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DREPT CIVIL. PERSOANELE,

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Irina APETREI[1]

The appearance of the new Romanian Civil Code (Law no. 287/2009) will constitute, for law theoreticians and practitioners alike, a source of inspiration and also an occasion for divergent opinions, for a long period of time.

This collection of fundamental texts of civil law determined the authors Ovidiu Ungureanu[2] and Cornelia Munteanu[3] to publish an academic manual in the field of persons of the civil law, as the main actors of civil legal relations.

In elaborating the manual, the authors used, as bibliographical sources, the classic works of C. Hamangiu, I. Rosetti – Bălănescu, Al. Băicoianu, M.B. Cantacuzino, the contemporary civil law literature, represented by Gh. Beleiu, G. Boroi, E. Lupan, Şt. Răuschi, I. Reghini et al., and also the French doctrine, represented by J. Carbonnier or Ph. Malaurie; however, the essential reference remains the new Civil code, also inspired by numerous foreign Civil codes, mainly by the Civil Code of Quebec, Canada.

The detailed analysis of the civil law subjects led to the organization of the manual in two major titles, corresponding to the two categories of participants in the civil circuit, the natural and the legal persons.

Title I, referring to the natural person, is the most extensive, provided that, on the one hand, the issues relating to this category of civil law subjects are broader in comparison with those regarding the legal

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person, and, on the other hand, the authors added a series of new aspects in the matter of the natural person, imposed by the new regulations brought by the current Civil code.

Thus, the chapter suggestively entitled *The existence of the natural person*, begins by defining the natural person, in terms of the difference between person, persona and personality. A distinct section is dedicated to the protection of the human body, an "inviolable sanctuary" of whose primordial protection depends on the natural person's protection. The authors thoroughly deal with the procurement of organs, tissues and cells from living or deceased donors, and also with the transplants of organs, tissues and human cells (operation that can only be done in therapeutic purposes), as well as with the body damages[4] that may be granted in case of breaching the principle of inviolability of the human body. Within another paragraph, the authors reflect on the issues of assisted human reproduction with a third party donor, which, according to the new code, does not entail filiation between the child and the donor. The authors make the difference between the medically assisted procreation and cloning, which implies "producing genetically identical individuals from a single parent", and is prohibited by the new Civil Code and in the majority of the world countries, also.

Special attention is conferred, within the manual, to personality rights, regulated by the new Civil code for the first time, rights which the authors define as being "the prerogatives due to which the faculty of the individual to benefit and protect the essential attributes and interests inherent to its person is recognized.

Pointing out that the personality referred to by these rights is not to be reducible to the meaning of legal personality, but it concerns the individual in its biological, psychological and cultural complexity, the authors offer a detailed analysis of the personality rights as non-communicable[5] extra-patrimonial[6] rights, making the distinction between

[4] Body damages imply two types of damages: *material damages* (the gain equivalent to that obtained as retribution - for the work of which the injured person has been abridged of, or has been prevented from obtaining, as a consequence of the loss or reduction of his/her ability to work, the expenses afferent to medical care or the increasing living necessities of the injured person) and *moral damages*, in terms of pecuniary compensations for the prejudices of a non-patrimonial nature brought on the injured party (such as the psychological suffering of a victim that has been mutilated in an accident).

[5] The authors prefer this denomination – extra-patrimonial rights (even though the doctrine and the new code still designate them as non-patrimonial rights),"since they have no economic content and are not part of the person's patrimony."

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the rights that concern the protection of the human body (such as the right to life, the right to physical and mental integrity et el.) and the rights that protect the moral and social values (the right to dignity, to honor, to private life etc.).

Furthermore, the authors' response to the question whether personality rights are applicable to legal persons as well is partially affirmative, provided that, even though these rights are closely related to the natural person, they can characterize the legal person also, "at least regarding those qualities which are not of human condition exclusively", being necessary to concretely verify, in relation to each personality right, whether the legal person can be the holder of a right similar to the one applicable to the natural person (as the right to denomination, to social reputation, to identity are applicable for the legal person). Moreover, this point of view is shared by the jurisprudence of multiple courts in France, Italy, Spain or Switzerland, this concept being embraced by the new Civil Code also, which, within art. 257, regulates that the provisions of Title V – *The protection of non-patrimonial rights* are applicable, by similarity, to the non-patrimonial rights of legal persons also.

The second Chapter of Title I deals with the exercise capacity of the natural person in all situations (lack of the exercise capacity, limited exercise capacity and full exercise capacity) in terms of the new regulations which do not contain major changes in this traditional matter of civil law.

The third chapter is also extensive referring to the identification of the natural person. Within this chapter, the authors offer a detailed analysis of all means of individualization of the natural person (the name, address and marital status), starting from interesting diachronic considerations, to the amendments brought by the new Civil Code regarding the field of the identification of the natural person.

A reliable and complete analysis regarding the protection of the natural person can be found in Chapter IV, which brings to our attention a series of updates and amendments within the current regulation, especially regarding the institution of guardianship. Thus, family council is analyzed as an institution that has been reintroduced[7] by the new Civil Code, its main attribution being the supervision of the manner in which the tutor meets the obligations concerning the minor's person and

[6] The extra-patrimonial rights are non-communicable - they cease on the death of the holder and cannot be transmitted to the successors.

[7] The family council existed in the regulation of the Civil code of 1864, the provisions relating to this institution being subsequently abolished.

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property, being empowered to give advisory opinions and decisions, in cases provided by law.

The second and last Title of the manual is dedicated to the legal person, as participant in the legal circuit. The legal person is approached in terms of its legal personality, distinct to that of the natural person. After defining and classifying it according to the criteria of the civil law literature, the authors analyze the legal person in terms of its constituent elements (the organization, the distinct patrimony and its purpose – according to the general interests of the society) and the specific manner in which this civil law subject is established and generically regulated by the new code.

Similarly to the case of natural persons, the authors deal with the civil capacity of the legal person, with its two components (the capacity of use and the exercise capacity), as well as with the means of identification of the legal person.

The manual concludes with the reorganization and the cessation of the legal person, as are these aspects conceived by the legislator of the new Civil Code.

Novelty, personal opinions, interesting, complex and extensive information, the approach of the new Civil code, without omitting the historical aspects of these regulations, with numerous references to the Romanian and foreign legal practice in the field of civil law – these are the features that recommend this appearance in the Romanian legal literature, a book that is useful both to students, researchers and practitioners in the field of law, as well as to common citizens interested by the subjects of civil law, as simple participants to the civil legal relations.

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