

THE ACTUALITY CONCERNING THE ISSUE OF PROPERTY IN THE NEW CIVIL CODE REPORTED TO THE CIVIL CODE IN FORCE

Ioan SABĂU-POP*

ABSTRACT: *A reflex of any modern Nation's wishing to express themselves as a stroke of its socio-economic development is the institutionalization of some legal rules which orders social relationships. This ordination must provide the strength of the social security harmony, the safety that produces the effects of some law relationships applicable fixing in the moment of dropping the progress in the development of that nation and those elements of progress must give them stability and ordering of contains constantly germs of construction. Institutional, this desideratum is possible to satisfy the institutional activities of coding.*

As the 19th century was, if we add to tackled, a century of great encodings, the codes of the stages of modern history, important encoders of this century were concerned about the modernization of law institutions from the feudal mentalities and the affirmation in the field of legislation of the national cultural spirit, which led to the building of different law systems, we believe that the revival of the legislation process repeats in 21st century, as a concern derived from the need to put right with parts of the contemporary world.

The author tackles an institution of the civil law, one of the most important, over which put their social footprint emphasized that every period has succeeded in history. How is stipulated and handled the property defines any social system in the most accurate of its form. Nothing reveals more true shaping social relations, economic system construction than if they have legal milestones as outlined on the regulation of property.

In this context, citing the need for organizing civil legal rules, a new civil Code was adopted, from which the author extracted relevant considerations concerning analytic regulations of the institution of property.

KEYWORDS: *New Civil Code, property right, civil liability, legal person, codification*

JEL CLASSIFICATION: *K 10, K 41.*

* Professor PhD., „Petru Maior” University of Tîrgu-Mureş, Faculty of Economics, Law and Administrative Sciences, Head of Law and Administrative Sciences Department, ROMANIA.

1. THE GENERAL FRAME OF THE PROBLEM OF THE NEW ROMANIAN CIVIL CODE

A reflex of any modern nation which wants to express themselves as a stroke of its socio-economic development is the dialogue of legal relationships and social order. This order must provide social security harmony it produces effects of employment relationships as the incidents when dropping normation progress in developing nations and those elements that progress must give them stability and ordering of contains the germ of construction. Institutionaly this grievance is possible to satisfy the institutional activities of coding.

As the nineteenth century was, if we tackle at the aborded problem, a century of great encodings, the codes of the stages of the history of modern large codificators of this century, it was concerned about the right of us institutions unchaining feudal and affirmation of the national legislation of the cultural spirit, which led to the building of different law systems, we believe that sudden change of the legislation again on the 21ST century, as a preoccupation derived from the need to put right with parts of the contemporary world. The anguis h to remain in the classical reflexes and should be revised adminrației romantic Moon is contrapune reality that is an arid facility with shiny appearance.

Along with other code, the legislatour has adopted a new civil Code, law No. 287/2009, published in the Official Journal of Romania on 24 July 2009, pending the promulgation of the law enforcement and fix the date of entry into force. Tests of adopting a new civil code are still in the inter-war period, it really was a Gore also code in 1938, which has never entered into force because of historical circumstances and stepmother eventimentelor dramaticce they lived in Romanian, during and after the second world war.

The venturesome action from the time of the project New civil Code was a real challenge with the imperative of the current context, but which do not have to face a virgin, but on the contrary, the experience of the old civil Code, known as “the Civil Code of Alexandru Ioan Cuza ruler” in 1864, of imitation and inspiration of the French Civil Code of 1804, as an argument to moreover that make part of a historic cultural space of the Roman origin, the code that was his time to modern, solid and lasting through centuries, more applicable by its elastic developed institutions, political schemes so different between them has known Romania to this day.

The current civil Code, is modelled on a project initiated in 1997, was based on multiple sources of inspiration for many systems of law, the editors expresses optimism compatibility between institutions with different characteristics and here were coming along the first criticism relating to doubt the strength of this hybrid. The models have been used in the first place and constructive developments and overlays resulting from the interpretation of the civil code in force, and the French civil code, a tradition in the version thereof resulting after changes in 2006, the Civil Code of Quebec, the Civil Code of the Italian civil code, the Unidroit Principles of Swiss and european law of the contract. Unmistakable, considering that Romania is a member of the European Union, the draft code itself and then tried to hang out in a framework of harmonizing with European regulations.

