

CONSIDERATIONS ON THE GENERAL PROVISIONS OF THE NEW CIVIL CODE IN THE FIELD OF WILL

ILIOARA GENOIU*

Abstract

Generally speaking, the will institution has been reconfigured by the new Civil Code. Even though its general provisions which have been consecrated to will, Law No. 287/2009 brings a few novelty elements. The present work is aimed to analyze the general aspects which characterize will (definition and legal features of will, contents of will, mutual will, proof of will, testator's consent and interpretation of will), in a comparative manner, both in relation to the provisions of the 1864 Civil Code and the provisions of the new Civil Code. Thus, this will allow us to point out the novelty elements brought within the field subject to our analysis by the new Civil Code and to assess their justness and appropriateness.

Keywords: testamentary provisions, mutual will, proof of will, testator's consent, interpretation of will

1. Introduction

Law No. 287/2009¹ reconfigures the field of successions in general, preserving from the former regulations only those provisions characterized by a justness and actuality which were never doubted throughout time.

The present work aims to analyze the general provisions of the new Civil Code regarding will. They are included in Book IV "On inheritance and liberalities", Title III "Liberalities", Chapter III "Will", Section 1 "General provisions", art. 1034-1039. In relation to these, the new Civil Code regulates the following aspects: definition and legal features of will, contents of the will, mutual will, proof of will, testator's consent and interpretation of will.

In the actual context, the objective of the present work is to analyze the legal provisions mentioned above in a comparative manner, so as to point out the elements which the new Civil Code has preserved from the former civil regulations (the 1864 Civil Code), but also the novelty elements consecrated by the new Civil Code. Moreover, the present work will also make an assessment on the justness and the appropriateness of the novelty elements consecrated by Law No. 287/2009.

Under the circumstances in which, after the new Civil Code entered into force, on October 1st 2011, it has been published only a specialized work relating to successions², we consider that our scientific initiative is both actual and useful. We also want to popularize this way the novelties consecrated by law No. 287/2009 in the field of will, so as to contribute, hopefully, to the good enforcement of the justice act. Moreover, we consider that the results of our current analysis can be of interest for notaries public and Romanian diplomatic representatives abroad, judges, lawyers, Law students and any other law subject intending to express his will according to legal conditions.

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¹ Law no. 287/2009 on Civil Code was republished in the Romanian Official Gazette, Part I, No. 505 from July 15th 2011.

² The work in question was written by professor Daniluta C. Florescu and is called *Dreptul succesorilor*, (Bucharest: Universal Juridic Publ. House, 2011).

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