

SOME ASPECTS OF THE PRIMARY IMPERATIVE REGIME IN THE NEW ROMANIAN CIVIL CODE

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Abstract

Dispositions of the New Civil Code regarding the matrimonial regime are discussed. The author opens a debate regarding the disposals of the primary regime according to the criteria of the given periods in the spouses' life, that is: normal periods of married life or those of crisis. Rights related to family residence, lease, income obtained from work, marriage expenses are discussed.

Key words: matrimonial regime, spouses, divorce

1. Preliminaries

In order to respect in our paper the imperative character of the disposals which constitute the basic primary regime, we should follow the order in which the governmenting rules with a general and compulsory character regarding the patrimonial rights and obligations of spouses were systematized. According to this, in paragraph 1 are included disposals regarding the matrimonial regime in general. According to Article 312, line 1 in the new Civil Code, the future spouses can choose either the regime of the lawful community, or the regime of property division, or that of the conventional community.

No matter what the chosen matrimonial regime is, if the law does not say something else, according to Article 312, line 2, it cannot depart from the imperative norms included in the common disposals of section 1 in the law.

The paragraph dealing with norms regarding the effects of the matrimonial regime, its opposability, the conventional and judicial mandate between spouses, acts of disposal which seriously endanger the family interests, the patrimonial independence of spouses, the spouses' right to information, as well as the norms regarding cessation, change or dissolving of the matrimonial regime, constitute the first group of primary, imperative,

legal norms. The disposals in paragraphs 2 and 3 (section 1) regarding the family residence and marriage expenses, aspects belonging to patrimonial relationships between spouses codified as compulsory, regardless of the chosen matrimonial regime, constitute the second group of norms in the primary, imperative regime.

Analysing these norms we are going to approach them somewhat differently, namely to open the debate regarding the disposals of the primary regime according to the criteria of the given periods in the spouses' life, that is: normal periods of married life or those of crisis.

2. Imperative Norms governing patrimonial relationships Between Spouses in the Normal periods of Their Married Life

Family Residence

The starting point of the present analysis originates in Article 1, line 1 in the present Family Code: „ In Romania the state protects marriage and family; by means of economical and social measures it supports the family development and consolidation.

Even from the very beginning we notice that the basic principle of the present Family Code is especially one of social protection, of protecting the basic entity of a society, the family.

One of the essential aspects of social life is the economical one, without which human existence cannot be thought of.

The Romanian State considers as a supreme principle the obligation of protecting the family by means of economical measures, and one of the essential aspects of it in a family obviously is the residence. Reading the stipulations in the Family Code we cannot find anywhere a concrete settlement regarding the common residence and especially of the rights of the married couple upon it.

Should it be an aspect that escaped? Or the Communist legislator at that moment left out to deal with it, confining himself only to principles.

As a consequence, there have been many tragedies of spouses who because of a poor economical situation were left, after a whole life, without a shelter because there wasn't a definite settlement regarding the judicial state of the residence.

It is well-known that although the spouses are judicially equal to law as partners in a marriage, they are not economically equal in the

beginning. Then, anyone who has a legal profession may wonder which are the lawful texts by means of which the fundamental principle found in Article 1 in the Family Code is set it to practice? There aren't any such lawful texts in this code.

Taking into consideration the gaps existing in the Family Code regarding the settlement of family residence, the point was reached when some of the spouses with modest economical situations were forced, the marriage being broken through divorce, or one of them died, to leave the common residence because of financial matters, as they either could not compensate the rights of the other spouse or those of his successors or they were thrown out of the residence lawfully belonging to the other spouse the very moment the marriage came to an end through a divorce. We ask here a legitimate question: how does the state protect family in these circumstances? It is difficult to answer.

If, during the Communist period the aspect was not so stern, as patrimonial differences between spouses were not so big, after 1989 the difference of incomes has become significant, so that the problem became serious and a concrete settlement of locative relationships between spouses was necessary. This determined the legislator to pay much more attention to the family residence.

