

MODIFIERS ISSUES BROUGHT BY LITTLE JUSTICE REFORM IN THE FIELD OF MARRIAGE

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Abstract

A new bill this year is Law no. 202/2010, Law on measures to accelerate the settlement process, called Little Justice Reform, which has brought some changes in law and family law. This paper aims at analyzing the main changes to the Small Justice Reform in dissolution of marriage in the only known way: the divorce proceedings.

The paper was divided into two parts, one relating to the analysis of changes to the Code of Civil Procedure in matters of divorce by Law no. 202 and the second relates to the analysis of changes to the Family Code relating to divorce, the new changes.

Keywords *"Little Justice Reform", divorce, mediation, dissolution of marriage.*

Law no. 202/2010 regarding some measures to accelerate the settlement process, including the "Little Justice Reform" was published in the Official Gazette of Romania, Part I, no. 714 of 26 October 2010, and in relation to the entry into force, Art. XXVIII provides for a period of 30 days after publication in the Official Gazette, except the provisions on divorce by administrative and notary by which enter into force within 60 days after publication in the Official Gazette.

This law amends a number of procedural rules or special procedures, including special procedure divorce in family law by amending the Code of Civil Procedure and Family Code.

1. Analysis of changes to the Code of Civil Procedure relating to divorce

The term process and publicity of divorce by agreement between the spouses, Article 613¹ Civil Procedure Code has changed radically. Thus, if the old forms, the presiding judge, the first application for divorce, then check for spouses consent within two months set a public hearing, in its present form, after verification of the presiding judge shall appoint a term spouses consent (not two months as was covered above, but perhaps it is recommended to be shorter in order to accelerate the settlement process and applications) to settle the claim in the council chamber, so no public hearing, another novelty, the previous proceedings in camera application is possible only with certain conditions stipulated by law. According to 615 articles, Code of Civil Procedure, the application for divorce shall be heard in open court. The court may order proceedings in camera but if you consider that by this would ensure better management trial or evidence. In all cases the decision is pronounced in open court.

Other changes relate to mediation as alternative dispute resolution procedure, art. 614¹ added by amending the law where the judge recommended mediation and the parties accept it, they will present to the mediator, to inform them of the advantages of mediation. The mediator can not charge fees for informing the parties. After informing the parties

decide whether to accept divorce settlement through mediation. By the deadline set by the court, which can not be less than 15 days, Parties shall report prepared by the mediator on the outcome of the briefing. These provisions do not apply when the parties have sought resolution through mediation before divorce proceedings are brought.

On another occasion¹ I made the distinction between mediation and conciliation, saying that as a rule, conciliation and mediation terms overlap, but where the distinction between them, the criterion is the degree of intervention of third parties. According to an opinion², if conciliation "conciliator brings the parties to the conflict, encouraging them to submit ideas, different approaches and solutions and assisting them in finding their own solutions to the existing conflict. Instead, during mediation, the mediator is more active, acting as a conciliator, but forward its own proposals for resolving the conflict by both parties work, however, may refuse such proposals."

2. Analysis of the Family Code amendments relating to divorce

The radical changes which have operated in the procedure of divorce by agreement between the spouses, which changes could previously only be carried out with the cumulative performance of two specific conditions and have passed one year after marriage and there are no minor children resulting from marriage. Now, according to Article 38 Family Code, divorce by agreement between the spouses may be pronounced by the court regardless of the duration of marriage and whether or not minor children resulting from the marriage.

If one spouse is put under the ban, the divorce by agreement between the spouses can not be accepted.

The new legislation has introduced a new requirement for the court, to ensure there is consent of the spouses and non-vitiation of it through one of the three vices of consent that may affect the validity of the marriage (the error when it is on the physical identity of the other spouse, the fraud - even retincentă and violence, usually the mental). A positive aspect is the provision relating to protection of interests of the child even in the simplified procedure of divorce by agreement between the spouses. And in this case, as in the divorce process itself, in addition to the end of proceedings, on the dissolution of marriage may be made and the heads of claim relating to maintenance accessories, home use and after modification - on custody of minor children. Under the Family Code amendments by Law no. 202, to resolve these claims (relating to the custody of minor children, maintenance and use of the dwelling), the court will take into account the interests of minors."

Another major change in divorce proceedings concerning the powers of the claim for dissolution of marriage. If until now the only competent to address both common law divorce proceedings and to resolve divorce by agreement between the spouses was in the first instance the court, by introducing four new items in the Family Code, the new law introduces a new jurisdiction in divorce by agreement between the spouses (Article 38¹ - Article 38⁴).

Thus, Article 38¹, if the spouses agree to divorce and have no minor children born in wedlock or adopted children, civil status officer or notary public at the last marriage or common house of the spouses may find husbands divorce by agreement, releasing them a certificate of divorce law. We note a positive aspect of this change consists in the fact that no discrimination between children born in wedlock and those adopted during the marriage, ensuring full equality between natural and civil lineages, as was natural, and as I repeatedly affirmed a previous amendment, and rejoicing that the legislature took into account the views expressed in the literature³.