The world of the specialists and the company's mining were maybe too visible in animated and controversy of passions, now known as the spirit of the impassioned romanian people, upon the theses and conception on all four codes, although the civil code from good considerations up to the challenge and opportunity of scientific value. There is a consensus in general and in the reporting of this event which marked the significance of the legislature for the change that needed the romanian nation. Already in the world of specialists and the company there is a strong acceptance for the presence of the new civil code, under which we cherish the hope that at least half a century should not be necessary for improvements by changes which would deprive its symmetric design and would introduce its institutional crevasse between where they are already reported discrepancies, which can be corrected by the Law for the implementation of the code.

We proposed this approach to make a relative resume of the rules of the Code concerning the right of property. Make clear that the current regulations in force are chaotic and generates tensions in the romanian society. Shades have brought into the public and of course the legal disputes that by their marked the amatoris of the politicians and have overlitated closeness terms. Such as for example the provision of art. of the Constitution from 1991 according to which "property is preserved" and not "guaranteed". By the reviewing from year 2003 was this correction, but whether the provisions of the code and other laws drafted after 1990 not give consistency and uniform interpretation at least among specialists is expressed the same skepticism in the notice of any improvement and is something that the New civil Code expects.

The Civil Code of a contry penetrates the fiber of the society and takes care of the institutional health of economic rights and non-patrimonial rights of each individual, economic goods distribution company "he rules the life from birth to her end through her important moments and there is no man to whom is not applied, which does from it, after the Constitution, the most important law of the nation"¹. The desire to be a mirror of a social system is what is expected from the civil code. All introductory point and that is a part of the civil code undertakings Romania established with the European Commission in the framework of the mechanism of cooperation (Commission decision 2006/928/EC of December 2006), in the Commission report on the progress of the measures of accompaniment of Romania after the accession (Brussels, 27.06.2007) stated that under the specific objective of reform as the completion of new code of civil procedure and civil.

2. ABOUT THE VISION OF THE REGULATION OF THE LAW OF PROPERTY IN THE NEW CIVIL CODE

In a comparison of current civil Code regulates in book II of the article. 461 "About property and ownership changes about osebitele lu-nd terminology and approach of its model of the French Civil Code".

In the new civil Code-Book entitled "The goods" continues with the title "property and rights in rem in General" to continue with title II "private Property" with the observation

¹ Quoted after A. Radulescu, Romanian Professor and Academician of the inter-war period

that is ordered before the public property, the latter being considered as an institution of administrative law.

Book III of the new civil Code “About a unification of the legal provisions relating to the goods” until then exists in multiple and disparate regulations, that brought a variety of interpreting what was a negative roll for legal order in the matter of ownership.

On the basis of the right of private property and public property in the code have been subject to all other rights in relation with the right of ownership: the right of usufruct, the right of usage, the right of abitation, the right of servitude, the right of superficies, the right of administration, the right of concession, the right of use.

A remark that we want to do it is that the right of superficies that isn't in the civil code, he's being spent and created by doctrine and jurisprudence, here's that is in the new legislative regulation (article 693-702), therefore a legal recognition and a definition of art. 693 (1) “The superficies is the right to have or to erect a building on land of another, above the fold in the basement of that land, on which the superficial gets a right of use”.

As regards the specific right of ownership shall be brought in the new civil Code, the content of which, the pursuit and defense is covered by art. 871-873 of Civil code known in Romanian law after the year 1990, the concession was covered in the law, being appreciated by the administrative law sector code (Law No. 219/1998 and the law No. 247/2005).

A novelty in the legislative process of the civil code everything in Chapter V of the III Book, the institution of periodic property. After the documentation I ordered so far a “timeshare” way of ownership is common ownership on the backside parts, as opposed to the property consists of periodical units of time, much practised in Spanish society, in particular on the moveable travel protection. She was treated in sporadic civil Romanian literature and with many established reserves, over virtually the mentality of the Romanians and a great unknown. That state of affairs, for the purposes of the joint owners pursued for a period of time determined the privileges of ownership of a good price without having to be made that can stand behind its clear rules. Even without a legislative it has a very historical and practical habits impregnated in the customs of the Romanian people, still in the darkness of this age as is the case, when transhumant pastures, owners of the pastures, alpine clearings of goals have transferred the ownership of which accurately ancestral pastures with moving of flocks were staying in migrating zones that worn as real owners.