In the Civil Code (1864) there isn't mentioned anywhere the spouses obligativity of living together, although this aspect constitutes an essential obligation in a marriage. Analyzing the texts in Article 185-193 Civil Code title IV *On Marriage and Obligations which Spring up from It* one may easily notice that such an obligation is not mentioned anywhere. Consequently, neither was the settlement of it the legislator's essential preoccupation¹.

Once the Family Code being adopted, the situation is changed: the spouses have the obligation to live together (co-habitation), but this obligation is not plainly stipulated in the Code, it only implicitly results from it, therefore the phrase „mutual/common residence” is not settled

¹ For other matters regarding the matrimonial regime, Civil Code 1864, see P. M. Popovici, *Generalități privind regimurile matrimoniale prevăzute de Codul civil (1865–1954)*, in I. Trifa, M. Iovan (coord.), *Știința și filosofia dreptului. Probleme, idei, studii*, Gutenberg Univers, Arad, 2004, pp. 213-217, *idem*, *Regimul dotal în vechiul drept și în Codul civil român*, in „Studia Universitatis Babeș-Bolyai. Series Iurisprudentia”, nr. 2-4/2002, pp. 157-171.

either. In this case the obligation of living together is more given by case-law and jurisprudence than being the expression of judicial texts².

No doubt that „family relationships get content and a goal is necessary that the spouses live together”³. Normally the legislator should have settled this as well, not leaving it only to case-law and jurisprudence.

Although according to Article 26 in the Family Code the spouses make up their mind together regarding all what marriage implies, implicitly their residence, a specific, separate text regarding it would have been necessary.

Even if the obligation of co-habitation is understood, and the stipulations in Article 1 of the Family Code decides that the person under age lives with his parents, and by the disposals of Article 100, paragraph 2 it is also settled that in the situation when for good reasons and if there might be short periods when the parents do not live together, the spouses will agree where the child lives. We consider the legislator’s settlement vague and incomplete.

The concept of residence or common dwelling of the spouses has been subject of serious debates both in jurisprudence and case-law, its meaning deriving from them. Thus, the High Court of Justice⁴ decided that some particular instances, such as the job, the necessity of training in one’s specialty, health care, and even that when neither of the parents’ residences offer right conditions of living⁵, justify separate residences for the spouses.

More than that even the Penal Code punished as family abandon the throwing out of one of the spouses of the common residence, as well as leaving it as a result of having been exposed to physical and moral sufferings⁶. At the same time, the legislator stipulated in some places milder measures, contraventions, for this particular aspect (Article 2, pct.30 Law

² Also see P. Popovici, *O analiză a argumentelor aduse în favoarea modificării regimului matrimonial*, in „Studii de drept românesc”, nr. 1-2 / 2003, p. 185.

³ Al. Bacaci, V. C. Dumitrache, C. C. Hăgeanu, *Dreptul familiei*, ed. a V-a, Edit. CH Beck, București, 2008, p. 38.

⁴ Plan of it, Decision, nr. 26/1962, Culegere de Decizii 1962, p. 37.

⁵ Tribunalul Suprem, secția civilă, decizia nr. 564/1973, Culegere de Decizii 1974, p.169; Tribunalul Suprem, secția civilă, decizia nr. 1334/1970, p 114-117; Tribunalul Suprem, secția civilă, decizia nr. 643/1982, RRD, nr. 3/1983, p. 65.

⁶ Al. Bacaci, V. C. Dumitrache, C. Hăgeanu, *Dreptul familiei*, ed. a V-a, Edit. CH Beck, București, 2008, p. 38.

61/1991)⁷.

Therefore, the term common dwelling place or common residence has been a controversial matter both of the legislator and of practice and doctrine without being distinctly settled.

