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STUDY ON MATRIMONIAL PROPERTY REGIMES AND THE PROPERTY OF UNMARRIED COUPLES IN PRIVATE INTERNATIONAL LAW AND INTERNAL LAW

NATIONAL REPORT

GREECE

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INTRODUCTION

Matrimonial property relations, is a subject matter that has been dealt with rather enough, by theory and case law, as far as the internal law is concerned. Private international law issues have been less elaborated, although they are considered as very important, since the number of couples concerned is steadily growing. Unmarried couples, is a very difficult subject matter to elaborate on, since it is mostly theory that has dealt with these issues, and of course not exhaustively.

CHAPTER 1

MATRIMONIAL PROPERTY. INTERNAL LAW

1.1 GENERAL ISSUES

1.1.1 Sources

1.1.1.1

Basically, it is the articles of The Greek Civil Code, which govern the issues of matrimonial property relations.

Furthermore, there is the Presidential Decree 411/1989, which constituted the public book, in which the contracts constituting community of property must be registered.

1.1.1.2

Court decisions, which have been issued, concerning the subject matter of matrimonial property, are of course important and contributed to the evolution of the law but there are rather no leading cases; therefore, it did not seem proper to me to choose a few and refer to them as principal sources. The ones cited are some of the most important, according to the issues studied.

1.1.1.3

There is no law reform under way.

1.1.2 Historic development

1.1.2.1

The family law was reformed in 1983. Before this reform, the system of separation of property was in force in Greece (previous art. 1397 CC), in combination with the institution of dowry: that constituted a group of property items, the ownership or usufruct of which was given from the woman's father to the man, as a sort of relief for the burdens of marriage (previous arts. 1406-1437). Theoretically, the spouse could also regulate their relations by contract, in a different way, by concluding before the marriage a marital contract (previous arts. 1402-1405). In fact, this institution was never developed

1.1.2.2

At the time of CC's reform, it was unanimously considered that the institution of dowry should be abolished. Therefore, the previous arts. 1406-1437, which concerned the dowry, were abolished, by art. 15 of the law 1329/1983. This article also ruled that for that moment onward, every transfer of property, that would constitute a dowry, would be null. Transient rules (arts. 59-60 l. 1329/1983) provided that dowries given before 1983, should be returned to wives[1].

Finally, it was decided that the system of separation of property would be maintained as the "legal" one, with the addition though, of the institution of the claim to share acquests (profits and gains) (art. 1400 CC) – see infra. At the same time, the system of community of property was introduced, but only as a contractual system (regime). The introduction of the latter system was considered by the lawmaker as purposeful as well as a more obvious expression – than that of the

[1] E. KOUNOUGERI-MANOLEDAKI, *Family Law* [in Greek], Vol. I, 2nd ed., Thessaloniki 1998, p. 230.

previous marital contract - of the party autonomy, which governs in general the contemporary family law.

According to art. 54 par. 1 of the L. 1329/1983, the provisions of this law, which are concerning the spousal relations, are also applied to marriages, which had been celebrated before its entry in force, in order that spousal relations are regulated for the time after that entry in force, that is, after 18.2.1983[2].

Given the fact that the [corresponding] previous law had already been considered as contrary to the Greek Constitution (and more specifically to its articles 4 par. 2, 116 par. 1 & 93 par. 4), as from 1.1.1983 and that, therefore, it could not be applied by the courts, the correct opinion that the new law is applicable to older marriages, not only after 18.2.1983 but also after 1.1.1983, became dominant in case law. It was made clear, though, that, for the time period between 1.1. & 18.2.1983, the new law is not applied as a legislative text, but as a regulation corresponding to the – imposed by the Greek Constitution - equality of the sexes before the law[3].

1.1.3 Primary regime

The big majority of family law provisions belong to the rules of public policy. According to art. 3 CC, private autonomy cannot exclude the application of rules of public policy. The criterion is not always certain: what is this that differentiates a rule of public policy from a rule of permissive law?

In some cases, the mandatory nature of a rule ensues from that very rule. This is the case when the rule explicitly forbids contrary agreements, rendering them null or when the imperative formulation indicates its obligatory character. The mandatory nature of a rule may also ensue from its place in the more general regulatory system of certain relations. A problem is created when the mandatory character of a rule is connected to the general purpose or interest that this rule aims at. In that case, it is up to the judge to draw the conclusion about the nature of the rule.

The contemporary development of family law shows a gradual retreat of its mandatory nature, by recognizing the possibility for the persons to define freely certain family relations. A typical example of this development is art. 1397 CC, according to which, spouses have an ample field to regulate, themselves, their marital cohabitation[4].

Private autonomy is crucial in the field of matrimonial property relations, since the spouses may freely choose between the foreseen by the law system ("the legal" system), which is the one of separation of property, and the contractual system of community of property. A combination of both is not excluded, given the fact that the spouses may choose a partial community of property, with the consequence that for the property items that remain outside the common property, the rules of separation of property will govern. What's more, in every case of community of property, that is, even when the "universal" community of property is chosen by the spouses, certain property items are obligatorily – by law - excluded, therefore, they are subjected to the system of separation of property[5].

Private autonomy of spouses to regulate at will their matrimonial property relations is limited. So much in the frame of the "legal" system, as of the contractual, the autonomy of the spouses is basically restricted to the choice of the contractual system, or, negatively, of the "legal". Furthermore, the choice by the spouses of a different "marital contract" than those by which their property relations are subjected in a system of community of property, is not allowed[6].

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[2] Areios Pagos [Greek Supreme Court] 1020/1988, *EEN* 56 (1989) 522.
[3] Areios Pagos 1161/1985, *EEN* 53 (1986) 415; Areios Pagos 1197/1985, *EEN* 53 (1986) 423.
[4] I. DELIGIANNIS, *Family Law* [in Greek], vol. I, Thessaloniki 1986, p. 10.
[5] G. KOUMANTOS, *Family Law* [in Greek], vol. I, Athens 1988, p. 217.
[6] TH. PAPACHRISTOU, "The renouncing of the claim to share acquests" [in Greek], *ChrID* 2001, p. 577, 578.

Regardless of the governing system, the law establishes three presumptions, which may be rebutted, as far as movable property is concerned (art. 1398 CC)[7]: Presumption for the creditors' benefit (par. 1), presumption of co-ownership of the spouses (par. 2), presumption about the movables of personal use (par. 3):

Movables in the possession of either one or both spouses, belong, for the creditor's benefit, to the spouse who is the debtor.

The spouse who is affected by the application of this presumption, may reverse it, by proving that the thing belongs to him/her exclusively or to a third person too[8]. He/she may prove that he/she had acquired the thing before marriage, or that someone donated it to him/her or that he/she acquired it by succession or legacy, or that he/she became exclusive proprietor with his/her own means.

In relations between the spouses, movables possessed by both spouses belong to both of them equally.

Each spouse, who is presumed co-owner of the movables possessed by both spouses, may prove, either his/her exclusive ownership or his/her co-ownership, at a bigger, though, percentage than half[9].

In relations between spouses and creditors, or between the spouses only, movables destined for the personal use of each spouse, belong to the spouse who uses them.

This presumption may be reversed, if the other spouse or his/her creditors prove that, in spite of this destination, the thing belongs in fact to the other spouse. For example, a woman's jewel had been acquired by the husband, not as a gift for his wife but as an investment, and only the use of it had been conceded to the wife[10].

For reasons of protection of the claimer to share acquests, the provisions of arts. 1400-1402 CC – see infra - are unanimously considered as mandatory rules[11]. This means, that spouses' agreements – before or after the marriage – that there will be no claim to share acquests or that there will be a claim for a different percentage from that which will be ascertained as corresponding to the other spouse's contribution, are forbidden. The agreement that certain objects will not be counted in the property's increase, as well as the total or partial renouncing of the claim to share the acquests, before its creation, are also forbidden.

On the contrary, after the claim is borne, all these agreements are valid[12].

It is questioned whether an agreement, by which the spouses, before the claim is borne, decide, not to exclude it or restrict it, but to extend it in favor of one of the spouses is valid. For example, they agree that one of them is entitled to the 50%, or even the 100%, of the property increase of the other. According to the more correct opinion, the mandatory nature of the claim to share acquests is interlaced with its redistributing function, which restitutes the property balance between the spouses, securing the just distribution of their acquests. This redistributing function is overturned, not only when the spouses agree from before the abolishment or limitation of the claim, but also when they extend it in favor of one of them. Therefore, this agreement too is forbidden. Besides, such an agreement, with which the spouses could decide that one of them would be entitled

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[7] I. DELIGIANNIS (-A. KOUTSOURADIS), *Family Law* [in Greek], vol. II, Thessaloniki 1987, p. 78; TH. PAPACHRISTOU, *Manual of Family Law* [in Greek], 2nd ed., Athens – Komotini 1998, p. 94; E. KOUNOUGERI-MANOLEDAKI, "Family Law in Greece", *in*: *Family Law in Europe* (eds. *C. Hamilton/K. Stanley*), London-Dublin-Edinburgh 1995, p. 206.

[8] G. DASKAROLIS, *Classes of Family Law* [in Greek], vol. I, Athens-Komotini 1992, p. 249; TH. PAPAZISSI, *in*: *Georgiadis/Stathopoulos* CC, art. 1398 no. 36.

[9] TH. PAPAZISSI, *op. cit.*, no. 37-38.

[10] G. KOUMANTOS, *op. cit.*, p. 193; TH. PAPACHRISTOU, *op. cit.*, p. 97.

[11] Court of Appeals of Thrace 202/2000, *Arm* 55 (2001) p. 478.

[12] A. KOTZABASSI, *Spouses' agreements in case of divorce* [in Greek], Athens-Komotini 1999, p. 58.

even to all the other's acquests, constitutes a not foreseen by the law "marital contract" and consequently is forbidden.

According to the dominant opinion in theory, renouncement of the claim to share acquests is, as an exception, acceptable, on the condition that it is part of the spouses' agreements, by which they regulate their property abeyances, in the frame of a consensual divorce, the procedure of which has not yet started. There are opposite opinions, though, according to which such a renouncement of the claim, before it is borne, is in any case null.

1.1.4 Secondary regimes

1.1.4.1

There are special rules on matrimonial property regimes.

1.1.4.2

There is not a distinction in the law, of personal and property relations of the spouses.

1.1.4.3

Art. 1397 CC, establishes the system of separation of property as legal: marriage does not alter the property independence of the spouses.

