

PERIODICAL PROPERTY IN THE NEW CIVIL CODE

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Abstract: *The characteristic of periodical property is that more than one person should exert successively and repetitively the attribute of use specific to the right of property on a mobile or immobile asset, during determined time intervals, whether equal or unequal.*

Periodical property is regulated by the New Civil Code as a variety of imposed joint property, and not as an absolute modality of property. What is peculiar to periodical property is the way of expressing the intellectual division of the right, the shares being expressed in periods of time. This peculiarity makes the attribute of use to be exerted differently by the owners of periodical property compared to the titular co-holders of a shared quota of the right. In the time span in which in which a co-owner has the right of use on the asset, he or she will solely and exclusively exert this prerogative on the asset as a whole. The use of the asset is successive and repetitive, on determined intervals which may be equal or unequal.

Key-words: *Periodical property, imposed joint property, the attribute of use, shared quotas expressed in time intervals.*

1. Concept and definition

In the second part of the last century, on the background of the increasing prices of buildings type “holiday home” and, in the meantime, of the increasing demand of these type of building on the estate market, a new legal formula was sought through which the right of property to belong to more holders, who could exert successively and repetitively the attribute of use on the entire asset during equal or unequal periods of time.

Thus, at the beginning of the nineteen sixties the so-called periodical property appeared in the tourism industry and in real estate in some European countries and then in North America.¹

Called “time share” or “time sharing” in the Anglo-Saxon system and “temps partagé” in French law, this new type of property arose controversy in our doctrine, regarding the term which will best describe its peculiarities, asserting the idea that this type of property should be called spatial- temporal property, respectively periodical property, each of the concept attributed had their critics though.²

¹ For a detailed analysis of the historical evolution of this legal institution to be consulted I. Popa *Spatial-temporal co-property in Pandectele Române*, no. 5/2004, pages 227-239

² To be consulted V. Stoica, *Civil Law. Main Real Rights*, C.H. Beck Publishing House, Bucharest, 2009, pages 284-290; V. Stoica, *Periodical Property in Pandectele Române*, no. 4/2005, pages 164-179; I. Popa, *Co-property...* , pages 227- 231; T. Sâmbrian, *Property in the “Time- Sharing” System- Periodical Property- a New Modality of the Right of Property in Dreptul*, no. 5/1997, pages 35-43; B.C. Stoica, S. Stoica, *Real Estate Investments in Time -Share Regime between Dream and*

The legislator has chosen the name of “periodical property” regulating its legal regime in articles 687- 692 in the new Civil Code³; dispositions found in Chapter V from Title II (“About private property”) and in the third book (“Assets”).

According to article 687, we found ourselves in the presence of periodical property when more persons successively and repetitively exert the attribute of use specific to the right of property on a mobile or immobile asset in determined periods of time, whether equal or unequal.

Two characteristics of periodical property can be drawn from this definition: on the one hand, it has many holders, and, on the other hand, the attribute of use is exerted successively and repetitively by these holders in determined intervals of time.

Periodical property can have as its subject any kind of physical assets, mobile or immobile. These assets should be inconsumable, because at the end of the period of use, the asset should be handed to the holder who is going to use the asset. It was, though, considered that consumable assets too, can be the subject of periodical property if they are attached to an inconsumable asset, but at the end of the period of use, each holder has the obligation to offer the following holder consumable assets of the same quantity, quality and value with the assets consumed.⁴

In France, periodical property, that had numerous terms attributed⁵, is regulated by Law no. 86-18 from January, 6th 1986. According to article 1, line 1 of this law “societies of attributing buildings for use in shared time” can be constituted. Within these societies the holders of the shares benefit of the time of use in a certain interval of a part of a building. Thus, the building is the property of the society and the associates are mere lodgers, being holders of the right of stay, thus having a mobile personal nature.⁶ The law from 1986 clearly stipulates that the associates have no right of property or any other real right (article 1 line 1 the second thesis).

In the Quebec province we may find the same view on periodical property as in France. Thus, according to article 298 of the Civil Code in Quebec a group of persons can associate themselves in a “co-habitation cooperative” which becomes a moral person distinct from the persons who have constituted it, having its own existence. The cooperative is the holder of the right of property on the building and its members are holders of the social parts and they benefit of the services of the cooperative under the form of inhabiting. These are privileged lodgers, being allowed to inhabit the building as long as they own the social parts.⁷ Due to the specific of this juridical institution, it has

Actual Possibilities in Pandectele Române , no 5/2004, pages 213- 226; C. Toader, *The Time-Sharing Contract now regulated in Romania in Revista de Drept Comercial*, no 9, pages 152- 183

³ The new civil code was adopted in Law no. 287/17.07.2009, published in the Official Monitor no. 511/2009. In article 220 of Law 71/2011 regarding the application of Law 287/2009 concerning the Civil Code, published in the Official Monitor no.409/2011 the validation of the new Civil Code beginning with the first of October 2011 was settled.

