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BOOK REVIEWS
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Calina JUGASTRU

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NADIA-CERASELA ANITEI. *MATRIMONIAL REGIMES UNDER THE PROVISIONS OF THE NEW CIVIL CODE,* EDITURA INDRA VERGAL, MUNCHEN, GERMANIA, 2011 /REGIMURILE MATRIMONIALE POTRIVIT DISPOZIȚIILOR DIN NOUL COD CIVIL EDITURA LUMEN, IAŞI, 2011.

Călina JUGASTRU[1]

Abstract

This paper is a review of the NADIA-CERASELA ANITEI' s Book MATRIMONIAL REGIMES UNDER THE PROVISIONS OF THE NEW CIVIL CODE, in printing at INDRA VERGAL Publishing, MUNCHEN, GERMANIA, 2011 /REGIMURILE MATRIMONIALE POTRIVIT DISPOZIȚIILOR DIN NOUL COD CIVIL , EDITURA LUMEN, IAŞI, 2011. The new Civil Code places at the basis of patrimonial relations between spouses the principle of autonomy of will, predicting a real legislative reform of the matrimonial regime existing at present in Romania. In this context we considered the publishing of the monograph called Patrimonial relations between spouses under the provisions of the new Romanian Civil Code as opportune.

Keywords

Nadia Cerasela Anitei, MATRIMONIAL REGIMES UNDER THE PROVISIONS OF THE NEW CIVIL CODE

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In the last 50 years Romanian experts have equated the term of *patrimonial relations between spouses* with the concept of *matrimonial regime*. The contemporary Romanian doctrine on the notions of *matrimonial regime and patrimonial relations between spouses* is much more nuanced than in the past, arguing that between the two notions are quite close links, but not identity links. Thus, the matrimonial regime should designate a system of legal rules that govern the patrimonial effects of marriage, but not any effects (there are some pecuniary relations that are of no interest for matrimonial regimes such as maintenance of spouses, as well as those they have with other people: children, relatives, etc.)..

The Family Code (adopted on December 29, 1953 and entered into force on February 1, 1954) regulates patrimonial relations between spouses in art. 29-36 as "patrimonial rights and obligations of spouses *as matrimonial law regime, characterized by the doctrine as not only legal, unique and mandatory, but, above all, rigid and restrictive*.

By Law no. 287 of July 17, 2009 *on the Civil Code* republished through Law no. 71/2011, the new Civil Code is subject to the tendency of the modern legislations to create a triple economic balance in relations between spouses matters by means of the matrimonial regimes established:

1. between spouses: the emergence of marital agreements, which led to the adoption of more flexible legal rules, that allow spouses a certain freedom to choose the regime of patrimonial relations between them;

2. within the family: to protect the interests of the family, they resorted to mandatory rules that provided for limitations and prohibitions (Art. 321-322 on family home - new concept in the Romanian law, art. 316 regarding the acts seriously threatening family interests);

3. between family and society-third parties: through the establishment of certain substantive requirements of legal acts, including of the marital agreements concluded by affidavit, with the obligation to be made public.

We believe that in the new Civil Code, Chapter VI of Book II - *The family* is called *Patrimonial rights and obligations of spouses* devotes Section 1 *Common provisions*, paragraphs 1-3, art. 312-328 to the primary regime.

The primary regime governed by art. 312-328 of the new Civil Code is defined as all legal norms governing the relations established between spouses, or between one or both spouses on the one hand, and third parties, on the other hand, relations having as object existing assets at the time of marriage, acquired during it, as well as contracted

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obligations in connection with such goods or the carrying out of the obligations of marriage that apply to all marriages, regardless of the matrimonial regime to which the spouses are subjected.

The provisions of art. 312 of the Civil Code establish: a legal system that is the community property regime and two conventional regimes: separation of property regime and the regime of conventional community (the latter includes conventional exemptions from the community property regime).

The legal matrimonial regime includes property acquired by both spouses during marriage, except for the goods provided by law, which are each spouse's own assets.

The legal community regime will apply in all situations in which prospective spouses do not opt for the **separation of property regime** or for the **conventional community regime**.

Separation of property regime is characterized in that each of the spouses is the exclusive owner of their property and of that they acquire by themselves after the marriage, at the adoption of this regime spouses are required to draw up an inventory of movable property belonging to each one at the date of the contracting of marriage.

The Conventional community regime is applicable when by matrimonial agreement, they derogate from the provisions on the legal community regime, and the matrimonial convention concluded in this case may narrow or widen the community of goods.

The new Civil Code places at the basis of patrimonial relations between spouses the principle of autonomy of will, predicting a real legislative reform of the matrimonial regime existing at present in Romania.

In this context we considered the publishing of the monograph called Patrimonial relations between spouses under the provisions of the new Romanian Civil Code as opportune.

The monograph is structured as follows:

1. Introductory notions about marriage and its legal effects
2. Introductory aspects on the matrimonial regime
3. The imperative primary regime under the provisions of the new Civil Code
4. The legal community regime
5. Separation of property regime
6. Conventional community regime
7. The conventional change of the matrimonial regime

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8. Aspects of private international law on marriage, patrimonial relations and marital convention

In this context we regarded as opportune the issue of the monograph entitled Matrimonial Regimes under the Provisions of the New Romanian Civil Code.

In fact, the modern dimension of the theme developed in terms of the European harmonization of national legislation is more than obvious. We note the perfect integration in the debates of the property relations between spouses, in the presence of the matrimonial regimes as they are covered by the new Civil Code.

All these converge towards the exhaustive presentation of the issues related to matrimonial regimes. And the conclusion that emerges from the work – the preservation of the rules that have proven to be viable, along with the resettlement of certain issues, through the reception of new possible interpretations - perfectly fits the pattern of European trends, imbued with pragmatism.

The level of knowledge in this area is presented at length; starting from this, the author has made a number of pertinent observations about matrimonial regimes.

We believe that this work will be useful, both to theorists, practitioners, PhDs, master students, students and to all those interested in *Matrimonial regimes*.

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