EFFECTS OF MARRIAGE ON THE PERSONAL RELATIONS OF THE SPOUSES IN THE LIGHT OF THE NEW CIVIL CODE

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Abstract

Personal relations of the spouses are part of a very broad area and are governed by family law.
The most important personal relations between spouses include the following: name of spouses; obligation of moral support; obligation of fidelity; obligation to live together (cohabitation obligation) etc.

Key words:marriage, patrimonial relations ,family law

Marriage generates multiple and complex relationships of various natures between spouses, only some of which are subject to legal regulation (See T. R. Pascu, op. cit., p. 149) .

Especially patrimonial relations, but also some personal, non-patrimonial relations are subject to regulations, establishing mutual rights and obligations between spouses. Importance of such legislative provisions appears more intense when disagreements arise between spouses on their rights and obligations when it comes to dissolution of the marriage between spouses.

Due to the very vast domain of personal relations between spouses, Family law covers only part of them, thereby giving them also a legal character, while others have only a moral character and are not included in the rules of law.

MATERIAL AND METHOD

Personal relations between spouses include the following elements (Dreptul familiei, Editia a V-a, Alex Bacaci, V. C. Dumitrache, C. C. Hageanu, C. H. Beck Publishing House, Bucharest, 2002, p. 35):

1. name of spouses;
2. obligation of moral support;
3. obligation of loyalty;
4. obligation to live together (cohabitation requirement).

Name of spouses

When filling out the declaration of marriage, according to Article 281 Civil Code, the future spouses will mention the surname that they will assume during the marriage. Article 282 of the Civil Code provides four possibilities:

a) each spouse maintains the family names they had before marriage;

b) spouses elect, jointly, a common name of one of them; in this situation, only the surname of one spouse will change;

c) choose as common surname their combined surnames, in which case the surnames of both spouses will change;

d) a spouse may retain their surnames before marriage, and the other one may assume their surnames combined (Except this provision, the regulation of personal relations between spouses was not amended by the new Civil Code. Introducing this new option to choose surnames practically exhausts all the possibilities the spouses have in this regard so that this limited listing does not restrict any more the possibilities of spouses and avoids criticisms of previous regulation *(LC. Dumitrescu,* Un aspect privind reglementarea alegerii numelui de familie de către soți, Dreptul nr. *10/2004, p. 132-135)*).

RESULTS AND DISCUSSION

Spouses can exercise this option either in the wording of the declaration of marriage or later on, but not later than the time of marriage, by a separate document to be attached to the declaration of marriage.

If the spouses did not make a choice regarding their surname until marriage, it is presumed that each of them retains the surnames they had before marriage (For a summary of GD *41/2003* concerning assumption and change, by administrative means, of surname, see *E. Chelaru,* Privire critica asupra noii reglementări a numelui, Dreptul nr. *7/2003, p. 5-17*).

Once they declared the common surname,

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spouses are obliged to retain it for the duration of marriage and they may change it only with the consent of the other spouse (Article 311 Civil Code). If each spouse keeps the surname they had before marriage, its change by administrative proceedings can be done without the consent of the other spouse, on whom this change has no effect. Even if the spouses have a common surname, change of surname of one of them does not attract changing the surname of the other [Article 9 paragraph (2) of the Government Ordinance 41/2003 on assuming and changing names of individuals by administrative proceedings], only that in this case, as already stated, the consent of the other is necessary (See C. *Birsan,* Schimbarea numelui pe cale administrativă, R.R.D. nr. 6/197C p. 31). Spouses may also request together change of their common surname, but in this case, each of them must require change through a separate application.

A situation that was dealt with in legal literature (See: *LP. Filipescu, A.1. Filipescu,* Tratat ..., op. cit., p. 45; *1. Albu, L Reghin, P.A. Szabo,* Inheres, Dacia Publishing House, Cluj-Napoca, 1977, p. 155; *D. Lupulescu,* Numele şi domiciliul persoanei fizice, Ed. Ştiinţifică şi Enciclopedică Publishing House, Bucharest, 1982, p. 36; *L Molica,* Efectele încuviinţării înfierii asupra numelui înfiatului căsătorit, R.R.D. nr. 5/1983, p. 31; *L Deleant* notă la sentinţa civilă nr. 515/1966 a fostului Trib. rai. Gherla, R.R.D. nr. 4/1967, p. 144) is also that of the surname of the husband adopted during the marriage and who has a surname common with the other: after adoption, the person concerned will assume the adopter's surname and keep the common surname. The answer is found in Article 473 par. (4) Civil Code, which sets out that the child adopted may receive during the marriage the surname of the adopter, if the other spouse consents in this respect, before the court that approved adoption. After that, obviously, spouses will no longer have a common surname. If the husband being adopted did not assume the surname of the adopter, in case of divorce, he will not return to the surname he had before marriage, but to the adopter's surname; thus, all the effects of natural kinship disappear (See *I.P. Filipescu, A.1. Filipescu,* Tratat ..., op. cit., p. 45).

