stock company, together with the entry into force of the New Civil Code (art.209, para. 2) and considering the general applicability of this legal text, currently we are not wrong to consider that any type of trading company can be managed by a legal person, including the general partnership and limited liability companies. Also, keeping in mind that the administrator concludes any juridical act necessary for carrying out activities having as main objective obtaining profit, we consider that only a commercial company can be appointed "legal entity administrator" in the sense of Law no.31/1990. In the absence of an expressly stipulated distinction between the natural and legal person, we consider that there exists no impediment for the administrator-legal person to meet, on appointment, the independence and honorability criteria. At the same time the legal entity administrator cannot be revoked ad nutum by the general assembly of the shareholders like in the case of the natural person administrator, but only under the conditions, limits and terms of the contract agreed upon with the managed company, the revocation acting as a termination of this contract.

Although this paper was related to the issues regarding the appointment and revocation of the administrator of the trading company, the issues are currently relevant in the context where the New Civil Code recognizes in general the possibility of appointing a legal entity administrator to other legal personality entities, and not only strictly limited to trading companies. Therefore the difficult task to implement the provisions of the new Civil Code and to offer solutions to the problems considered and regarding other categories of legal person, who will carry out, in practice, the administrative position, lies upon the court.

[28] Emanoil Munteanu, *quoted work*, 123.

[29] According to art 111 para.2 *" the genera assembly is obliged: […] b) to appoint and to revoke the member of the board of directors, respectively of the supervisory board…*"

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