A controversial matter appeared in the jurisprudence and case-law related to the possibility of one of the spouses to demand the evacuation of the other one from their common residence. Taking into consideration the hypothesis of a common dwelling place and even more the spouses' obligation to dwell together what would be the reasons which make one of the spouses demand something like that? There have been more opinions. The partisans of the inadmissibility of the spouse's evacuation are based on the idea that such a fact would lead to a factual separation, being implicitly against the very principles of marriage⁸.

According to a contrary opinion, if one of the spouses through his/her behaviour makes co-habitation impossible, the evacuation can be demanded by the other spouse⁹.

It would be interesting to know whether when one of the spouses leaves the family residence, the other one might bring an action to oblige the spouse to come back? Some courts decided that such an action is inadmissible¹⁰. But could we state this viewpoint without any doubt? Is such a solution a correct one, because in this case a new question arises: what is the value of the co-habitation obligation?

There is a law principle stating that the unguilty party has the possibility to choose between keeping the existent situation or demanding its dissolution. Does that not mean the breaking of the unguilty spouse's possibility to use the obligation of the other's spouse to co-habitation? In this case he is left no other possibility and is forced to demand the breaking of marriage, although he/she, the unguilty spouse does not want it? What would be then the compensation of the moral prejudice, and not only,

⁷ Republished in the Romanian Official Journal, no. 387/2000, 1st section.

⁸ I. Mihuța, *Probleme de drept din practica judiciară pe anul 1970 a Tribunalului Suprem*, civil section, Decision no. 272/1970 in *Culegere de Decizii 1970*, p. 114.

⁹ The Supreme Tribunal, civil section, Decision no. 1861/1975 in „*Revista Română de Drept*” nr. 12/1975, p. 35-36; C. Turianu, *Despre posibilitatea evacuării din domiciliul comun al soțului în caz de violență exercitată asupra soției*, in „*Dreptul*”, no. 12/1992.

¹⁰ Ilfov Tribunal, civil section, Decision no. 994/1978, „*Revista Română de Drept*”, no. 11/1978, p. 52. E. Florian, *Dreptul familiei*, 2nd edition, CH Beck, București, p. 76.

experienced by the unguilty spouse.

The matter is worth being studied by those who choose the doctrine.

If the aspects related to the spouses' common residence requires serious debates even during periods of relative normality of their married life, or even more, when the relationships between spouses are deteriorated, the problem arises: what will happen with their common residence during a process of divorce and then division of goods, that is to say whose spouse will be the residence given during the process? It is known that, unfortunately, such processes last for a very long time. Well, the process being concluded, in case the residence is in common property and both spouses have equal right upon it, what would be the reasons one of the spouses might get it?

In solving this matter we believe the study should focus upon two situations:

1) When the residence belongs to common property:

- In the hypothesis that both spouses have equal rights upon the common residence and are in a divorce process and after that, of division, that is if only one action to break the marriage by means of a divorce was promoted, without demanding the division of common goods, the instance might dispose as a temporary measure, or by means of presidential ordinance the division or giving the residence to one of the spouses, temporarily, till the final and irrevocable solution regarding the personal relationships between them is found.
- In the hypothesis that the spouses have ended the divorce process and division, the problem arises: who is going to get the common residence and the right of exclusive property upon the building that was object of the common residence? The lack of a definite legislative frame left the possibility of some heterogenous solutions and even if some of them are not abusive they might arise interpretations and doubts regarding their righteousness. In this case the practice decided as a rule on condition that the children are given to be brought up and educated to one of the parents, the same person also gets the residence with the obligation to pay the necessary money according to the shares of property the other spouse has. (Although it is not part of the present paper, it is worth mentioning that the money will be calculated after having established the property shares that belong to each spouse

by ceasing the previous situation).

2) The situation when the property meant to be common residence belongs only to one of the spouses.

