

THE ECONOMICAL IMPLICATIONS OF THE MODIFYING LAW 31/1990 REGARDING THE COMPANIES AND THE NEW CIVIL CODE ON PROPERTY RELATIONS BETWEEN SPOUSES

OANA RĂVASĂ*

ABSTRACT: *Matrimonial regime is the synthesis of all the rights and obligations of spouses pecuniary valence, having its origins in the institution of marriage, leaving outside their regulatory and other economic issues that may arise property relationships between spouses, as: maintenance obligation, Liberties rights of inheritance. matrimonial regime, considering that it is the synthesis of all the rights and obligations of spouses pecuniary valence, having its origins in the institution of marriage, leaving outside their regulatory and other economic issues that may arise property relationships between spouses, such as: the obligation maintenance, Liberties, rights of Inheritance. Under company law, spouses are not forbidden to own a company, whether it one partnerships, or that they have an association with unlimited in a limited partnership or limited by shares or a company is limited or become shareholders in a joint stock company.*

KEY-WORDS: *family; mariage; matrimonial property regimes; matrimonial relations; trade company; contribution.*

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Marriage is a state law that makes significant changes pecuniary heritage of each spouse.

Property relations between spouses complement personal relationships between them. Common life, common household and raising children causes intertwining property interests of spouses, both in terms of rights and obligations,

* Asisst. Prof., Ph.D. Student, University of Petroșani, Romania,
oana_dumitrescu13@yahoo.com

subordinated same finality: providing material support necessary existence and, if possible, the comfort of the family.

New Civil Code governing such property relationships in Chapter VI "The rights and obligations of the spouses 'property' where resumes, according to the former Civil Code of 1864, matrimonial, embodied in marital relations as a reality of the society. This faculty of choice between applicable matrimonial had become imperative and required legal realities faced by spouses in everyday life, economic relations constitute an important element in family life, sometimes at the expense of personal relationships, affection between family members.

Thus, sharing views of doctrine, the deepening of the research start by defining the matrimonial regime, considering that it is the synthesis of all the rights and obligations of spouses pecuniary valence, having its origins in the institution of marriage, leaving outside their regulatory and other economic issues that may arise property relationships between spouses, as: maintenance obligation, liberties, rights of inheritance.

Specific rules provide for matrimonial every mood and how to manage those assets. We are talking mainly about whether each spouse can manage one property of its assets, or if the provision and management rights are concentrated in the hands of a spouse, or they are divided between husband and wife.

The rules established in these procedures refers to the ownership of property, goods or other governing separation of property each spouse composition. Through them you can determine on the one hand, if certain goods that they had wives when the marriage or after they have acquired during marriage, shall remain their individual or in whole or in part in mass commons, on the other hand the rules governing the distribution of patrimonial liability of each spouse.

The form of distribution of goods, assets and liabilities, is specific and depends on each matrimonial importance given to the separatist community spirit by both systems of law governing family law rules and the spouses exercise their faculty choose which matrimonial their conception considers appropriate.

Economic and social factors have an important contribution to the regulation of base that must obey all married couples, which may differ in each country according to local traditions, the perceptions of marriage, but evolving and may even adaptation and change, as happened with the return of the New civil Code regulate matrimonial regimes, which urged the doctrine and the realities of daily market economy changed substantially compared to the previous provision of the Family Code, we can say that it was outdated.

Multitude of situations that lead the spouses as to marriage, putting aside personal emotional side, which theoretically is the engine formalize relationship underpin the design and choice of matrimonial regime governing best property relations between the spouses involved the new status acquired in marriage. Thus, you may encounter situations where the spouses own property consistent with monetary side and professions which contribute to and during the marriage, they can opt for separation of property regime, the confusion wanting them. Also, a spouse may carry high risk occupations pecuniary, which may harm the common heritage and therefore

wives, by mutual agreement, may consider choosing the separatist regime is the best solution for the cohabitation fairness couple.

Under company law, spouses are not forbidden to own a company, whether it one partnerships, or that they have an association with unlimited in a limited partnership or limited by shares or a company is limited or become shareholders in a limited company. Also art. 348 of the New Civil Code expressly regementează common property of the spouses intake to companies, associations and foundations. Prior to adoption of the new Civil Code has been some controversy about the legal nature of the common property contributed to the establishment of the company, as good contribution becomes the property of the company.

For the first time after returning to the market economy, our law governing the situation of a spouse or spouses participate in the formation of a company, association or foundation with common goods.

Family Code has not considered these issues and contributions of the commons situation was controversial because the wife did not have a fixed quota of good, so I could determine what part of the asset contribution husband's partner or shareholder returns, and was dangerous because if the other spouse has not consented to the formation of the company or association with a common good, he may request the cancellation of articles of incorporation, which seriously affect the safety of civil circuit.

