

ABSTRACT

The herein thesis aims to achieve an analysis of the problematics of the role and place of co-ownership in the field of modalities of property right, configuration of its coordinates from a double point of view, that is the perspective supplied by the Civil Code of 1864 and by the new Civil Code. We consider that the theme is interesting in view of the recent detailed regulation of co-ownership fnew Civil Code, as well as the rich jurisprudence in this area, which represented the driving engine for this new regulation.

We approached the shaping of an individual physionomy, the establishment of the legal nature, of contents and specificities of exercise and defense of this modality of the property right, by framing it among the other modalities of property right.

We intended to clarify the controversial legal issues related to co-ownership through a comparative analysis of the provisions of the two codes, as well as through the performance of an analysis of the jurisprudence, which is rich in cases in this field.

The richness and diversity of numerous practical cases in this area lead to a rich jurisprudence and legal experience, which, in synthesis, is found in the new Civil Code.

We analyzed the theme by framing it in the much larger context of the concept of property right and of its defining attributes, by reviewing its legal contents.

The multitude of owners of common property makes the study achieved to take into account the role, purpose and practical consequences

resulted from the relations of co-ownership in order to reconcile the interests of all co-owners, for the exercise by everybody and by each one of them the attributes which represent the legal contents of co-ownership.

Through the parallel done with other similar legal institutions I revealed numerous interferences which the institution of co-ownership has in other fields.

Which is characteristic to co-ownership is that all prerogatives of the right belong together and in the same time to several owners, which exercise simultaneously and in a concurrent manner the attributes which represent the legal contents of property right.

In the view of the Civil Code from 1864, the legal literature and legal practice brought a meaningful contribution to shaping an individual physiognomy of common property law, to the establishment of the legal nature, of the contents and specificities of exercise and defense of this right.

The new Civil Code aims to supply a gap in the legislative area, the insufficient regulation of co-ownership and regulates in detail the types of common property, as well as the means to protect it.

Before studying co-ownership, as a form of common property, I analyzed its role in the assembly of legal relations of property, thus realizing a synthetic presentation of the property right, taking into account the conceptual preliminaries, the defining attributes of the property right and its legal contents.

The thesis is structured on six chapters, it contains an introduction, a chapter which makes a synthetic analysis of the private property right, a chapter which analyzes in brief the legal modalities of property law, a large chapter which analyzes the co-ownership in the system of modalities of the property law, a chapter regarding time-sharing property, a chapter which

contains the protection means of co-ownership and a final chapter which contains the interferences and parallels with other similar institutions.

The first chapter analyzes the preliminary considerations regarding the field of private property law. We reviewed the conceptual preliminaries, the defining attributes of private property law and the legal content of property right.

The property right is defined in the new Civil Code, within title II, related to private property, art. 555, as being the right of the owner to own, use and dispose of an asset in an exclusive, absolute and continuous manner, within the limits established by the law, mentioning that, in the conditions of the law, it is susceptible of modalities and dismemberments, as applicable.

Also, it is mentioned that the property right may be exercised within the material limits of its objects. These are the corporal limits of the asset which is the object of the property law, with the limitations imposed by the law.

The exercise of attributes of the property right may be limited by law. Thus limitation may be done also by convention, with the exceptions mentioned by the law.

The second chapter treats the legal modalities of the property right, that is the resolvable property, the annulable property and the common property.

Sometimes, the property law presents a certain degree of complexity, in the sense that several versions are encountered, modalities of this right, which present certain differences in which concerns the general legal characteristics.

The resolvable property was defined as being the legal modality of the property right which expresses the situation of temporary uncertainty of this right, when its transfer from an owner to the other was done under a resolutive condition.

By annulable property we understand the legal modality of property law which appears in case the transfer of property from one person to another is done on the basis of a legal document which is relatively null (annulable). It is important to establish it as relative nullity of the legal document, that is to aim only the interests of the parties which concluded the document, in consequence, the possibility to expressly or tacitly confirm those interested in claiming the nullity.

The third chapter establishes the coordinates of co-ownership in the system of legal modalities of property law. It contains the evolution of co-ownership from the formalism specific to Roman law to the current regulation, categories of common property on quotas-shares, forced or continuous co-ownership, common property in condominium, as well as jurisprudential aspects in the field of co-ownership.

Also, in chapter III I also analyzed the forced co-ownership. The forced and continuous co-ownership is characterized by that fact that it cannot cease by legal partition. It may result, by interpreting the respective provisions *per a contrario*, that the conventional partition is not excluded.

In this sense, we can mention also the provisions of art. 671 para. (3) of the new Civil Code, where it is mentioned that, in the case of time-share property and in the other cases of forced property, the partition may be done only by amicable decision.

The forced and continuous property is that form of common property on quotas-shares which is characterized by the fact that it exists and it maintains independent of the will of co-owners, because, in most cases, it is reflected on assets called accessory assets, because they serve other assets called principal. These assets, by their nature and destination, being used by several owners, cannot be divided. The continuous character of co-ownership regards the accessory asset and is given by the permanent destination the asset has.

Chapter IV contains an analysis of the time-share property as an imperfect manifestation of co-ownership.

This type of property appeared for the first time in the legal practice of our country in the year 1995, when the Autonomous Company "Loteria Română" launched an emission of tickets with the title "Vila de Aur" (Golden Villa), the winner being offered "the property right, for a week in a year, on a 3 room apartment, with furniture and with electronic equipment, situated in a luxury villa in Poiana Braşov; the winning tickets have the villas, apartments, as well as the property periods mentioned; the property right may be sold, rented, transferred or transmitted as inheritance; the maintenance of apartment is ensured against a fixed annual amount".

Chapter V is entitled "Protection of property by specific means". The defense means of the property right are the claims by which the owner aims to eliminate the violations of his right and to help to reestablish it.

The common time-share property, as modality of the property law, may be defended by the same means as the property law, that is direct and indirect means.

The direct means represent those claims which are directly grounded on the property right, being the direct companions of this right.

The last chapter contains a comparative analysis of co-ownership related to other similar legal institutions, that is copossession, affectation patrimony, assets of a trade company, intellectual property rights and the legal regime of common goods.