⁴ L. Pop, L.M. Harosa, the work quoted above, page 220, V. Stoica, the work quoted above, page 284

⁵ Fr. Terré, Ph. Smile, *Droit civil. Les biens*, 5^e éd. Dalloz, Paris, 1998, page 386. At the beginning the French doctrine called this type of property ‘mutiproperty’, but, considering that the term is inadequate, terms like ‘spatial-temporal property’, ‘the usage of buildings in shared time’ or ‘temporary co-property’ have been assigned.

⁶ To be consulted I.Popa, *Co property...*, pages 230-231. On the same subject . Cornu, *Droit civil. Les biens*, 11^e éd. Montchrestien, Paris, 2003, pages. 437; J. P. Rousselle, *La multipropriété*, in *La revue du Notariat*, Montréal, no. 5-6/1985, pages. 87; Juris-Classeur, *Copropriété*, èd. Techniques

been said in doctrine that this is not a form of the right of property, but a mixed form of property and renting.⁸

2.The legal nature of periodical property

Until the legal consecration of this institution, the doctrine was not unitary concerning the legal nature of periodical property.

Some have said that periodical property is a mere *form of the right of property* within which each holder exerts in his/ her own name and interest the prerogatives of his/her right of property during a specified period of time, which repeats successively and permanently at settled and equal intervals, at least two holders being required.⁹

Some other authors have said that periodical property does not guarantee a right of property to its holders; it actually represents *the right of use in a determined shared period of time*.¹⁰

Others have said that periodical property is *a variety, a type of common property*,¹¹ or, as it has been called, *a special hypothesis of co property*,¹² not a new self-existing form of the right of property. Those who agree with this opinion consider periodical property but a mere form of common property on shared quota which manifests the characteristics of this modality of property, the difference being that the right is divided in periods of time and not on shared quota.

After the regulation of the periodical property in the new Civil Code, its legal nature was settled clearly as being a variety of common property and not a modality of the distinct right of property. Thus, article 646, the first point in the new Civil Code stipulates clearly that the assets about which article 687 talks about (article which stipulates periodical property) are part of forced co property. The legislator himself calls the holders of this right “co owners” (for instance article 689 entitled “ the validity of the papers signed by *co owners*” or article 690 “the rights and obligation of the co owners”)

3.Periodical property- variety of forced co property

As we can conclude from the provisions of article 687 of the new Civil Code periodical property maintains the features of common property on shares: plurality of holders of the right, the physical indivisibility of the asset, the intellectual division of the right of property.

Specific to the periodical property is the modality of expression of the intellectual division of the right. If, in the case of common property on shares, the right is divided in quotas expressed in fractions or percents, in the case of periodical property these quotas are expressed in time intervals (days, weeks, months). These intervals must be determined; the

SA, Paris. Regarding temporary property to be consulted H. si L. Mazeaud, J. Mazeaud, Fr. Chabas, *Leçons de droit civil. Biens, Droit de propriété et ses démembrement*, 8^e édition, Montchrestien, Paris, 1994, pages. 106-108.

⁷ Baudouin-Renaud, *Code civil, Quebec, 2003-2004*, éd. Wilson-La Fleur, 2003.

⁸ P.C. Lafond, *Précis de droit des biens*, Les Editinos Thémis, Montreal, 1999, pag. 717.

⁹ T. Sâmbrian, *Property in a system...*, page 35

¹⁰ I. Dogaru, S. Cercel, *Civil Right. The general theory of real rights*, All Beck Publishing House, 2003, page 163

¹¹ O. Ungureanu, C. Munteanu, *Civil Right Treaty- Assets. The main real rights*, Hamangiu Publishing House, Bucharest, 2008, page 362: V. Stoica, the quoted work, pages 284-285; E. Chelaru, *Civil Right. The main real rights*, second edition, C.H. Beck Publishing House, Bucharest, 2008, page 212

¹² L. Pop, L.M. Harosa, *Civil Right.- The main real rights*, Universul Juridic Publishing House, Bucharest, 2006, page 220

provisions of article 687 of the new Civil Code are clear in this direction. Otherwise we found ourselves in the presence of ordinary property and not of periodical property.

This feature makes the attribute of use to be exerted differently by the holders of periodical property unlike the co owners of a shared quota of the right. In the time interval in which a co owner has the asset in his/her use, he/ she solely and exclusively exerts this prerogative on the entire asset. The use of the asset is successive and repetitive, in determined intervals, which can be equal or unequal.