However, case law and doctrine admitted that spouses may be associates or shareholders in any company, even without asking in advance division of joint property. To solve this problem was noted that, according to art. 65 of Law no. 31/1990, assets pledged as contribution in kind in society become its property since its registration in the commercial register, following legal act by which common property is turned over to the company a disposal.

The doctrine also held that if both spouses attend the commons to establishing or increasing the share capital of a company does not raise special problems and, as noted, does not require any separation of patrimonies, as "... the provisions art. 30 para. (2) C.fam.according to which the agreement is null and void any contrary provision contained in that paragraph. (1) of the same text, under which property acquired during marriage (...) are the common property of the spouses have a protective character of each spouse to not be prejudiced by the other, the penalty occurred when decreasing community of goods, the act of one spouse, it would be detrimental to other personal property, in which fraud must be proven "and this can not occur when couples decide together the common good.

In case only one spouse participates in setting up capital of a company with common goods admitted that the document is valid, even without the consent of the other spouse, if the common good is one mobile intake in this case all the real benefits will be achieved common, as are acquired during marriage as civil fruits of the commons. Will have the same legal and proper share of the husband's associate company dissolution or withdrawal times its exclusion from the company. However, if the common good is building and associated husband had the common good without spousal consent clause correlative of contract shall be null and void because they

violated the limits of mutual tacit mandate stipulated in the Family Code, except confirmation document.

Regarding to profit from commercial activities distinguished by analogy with the salary, and argued that as long as profit was not charged, associate husband can not claim because of the dividends is a social fundamental of each associate and can not be alienated except by agreement between the parties. After their receipt by the spouse associated profited in the common heritage of their husbands.

Regarding the liability was concluded that if both spouses are members or shareholders, it will be unlimited joint and several, both its own assets and those common to partnerships and limited companies established equity contribution. If only one spouse is a member, will be his personal responsibility, so lenders will follow their own property, and if they are insufficient, it may require division of joint property. In principle, all these doctrinal considerations remain valid under the new regulations make the empire express provision on the contribution made by companies.

New Civil Code provides that common property can be subject to a contribution to society, association or foundation in the law (art. 348). Reference to the law must be understood as referring both to be governed by special laws establishing civil or commercial companies, associations and foundations, as well as provisions on matrimonial property regime of the spouses.

Since the creation of a commercial or civil companies, associations or foundations get out of the husbands patrimony asset and enter into patrimony of legal entity, the constitutive document or change of legal person is available and act according to art. 346, may be terminated only with the consent of both spouses if its object a shared house or a shared mobile alienation formalities which the law provides advertising.

If the object is a movable joint contribution in order alienation formalities which the law provides advertising, according to the general rule, the memorandum could be signed and by one spouse, the other being presumed consent. in relation to society, however, the legislature imposed a strict co-management so that any common property, movable or immovable can not be contributed to a society without the written consent of the other [art. 349 para. (1) Civil Code].

The applicable sanction documents signed by one spouse without the consent of the other,-when it was necessaryit is relative nullity provided for in art. 347, which can not be opposed to third parties in good faith.

If both spouses participate in the formation of the company or association with a common good, both have the status of partners or shareholders and benefits obtained and the share to be paid on withdrawal or dissolution of the company or the company will be excluded from common property to that comes from turning a common good. In this situation become incidents and provisions of art. 83 of Law no. 31/1990 which states that when social capital contributions to several persons, they are jointly and severally liable to the company and shall jointly appoint a representative to exercise the rights arising from this contribution.

If only one spouse is part of the association, but it will be partner or shareholder, but all the benefits obtained will be increasingly common as civil fruits of a common good.

While art. 348 establishes the principle that the only common goods may be subject to contribution to society, association or foundation in law, art. 349 contains a number of direct applications in the field of company law.

With respect to corporate rights, Romanian legislator has inspired correlative provisions of the French Civil Code, art. 1832-2, provides that a spouse alone can not employ the common good as a contribution to a company without her husband be warned. Being a member is recognized spouse who participated in the constitution, and the other spouse to the extent that the company notify its intention. If this intention is notified after the formation of the company, the spouse will not participate in the vote and its parts are not taken into account in order calculating the quorum and majority. Text is correlated with that of art. 1424, so if the object is a property contribution, a goodwill or other important asset, the consent of both spouses for the goods to enter the patrimony of society.

If your wife or husband's intake is associated with a common good, the Civil Code establishes co-management rule for the conclusion of a contract. This is not an exception itself, for a contract that the company is undoubtedly a disposal since capital goods that are out of the assets of spouses and entering the company's heritage, basically coincides with the general rule contained in Art. 346 of the Civil Code, except with respect to acts of disposal concerning movables whose alienation is free, not subject to any notice procedure. In corporate, cogestiunea is stricter : no common good, regardless of its nature, can not be contributed to a corporation by one spouse alone, it is necessary written consent of the other spouse. The text refers to simple company (joint venture) regulated by the Civil Code and the companies to which a spouse acquires shares or shares.