1.1.4.4

One observes an unwillingness of the spouses to regulate contractually their property relations: The institution of community of property remains undeveloped. This type of regime has no roots in the Greek society. With the exception of some areas (Ionian islands, Cyclades islands), where for historical reasons the community of property was customarily in force, in the rest of Greece it was unknown[13]. Therefore, it is not considered as curious the fact that its legislative regulation, as a contractual system, has not been "accepted" by the Greek society.

From 1989, when the specific public book, in which the contracts, constituting community of property regime, are registered – see infra -, entered into force, until 1997, only three (3) such contracts had been registered[14].

1.1.4.5

The spouses can only choose to conclude a contract, constituting thus community of property regime.

1.1.4.6

Yes, it can.

1.1.4.7

There are no special regimes allowed locally.

1.2 TYPES OF REGIMES

1.2.1 Comments as to the primary regime

[13] P. NIKOLOPOULOS, *The claim to share acquests by the spouses* [in Greek], Athens-Komotini 1993, pp. 8 ff.
[14] TH. PAPACHRISTOU, *op. cit.*, p. 121.

1.2.1.1

See supra, 1.1.3

1.2.1.2

During marriage, there is not an independent obligation of maintenance, but there is a particular, as far its extent is concerned, obligation to contribute to the needs of family, which covers the mutual needs of maintenance of the spouses (arts. 1389, 1390 CC).

1.2.1.3

The marital home may be owned by one or by both spouses. Otherwise, one or both of them may be lessees. Irrespective of which one of them is the owner or the lessee, both spouses have the right as well as the duty to occupy the marital home, by virtue of their right and duty to consortium[15]. Each spouse may demand that third parties, such as relatives or friends of the other spouse, are not allowed to stay in the marital home, because each spouse has the right and duty to cohabit only with the other spouse.

In case the marital home is leased by one of the spouses, when a lessor gives notice of termination of the lease to the sole leaseholder, the other spouse must be notified too (art. 612 a CC).

1.2.1.4

According to art. 1387 CC, the spouses decide together for every issue of the marital life. If one of the two is in natural or legal impossibility to do so, the other decides by him/herself.

The regulation by the spouses of their marital life must not deter the professional as well as the other activity of each one of them and must not violate the sphere of his/her personality.

1.2.1.5 - 1.2.1.7

The law does not establish power of representation for one spouse, at the expense of the other, for juridical acts with third persons, concerning "current needs" of the household – as the previously in force art. 1389 CC had established such a power for the wife, who presumably was managing the marital household. Nevertheless, it may be assumed that, for the needs of cohabitation, there is tacit mutual proxy of the spouses for those juridical acts, which concern the current needs (purchases, repairs, etc.) of the family and the house, with the condition that the spouse who concludes the contract, acts, be it tacitly, in his/her name too and, at the same time, in the name of the other spouse. If he/she explicitly acts only in his/her name, the other of course is no liable. If he/she explicitly acts in the name only of the other spouse, he/she needs a proxy, according to the general rules. Naturally, this tacit mutual power of representation does not exist if the third person is aware of a contrary declaration of the spouse, presumably represented. There is no tacit mutual power of representation either, when the cohabitation has been interrupted. In as far as this proxy is valid, the spouses become joint creditors and joint debtors in front of the third person, independently of how they have divided rights and obligations between them[16].

1.2.2 Matrimonial property regime provided by law (statutory regimes)

1.2.2.1

The law provides for such a regime.

[15] AP. GERORGIADES, "The family home" *HellDni* 29 (1988) p. 1284.
[16] G. KOUMANTOS, *op. cit.*, p. 133-134.

1.2.2.2

Each spouse's property, either movable or immovable, having been acquired either before or after the celebration of marriage, remains separate individual property. Consequently, each spouse preserves, even after the marriage, full capacity for juridical act and acquisition in law, may administer, at his/her own judgment, his/her property, dispose of his/her property items, be individually responsible for his/her debts.

Separation of property does not mean that the spouses may not acquire, during marriage, a certain property item together. In the latter case, the rules of both the community of rights and the joint property (arts. 785 ff, 1113 ff CC) will be applied. Obviously, the spouses may, after the marriage, remain co-owners of a certain property item they had eventually jointly purchased[17].

The system of separation of property may coexist with the contractual system of community of property, when the latter is not constituted for the whole but for part of the properties of the spouses.

1.2.3 Marital settlements (contractual regime)

1.2.3.1

The spouses may choose any of the known forms of community of property, that is:

either the universal (total), which extends to all property items, independently of whether they are movable or immovable or were acquired before or after the celebration of marriage,

or the community of movables, acquired before the marriage and things (movable and immovable) acquired during marriage – *community of movables and acquests*,

or the community only of things, movable or immovable, acquired during marriage – *community of acquests*.

Even in the case of the total community of property, the law excludes certain property items, which may not, even if the spouses want it, be rendered common to both of them. These are: whatever is strictly aimed for the personal use of each spouse for his/her professional activity, and its appurtenances, as well as the rights of intellectual property (art. 1405 par. 1 CC)[18].

If the contract does not contain any provision about the extent of the community of property, then, according to art. 1405 par. 1 al. a CC, there will be only community of acquests, and more specifically:

Incomes that each spouse realized during marriage, from his/her professional or business activity, as well as from the exploitation of his/her property that he/she acquired during marriage, onerously.

Incomes from the exploitation of the common property.

Property items that each spouse acquires during marriage, onerously,

Incomes from the exploitation of intellectual rights – not the rights themselves, which are obligatorily excluded from the common property.

1.2.3.2

This regime is constituted by contract, which may be concluded either before the celebration of marriage or during marriage.

The registration of the community of property's contract to the particular public record (presidential decree 411/1989), which demands that a public record act of marriage is also produced, is only possible after the marriage.

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[17] E. KOUNOUGERI-MANOLEDAKI, *op.cit.*, I, p. 233.

[18] G. KOUMANTOS, *op. cit.*, I, p. 244; contra, I. SPYRIDAKIS, *Family Law* [in Greek], Athens 1984, pp. 133-134.

The contract is concluded by the spouses, however the cooperation of third persons is not excluded. The modification though or the abolishment of the contract may only be done by the spouses.

As far as the capacity of the spouses is concerned, there is no unanimity of opinions. According to one opinion, the specific capacity of arts. 1350 ff CC (to conclude a marriage [contract]) is sufficient[19]. The second opinion seems more correct, according to which the general provisions for the contractual capacity (arts. 127 ff CC) must be applied[20].

The contract is promissory and causal. Each spouse simply undertakes the obligation to transfer to the other, half of his/her property items, jointly, which is agreed that will be part of the common property, so that he/she acquires a corresponding right to the property items of the other spouse. Therefore, after the conclusion of the community of property's contract, the alienating contracts for each and every property item of the spouses must follow. It is not excluded that those alienating contracts may be included in the same community of property's contract. In case that alienating contracts concerning immovables are concluded, a separate transcription for each one must take place – different from the registration of the community of property's contract to the specific public record[21].

1.3 CHANGE OF MATRIMONIAL PROPERTY REGIMES

1.3.1 Principles

1.3.1.1

The matrimonial property regime may be changed during marriage, either because the spouses who were subjected to the statutory regime of separation of property, decided later to conclude a marriage contract, establishing community of property, or because the community of property regime was prematurely terminated, and therefore the spouses are onwards subjected to the statutory matrimonial regime of separation of property (arts. 1397 & 1400-1402 CC)[22].

1.3.1.2

The reasons are obvious: the law, anyway, permits the conclusion of a marriage contract, having as its content the establishment of community of property, even after the celebration of marriage. On the other side, if the community of property regime is prematurely terminated – see infra, 1.3.2. -, the statutory matrimonial regime will govern; matrimonial property relations could not be left unregulated.

1.3.2 Modalities for change

1.3.2.1

The community of property regime may be terminated in three ways: a) *ipso jure*, in case of dissolution or annulment of the marriage, or when one [or both] of the spouses is [are] declared absent or insolvent (art. 1411 CC, b) by contract (art. 1412 CC), or by a court's decision (art. 1413 CC).

[19] Contra, I. SPYRIDAKIS, *op. cit.*, p. 109.
[20] G. KOUMANTOS, *op.cit.*, I, p. 216.
[21] E. KOUNOUGERI-MANOLEDAKI, *op. cit.*, I, p. 279.
[22] E. KOUNOUGERI-MANOLEDAKI, *op. cit.*, I, p. 298.

1.3.2.2

In case the community of property is terminated following a divorce or annulment of the marriage, the effects of the termination start retroactively from the day that the suit for divorce or annulment was served (notified) to the defendant.

According to art. 1412 CC, the community of property regime may be terminated by agreement of the spouses, which agreement must be drafted by a notary. This contractual termination may take place at whatever time. The contractual termination of the community of property has effects only for the future.

The community of property is also terminated by a court's decision, following a suit filed by one of the spouses, whenever one of the following circumstances, exclusively, comes up:

a Interruption of the marital cohabitation, which has lasted at least one year and continues during the hearing of the suit.

b Bad situation of the individual property of the other spouse or bad management of the common property by him, with the consequence of creating dangers for the plaintiff's interests.

c Breach by the other spouse of his/her obligation to contribute to the family needs.

The right to end the community of property is personal and its exercise may not be excluded by an opposite agreement of the spouses. The results of the termination of the community of property by a court's decision go back to the time that the relevant suit was served to the defendant.

1.4 PUBLICATION OF THE REGIME

1.4.1 Principles

1.4.1.1

There is a system for publication of the matrimonial property regime, for the case a marriage contract is concluded, constituting community of property regime.

1.4.1.2

The basic reason is the protection of third parties. For example, for the termination of the community of property to be valid towards third persons, in all cases except death of one spouse, the relevant event, that is, a court's decision of divorce, of annulment of marriage, of declaration of absence or insolvency, of dissolution of the community of property, as well as the spouses' agreement, must be noticed at the margin of the specific public record.

1.4.2 Modalities for publication

As far as the form of the community of property's contract is concerned, the law demands a notary document, not only for its constitution (art. 1403 par.2 al. 1 CC) but also for its abolishment (art. 1412 CC). It is rightly supported that the notary form should be kept, by analogy, for the modification of the contract too.

An additional element of publication is the obligatory registration of the community of property's contract in the unique public record (art. 1403 par. 2 al. 1), the organization of which is foreseen by the presidential decree 411/1989. According to the dispositions of this decree, a specific public record has been constituted by the Secretariat of the Athens Court of First Instance, in which public record the community of property's contracts concluded everywhere in Greece are registered. Anyone who has a legal interest, as well as the notary who drafted the contract, may petition for its registration.