- Considering that the spouses are during the process of divorce and division. At first sight the solution seems to be quite simple. A lapidary answer could be that as long as the building is one's own property (one of the spouses) and misunderstandings occur, the spouse who is not an owner should leave. But in this case the question arises: if he/she is not guilty, and, on the other hand, it is known that nobody can invoke his own guilt in order to promote an action and, even more, if we consider that the obligation of co-habiting was broken by the spouse-owner, what rights does the non-owner possess to defend himself and the common residence? Could the spouse non-owner get the possibility to evacuate the spouse owner, and who is guilty having been violent and for the breaking of marriage? It is really difficult to give a concise answer, as the right to property would be broken. However, after long debates upon the theme and case-law, it was finally agreed that such actions are admissible. Therefore, it was decided that the demand of evacuation is to be admitted even if the defendant spouse is the owner of the building; the argument was that the measure is not final and, consequently, does not mean the denial of his property right. It was also decided that the attitude cannot be considered an abuse and, if his/her behaviour is violent or aggressive it must be repressed and punished. Thus, under these circumstances this seems to be the only possibility to penalize the violent spouse even if he is the owner¹¹.

– In the hypothesis that the spouses concluded the process, obviously, as the ownership right is established by the Romanian Constitution¹², the court must take into consideration the aspect, and by the end of the trial, the non-owner spouse will have left the home that was considered common residence. In spite of all this, because the spouse's attitude considered abusive in family relationships, and he/she an aggressive person, shouldn't we consider that the non-guilty spouse, although a non-owner, cannot be left without an intimate right, and the other spouse

¹¹ Supreme Tribunal, civil section, Decision no. 1775/1976, *Culegere de Decizii* 1976, p. 114. E. Florian, *Dreptul familiei*, 2nd edition, CH Beck, București, p. 80.

¹² Art. 44 of the Romanian Constitution – The right to private property as well as the debts incurring on the State are guaranteed. The content and limitations of these rights shall be established by law.

be penalized in his right of owning the residence? The aspect has not been entirely solved up to now, but the new Civil Code through its imperative norms of the primary regime settles by means of Articles 321-322 the legal regime of family residence, also giving the necessary imperative norms of protection of this judicial institution.

The protection of imperative disposals of the new Civil Code is enlarged by Articles 323 and 324 upon the spouses' rights regarding a hired residence, that means in a situation where neither of the spouses is an owner of the building considered common residence.

3) The situation where neither of the spouses possesses the building considered common residence.

- Analysing this hypothesis the starting point is that rent law obeys the Family Code, namely the rules of matrimonial regime upon common goods. Thus, the term „goods” in Article 30 must be considered in its judicial sense¹³, including both things and patrimonial rights upon those things¹⁴ taken as common goods of the spouses.

The rent law of the spouses, who are in a process of divorce and division of goods finds identical case-law and jurisprudence solutions with those where both spouses have a property right upon the common residence, so there is no need to go on with this hypothesis.

But when the spouses have concluded the divorce process a new question arises: to whom will the building be given? Two situations appear: the first one when the spouses do not have under age children, the building is given to the spouse who demonstrated not being guilty for the breaking of the marriage; the second situation, when the spouses do have under age children, the building is given to the spouse who also got the children.

These various instances are simple and definite. But what happens when the breaking of marriage is the guilt of both spouses; what is the court's position? Lacking a particular lawful text¹⁵ existing in the Family Code, the

¹³ I. P. Filipescu, A. I. Filipescu, *op. cit.*, p. 55-57.

¹⁴ Gh. Beleiu, *Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil*, Edit. Universul Juridic, București, 2001, p. 94.

¹⁵ Emergency Ordinance no. 40/1997 introduced Art. 27¹ stating that in case of a divorce, if spouses did not agree otherwise, the benefit of the lease contract is given to the spouse who has custody of the children, and if there are no children, to the spouse that obtained the divorce.

courts were called to solve such cases, taking into consideration the judicial specificity, and giving the building according to it.

Case-law made use of a criterium which should be regarded: to give the rent contract to that spouse who badly needs residence¹⁶. Not all instances took into consideration this fact.

Taking into consideration the gaps in normative acts up to now, the legislator of the new Civil Code has brought a more definite and protective settlement upon the spouses' rent law.