If one spouse alone and without the written consent of the other, concluded such a contract for the supply of community sanction relative nullity of the act will be done with disregard of legal requirements. Third parties acting in good faith are protected from the consequences of nullity [art. 347 para. (1) and (2) Civil Code].

In the case of companies whose shares are traded on a regulated market, the spouse who has not given written consent to the use of the commons can only claim damages from the other spouse, without affecting the rights acquired by third parties. The provision aims to protect circuit securities markets with public activity, so in these cases act spouse participate in seeking damages from her husband, but can not ask in order annulment of that would be affected rights acquired by third parties in good faith.

Directive 2004/39/EC on markets in financial instruments available in the Preamble Recital 6 : " a market that is only composed of a set of rules that governs aspects related to membership, admission of instruments to trading, trading between members, the notification of the transaction and, where applicable, transparency obligations is a regulated market or a multilateral trading facility for the purposes of this Directive (...). " both Community law, these two organized markets, which both are subject to certain rules are defined separately (art. 4 section 14 - " regulated market " and art. 4 pt 15 - " MTF ") and are regulated separately. term " multilateral trading facility " used by Directive 2004 / R39/route was transposed into national law (Law no. 297/2004 regarding the capital market) as alternative trading system. Are such

regulated market managed by the Bucharest Stock Exchange and the National Securities Commission.

It's about rights in connection with the company's business, such as, for example, the right to verify the company's financial situation, request and receive data on the situation of assets, liabilities, income and losses, and any other data related to the activity social and safeguarded access to its documents.

When a husband alone, but with the written consent of the other, make a contribution to the common good as a society, an associate is recognized only contribution to the common good spouse, but shares or shares are commons. Husband carries one associated rights arising from this quality alone can achieve the transfer of shares or, where appropriate, the shares held. It establishes, therefore, a sole managing partner of a spouse, which is an exception to the general rule that common goods are subject to co-management. Being an exceptional provision, its interpretation must be strict, meaning that only one spouse associate will perform legal acts listed in the text : acts of exercising rights arising from an associate and transfer of shares or shares. By establishing exclusive management aimed at simplifying the transfer of securities to trading activity that would be unduly hampered if there is the necessity of both spouses for movement actions that are common property.

Being a member and spouse can be recognized if it has expressed its willingness to do so. In this case, each spouse has an associate for shares or shares awarded in exchange for half of the property, whether by convention spouses have stipulated other odds - parties. Shares or shares that are personal property each spouse. Regulated situation is: a spouse alone or jointly with a third party is a civil or commercial, his contribution to the common good. Husband participate in the conclusion of the company gives its written consent to the establishment of a shared society and expresses the will to be accepted as an associate. To determine what the common good is for each spouse of share capital contribution equal to resort to the presumption provided by art. 357 para. (2) The last sentence of the Civil Code.

Therefore, each spouse will receive the equivalent of half the value of the property if a convention spouses have provided other allowances. as shares or shares are personal property of each spouse, they will be handled exclusively by each spouse who can exercise all the powers of their ownership. This does not mean that a husband give the other to exercise these rights mandate because they wives may conclude any legal act.

Therefore, we can conclude that economic relations as the basic element of the functioning of the institution of marriage, they met again with reintroduction of family relations in the Civil Code, substantial changes that have fundamentally altered the relationship between spouses, giving them more independence asset and decision, which was hitherto denied them the old regulation, where they were subjected to a single regime, legal, immutable. These changes occur due to multiple requests for reconsideration of the doctrine and realities adapt legislation according to which the provisions of the Family Code no longer corresponded being exceeded, a tributary of communist thinking.

Therefore, freedom of contract, specific to a open, free, together with the principle of equality between spouses underlying all property relations between

spouses, who are only able to choose the matrimonial regime applicable to the three allowed by the current legislation.

The new Civil Code is the most powerful Romanian judicial system reform suffered the last century, came as a response to various issues extensively discussed in the literature and jurisprudence, but we can say that in matters of family relations experienced a real revival, so necessary, reported the daily realities and developments in society, giving them rightful place back where now gone more than half a century, within the civil law, without this specific individualitatea to diminish in family law because family is even mirror transformation of society, requesting these changes.

Relatively short period after the entry into force does not allow us to review the effects of long-term application, but unquestionably a step forward in ensuring individual freedom and equality, while maintaining family unity in diversity relations in the society.

Characterized by flexibility and freedom of choice by giving notice that matrimonial not yet in conscious Romanians, they remained faithful to the traditional version of Community origin both to blame, but that seems harder to get rid of the attachment to the family spirit of communion, which I believe marriage attached either from ignorance, which is visible aspect given the extremely low number of people who chose to enter into a matrimonial agreement, where the draw conciliazione despite the desire of doctrinal level introducing a flexible, perhaps Romanian society is not yet ready for such liberalization manifestation of will, the family relationships.

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