1.5 ADMINISTRATION OF ESTATRS

1.5.1 Under the regime provided by law (statutory regime)

1.5.1.1

See supra, 1.2.2.2

1.5.1.2

The separation of property simply means that each spouse may manage his/her property by him(her)self, but he/she does not have to; he/she may, at his/her will, entrust the other spouse with the management of his/her property (art. 1399 CC). The contract of mandate, by which the management of the property is entrusted to the other spouse (or, more rarely, the labor contract or whichever contract by which this management may be entrusted), does not need to be concluded in written, but it may be tacitly concluded.

The spouse manager is under the obligation to manage the property of the other spouse according to the rules of regular exploitation. However, there is no unanimity as far as the degree of liability he/she has towards the entrusting spouse: There are those who support the opinion that the manager's liability is judged according to the rules of mandate and that, therefore, the manager is liable for every misdemeanor (art. 714 CC), and those who support the opinion that the art. 1396 CC is applied, which rules that the measure of the spouse's liability is the care he/she shows for his/her personal affairs.

The management is terminated, either when the marriage is dissolved or annulled, or when the contractual relationship that connects them is over, or when the relevant entrusting is revoked.

Arts. 1387 (regulation of marital life by joint decisions) and 1389 (obligation of contribution to the family needs) CC, may set certain limits to the freedom of each spouse to manage his/her property by him(her)self.

1.5.2 Under marital settlements (contractual regimes)

The management of the common property is exercised according to the dispositions on community of right (arts. 785 ff CC), which are by analogy applied, in case nothing different is foreseen in the contract[23].

The juridical acts referring to the common property are undertaken, either by cooperation of both spouses, acting together, or even by one of them, with the consent of the other, though. As an exception, these juridical acts are concluded only by one of the spouses, without the consent of the other, but with the permission of the court, when the other spouse is in real (illness, long absence) or legal (juridical incapacity) impossibility, or even when the other spouse refuses without reason to cooperate or consent to a juridical act, imposed by the family's interest (art. 1407 CC).

The common property is primarily a guarantee for its creditors and secondarily a guarantee for each spouse's creditors.

The common property is primarily a guarantee for:

a the real rights (pledges, mortgages, etc.) and the real onuses (limits of ownership, obligations created by tracing the streets, provisional arrest, etc.) with which it is burdened;

b whatever obligation, assumed by each spouse, inside the limits of his/her managerial power, and which concerns the common property. These obligations are in principle assumed by both spouses; it is possible, though, for them to be assumed by only one of them, either because the other consents to it or because there is a court's permission;

[23] TH. PAPACHRISTOU, *op. cit.*, p. 112.

c every obligation assumed by one of the spouses, independently of the management of the common property, on the condition that the obligation concerns family needs;

d obligations assumed by both spouses, even if they are not enlisted in the management of the common property or they do not concern family needs.

The common property is secondarily a guarantee, till half of its value, to each spouse's individual creditors.

Each spouse's individual property is primarily a guarantee for his/her debts and secondarily a guarantee, till half of its value, to the common property's creditors[24].

1.5.3 Contracts between spouses during marriage

1.5.3.1 Admitted.
1.5.3.2 Admitted.
1.5.3.3 Admitted.
1.5.3.4 Admitted.

1.6 DISSOLUTION, LIQUIDATION AND DIVISION OF THE MATRIMONIAL PROPERTY REGIME

1.6.1 Following dissolution of the marital bond (divorce)

1.6.1.1

In matrimonial property consequences of the divorce, are included:

the cessation of the validity of the presumption for the ownership of the movables, possessed by one or both of the spouses (art. 1398 CC);

the birth of the obligation of rendering of accounts and restitution of the incomes acquired from the eventual management of the one spouse's property by the other, if the management is still going on (art. 1399 CC);

the birth of the claim to share acquests, on the condition that all the other requirements of the art. 1400 CC are met – see infra;

the *ipso jure* termination of the community of property regime, that the spouses had eventually chosen by their agreement (art. 1411 CC);

the cessation of the inheritance right *ab intestate* and oft the right to a compulsory portion [legal share] that the spouses had towards each other;

the invalidation of the provision of one spouse's will in favor of the other, if the marriage was dissolved by divorce before the death of the testator (art. 1785 CC).

In case one of the spouses had made a gift to the other during marriage, the issue will be solved according to the general rules for the revoking of gifts (arts. 505 ff CC).

In matrimonial property consequences of the divorce, is also included the eventual birth of the obligation of pecuniary compensation of one spouse because of moral damage provoked by the other, according to the arts. 57 & 59 or 914 & 932 CC; that is, if, in parallel with the cause of divorce, the conditions of either the personality's offence or of the tort, were independently created, under the specific circumstances of the concrete case[25].

The claim to share acquests (profits and gains) is considered as very important – it corrects "injustices" of the system of the separation of property.

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[24] TH. PAPACHRISTOU, *op. cit.*, pp. 112-113.

[25] Areios Pagos 431/1987, *NoV* 36 (1988) p.914; Court of Appeals of Athens 10144/1995, *NoV* 44 (1996) p. 225 = *Arm* 50 (1996) p. 189; TH. PAPACHRISTOU, "Pecuniary compensation for moral damage in case of divorce" [in Greek], *NoV* 31 (1983) p. 933.

According to art. 1400 CC, the spouse who, in whatever way, contributed to the increase of the other spouse's property, may, after the dissolution by divorce or the annulment of the marriage, as well as the completion of 3 years of separation, demand from the spouse, whose property was increased (or his/her heirs), part of the increase or even the whole lot. It is presumed that the contribution to the increase was at a percentage of 1/3.

The spouse does not acquire *ipso jure* the share of the acquests, corresponding to his/her contribution; he/she just has the right to demand its restitution.

The claim belongs only to the spouse who contributed to the increase of the other spouse's property. If then, the marriage is terminated following the death of the claimer, his/her heirs have not themselves a claim to share acquests (art. 1401 al. a CC). Even if the claim had already been borne for the deceased spouse, before his/her death, his/her heirs cannot exercise it, except if it had been contractually recognized or the suit (writ) had already been served (art. 1401 al. b).

In case of termination of the marriage following the death of the "debtor" spouse, the other spouse may exercise his/her claim against the debtor's heirs[26]. If, by the way, the surviving spouse is also one of the heirs, then the claim will be directed, for the percentage to which he/she succeeds, against himself/herself. For that percentage, the claim will be extinguished by confusion, since the same person will be debtor and creditor[27].

Most of the times, during marriage, both spouses' property is increased. In this case two opinions are supported. According to the first, the smaller increase is deducted from the bigger, and the spouse with the smaller increase has a claim of share to the rest. According to the second, each spouse has his/her own claim against the other, and a set-off between the two claims will take place.

Art. 1400 par. 3 CC says that whatever was acquired by gift, inheritance or legacy, or by disposal of what was gained by these reasons, is not reckoned together. In the case of gifts, it is questioned whether this disposition should be interpreted contractively, so that it refers only to the gifts by third persons and not to the gifts by the other spouse. Both answers have been supported. According to one opinion, gifts between the spouses are included to the gifts mentioned in art. 1400 par. 3 CC, and therefore they are not reckoned together at the estimate of the increase of the property. According to that opinion, one must take into account the irrevocability of the gifts that took place for reasons of decency or out of a particular moral duty (art. 512 CC), given the fact that, as a rule, gifts between the spouses have such reasons[28]. However, according to the opposite opinion, that position would lead to an unjust solution for the donor spouse, given the fact that an item of the defendant's property, the acquisition of which is absolutely due to the plaintiff spouse, remains out of the regulation of art. 1400 CC. Furthermore, even when the gifts between spouses have as reasons a particular moral duty or decency, they are given on the resolutory condition that the marriage will not be dissolved nor annulled[29]. Courts, usually without proceeding to theoretical debates, pronounce judgments consistent with the second opinion, that is, that gifts between spouses, are considered as acquests[30].

As far as the contribution of the other spouse is concerned, the interpretations should rather be dilatable, so that every kind of assistance, direct or indirect, could be taken into account. For example, the disposal of capital for the development of an immovable of the other spouse, the performance of the household work[31] or the help to the other's profession, gifts to the other spouse

[26] AST. GEORGIADES, "The claim to share acquests in case of separation of the spouses (CC 1400 par. 2)" [in Greek], *Arm* 49 (1995) p. 574.
[27] Three-member District Court of Thessaloniki 11545/1993, *Arm*. 48 (1994) p. 166.
[28] M. STATHOPOULOS, *in*: *Georgiades/Stathopoulos* CC[in Greek], arts. 1400-1402, no. 23.
[29] A. GAZIS, *The new Family Law (the problems)* [in Greek], Athens 1985, p. 48.
[30] Three member District Court of Thessaloniki 906/1991, *Arm* 45 (1991) p. 244.
[31] E. KOUNOUGERI-MANOLEDAKI, *op. cit.*, I, p. 260; According, though, to the dominant opinion, the household work does not constitute a contribution, see G. DASKAROLIS, *op. cit.*, p. 283-284; G. KOUMANTOS, *op .cit.*, I, p.

and particularly the payment of his/her debts, the psychological strengthening of the spouse and the creation of a pleasant family ambiance due to which the other spouse is very efficient in his/her profession, providing ideas for the development of business activity, the improvement of social relations which influence favorably the other spouse's profession, etc.

The presumption of the spouse's contribution to the 1/3 may be rebutted. In fact, this is a procedural rule which distributes the burden of proof, favorably for the claimer.

According to one opinion, the claim of art. 1400 CC is obligatorily pecuniary. However, it seems that the second opinion is more correct, according to which, the giving of objects *in natura* is also allowed[32].

According to art. 1401 al. 1, the claim is prescribed two years after the dissolution or the annulment of the marriage. There is no particular regulation as far as the claim borne after a three years' separation is concerned. According to the dominant opinion, both in theory and in jurisprudence, we are before a voluntary legislative gap: it means that, in case of three years' separation, the claim to share acquests is borne at the time of completion of this period, nevertheless its prescription time does not start before the dissolution of marriage[33].

The right of common possession and use of the marital home, is not revoked at the interruption of the cohabitation; it is revoked only after divorce, on the condition that a different judicial regulation does not intervene [34].

1.6.1.2

The under obligation spouse, discerning the other spouse's claim to share acquests, may proceed to fraudulent for the claim acts; e.g. to liquidate his/her immovable property and to deposit the money in a bank abroad or to invest them, or even to make fictitious conveyances. This danger is even bigger, when the marital cohabitation has been interrupted, as well as when a divorce suit or a suit for the annulment of the marriage has been filed: then, the birth of the claim to share acquests is imminent.