Starting from the obvious point that any married couple, and even more those who have children, need a place where to live, Article 321, par. 1 in the new Civil Code defines the term family residence as being „the spouses' common residence, or, not being the case, the building of the spouse who got the children”.

The legislator took into consideration that in foreign settlements the family residence is not necessarily „the spouses' common residence. For example, in the French Civil Code, Article 215, the regime of the family residence is settled in a more restrictive way¹⁷ than that of the common residence. The family residence has a double importance: first, objectively, it is the building where the spouses live and, second, the spouses, subjectively, affected the building because of their family life.

The future Civil Code allows, by means of Article 321, par.2, that either of the spouses may ask the writing in the land registry of a building as being family residence, even if he/she is not the owner of it. This step confers a special judicial statute to that building. Thus, according to Article 322, par. 1, „neither of the spouses, even if being exclusive owner, can use the building without the agreement of the other one.” Also, a spouse must not remove or „make use of the goods being in the building without the other spouse's agreement:” (Article 322, par.2)

Breaking these disposals brings about the relative nullity penalty, according to Article 322, par. 4, that says „The spouse who didn't agree

¹⁶ Supreme Tribunal, civil section, Decision no. 1681/1977, in „Culegere de Decizii” 1977, Editura Științifică și Enciclopedică, 1978, p. 6; Decision no. 1261/1982, in „Culegere de Decizii” 1982, Editura Științifică și Enciclopedică, 1983, p.129; Decision no. 485/1982, in I. G. Mișuță, Al. Lesviodax, *Repertoriu de practică juridică în materie civilă a tribunalului suprem și a altor instanțe judecătorești pe anii 1980-1985*, Editura Științifică și Enciclopedică, 1986, p.23 și 124.

¹⁷ Also see: , P. Vasilescu, *op. cit.*, p. 35.

with the document may demand its *annulment* in one year time from the datum he found out about it, but not longer than a year from the ceasing of the matrimonial regime”.

We notice that, by introducing in the new Civil Code these special disposals regarding the family residence a derogation to the disposition right of the spouse owner is brought, namely it is obviously restricted. This restriction can be seen only in the context of introducing the building in the land registry as „family residence”. Out of this context, it could be considered a breaking of constitutional norms which guarantee the property right. Not being introduced in the land registry, the spouse who is not an owner of it, and who hadn't agreed upon the estrangement of it by the other spouse, can demand nothing but *damages – interests*.

The family residence can be, and is sometimes, a hired space, that has a special settlement.

3. Rent Law Regarding Hired buildings

As the legislator thinks, the necessity of a special settlement of the spouses' rent rights in a hired building is imposed in order to assure a minimum of protection to an essential aspect of the patrimonial relationships between spouses – that of leading a family life in a common residence – both for the periods of calm, and those of crisis, when the spouses get apart or divorce. An equilibrium is thus kept between the spouses' economical interests and conflicts which may deteriorate the marriage.

Up to this moment, when we already have a definite settlement of the spouses' rent rights, if one of the spouses had got, during the marriage, the right of rent law, one may wonder whether it is common or his own. The answers have been controversial¹⁸. The future Code, by imperative disposals of the primary regime, puts an end to the debate. Thus, Article 323, line 1, in the future Code says:”In case the building belongs to them by means of a hire contract, each spouse has a rent right of his own, even if only one of them is holder of the contract, or the contract was concluded before marriage”.

¹⁸ See the copy from M. Eliescu, *Raporturile patrimoniale dintre soți*, in Tr. Ionașcu, I. Christian, M. Eliescu ș. a., *Căsătoria și încheierea ei*, Edit. Academiei RSR, București, 1964 p. 273 și urm.; P. Anca, *Structura juridică a dreptului de folosință privind suprafața locativă*, in „Studii și cercetări juridice”, no. 1 / 1956, pp. 107-181.