Within the meaning of the concept of modern periodic property is part of the successive units of time, equal or unequal, the different periods of use exclusively, by the holder of the whole object of the property. For example, each holder of a fixed period, exclusively (a month, a semester, etc.) the real estate object's property. We believe that after the new periodic property, may be exercised by, and on the moveable.

It should be noted that the legal doctrine, after 1990, it was referred to the possibility of periodic property, in 1995 as a result of gambling, which gives the winner exclusive property right (via usage) over a specified period of time, of apartments located in attractive mountain tourist resort. This right shall be able to pass through acts between the live or dead. In short this once famous cottage industries has been implemented successfully in the field of real estate investments, in particular. Holders can take advantage of the use and the effective use of an asset for a specified period of each year, instead of making an

investment of less than the price of the whole construction. The periodical is a hypothesis of coproperty and in the rules in the new civil Code termination of uncertainties, and assumptions at random on the edge of this theme. So far, it has been practiced on commercial spaces with tourist destination, but the code does not exclude the possibility of being charged to any other real estate, including buildings, but as I said and movable.

Uncertainty is aborted by the rules of the new civil Code, which provides in art. 687-692 of the code. By regular, already traditional property, in particular in countries with tourist potential in Western Europe, shall arise by virtue of a legal act (art. 688) and provides the text that the relevant provisions of the land register shall apply accordingly. This clarification is welcome because after the structure and tradition of advertising real estate in the land register how periodic property advertising not foreseen nor technical opportunities to be made there. The completion of this shortcoming formulated by the legislator. As regards exhaustive the rules of periodic property, in addition to its definition and meaning, the code regulations: the validity of the act concluded by co-owner acts (art. 689) and the terms on which such acts must be satisfied under the penalty of their lack of efficiency, rights and obligations of co-owners (art. 690) similar to other methods of the compensation obligation of coproperty, and exclusion (art. 691) with specific characteristics that lead to the award of damages and penalty until now unknown to the exclusion of co-ownership that may conflict with the principle of guaranteeing the right of ownership and finally, end the periodic property (article 692) that remains the rule that no one can be forced to remain in the joint ownership, be it and periodically, which must be a temporary state.

The new code makes a rethinking of ownership and make an evaluation and consolidation of the legislative developments that took place after the change of political an social regime in 1990.

There are several new elements which it makes in the field of property in the New civil code²:

- relating to the acquisition of ownership by accession it has been made a distinction between the work of autonomous and additions, as well as the work of lasting nature and work of having provisional specific legal regime being given useful and voluptuous works
- the right of the joint proprietor of energetic, where injured recognized as being entitled, before the division, to pursue actions as owner against the third party that would have been in possession of the asset pool from the conclusion of the act;

- limitation of the duration of the right of the 99 years superficies, which replaces the concept about superficies can exist for the duration of the building meant even the longlasting;

- was to clarify the possibility of acquiring the right of servitude by adverse possession tabulated for positive at sight servitudes, are likely possession;

- was supported by pregnancy function of possession of the good faith of a movable to hire good against third parties of the legal acts of the constituent or translativo of rights;

- the distinction between limitation and revocation, for the three years since the owner of the movable property lost or has been stolen, he is known to the third party

² V. Stoica: Drept civil. Drepturi reale principale, CH Beck Printing Press, Bucharest, 2009, p. 245-247;

purchaser in good faith from which you may claim;

- the new civil code in addition to a system of real estate advertising by cards with effect for the formation of concrete rights, apply to the two phases of adverse possession, as a means of acquisition of ownership- extratabulated usucaption and tabulated usucaption and put in a different context than the rules so far.

As a result, the new civil code have the polar structure of ownership, finding in the rules of both private property and public property, and the subjective, and representation in a system context brings both unit within the meaning of proximity and close private property. The two forms which have there coexist in the contemporary development of the complex and technical.

The logic of rights in remained under the same patterns, in its general lines showing a constant of the civil law. In the new civil code is expressed in the doctrine and practice of judicial pregnant that have the matter and have complinit shortcomings of the old code, without denying the records already reported, however, where there are other new regulations requiring the solutions they proposed.