The law, in order to protect this claim from such acts, establishes a legal title, in favor of each spouse, for registration of a mortgage on the other spouse's immovable property (art. 1262 no. 4 CC).

This protection, though, is not very efficient. According to art. 1269 CC, the registration of a mortgage may only be done for a determinate, or at least easy to determine, claim [right]. According to the dominant opinion, both in theory and in case law, during marriage there is uncertainty, as well for the existence of the claim, as, mainly, for the claim's measure, with the consequence that it be not possible, not even approximately, to determine the pecuniary amount, for which the mortgage may be registered. According to another, more correct, opinion, however, the registration of a mortgage is always possible, even before the dissolution or the annulment of the marriage, or the three years separation. According to this opinion, the uncertainty is innate in every future claim, for which, though, the law explicitly foresees the possibility for registration of a mortgage (art. 1258 CC). Consequently, it should be admitted that a mortgage may be registered whenever, during marriage; the measure of the claim to secure, will be determined approximately,

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88; P. NIKOLOPOULOS, *op. cit.*, 1993, pp. 130 ff; Three member District Court of Thessaloniki 11019/1993, *Arm* 48 (1994) p. 283.

[32] Areios Pagos 28/1996, *HellDni* 38 (1997) p. 28.

[33] I. DELIGIANNIS (-KOUTSOURADIS), *op. cit.*, II, p. 119; G. KOUMANTOS, I, *op. cit.*, p. 210; E. KOUNOUGERI-MANOLEDAKI, *op. cit.*, I, p. 107.

[34] A.K. POULIADES, "The judicial regulation of the use of the family home in case of interruption of the cohabitation of the spouses (CC 1393)" [in Greek], *Arm* 49 (1995) p. 592.

on the basis of the until then increase of property, the ascertained or presumed contribution, as well as the estimate for future developments.

Moreover, according to art. 1402 CC, each spouse has a right to ask for security, on the conditions, on the one hand that he/she has already filed a suit for divorce or annulment of the marriage, as well as a suit for the share to acquests and on the other hand that there is well-grounded fear that, because of the other spouse's or his/her heirs' behavior, the claim to share acquests is in danger. The security, on the basis of art. 1402 CC, may consist in pledge, guarantee (of any form), in provisional arrest, in a note of mortgage, in registration of mortgage (independently of art. 1262 no. 4 CC). The security is asked, by filing an orderly suit or a petition for provisional measures, on the condition, of course, that there is an imminent danger for the claim of the art. 1402 CC[35].

An issue is emerging in relation to whether is it possible to order provisional measures, as a protection of the claim to share acquests, based on the arts. 682 ff CCivPr, even when the requirements of the art. 1402 are not met. According to one opinion, this cannot happen. According, though, to another, seemingly more correct, a petition for provisional measures is possible as from the moment when an imminent danger for the claim to share acquests shows up, independently of whether the suit for divorce, annulment of the marriage or share to acquests has been filed[36].

In any case, the entitled to the cla im spouse may have recourse to the general provisions, in order for the nullity of fictitious conveyances to be recognized or for a fraudulent alienation to be broken[37].

1.6.1.3

Interruption of cohabitation gives birth to a claim for maintenance, as an independent and concrete property payment, for the spouse who, at the time and during the interruption, is not in a position to maintain him(her)self (art. 1391 CC).

The extent and the amount of this claim depends on the reasons of the interruption (art. 1392). If there is a real reason for divorce, for which the entitled to the claim is responsible, maintenance is limited to the absolutely necessary for his(her) support (arts. 1329 al. 2, 1494, 1495, 1498-1500 CC)[38].

Mixed consequences of the divorce are:

the cessation of the spouses' obligation to contribute in family needs (arts. 1389, 1390 CC);

the cessation of the obligation of maintenance, according to arts. 1391 & 1392 CC, if, before the divorce, a separation had taken place (see supra);

the ending up of every out-of-court or judicial regulation concerning the distribution of the family home's use, according to art. 1393 CC or of the movables, according to arts. 1394 & 1395 CC;

the cessation of the lesser liability of the spouses, established by art. 1396 CC.

[35] E. KOUNOUGERI-MANOLEDAKI, "The claim to share acquests"[in Greek], *HellDni* 29 (1988) p. 1322 n. 31.
[36] V. VATHRAKOKOILIS, *The new Family Law (interpretation of articles)* [in Greek], Athens 1990, art. 1400, p. 254; E. KOUNOUGERI-MANOLEDAKI, *op. cit.*, *HellDni* 29 (1988) pp. 1322-1323.
[37] TH. PAPACHRISTOU, *op. cit.*, p. 107; I. DELIGIANNIS (-KOUTSOURADIS), *op. cit.*, II, p. 123; Three member District Court of Athens 802/1990, *HellDni* 32 (1991) p. 1102, comments *K. Limperopoulos*.
[38] I. ANDROULIDAKI-DEMETRIADI, "The influence of the non marital cohabitation in the right to maintenance" [in Greek], *in*: Offer to G. Michaelidis-Nouaros, Athens 1987, p. 65, 69.

1.6.2 Following the death of one of the spouses

When the marital home had been leased by one of the spouses, in the case of his/her death, art. 612 CC provides that the other spouse may take over the lease. The latter has also the right to terminate the lease.

The three presumptions about movable property – see supra 1.1.3. – are not valid anymore; art. 1100 CC is again applied.

The community of property regime is *ipso jure* terminated (art. 1211 CC).

The surviving spouse may be an *ab intestate* heir – to the ¼ when there are children and to the ½ when inheriting with other heirs and there are no children of the deceased.

As far as the obligation of maintenance is concerned, art. 1392 al.1 refers to art. 1500 CC, applied by analogy, according to which, the claim to maintenance ceases with the death of the entitled to it, except if it refers to the past or to instalments which were payable at the time of death.

1.7 OTHER REMARKS

None.

CHAPTER 2

MATRIMONIAL PROPERTY. PRIVATE INTERNATIONAL LAW

2.1 GENERAL REMARKS

2.1.1 Sources

2.1.1.1

Greece has not ratified any multilateral or bilateral treaty, concerning specifically matrimonial property relations.

2.1.1.2

The most important rules of the Greek conflicts law, are the articles 4-33 of the Greek Civil Code.

2.1.1.3

Case law has contributed to the evolution of private international law, but not decisively.

2.1.1.4

No reform of the law is currently considered.

2.1.2 Historic development

Before 1983, matrimonial property regime was governed by the law of the state, of which the husband was national at the time of marriage. In 1983, the law 1329/1983 reformed many rules of the family law, so as for it to be consistent with the Constitutional order about the equality before the law[39], as has already been mentioned. Among those rules, were the rules of conflict for the relations [personal and property] of the spouses.

2.1.3 General notions of private international law

2.1.3.1

There is not a specific rule concerning problems of characterization. In theory, both opinions are supported: the opinion according to which, characterization should be done *lege fori*, and the opinion according to which, characterization should be done *lege causae*. In case law, the first opinion is rather the dominant.

2.1.3.2

Renvoi is not accepted in Greek private international law. According to art. 32 CC, "in foreign law which must be applied, are not included the rules of private international law of the foreign country".

Renvoi is permitted in Greek private international law only as an exception: in cases of undertaking of an obligation due to a bill of exchange, bank check, promissory note (art. 90 of the L. 5325/1932, art. 70 of the L. 5960/1933).

[39] P. AGALLOPOULOU, "Modifications du droit de la famille hellénique dues aux changements socio-familiaux", *RHDI* 50 (1997) p. 580.

2.1.3.3

According to art. 33 CC, the foreign *lex causae* is not applied in Greece (forum), if its application offends, *in concreto*, morality or generally the [Greek] public order.

2.1.3.4

There is not a specific rule for the fraud (*fraus legi facta*), but it has the same content as in other countries' private international law. The sanction, in cases of disapproval of the fraud, consists in that, at the concrete relation for which the fraud took place, the law, which would be applied if the fraudulent activity had never happened, will be anyway applied.

2.1.4 General problems of private international law

2.1.4.1

Usually, connecting factors are considered simple factual incidents; we do not have to search for the law which will provide us with the meaning of the terms by which these incidents are being formulated. The only thing that must be proven is, which is *in* concreto the place with which, the connecting factor connects the relationship to be regulated[40]. Following the above, are considered factual incidents: the seat of the company (art. 10 CC), the place where the juridical act is undertaken (arts. 9 & 11 CC), the place of the habitual or simple residence (art. 30 CC).

On the contrary, nationality (citizenship) is a juridical (legal) incident, since we have to apply some law to find out if X is a national of the X State or not.

When a rule of conflict designates the *lex patriae* as applicable and the natural person has more than one, nationalities, the question is: the law of the State of which of those nationalities will be applied. If one of those nationalities of the natural person is the Greek one [the one of the forum], then the Greek law will be applicable (art. 31 par. 1 CC). Otherwise, the law of the nationality of the State with which the person is more closely connected will be applicable [law of the "real" or "active" nationality] (art. 31 par. 2 CC)[41].

If the person is stateless, the applicable law will be the law of the place of person's habitual residence; if the person has not a habitual residence, then the law of the place of the person's simple residence will be applicable (art. 30 CC).

2.1.4.2

There is always the possibility that, in the State, the law of which is designated as applicable, coexist several juridical systems, that are in force in parallel, either in different territorial units of that State, or in different categories of persons.

This phenomenon is observed in Greece too. In particular, as far as Greek nationals of Moslem religion are concerned, there are some issues, mainly of family and succession law, which are regulated according to their sacred law and for which the Mouftis [clerical judges] have jurisdiction to judge (art. 10 of the law 2345/1920). Among these issues, maintenance claims are included[42], but not property relations of the spouses, in general[43].

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[40] S. VRELLIS, *Private International Law* [in Greek], 2nd ed., Athens-Komotini 2001, p. 76.

[41] S. VRELLIS, *op. cit.*, p. 80 ; E. KRISPI-NIKOLETOPOULOU, *The Citizenship (General Theory-Comparative Law)* [in Greek], Athens 1965, pp. 109-120.

[42] Areios Pagos 1723/1980, *NoV* 29 (1981) p. 1217.

[43] E. KRISPI-NIKOLETOPOULOU, *Personal and Property Relations of the spouses in Private International Law* [in Greek], Athens 1952, p. 135; contra, E.J. KASTRISSIOS, "Griechenland", *in*: *Internationales Ehe- und Kindschaftsrecht* (Hrsg. *Bergmann/Ferid/Henrich*), Frankfurt a.M./Berlin 2001, pp. 28-29.