When breaking the marriage, if the residence cannot be used by both of them, the benefit of the hire contract can be given to one of them, according to Article 324, par.1, taking into consideration first, the superior interests of under age children, the guilt that led to the breaking of marriage, and rent possibilities of the ex-spouses.

This text stipulates criteria for giving the building in case of divorce to one of the spouses, so as to eliminate the controversies in the judicial literature and practice, related to who has the right to stay in the residence after the divorce.

The spouse who got the benefit of the rent contract should pay the other spouse an allowance to cover the expenses for moving to another building, excepting the case when the latter was exclusively guilty for breaking the marriage. Should there be common goods, the allowance may be imputed during the division upon the decided share for the spouse who received the building.

In order to ensure the acceptance by the tenant with all the included effects, article 324, par.3 in the future Code stipulates that the tenant will be cited in the process when getting the building, so that the effects of this action will take place from that datum, when the judicial decision is final.

By presenting in a concise manner the imperative norms regarding the spouses' rent rights, we underline the fact that although the future Civil Code, as a whole, makes the breaking of marriage easier, offering more divorce possibilities, they do not penalize the guilt when done through economical, patrimonial measures, such as the lack of the right to allowance when settling in another building.

4. Marriage Expenses

The basic primary regime in the future Civil Code includes imperative disposals also regarding marriage expenses. Obviously, each family, by living together, is confronted with expenses. In this respect, Article 325, par. 1, stipulates that the spouses should offer each other material support. According to Article 325, par. 2, they should take active part in the marriage according to their own means, if, by means of matrimonial convention, it has been decided otherwise.

The spouses' obligation to reciprocal material support and that of taking part in various expenses is stipulated in various lines, namely the law

does not identify the two obligations; neither does it accept a certain interference between them. The principle is that the spouses due reciprocal material support. They may derogate from this principle by making a matrimonial convention, referring only to marriage expenses.

According to Article 325, par.3, any convention including the idea that the marriage expenses belong to one spouse only is considered as being not written.

Each spouse's work done in the house-hold and for bringing up the children is, as Article 326 in the new Civil Code stipulates, a contribution to marriage expenses. This acceptance, not included in a law text up to now, but regarded as such in the doctrine and practice, is an important contribution for determining the content of marriage expenses. It is worth noticing that the law regarding marriage expenses does take into consideration both the parents' and children' interests. Therefore, the meaning of the phrase „marriage expenses” can be determined from now on as stipulating: expenses for everyday's common life, for bringing up the children, but also expenses for reciprocal help, even in special conditions after the marriage was broken.

Until a definite text of the new law (Article 326) was introduced, law that determines the area of expenses, it was only the doctrine that interpreted them¹⁹.

As we already mentioned, each of the spouses' obligation to contribute according to his/her means, to marriage expenses is not entirely identified with material support. The latter supposes, among others, also the covering expenses of entertainment, besides the spouses' obligation to take care one of the other, and also the obligation of taking care of underage children. In case of divorce, material support and common house-hold ceases, but their obligation to take care of the children survives after the divorce.

On the other hand, taking into consideration the fact that, according to Article 325, par.2 in the Code regarding the spouses' contribution to marriage expenses, the spouses may derogate by means of a matrimonial convention, we must stress upon the fact that their contribution to bring up the children can not be subject of a matrimonial convention, being the

¹⁹ See: M. Eliescu, *op. cit.*, p. 180; I. P. Filipescu, *Tratat de dreptul familiei*, 5th edition, All Beck, București, 2000, p. 50; P. Vasilescu, *op. cit.*, p. 36-37 etc.

parents' duty.

It is worth mentioning the importance of material support stipulated in Article 325, par. 1 being more comprehensive than the obligation to contribute to marriage expenses, which it implicitly includes, but is not exactly identified with.

5. Income got from the job

As far as this aspect is concerned, the disposals of the basic primary regime stipulate, in Article 327, that each spouse is free to do any job and get, according to the law, incomes, save that he/she obeys the obligation regarding marriage expenses. We notice from this text that, although the spouses may use their incomes the way they choose, marriage expenses are to be obeyed. The spouse who effectively participated in the professional activity of the other one has, according to Article 328, the right to compensation, related to the latter's wealth, if his participation went beyond the limits of material support and marriage expenses²⁰.