The agreement between the spouses in divorce proceedings under the Family Code Article 38², the application for divorce filed by the spouses together, unlike the old regulations which provide that the application for divorce by agreement between the spouses shall be submitted by the spouses or by one of them but signed by both spouses, but their presence together is absolutely necessary. Civil status officer or notary public registers the request and grant a period of 30 days for the eventual withdrawal of an application for divorce. Therefore, although the law does not regulate, as in past periods for conciliation and / or thinking, is provided within afterthought or withdraw the application for divorce, however shorter than two months, which was actually the term of the divorce court for settling claims by agreement between the spouses, namely 30 days.

Thereafter, the officer of civil status or, where appropriate, the notary public to verify that the wife insisted on divorce and whether, in this sense, their consent is free and uncorrupted. Note that the new rules insist on that point, the verification of consent by both spouses court (appearance showed above), and by the civil registrar, that the notary public.

If the spouses continue in divorce, civil status officer or, where appropriate, the notary public certificate of divorce without making any mention of the guilty spouse. With regard to that misconduct, we consider that the provision is unnecessary since, however, the notary public or civil status officer could not pronounce one fault divorce, the other or both spouses, for they do not have jurisdiction to hear the actual application divorce. Moreover, even these changes by referring to the notary jurisdiction, for example, actually refer to the finding divorce (Article 38³) and not to judge or divorce. On the other hand, if no settlement by agreement between the spouses divorce petition by the judge, he did not rule on the fault of the spouses, as a reason for divorce, this time, the consent of their husbands and not fault or blame one or the other .

If spouses can not agree on the name of the family to wear it after the divorce, the officer of civil status or, where appropriate, issue a notary public to reject the application for divorce and spouses guidance to address the court, according to Article 38. On that changes are needed to make some clarifications. From this formulation means that it will bear the name after a divorce wives by their agreement and understanding is not the legal effect on the dissolution of marriage, namely the return to the name it had before. The possibility of maintaining the common name was possible until now, exceptionally, if the former spouse express their consent or even without such consent, if the court considered that the reasons given by the applicant were based, but not proceeded the assumption that the spouses can choose and can understand the name, regardless of circumstances or the reasons.

Settlement of claims on other effects of divorce on spouses who do not understand is for the court.

The divorce trial and formal requirements to be fulfilled after the dissolution of marriage under the Family Code Article 38³, as it was introduced by Law no. 202/2010, the application for divorce is filed at the town hall where the marriage took place, civil status officer, after issuing the certificate of divorce, make proper entry in the act of marriage. If the application to the mayor's wife in whose jurisdiction their last common residence, civil status officer issuing the certificate of divorce and shall, without delay, a certified copy thereof to the hall where the marriage took place, to be made phrase in the act of marriage. In the case of divorce by finding a notary public, it shall issue the divorce certificate and shall, without delay, a certified copy thereof to the hall where the marriage took place, due to be mentioned in the act of marriage.

Also, new regulations provide, and what happens if the application for divorce in the jurisdiction of the notary public or civil status officer is rejected by them. Under Article 38⁴, if the conditions of Article 38¹, the officer of civil status or, where appropriate, the notary public reject the application for divorce. Against refusal of civil status officer or notary public no appeal, but spouses may address application for divorce court to have their divorce by agreement or under another basis provided by law. To repair the damage by refusing unfairness of civil status officer or notary public to determine the dissolution of marriage by agreement between the spouses and issue the certificate of divorce, either spouse may, by separate court.

Another change concerns the date on which the marriage is considered dissolved by divorce, divorce law by distinguishing itself in divorce by agreement between the spouses, on the one hand and the effects of divorce between spouses and to third parties on the other side. Under the current wording contained in Article 39, the day when marriage is dissolved by the decision to divorce remained irrevocable. In the case provided for in Article 38¹, the marriage is dissolved on the date of issue of divorce. Compared to the third, the economic effects of marriage shall cease on the date when the decision was made mention of divorce or, as appropriate, on the divorce certificate of marriage or after divorce when they met in another way.

Change on the jurisdiction to hear applications for divorce was a much anticipated time, the emergence of the new Civil Code which will repeal the provisions of the Family Code. Perhaps it is presumed that the entry into force of the new civil code will be removed at once, since the legislature considered amending these provisions could not wait until the coming into force of the new civil code. However, large deductions manifest vis-à-vis the jurisdiction of the notary public and civil status officer to settle claims by agreement between the spouses divorce, believing that this action should be on future court jurisdiction to hear, even between the spouses if there is disagreement as to any claim related to divorce. There are other applications “necontecioase” the jurisdiction of the courts and does not believe that all those applications that do not involve parties with conflicting interests should be given the competence of other organs than the courts.

Endnotes:

¹ Laura Cetean-Voiculescu, "The procedure for solving trade disputes", House of Printing CH Beck, Bucharest, 2007;

² N. Voiculescu, "Labor Law. Internal regulations and Community ", Publishing Rosetti, 2003, p. 162;

³ For more details see Laura Cetean-Voiculescu, Adam Dragoi, "Theoretical and practical course of Family Law", Agora University Publishing House, Oradea, 2007, p. 116-120.