In those cases, of coexistence, in the State of the *lex causae*, of many "local" or "personal" laws, it is the interterritorial or the interpersonal law which will designate more specifically the applicable rules of the *lex causae*[44].

2.2 NTERNATIONAL JURISDICTION OVER MATRIMONIAL PROPERTY ISSUES (JURISDICTION OF COURTS AND OTHER AUTHORITIES)

2.2.1 The general rules on international jurisdiction as applied to matrimonial property regimes

2.2.1.1

The rules of the 44/2001 Regulation (former Brussels Convention 1968) are not applicable to issues of matrimonial property regimes - except for the art. 5 no 2, in cases of maintenance -, nor are the rules of the 1347/2000 Regulation[45]. Therefore, it is the rules of the Greek [new] Code of Civil Procedure (CCivPr) that are applied[46].

According to art. 3 CCivPr, "Greek nationals and foreigners are subject to the jurisdiction of civil courts insofar as competence of a Greek court is existing". In both theory and case law, it is almost unanimously admitted that the sole criterion to be applied for the determination of the international jurisdiction of Greek courts depends on territorial competence[47].

Rules establishing a general or special jurisdiction, allocate disputes to Greek courts only as far as the courts are territorially competent. All defendants having a domicile or a seat in Greece, are subject to the jurisdiction of Greek courts, whether Greeks or foreigners. In case there is no domicile nor seat, nor other bases of jurisdiction, foreseen by the law (arts. 22-40 CCivPr), even Greek nationals cannot be sued in the Greek courts, unless otherwise provided.

Greek legal theory accepts international jurisdiction based on public policy, even where territorial competence is lacking. The aim is to cover extreme situations, in which denial of international jurisdiction contradicts the fundamental principles of the national legal order. It has often been related to provisional remedies.

2.2.1.2

Despite the fact, that as was already mentioned above, the new Greek Code of Civil Procedure disconnected the international jurisdiction from the litigants' nationality, the latter has exceptionally remained relevant with regard to matrimonial disputes and to disputes between parents and children.

Greek courts have international jurisdiction over matrimonial issues, according to arts. 611, 612 CCivPr.

2.2.2 Rules on international jurisdiction particular to matrimonial property issues

What is required, according to art. 612 CCivPr, is that one of the spouses must be Greek, even if he/she has no domicile nor residence in Greece, or that he/she was Greek at the time of the celebration of marriage and during marriage he/she lost the Greek nationality. Where there are not

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[44] E. KRISPIS, *Private International Law-General Part* [in Greek], Athens 1970, pp. 97-100.
[45] H. TAGARAS, *The contribution of the Community legal order to the unification of the international family law* [in Greek], Athens-Komotini 2001, pp. 29-30.
[46] The Necessity Law 44/1967, as modified by the Law Decree 958/1971, introduced in Greece the new Code of Civil Procedure, which abolished the, formerly in force, Civil Procedure of 1834 and Cretan Civil Procedure of 1903.
[47] P. YESSIOU-FALTSI, *Civil Procedure in Hellas*, The Hague/London/Boston ---------, p. 167-168.

territorially competent courts before which such actions may be filed, courts of Athens will have [international] jurisdiction (art. 612 par. 1 CCivPr)[48].

In case of spouses of foreign nationality(ies), according to art. 611 par. 1 al. 1 CCivPr, Greek courts have international jurisdiction over issues of this marriage, on the condition that the *lex patriae* of both spouses admits that. According to art. 611 par. 1 al. 2 CCivPr, the Greek courts have international jurisdiction when the marriage is valid according to Greek law, while it is inexistent or null according to the *lex patriae* of the man[49].

2.3 LAW APPLICABLE TO THE MATRIMONIAL PROPERTY REGIME

2.3.1 Determination of the law applicable to the matrimonial property regime

2.3.1.1 In case spouses have entered into a marriage contract

2.3.1.1.1

In both cases, the choice-of-law rule is the same. There is no different choice-of-law rule according to whether the spouses have entered or not into a marriage contract – an opposite opinion, though, has been put forth, according to which, in case spouses have entered into a marriage contract, we should have recourse to the choice-of-law rule, concerning contracts, and therefore, the private autonomy principle would be governing. Nevertheless, the *sui generis* nature of the marriage contract and the fact that it is closely related to the organization of the family, led others to support the opinion, according to which, the applicable law in the case of existence of a marriage contract would be the law governing the personal relations of the spouses, putting forth the argument that the marriage contract, based on the existence of marital bond, is a particular kind of contract.

Dominant is the opinion, according to which, as mentioned above, the choice-of-law rule is the same, the one concerning the matrimonial property relations.

2.3.1.1.2

Public policy's mission (as public policy is formed in art. 33 CC) is the control of the *in cocreto* application in forum, of a certain (designated by rules of conflict as applicable) foreign rule of law. That is, public policy is functioning as a reserve, so that the non application of foreign law [the application of which is, in principle, imposed by the forum's rules of conflict] in certain circumstances, as an exception, is justified.

2.3.1.1.3

There is no possibility for the spouses to choose the applicable to their property relations law, according to Greek private international law.

If, according to the designated by the proper rule of conflict (art. 15 CC, see infra) law, it is permitted to the parties who enter into a marriage contract, this is not considered an exception to the forbiddance, by Greek private international law, of renvoi.

2.3.1.2 The spouses have not entered into a marriage contract

[48] G. MITSOPOULOS, *Civil Procedure* [in Greek], vol. A, Athens 1972, pp. 143-147.
[49] S. VRELLIS, *op. cit.*, p. 309.

2.3.1.2.1

Main choice-of-law rules

The applicable law to property relations of the spouses is the applicable law to their personal relations, right after the celebration of the marriage (art. 15 CC)[50]. The applicable law to the personal relations of the spouses is, in order of priority: a) the law of their last common nationality, if one of them still has it, b) the law of their last common marital habitual residence, c) the law to which they are most closely connected (art. 14 CC).

As far as the issue of legal characterization is concerned, it is answered according to the private international law of *lex fori*. As to the subject under study, it is observed that the term "matrimonial property regime" includes institutions of foreign laws which, independently of their classification in their own laws, are identical, analogous or have similarities, as far as their nature or their aims are concerned, to the institutions which, according to the theory of the Greek family law, belong to the category of the matrimonial property consequences.

2.3.1.2.2

Problems in applying the choice-of-law rules

Art. 33 CC sets a clear limit to regulations of foreign laws, designated as applicable – in this case by the art. 15 CC -, if they are incompatible with the Greek public policy. It is accepted that these regulations are not applied by the Greek judge, when in the concrete case they are contrary to the Greek public policy. This could happen when the "litigation" is closely connected to the Greek legal order[51].

A specific problem is created in cases of third persons negotiating in Greece with spouses the matrimonial property relations of whom are governed by a foreign law, that those third persons ignore. The issue of the latter's protection comes up and it is different from the issue of security of law in the relations between spouses and the protection of third persons in general, at which the establishment of unchangeable connecting factors is aiming at. It is not about the protection of transactions of third persons in general, but about the protection of a Greek transaction[52].

2.3.2 Scope of the law applicable to the matrimonial property regime

2.3.2.1 During marriage

2.3.2.1.1

Matters governed by the law which is applicable to the matrimonial property regime

Art. 15 CC establishes the principle of uniform regulation of the matrimonial property regime, independently of the kind of things constituting the matrimonial property, that is, whether they are movable, immovable, immaterial, etc. It is also indifferent, where the property items of each spouse are. Art. 27 CC, which designates the lex rei sitae as applicable law to real rights, cannot be applied; it cedes, as a general rule, before the specific rule of the art. 15 CC.

Thus, according to the designated by art. 15 CC law, the following issues are regulated:

[50] A. PAPADOPOULOS, „Maßnahmen zur Sicherung der güterrechtlichen Ansprüche eines Ehegatten gegenüber dem anderen Ehegatten in und vor dem Scheidungsprozeß", *in*: *Recht in Europa. Festschrift für H. Fenge*, Hambourg 1997, p. 476.

[51] I. DELIGIANNIS, "Private International Law of the spouses' relations" [in Greek], *HEEurD* 1986, p. 227, 258.

[52] I. DELIGIANNIS, *op. cit., HEEurD* 1986, p. 259.

Which system, among the various adopted by different States, governs the matrimonial property regime, that is, which one among: separation of goods, community of goods, community of acquests, community of movables and acquests, etc[53].

Whether it is allowed to the spouses to designate a specified type of matrimonial property regime, the conditions and the time of its conclusion (before or after the marriage), the possibility of its transformation or abolishment.

Whether, beyond the matrimonial property regimes, legal and contractual, which eventually are "offered" by the law designated by the art. 15 CC, there are certain general rules governing together with whichever of these systems and more particularly: whether in the relations between spouses legal presumptions of ownership are in force, in favour of their creditors, whether, in case one spouse entrusts the other with the administration of his/her individual property, the latter has a right to hold the incomes, the way the use and distribution of movables (and in particular of the household) in case of interruption of marital cohabitation are regulated, etc.

Whether the institution of dowry is foreseen, or, on the contrary, is not only not foreseen but it is forbidden, how it is regulated in its details in case it is foreseen, that is: how it is constituted (the issues of capability and form are excepted), how it is functioning during marriage, how the administration of the things given as dowry takes place, if and on what conditions their alienation is permitted, what happens with the dowry in case of dissolution of marriage, etc.

2.3.2.1.2

Matters governed by another law

The validity of the form of a marriage contract, is governed by the law designated by the art. 11 CC[54]. According to that article, for a contract to be valid in form, it must fulfill the requirements set by, either the law governing the content of the contract (lex contractus), or the lex loci actus, or the law of the nationality of all the parties. Does the requirement for a marriage contract to be drafted by a notary, as Greek legal order too demands, concern the form or the substance of the contract? According to the dominant position, it concerns the form, therefore, the applicable law will be one of the laws referred in art. 11 CC.

Whether spouses are capable of concluding such a contract, will be judged, according to the dominant position, by the law designated by the art. 7 CC. According to the latter article, the capacity to conclude a contract is governed by the law of the contracting person's nationality at the time of the contract's conclusion[55].

The applicable law to the relations between parents and children is governing the issue whether there is an obligation of the parents to constitute a dowry for the sake of their daughters.