The spouse adopted may, all the more, take the name of the adopter, if he/she kept the surname before marriage, even without the consent of the other spouse.

Legal literature (Idem, p. 44) legitimately considers that the surviving or divorced spouse, but who retained the common surname acquired upon marriage, may agree with a future spouse to assume in the future the surname chosen by them in the same terms as any person, since Article 282 Civil Code does not distinguish between the ways in which the future spouse gained his/her name (See, for a contrary opinion, *Tr. Ionaşcu,* Numele şi domiciliul persoanei fizice in lumina recentei legislatii a R.P.R., A.U.B. nr. 6/1956). Therefore, it is possible for the spouse concerned to agree with the spouse in the second marriage to assume the surname he/she had before, but which belonged to the deceased or divorced spouse, and they may decide as well to assume both this surname or their combined surnames.

Obligation of respect and moral support

Based on the principle that family relations are based on friendship and mutual affection, Article 307 Civil Code regulates the obligation of respect and moral support: the legislator sets out that spouses are obliged to give each other moral support. This obligation takes multiple forms, also retained by the provisions of the Civil Code in this Article, the obligation being determined only generically. Depending on the act committed, the breach of the obligation of moral support may constitute a contravention (as, for example, that provided for by Article 2 par. 30 of Law 61/1991, consisting of expulsion from the common residence of the spouse, wife or children and any other dependants) or offence, punishable by the Criminal Code provisions (for example, abandonment of family - Article 305).

Obligation of moral support consists therefore in the duty of each spouse to help the other, in case the latter, due to age or health status, needs it (See *LP. Filipescu, A.I. Filipescu,* Tratat ..., op. cit., p. 40), as well as to prove solidarity towards the other spouse, in all life circumstances (See *I. Deleanu,* note la sentinta civila nr. *515/1966* a fostului Trib. rat. Gherla, R.R.D. nr. *4/1967, p. 144*).

Obligation of loyalty

After marriage, spouses must be loyal to each other (sexual intercourse is confined to intercourse within marriage and not outside it).

This obligation is expressly provided for by the legislator in Article 309 Civil Code, being considered a natural consequence of marriage. Also, the presumption of paternity is based on fidelity of spouses, that the mother's husband is the father of the born child.

Some authors (See: *L Albu,* Căsătoria ..., op. cit., *p. 101; M Banciu,* op. cit., *p. 40-41; E. Florian, op.* cit., *p. 62-63*) approach separately the obligation of loyalty, which means the duty of spouses not to have sexual intercourse outside the family, the so-called conjugal obligation, that would consist of the duty of spouses to have sexual intercourses with each other. However, obligation

of loyalty is more complex, comprising both issues highlighted above, being actually two perspectives of the same issue.

Obligation to live together (cohabitation duty)

In order for the family relationships to acquire content and purpose, it is necessary for the spouses to live together.

Since it is established, as a principle, that spouses decide together in everything concerning marriage (Article 308 Civil Code), this means that they may also decide on the domicile he they will have.

This duty results from Article 309 par. (2) Civil Code, which states that, for good reasons, spouses may decide to live separately. Moreover, such a hypothesis was considered by the legislator when it ruled on the rights and obligations of parents towards their children, showing that, "If the parents do not live together, they will decide the child's residence by mutual agreement" [art. 496 par. (2) Civil Code].

The former Supreme Court (Meeting of the Supreme Court, Civil Section, Guiding Judgement No. *26/1962,* C.D. *1962, p. 37*) ruled that circumstances such as those imposed by practicing a profession, need of specialized training, health care or even when none of the spouses homes does not ensure proper housing (Supreme Court, Civil Section, Judgement No. *546/1973,* C.D. *1974, p. 169;* Supreme Court, Civil Section, Judgement No. *1334/1970,* C.D. *1970, p. 114-117;* Supreme Court, Civil Section, Judgement No. *643/1982,* R.R.D, No. *3/1983, p. 65*) justify separate homes of spouses.

As noted in the literature (See *LP. Filipescu, A.I. Filipescu,* Tratat ..., op, cit., p. *41*), these are situations where it is possible for spouses to have common domiciles and the solution chosen by them is based on founded grounds. In the absence of founded grounds, refusal of one spouse to live together with the other constitutes grounds for divorce.