Another norm of the basic primary regime in the new Civil Code is that of patrimonial independence of the spouses, which is a completely new disposal and can be found in the Family Code only among lawful disposals regarding patrimonial relationships between parents and children or between the children and tutor. Article 317, paragraph 1 in Section 1, Common Disposals, stipulates that „if not required otherwise by the law, each spouse may conclude any judicial acts with the other one or with a third person.” The content of this principle stresses upon what we mentioned before related to the spouses' independence to conclude between them the mandate contract settled by Common Law in Article 2009-2016 Civil Code, with the peculiarities imposed by the matrimonial regime they have.

Very good are the paragraphs 2 and 3 belonging to Article 317 which frame the judicial regime of some bank documents of spouses which, till this new settlement, was only object of debate of judicial doctrine and practice.

Thus, by means of definite norms, according to Article 317, par. 2,

²⁰ For a bird's view upon incomes from jobs see: P. M. Popovici, *Natura juridică a câștigurilor realizate de către sportivi din punct de vedere al dreptului familiei*, in „Revista de Drept Comercial”, no. 7-8 / 2006, pp. 108-111. For other income sources, of a debateable nature, see P. Popovici, *Natura juridică a câștigurilor realizate la diferite sisteme de jocuri de noroc*, in „Dreptul”, nor. 5/2003, pp. 83-87

„each spouse can make alone, without the agreement of the other spouse, bank deposits, as well as other kind of related activities.” As law makes no difference between the spouses’ categories of goods, or between types of matrimonial regimes, it results we shouldn’t either. Therefore, the disposals are general, as they appear in the chapter regarding rights and obligations between spouses. Thus, we may say that spouses, not only in the regime of goods division, but also those which are common, would be able to do bank deposits or other operations without the agreement of the other spouse.

More than that, Article 317, paragraph 3, allows the spouse holdert of the account, related to the bank society, to use the funds, even after the marriage was broken, if not decided otherwise by means of judicial decision.

We still foresee that in the future judicial practice will not be prevented from many litigations rising various specific aspects regarding the patrimonial independence between spouses²¹.

In supporting a solution to these aspects we believe the disposals in the new Code will be useful (318) that settles, as a basic norm, the right to information.

6. Right to Information

According to Article 318, paragraph 1, „Each spouse may demand that the other one shoould inform him/her about his incomes, goods and debts, and in case of unjustified denial, he can address the tutelage.” And then, line 2, stipulates that „the instance may compel the spouse or any third person to deliver the required nformation and give the neccessary proofs related to this aspect.”

It is true that if the legislator is so open regarding spouses’ prerogatives to conclude any operations with the goods which are part of their patrimony, it is the same legislator who, by means of his imperative norms teaches the spouses about the fairness of such actions, if not, allowing the spouse who was deprived of his own interests to bring to order the other spouse by the tutelage.

Although preoccupied with spouse’s rights whose interests might be broken, the legislator, by his norms, does not omit to create an

²¹ Also see P. M. Popovici, *Regimul matrimonial al separației de bunuri*, in „Pandectele Române”, no. 2/2006, p. 191.

equilibrium as far as the third person is concerned, who although might deliver the required information, are allowed to refuse, when their refusal is justified by the keeping of professional secret (Article 318, paragraph 3, Civil Code).

It is worth mentioning that in settling the patrimonial relationships between spouses the legislator sets up (Article 318, paragraph 4) a *relative presumption of truth* of supporting the plaintiff spouse when demanding information about goods, incomes, debts, he refuses to give them or when being the only justified person to demand from some institutions he refuses to do so.

Including the presumption of truth for the plaintiff spouse seems proper to us and constitutes a judicial means of settling the patrimonial behaviour of spouses in the relationships between spouses.