Mortgage rights, attributed by the law to the spouse, to secure his/her rights/claims towards the other, will be governed by the law designated, either by art. 14 CC (choice-of-law rule for the personal relations of the spouses) or by art. 15 CC (choice-of-law rule for their matrimonial property relations): it depends on the nature of the right to be secured, that is, whether it will be considered as following from the personal relations or the property relations of the spouses. In any case, though, whichever law will be the governing the mortgage rights, attributed by law, it can only have the results that the lex rei sitae of the immovable tolerates[56].

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[53] G. MARIDAKIS, *Private International Law* [in Greek], II, Athens 1968, p. 170.
[54] G. MARIDAKIS, *op. cit.*, II, p. 180.
[55] G. MARIDAKIS, *op. cit.*, II, p. 179.
[56] E. KRISPI-NIKOLETOPOULOU, *op. cit.*, p. 181; N. PARASKEVOPOULOS, *The Property Relations of the Spouses in Internal Law and in Private International Law after L. 1329/1983* [in Greek], Athens 1984, p. 130.

2.3.2.1.3

Matters of which it is disputed by which law they are governed

There is no unanimity as far as the maintenance obligation is concerned: does it belong to the personal relations or to the property relations of the spouses? If the first opinion is accepted, then the applicable law to this obligation will be designated by the art. 14 CC; if the second opinion is accepted, then the applicable law to it will be designated by the art. 15 CC.

2.3.2.2 At the time of dissolution of marriage

2.3.2.2.1

It is the same law, that is the applicable law to the matrimonial property regime, that says what are the consequences of the dissolution of the marriage to the property relations between the ex spouses.

The dissolution of marriage, during the life of spouses, is governed by the law designated by the art. 16 CC. It is this law that sets the reasons for which the marriage must be dissolved. But it is the law designated by the art 15 CC that governs property relations of the spouses after the dissolution[57].

In case of annulment of marriage, a new self existent situation is created, which is not really a consequence of the [annulled] marriage. Therefore, it is proposed that the applicable law to the liquidation of the property relations created during the annulled marriage, should be a different law than the one applicable to the matrimonial property regime, and in particular the law of the nationality that each of the spouses had at the time of the conclusion of the marriage. That is, each spouse may have the property items that he/she is entitled to, according to the law of his/her nationality at that time.

2.3.2.2.2

It is again the law designated by the art. 15 CC that is applicable to the consequences of the dissolution of marriage upon the death of one of the spouses, for the property relations of them.

The law designated by the art. 28 CC (applicable law to the inheritance issues), that is, the law of the State of which the deceased was national, determines the inheritance rights of the surviving spouse[58].

If the two laws, the applicable to the matrimonial property regime and the applicable to the inheritance rights of the surviving spouse, are of different States, and the concurrent application of them both leads to unfair results, that is, legal consequences that are incompatible with the spirit of the law of either of the two States – that may happen in case both of the spouses have the nationality of either of them – it is proposed that one of the two laws should be applicable and that would be designated according to the specific circumstances of each case.

A special statutory provision validates prenuptial or postnuptial contracts made abroad between a Greek and a foreign citizen, both domiciled abroad, whereby the foreign spouse relinquishes any and all inheritance rights to the property of the Greek spouse (Law Decree 472/1974).

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[57] S. VRELLIS, *op. cit.*, p. 307 ; G. MARIDAKIS, *op. cit.*, II, pp. 171-172 ; G. HOHLOCH/I. ANDROULIDAKIS-DIMITRIADES, "Griechenland", *in*: *Internationales Scheidungs- und Sceidungsfolgenrecht* (Hrsg. *G. Hohloch/I. Androulidakis-Dimitriades* …), München/Berlin 1998, p. 123.

[58] N. PAPANTONIOU, "Die Auswirkungen des Zugewinnausgleichs auf das Erbrecht. Rechtsvergleichende Bemerkungen zum griechischen und deutschen Recht" *FamRZ* 1988, p. 687.

2.3.3 Law applicable in case of changes in the matrimonial property regime

2.3.3.1 Modifications of the connecting factor

At the time when several articles of family law were reformed, and consequently the relevant private international law articles of CC were also reformed, so to be harmonized with the constitutional principle of equality before the law, the issue of choice of connecting factors came up. Of particular importa nce was the issue whether the new regulation would insist on a system of different applicable laws to personal and property relations, or a unified approach would be more suitable.

The arguments in favour of a differentiated approach, pointed out that the applicable law to the personal relations of the spouses must be changeable, so that a close connection of the spouses with it be always possible, while, on the other hand, it is necessary for the applicable law to the matrimonial property relations to be unchangeable, for the sake of the certainty of law in general and of the protection of the spouses and also of other persons, negotiating with them, in particular.

An argument contra the above position, was that there should be a single, unique, regulation, on the one hand because of the difficulty of ranking a relation to the category of personal or property relations[59], on the other hand because of the possible problems that would come up due to the different, perhaps even contradictory, applicable laws to these two categories. A further argument is that, while in every State the regulation of the matrimonial property is coordinated with the regulation of the inheritance right of the surviving spouse, this coordination could be disrupted in case of application of different laws to each category of inter spouses relations, with unpleasant results[60].

The basic argument contra an unchangeable applicable to the matrimonial property law seems to be that the property relations of the spouses might be governed by a law of a State with which the spouses would not have any connection anymore, even a long time ago. This disadvantage, which is really considered by almost everyone as serious, could be coped with if the existing system could be combined with the recourse to the autonomy of the spouses' will, as far as the designation of the applicable law is concerned. Unfortunately, this solution is not accepted by the Greek private international law, which does not permit the choice of the applicable law by the spouses concerned.

Let it be mentioned that Greek jurists, commenting on the private international law regulation of matrimonial property relations, lament the fact, that Greece has not ratified the Hague Convention, of 4.3.1978, on the applicable law to the property relations of the spouses, the provisions of which are considered as well elaborated[61]; or at least that, as is already mentioned supra, that the private autonomy, as far as the choice of the applicable law to these relations is concerned, is not admitted by the law[62].

2.3.3.2 Modifications of the applicable law

The choice of unchangeable connecting factors does not necessarily mean that the rules of the designated by the conflict rule applicable law are also unchangeable. It only means that the lawmaker's intention was for the designated legal order not to change. If in the frame of that

[59] Areios Pagos 429/1994, *HellDni* 36 (1995) p. 308; A. VRELLI-VRONTAKI, "Survey of Greek Private International Law Cases" [in Greek], *Koinodikion* 2 (1996) p. 304.
[60] A. GRAMMATIKAKI-ALEXIOU/Z. PAPASIOPI-PASSIA/E. VASSILAKAKIS, *Private International Law* [in Greek], Thessaloniki 1997, p. 187.
[61] S. VRELLIS, *op. cit.*, p. 302-303.
[62] H. TAGARAS, "The applicable law to the property relations of Greeks' mixed marriages" [in Greek], *Arm* 41 (1987) p. 833.

particular legal order a reform of the internal legislation takes place, it is indifferent for the conflict rule. The issue whether, in that case of reform of the internal legislation of the legal order firmly designated by art. 15 CC, the spouses will be subjected to the law in force before or after the reform, depends on the transitional provisions of that internal legislation.

2.3.3.3 Changes in the matrimonial property regime by consent of spouses

2.3.3.3.1

It is always the law designated by the art. 15 CC, that will tell, whether a change of this sort is admissible.

2.3.3.3.2

Again the law designated by art. 15 CC will be applicable, except for the form of the marriage contract, which will be governed by the law designated by art. 11 CC.

2.3.3.4 Other possible changes in the matrimonial property regime

The law designated by art. 15 CC will govern automatic changes or changes in the regime as a consequence of a court decision or public authority.

2.3.4 Law applicable to the publication of the matrimonial property regime

2.3.4.1 Law applicable to the publication of the initial regime

2.3.4.2 Law applicable to the publication of a modified regime

It seems that the answer to all the above questions – of 2.3.4. – is that the applicable law will be again the one designated by art. 15 CC. It is considered that the stability achieved by applying the law governing the matrimonial property regime, to everything concerning its publication, contributes to the protection of the spouses as well as the third persons, negotiating with the spouses.

2.4 RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS AND 'PUBLIC' ACTS IN RESPECT OF MATRIMONIAL PROPERTY REGIMES

2.4.1 The general rule on the effectiveness of foreign 'public' acts and courts decisions as applied in the area of matrimonial property regimes

2.4.1.1

The Code of Civil Procedure contains provisions on both recognition and enforcement of foreign courts' decisions, which treat nationals and foreigners alike, without any discrimination. No reciprocity is required. Recognition and enforcement take place without re-examination on the merits.

According to art. 323 CCivPr, five requirements must be met for a foreign court's judgment, rendered in contentious jurisdiction, to be recognized in Greece:

a The court must have had international jurisdiction according to Greek procedural law[63].

b The judgment must have a *res judicata* effect under the law of the country of origin.

[63] Areios Pagos 12/1986, *NoV* 34 (1986) p. 1239.

c The losing party must have been given an opportunity to defend him(her)self, not less favorable than that available to nationals of the country of origin.

d The judgment must not be inconsistent with a [subsequent or prior] Greek judgment on the same matter, binding the same parties.

e The judgment should not be contrary to morality and generally to Greek public policy.

In the context of recognition of foreign courts' judgments, public policy is less demanding than in choice of law and it is possible for a Greek court, especially where foreign parties and events are involved, to recognize a judgment applying a rule of law that it would have refused to apply in the first place on public policy grounds[64].

Judgments rendered *ex parte* (voluntary or non-contentious jurisdiction), are more easily recognized. According to art. 780 CCivPr, the foreign court must have had jurisdiction under the applicable substantive law and the judgment should not be contrary to morality and generally to Greek public policy. The court must have chosen the applicable law consistently with the Greek rules of conflict.

When the judgment orders the payment of money or proceeding to an act, it must also be declared enforceable. According to art. 905 CCivPr, which refers to the enforceable instruments, a special *exequatur* proceeding before the one-member district court of the defendant's domicile or residence or, in their absence, of Athens, is defined. For an *exequatur* to be obtained, it must be proven that the foreign document is judicially enforceable under the law of the country of origin and contrary to morality or generally to Greek public policy. When the enforceable instrument is a judgment, the recognition requirements of art. 323 CCivPr must also be met[65].

2.4.1.2

Foreign legislative or administrative acts are recognized in Greece, as far as they are valid in the State in which they were issued and they are not contrary to morality or the Greek public policy.

Most of the cases, in which the public policy exception was raised, involved divorce or other family related decrees.

