

SHORT PRESENTATION

‘Good Morals and Public Policy in the New Romanian Civil Code’

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The New Romanian Civil Code, which became effective at October 1st, 2011, answers to a new trend existent in the modern world, namely that unification of the Private Law, unification perceived under 2 aspects:

1. Under the aspect of including into a Civil Code all the rules after which are governed the legal relationships of the private law;
2. Unification within the meaning of legal transfers from Anglo-Saxon System into the Roman-German System and vice versa.

Therefore, in the first aspect, the New Romanian Civil Code is governing both strictly juridical relations of Civil Law as well as the juridical relations of Commercial Law. In the second aspect, in Romanian private Law, whose origins are French (the Old Romanian Civil Code, which became effective in 1865, was a genuine reproduction of the Napoleon Code), appear institutions which have their origin in the Anglo-Saxon Law (trust and independent guarantees).

Regarding the general rules, which governs the private law relations, the New Romanian Civil Code, includes a preliminary title entitled “About the Civil Law”, which, at chapter III, regulates “The Civil Law effects and its interpretation”. Among other dispositions, contained by this chapter: bona fide, misuse of rights, culpability, common and invincible error, who are new dispositions, reported to the old Civil Code, this chapter, as I was saying, it contains dispositions which repeats the regulation from the old Civil Code, dispositions such as: law interpretation, prohibition of the analogy, liberty of disposition, as well as the relative disposition contained by the article 11, related to the respect for public order and good morals.

This reiteration in the New Romanian Civil Code of the principle of respect for the public order and morals, they reveal in our opinion, the importance that the legislator gives to a fundamental law principle, namely the principle according to which, in law interpretation and application, must make a clear distinction between the public law rules and the private law rules. Even if the contract is regarded as a rule in private law theory and practice, namely

parties' law, it varies from the rules contained in public law rules (constitutional law, administrative law, criminal law), which is it known, has the generality attribute and the attribute of absolute opposability, regarding their applicability, while the contracts are governed by the relativity principle, it can become effective only inter partes, knowing in both the old Civil Code and the New Civil Code just a few exceptions from the rule (stipulation for another, direct actions) and an apparent exception, promise for acts of another person.

We remark the fact that the stipulation for another, in contrast with the old Civil Code, has a regulation in the New Civil Code. As for the opposability, the New Civil Code, as well as the Old Civil Code, knows the exception of lying in law or simulation.

Regarding the public policy (the article 5 from the Old Civil Code states that “can not be derogated through conventions or particular dispositions, to the laws who interest the public policy and the morals”), it can be defined as being the totality of general interest, which the law considers to be superior from freedom and the willingness autonomy of the parties, as they are defined in the New Civil Code through the article 1270.

Therefore, it can be identified as belonging to the public policy, according to the Romanian Law, beside the rules who belong to the written public law, and the civil law rules who regulates:

1. State and capacity of the persons
2. Rules regarding the shape of the juridical acts, when is prescribed ad validitatem
3. Rules related to inheritances
4. Rules regarding the juridical circulation of movable property.