On the other hand, possession and disposition are exerted simultaneously and by every holder in the case of periodical property just as in the hypothesis of common property on shares. Except for the period in which he/she has the use of the asset, each co owner possesses *corpore alieno*, that is through the other co owners.¹³ Regarding the material and the legal disposition, the same rules apply as in the case of common property on shares, that is the principle of unanimity regarding the material disposition and the legal disposition on the asset and the rule of the exclusive right to decide from a legal point of view regarding the shared quota of the right corresponding to the time interval which has been attributed to each owner.

In the doctrine previous to the new Civil Code the periodical property was considered to be a version of ordinary co property because it has the same features and obeys the same legal regime, except the way of division of the right (on time intervals) and the way of exerting the attribute of use (exclusive, successive and repetitive).¹⁴

The lawmaker has settled this aspect, establishing, correctly, that periodic property is a form of *forced co property* and not of ordinary co property (article 646, the first point of the new Civil Code), fact that gives it a permanent character. Indeed, if in the case of ordinary co property, essentially temporary, each of the holders may ask to cease co property by partition, in the case of periodical property, the legal parting is not possible because of the specific way in which the shares of the holders are expressed. The division of the right of periodical property in time intervals is essential to this form of property, so like in the cases of other forms of forced co property, legal partition is not possible. This rule is consecrated in article 671, line 3 of the new Civil Code, which stipulates that in the case of periodical property, as in the other cases of forced co property, partition is possible only through settlement.

4.The sources of periodical property

According to article 688 of the new Civil Code, periodical property appears on the base of a legal act, the disposition of the land registry book being applied accordingly. Thus, periodical property can have as its source either convention or a *mortis causa* act.

If its source is convention, more hypotheses are possible. By convention, the parts may agree on building an immovable property or on making another asset regarding which the parts may have the right of periodical property, case in which this form of property is born. In another hypothesis, many persons may buy an asset, making clear in a contract that they acquire the right of periodical property on the asset. Another situation may appear in which the holders of a right of ordinary co property will agree on transforming this co property in periodical property.¹⁵

If periodical property appears by agreement, by the will of *de cuius*, the simple right of property is transformed in the right of periodical property.

¹³ L. Pop, L.M. Harosa,, the quoted work, page. 220.

¹⁴ L. Pop, L.M. Harosa, the quoted work, page. 217-218; E. Chelaru, the quoted work, page. 213.

¹⁵ V. Stoica, the quoted work, pages. 286-287.

The doctrine says that periodical property can also appear by the right of use.¹⁶ This theory was contradicted; periodical property can not appear by the right of use, because possession of an asset is not continuous, the conditions of a useful and able to have the right of use possession not being met.¹⁷

Regarding the acquirement of the right of periodical property by use there is another point of view that there a situation may appear in which the co owners of a building will acquire the periodical property this way, on condition that there is proof that *animus possidendi* corresponds, for all the co possessors, to this type of legal modality, the hypothesis of acquiring shares in a building when periodical property is considered is not acceptable because of lack of continuity of possession.¹⁸

We consider that the dispositions of article 688 of the new Civil Code are clear regarding the sources of periodical property; this could be acquired only by contract and not by the right of use.

5. Termination of periodical property

According to article 692 of the new Civil Code, periodical property is terminated by erasing it in the land registry book on the grounds of the acquirement of all the shares of the right of periodical property by a single person, as well in some other situations as stipulated by the law. These provisions represent an application of the constitutive effect principle of registrations in the land registry book¹⁹ as regulated by the new Civil Code.

The termination of periodical property by legal partition is not possible, being forbidden by article 671, line 3 of the new Civil Code. But nothing stops the co owners to cease periodical property by voluntary partition; the legal dispositions mentioned clearly stipulating that “parting will only be possible by agreement”.

By willing partition or by acquiring the shares by a single person, the right of periodical property is transformed into a simple right of property. Only in the case in which the asset subject of periodical property disappears, the rights of the co owners cease also. Thus, the termination of the right of periodical property does not affect the perpetual character of the mere right of property.²⁰

¹⁶ T. Sâmbrian, *Property in system...*, page. 43.

¹⁷ L. Pop, L. M. Harosa, the quoted work, page. 221; C. Bîrsan, the quoted work, page. 196-197. See also O. Ungureanu, C. Munteanu, the quoted work, page. 362.

¹⁸ V. Stoica, *Periodical property*, in *Pandectele Române*, page. 177

¹⁹ According to article 885 of the new Civil Code (1) if some adverse legal dispositions do not exist, the real rights on buildings from the land registry book are acquired, both between 2 partners and between three partners, only by their registration in the land registry book, based on the document or on the fact which justified the registration.

(2) The real rights will be lost or will go away only by their erasing from the land registry book with the consent of the holder written in an authentic notary paper. This consent is not needed if the rights fade away when the date in the documents is reached, or by death or termination of the legal existence of the holder, if a juridical person.

²⁰ V. Stoica, the work quoted, page. 290.