2.4.2 Rules on the effectiveness of foreign "public" and private acts and court decisions specific to the area of matrimonial property regimes

In general, Greek courts do not often adopt the opinion – as it is already mentioned, supra – that the recognition of a foreign decision or its declaration as enforceable, is *in concreto* contrary to the Greek public policy. The relevant allegation, which is often put forward by the defendant, against whom the enforcement is being seeked, most of the times is overruled. The percentage of the decisions, overruling this kind of allegation, is over 70%[66].

It is considered that there is a contrariety to the Greek public policy, not only in case when the evidence procedure and the decision were different than what the Greek procedural rules impose, or in case that different substantive rules were applied than those of the Greek substantive law; also, when the development of the foreign decision's consequences, under the specific circumstances under which they are going to be produced, "is directly contrary" to the dominant in Greece fundamental principles which constitute the meaning of the public policy, so that there is a

[64] G. MARIDAKIS, *The Enforcement of Foreign Judgments* [in Greek], 3d ed. Athens 1970, pp. 101-102; Areios Pagos 1007/1982, *Dike* 14 (1983) p. 460.

[65] K. KERAMEUS/P. KOZYRIS (eds.), *Introduction to Greek Law*, 2nd revised ed., Deventer – Boston 1993, pp. 314-315.

[66] A. ANTHIMOS, "Der verfahrensrechtliche ordre public im intwernationalen Zivilprozeßrecht Griechenlands", *IPRax* 2000, 331.

danger of creation of a situation which would not be adapted to the moral, economical, justifiable and constitutional order of the [Greek] State[67].

As an exception, when it is about a decision of a foreign court, which concerns the personal status, or when it is about whatever act of the competent organ of the foreign State (e.g. administrative or clerical), which regulates, according to the law in force there, issues referring to the personal status, which issues are regulated in Greece, exclusively, by a court's decision, the recognition of the *res judicata* is taking place by a Greek court's decision, suffice it that the requirements of the art. 323 CCivPr are met (art. 905 par. 4 CCivPr).

This provision, which did not exist in the initial text of the necessity law 44/1967, was added to the art. 905 CCivPr, by the law decree 958/1971, in order that the serious issue that had come up in the past, be solved out: Certain administrative authorities in Greece, were not proceeding to the issuing of acts, a requirement of which acts was the validity of the foreign decision of personal status, because they were hesitating to recognize their validity.

For the relative hesitations and the doubts about the validity of these foreign decisions (of personal status), as well as about whether the intervention of a judicial judgment was necessary and when, to be removed, the need of their judicial recognition in Greece, was prescribed.

Obviously, the foreign decision of personal status does not need to be "enforceable" in the State that issued it, since there is no "enforcement" in this kind of decisions; it suffices for the decision to have in that State force of *res judicata*.

2.4.3 Practical significance of the rules set out under 2.4.1 – 2.4.2

In spite of my efforts, it was not possible to find out the answer to the above questions, not even to give a rough estimate. Courts decisions are not reported electronically, neither are they reported in the specific books, by subject. There is no authority, either, where one could find statistic information.

2.5 OTHER REMARKS

None

[67] S. VRELLIS, "Reconnaissance et exécution de décisions étrangères tant judiciaires qu'arbitrales (Le système en vigueur et ses améliorations)", *in*: *Justice and Efficiency. The contribution of the Greek science of procedural law to the 8th world conference of civil procedure in Utrecht, 1987*, II, Athens, p. 424; Areios Pagos 1559/1979, *NoV* 28 (1980) p. 1094.

CHAPTER 3

UNMARRIED COUPLES. INTERNAL LAW

3.1 SOURCES OF THE LAW ON UNMARRIED COUPLES

3.1.1 Description of the general legislative sources

Non marital cohabitation (free union) is not regulated by the Greek law. It is considered as a factual situation, tolerated by the Greek legal order. The law does not forbid it nor protects it. This is "supported" by the provision of art. 5 par. 1 of the Greek Constitution, according which, everyone has the right to develop freely one's personality, on the condition that he/she does not offend others' rights and does not violate Constitution or morality. Free union is an expression of a human being's personality and may not, by itself, be considered as contrary to morality[68]. It is a parallel, to marriage, form of long lasting coexistence of man and wife, without having the legal consequences of the marriage [69] and without being possible for the provisions of law of marriage to be applied by analogy [70], but only in exceptional situations. In those specific and isolated situations, application, by analogy, of certain provisions of the law of marriage is imposed by the law of equity, which "surrounds" the rules of positive law. In those exceptional circumstances, the judge is legitimated to have recourse to not yet existent law evaluations and to create law in analogy with the principles having been formulated in rules of positive law.

The fact that the legislator of 1983 – when the family law was reformed – does not ignore the non marital cohabitation as a factual situation, from which juridical consequences may follow, is also obvious from the provision of art. 1444 par. 2 CC, according to which, "the maintenance right ceases, if the beneficiary … is living together with someone else, permanently, in a free union". Nevertheless, the legislator only defined a certain consequence of the permanent cohabitation of man and wife in a free union; no general rule of recognition of legal consequences to the non marital cohabitation may be deduced[71].

Supporters of the actual situation, put forth the argument that, regulating cohabitation would run counter to the deliberate intentions of the couples who have chosen a free union in order to avoid the legal consequences attached to marriage.

According to most definitions in theory of this non marital cohabitation, it must be a union between persons of different sex[72]. However, there are those – only a few – who support the opinion that it could be a union between persons of different sex[73].

Furthermore, although according to the dominant opinion, both in theory and in case law, the marital cohabitation implies a certain duration – "permanently", according to the mentioned art. 1444 par. 2 CC -, the opinion is also expressed according to which, trying to qualify a relation by

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[68] I. ANDROULIDAKI-DEMETRIADI, *The non marital cohabitation* [in Greek], Athens 1984, p. 80.

[69] Which is an institution protected by the Greek Constitution, according to the art. 21 par. 1 of which, "family, as a foundation of the conservation and of the advancement of the Nation, as well as the marriage and the maternity and the childhood are under the protection of the State".

[70] According to a different opinion, though, the provisions about marriage could be applied by analogy to the free union too, see G. KOUMANTOS, *op. cit.*, I, pp. 19 ff.

[71] I. ANDROULIDAKI-DEMETRIADI, "The "paternity legal fiction" of the heterologous artificial fecundation" [in Greek], *HellDni* 42 (2001) p. 10.

[72] G. KOUMANTOS, *op. cit.*, I, p. 19; P. SCORINI-PAPARRIGOPOULOU, *in*: *Georgiadis-Stathopoulos* CC, art. 1444, no. 33.

[73] C. STAMBELOU, « Le concubinage en droit civil grec », *in* : *Les concubinages en Europe. Aspects socio-juridiques* (dir. *J. Rubelin-Devichi*), Paris 1989, 179; TH. PAPACHRISTOU, *op. cit.*, p. 174.

numbers (of years? What should be the number required for a union to be considered permanent) is arbitrary; therefore, according to the latter opinion, time should not play a significant role [74].

A recent decision that a first instance court issued, applied by analogy art. 1471 par.2 al. 2 CC to the non marital cohabitation. According to this provision, the mother's husband cannot dispute his paternity, if he had given his consent for the child's conception by artificial fecundation[75].

3.1.2 Description of principal sources in court decisions and in customary law

None

3.1.3 Description of any reforms of the law carried out in your country

None

3.2 HISTORIC DEVELOPMENT OF THE LAW ON UNMARRIED COUPLES

3.2.1 Stages of the historic development

Before 1983, there was nothing in the [written] law. After 1983's reform, there is only 1444 par. 2 CC, as far as written law is concerned. Issues of unmarried couples are mostly dealt with in theory – not abundantly, though.

3.2.2 Actual situation

None.

3.3 THE LEGAL CHARACTER OF RELATIONS OTHER THAN TRADITIONAL MARRIAGE

3.3.1 The concept of 'legal' marriage

None

3.3.2 The marriage of fact

None

3.3.3 Partnership registration

None

3.3.4 Contract to cohabitate

None

3.3.5 Any other type of relation accepted by the internal legal system which is other than 'legal' marriage

None

[74] C. STAMBELOU, *op. cit*., p. 181.
[75] One member District Court of Athens 6779/2000, *Arm* 55 (2001) 57, obs. *Papachristou.*

3.4 PROPERTY IN RELATIONS OTHER THAN TRADITIONAL MARRIAGE

Explicit agreements between cohabitants for the regulation of their property relations, are, in principle, valid [76]. This regulation must not reach the point of imposing a guarantee clause, because in this case that would have as a consequence the excessive binding of a human being's freedom. Furthermore, it is not allowed to impose, by such an agreement, the application of the family law rules to a free cohabitation (union).

A question is put, whether juridical acts, concluded by one of the cohabitants with a third person, concerning current needs of their household, bind the other cohabitant. It is supported that the other cohabitant is liable only if he/she approved the juridical act that his/her compa nion concluded with the third. In that case, his/her liability is created according to the provisions on false agent. It seems that there is no need to require an approval each time one of the cohabitants concludes a contract with a third person for the household needs. Given the fact of the cohabitation, it is considered that proxy (authority) has tacitly been given, from one cohabitant to the other who concluded the contract.

Gifts between cohabitants are valid, if all the formal and substantive requirements for their valid conclusion have been met (arts. 496-498 CC). Furthermore, it is required that the content of a gift must be consistent with the law and morality.

3.5 PROPERTY ISSUES IN CASE OF SEPARATION OF UNMARRIED COUPLES

3.5.1 The separation of the couple

The law does not provide anything.

3.5.2 The effects of the separation upon the property of the members

Given the fact that the free cohabitation, as already mentioned, is a factual situation, which does not create rights nor obligations in law, if the cohabitation is dissolved on the initiative of one of the two cohabitants, the other does not have a general right to indemnification, except in the following circumstances:

a If the cohabitant who leaves, has drawn profit from the work of the other, without having paid him, then he could be sued by the other, for the wages he owes him, either under a labor contract, if such a contract had been concluded, or under the provisions for the unjustified gain (arts. 904 ff CC).

b If a company had been set up by the cohabitants, the dissolution of the cohabitation may have as a consequence the dissolution of the company and therefore, the liquidation of the assets. If the former cohabitants disagree about the distribution, the cohabitant who was "deserted" may file a suit asking for the distribution.

c If the cohabitants had just put their properties together so that a common capital had been created, it is accepted that a de facto company relationship had been constituted between them. As far as the movables that the cohabitants had contributed are concerned, it is supported that art. 1394 CC, concerning the distribution of movables in case of interruption of the marital cohabitation, must be applied by analogy.

d If, following the cohabitation, a child was bor ne, which was recognized by its father, after the dissolution of the cohabitation, the mother has the right – in an exclusive term of three years from the confinement – to ask for a restitution of the confinement's expenses and for a maintenance for a time space of two months before the confinement to four months after it, on the

[76] P. AGALLOPOULOU, "The legal consequences of the free cohabitation" [in Greek], *NoV* 37 (1989) p. 866.

condition, of course, that those amounts have not already been paid by the father of the child (art. 1503 CC).