Expulsion from the family domicile of one spouse by the other, as well as leaving it by one of them, in such a way so that the spouse subject to physical and moral sufferings, constitutes the crime of abandonment of family, as criminalized by the legislator pursuant to Article 305 letter a) of the Criminal Code.

It is an offence as long as, under the criminal law, it is not considered a crime, the act of driving out from the family domicile of the husband or wife, children or any dependants (Article 2 par. 30 of Law 61/1991 on sanctioning infringement of social life and public order rules).

With regard to the possibility of one spouse to obtain, by court decision, evacuation of the other spouse from the family home, the views expressed in the literature were different. Part of doctrine and jurisprudence (See *1. Mihula,* Probleme de drept din practice pe anul *1970* a Tribunalului Suprem, secția civilă, R.R.D. nr. *8/1971, p. 114;* Supreme Court, Civil Section, Judgement No. *272/1970,* C.D. *1970, p. 134;* Supreme Court, Civil Section, Judgement No. *1071/1973,* C.D. *1973, p. 149;* Neamt County Court, Civil Judgement No. *404/1981,* R.R.D, No. *1/1982, p. 55*), under the old regulation, claimed that it is inadmissible in principle to evacuate the spouse, due to the fact that, in general, this would lead to a *de facto* separation of spouses, imposed by the court, which must be avoided, as it is against the principles of marriage.

The opposite view was also defended, namely the fact that the spouse who, by their attitude, makes it impossible to co-habitate, may be evacuated at the other spouse's request (Supreme Court, Civil Section, Judgement No. *1861/1975,* R.R.D. No . *1285/1975, p. 35-36; C. Turianu,* Despre posibilitatea evacuării din domiciliul comun al soțului în caz de violență exercitată asupra soției, Dreptul nr. *12/1992, p. 82*).

The proceeding aimed at evacuation a spouse can be accepted as founded when the spouse in question, by violent behaviour, would seriously jeopardize the life or health of the other spouse (or family members) and would lead to the impossibility to continue living together. An exceptional situation is also admissible, namely when the spouse whose eviction is requested is co-owner of the dwelling, since the evacuation ordered, even if it leads to depriving the spouse concerned of some of the attributes of their ownership rights, it is temporary and does not cause loss of ownership rights. It should be noted that, in practice, most often, evacuation request is filed during divorce proceedings and the measure is valid only until property partition, when the Court decides who of the two spouses will receive the house that used to be the marital home. This view also maintains its timeliness under the New Civil Code, although new regulations have been introduced on the family home.

Independence of spouses

Pursuant to Article 310 of the Civil Code, a husband has no right to censor mail, social relationships or career choices of the other spouse.

This legal text did not have a correspondent in the Family Code, as it is a reflection in the family area of the developments in terms of protection of fundamental human rights over the past century.

CONCLUSIONS

Although they have a duty of common life and respect, loyalty and moral support, spouses remain independent from a personal point of view and each of them has the right to respect for private and professional life. Therefore, marriage does not mean disappearance of one or both spouses from social or occupational live. The principle of equality of rights for both spouses and the possibility of concluding a marital convention guarantees the opportunity of each spouse to dispose freely of their time, to develop human relationships and pursue careers of their choosing. However, individual freedom is subject to limitations in order not to violate the obligations arising from marriage and not to prejudice freedom and personality of the other spouse.

With regard to disagreements between spouses on personal relationships between them, the law regulates such relations by setting out that disputes between them in relation to observance of rights and fulfilment of personal obligations will be settled by the guardianship court, which has general jurisdiction in all disputes resulting from family matters and therefore also in those resulting from misunderstandings between spouses on personal relationships between them (Article 265 Civil Code).

For example, the duty of loyalty requires a limitation of relationships with third parties, as an excessive intimacy, even if it does not constitute adultery, can be charged and considered grounds for divorce.

For example, when one spouse would have morally doubtful activities or activities which would require repeated absence from home, justified by existence of a hobby, a religious activity etc. In this regard, French literature states that a marriage "creates a particular limiting obligation in exercising freedom: before acting, a spouse must remember that he/she is not alone" J. Carbonnier, Civil Law, PUF, coll. Quadrige, 2004, vol. 1, no. 547-553, no. 553.

Often, however, these misunderstandings are causes of divorce proceedings. The more complex these relationships are, the more impossible it is to establish rules, so their resolution depend on the wisdom and good faith of spouses.

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