If the paternity is highly possible and the mother is resourceless, she may ask from the court to order, as a provisional measure, the prepayment by the father to the child, every month, of a reasonable amount of money, for the owed to the child maintenance (art. 1502 CC).

If the former companions had rented a house, where they were living during the cohabitation, in case of interruption of the cohabitation, art. 1393 CC, concerning the regulation of the use of the family home in case of interruption of the marital cohabitation, should be applied by analogy, especially when it comes to long lasted cohabitations, from which children have been borne.

One could draw the conclusion that, according to the dominant opinion in theory, the matrimonial property regime could be partly applied to the non marital cohabitations; particula rly the provisions which would not be contrary to the nature of free union and to the freedom which the companions have chose to preserve.

Case law has started hesitatingly to face the issue of application by analogy, of the art. 1400 CC – claim to share acquests - to the non marital cohabitation. A district court's decision has already been issued, accepting this application by analogy[77]. This decision was negatively criticized, and the argument was that non marital cohabitation is contrary to the morality of the Greek society. Two more decisions, again of district courts, explicitly accepted that the non marital cohabitation is consistent with the morality of the Greek society, nevertheless, they did not dare to apply by analogy art. 1400 CC, but judged that the contribution of one cohabitant to the increase of other's property could only be claimed on the basis of the rules for the unjustified gain[78]. There are not yet reported judgments of higher courts, concerning the above issue[79].

3.5.3 Effects of the separation with regard to third parties

None

3.6 PROPERTY ISSUES IN CASE A MEMBER OF THE UNMARRIED COUPLE DIES

3.6.1 In relation to the surviving member

The surviving member cannot be an ab intestate heir. Nevertheless, he/she may be an heir by will. A provision of a will, according to which one of the cohabitants leaves to the other certain property items, is considered valid, except if, under the particular circumstances, it shows contempt for the close relatives of the testator. That would be the case, when, without particular reason, the testator leaves a minimum amount of the estate to his/her close relatives.

A provision of will, by which the testator leaves to the surviving cohabitant a pecuniary amount as a recompense for their love affair, is also considered null[80].

3.6.2 In relation to third parties

In case a member of the unmarried couple dies because of an accident, the surviving member cannot claim damages from the responsible for the accident (art. 928 CC).

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[77] One member District Court of Rhodes 206/1991, *HellDni* 36 (1995), p. 725, comments *P. Nikolopoulos & I. Katras.*.
[78] One member District Court of Kozani 204/1999, *NoV* 48 (2000), p. 1446, Three members District Court of Kozani 388/1999, non published, concerning the same case.
[79] P. NIKOLOPOULOS, *The evolution of precedents about acquired property of spouses* [in Greek], Athens-Komotini 2001, pp. 36-38.
[80] I. ANDROULIDAKI-DEMETRIADI, *op. cit.*, pp. 168 ff; Areios Pagos 1311/1982, *NoV* 31 (1983), p. 1343.

Only when the surviving member is a woman, mother of a child borne outside marriage, and on the condition that she still has the right to ask for her maintenance, according to art. 1503 CC – see supra -, only then has she a claim to damages.

The surviving member has not an obligation by the law to pay the [eventual] hospital expenses or the funeral expenses, since these expenses burden the heirs (arts. 1901 par. 1 & 1831 CC). If he/she has already paid them, without being an heir to the deceased, he/she may ask for their restitution by his/her companion's heirs, by application of the provisions on management of belongings to others (arts. 736 ff CC). Only if the surviving member is a heir by will, is obliged to pay a part of them, in analogy with his/her succession share (art. 1885 CC).

The law provides for a pecuniary compensation due to moral damage, caused by the death of a family's member, only for the members of the deceased's family. Jurisprudence, though, admits that, by application of art. 932 par. 3 CC, the surviving member of the cohabitants, is also entitled to a reasonable pecuniary compensation[81].

In case of death of one of the cohabitants, the question is put, whether the art. 612 par. 2 CC, referring to the family home, is applied. One has to distinguish: If the survivor was a co-lessee with the deceased, then he/she becomes co-lessee with the deceased's heirs. If he/she was not a co-lessee, the lease is acquired by the heirs, thus the surviving member is only then considered as lessee, when he/she is a heir by will. In case, though, that the cohabitation had lasted long, the application by analogy of art. 612 par. 2 CC is imposed[82].

3.7 OTHER REMARKS

None

[81] I. ANDROULIDAKI-DEMETRIADI, *op.cit.*, pp. 197 ff; Court of Appeals of Athens 618/1976, *NoV* 24 (1976) p. 725, comment *I. Spyridakis*.

[82] I. ANDROULIDAKI-DEMETRIADI, *op.cit.*, p. 188; P. AGALLOPOULOU, *op.cit. NoV* 37 (1989), pp. 869-870.

CHAPTER 4

UNMARRIED COUPLES. PRIVATE INTERNATIONAL LAW

4.1 GENERAL ISSUES OF P.I.L.

4.1.1 Public policy. Characterization

For the time being there is no positive law concerning p.i.l. issues of unmarried couples.

Obviously there are several categories of cohabitation and registered partnerships foreseen in different countries. At the same time, cohabitation relationships are very diverse as regards the degree of economic community of the couple. A very important issue is whether, even if the attitude of the Greek legislator changed and became positively oriented towards covering these matters, different rules of conflict for non marital cohabitation, registered partnership or other forms of cohabitation, as well for same sex or opposite sex registered partnerships should be set.

In any case, if according to the designated as applicable foreign law, a same sex partnership would have practically the same status as a marriage, that law would not be applied, because it would be contrary to the Greek public policy.

Furthermore, rights that the Greek legislator does not give to non marital cohabitants, according to Greek law, cannot either be recognized in Greece for non marital cohabitants, whose free union was created abroad. This refers to consequences of public law (e.g. taxes) as well as to consequences of private law.

4.1.2 Recognition of the relation between an unmarried couple

It seems that "recognition" in Greece of other than marriage relations between two natural persons, would not be similar to the recognition of marriages celebrated abroad, since neither in Greece this kind of relation is regulated as a form presenting similarities to marriage.

4.1.3 Admissibility of the "celebration" of a same sex "marriage" (or other relation)

It is not possible to accept the celebration in Greece of a same sex marriage, permitted by a foreign applicable law. It would be contrary to the Greek public policy.

4.2 INTERNATIONAL JURISDICTION

4.2.1 Separation of unmarried couples. International jurisdiction

There is nothing foreseen by the law. It would rather be improbable that international jurisdiction be established on the basis of the general rules on international jurisdiction.

4.2.2 Property aspects of the separation. International jurisdiction

There are no special rules on international jurisdiction for unmarried couples, neither provisions, normally applied to married couples would also be applied in the case of separation of unmarried couples.

For international jurisdiction to be established on the basis of the general rules, according to my opinion, it would need a different legal characterization of the subject of the litigation and not that of property regime of unmarried couples. The latter would not fulfill the requirements for any general jurisdictional basis.

4.2.3 Relation between 4.2.1 and 4.2.2

The answer to that is given by the answers above.

4.3 APPLICABLE LAW

4.3.1 Determination of the law applicable to the property regime

4.3.1.1

There is nothing specific in the law. It seems that the applicable law would be the designated for a contract – either arts. 3 and 4 of the Rome Convention 1980 or art. 25 CC for the cases not covered by the Rome Convention.

4.3.1.2

The applicable law would depend on the nature of each relation, and not on the general relationship of the unmarried couple.

4.3.2 Scope of the applicable law

None

4.3.3 Applicable law and changes of the property regime

None

4.3.4 Law applicable to publication of the property regime of an unmarried couple

None

4.4 RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS AND 'PUBLIC' ACTS IN RESPECT OF PROPERTY OF UNMARRIED COUPLES

4.4.1 The general rules on the effectiveness of foreign "public" acts and court decisions as applied in the area of property of unmarried couples

The legal relation between an unmarried couple, cannot be recognized in Greece, in the same way that a marriage celebrated abroad is recognized. Nevertheless, according to my opinion, foreign court decisions in respect of the legal relation of the couple, could be recognized someway, especially as far as property relations are concerned – but rather having been characterized as general property agreements between two persons, in order e.g. to prevent a "registered partnership" enjoying a similar status and similar privileges to marriage.

Certainly, at least for the moment, Greek legal order is not ready to recognize the [registered] partnership as having effects in relation to matters such as taxation or social welfare, or in relation to the continuing rights and obligations of the partners between them, to the extent that recognition involves state support for the continuing relationship within Greece.

Furthermore, in case a partnership registered abroad is being invoked before a Greek officer of civil status, it would not be recognized, therefore the said officer would not have to draw any consequence out of that act (the registration of the partnership abroad).

The above, do not seem to preclude recognition of property rights as between the partners, arising from the [registered] partnership, in case such rights have already been vested in the parties, before they ask Greek courts to recognize them. As it has been stressed out, disregarding the legal developments in some countries, in the field of registered partnership and cohabitation, would not be realistic or fair to the legitimate interests of the persons involved.

Obviously, recognition in case of homosexualpartnerships will be more difficult, perhaps impossible, at least for the time being and for the near future.

4.4.2 Rules on the effectiveness of foreign "public" and private acts and court decisions specific to the area of property of unmarried couples

None

4.4.3 Practical significance of the rules set out under 4.4.1 – 4.4.2

It is not possible to find out an answer to this question.

4.5 VARIOUS MATTERS

None.

ANNEXES TO THE REPORT

LIST OF ABBREVIATIONS

Arm	Armenopoulos
CC	Civil Code
ChrID	Chronika Idiotikou Dikaiou
CCivPr	Code of Civil Procedure
EEN	Efimeris Ellinon Nomikon
FamRZ	Familien RechtsZeitung
HEEurD	Helliniki Epitheorissi Europaikou Dikaiou
HellDni	Helliniki Dikaiossini
IPRax	Praxis des Internationalen Privat- und Verfahrensrechts
L.	Law
RHDI	Revue Hellénique de Droit International

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