Comparative Insight on the Matrimonial Regimes, in the Romanian Contemporary Law System

Miron Gavril Popescu*

Abstract:

The regulation of the plurality of matrimonial regimes is considered by a number of law theorists and practitioners as one of the first important innovations implemented with the entry into force of Law 287/2009 on the Civil Code.

In order to protect the interests of the family, the Romanian legislator laid down a body of fundamental, imperative rules governing the rights and obligations of the spouses, which do not constitute a separate matrimonial regime, but represent the common law applicable irrespective of the matrimonial regime to be be chosen later.

By establishing the plurality of matrimonial regimes, in particular the matrimonial regime of the legal community along with conventional[1] matrimonial regimes, the legislator confers to spouses or future spouses the freedom to choose how to exercise the rights and obligations arising from marriage.

Along with the entry into force of the Civil Code, the patrimonial freedom of spouses / future spouses,established as cardinal principle, empowered their adherence, either to the regime of separation of goods or to that of the conventional community, on the basis of a matrimonial convention. In the absence the matrimonial convention, by virtue of the law, the spouses will be subject to the legal provisions applicable to the regime of the legal community.

Keywords: spouses / future spouses, matrimonial regime of the legal community, imperative primary matrimonial regime, matrimonial regime of the separation of goods, matrimonial regime of the conventional community, matrimonial convention

Considered in historical evolution, the legal regulation of patrimonial rights and obligations arising from family relationships has undergone a number of substantial changes, if we take into account, as a

* Assistant PhD, "Aurel Vlaicu" University of Arad, mirongavril.popescu@yahoo.ro

[1]Regime of Separation of Goods and Conventional Community Regime

starting point, the Roman Law, the Law of the XII Table (451 AD) (1817), the Romanian Civil Code (1864), the Family Code (1954) in order to complete the legislative *periplus*, with the entry into force on October 1st, 2011 of Law 287/2009 on the Civil Code.

This analysis considers the main elements of legislative novelty, reflecting the dynamics of current social and legal needs, by comparison and by reference to the Family Code, which was abated since the entry into force of Law 287/2009 on the Civil Code.

The matrimonial regime of the spouses, as regulated by the Family Code, was a regime of the exclusive, legal, unique, compulsory and immutable property community, those who married were not entitled to determine, on the basis of their convention, the patrimonial relations, any convention contrary to legal regime being null. As a consequence, both the general mandate granted to the other spouse and the agreement by which one of the spouses gave up the right to dispose of common assets were considered against law provisions.The sanction enforceable to this kind of private agreements was absolute nullity.

The Family Code regulation restrictedly provided six categories of personal assets of each spouse and four categories of common debts, thus establishing an asymmetric proportion of goods and liabilities. Thus, common goods represented the rule, and personal assetsthe exception, while common debts were the exception, and the personal debtsthe rule.

Since the Romanian legislator has not explicitly defined the matrimonial regime, theoreticians and practitioners of law[2] have concluded a *lato sensu*definition, which refers to *all the rules governing the relations between spouses, regarding their assets as well as those that are formed in their relationships with third parties.*

In principle, with the entry into force of the Civil Code, the patrimonial freedom of the spouses excludes, as a consequence, the obligatory nature of the single legal matrimonial regime, which characterizes the previous regulation.It also gives the spouses the prerogative to decide regarding the assets and debts which are the subject of their patrimonial relations. To emphasize the eclectic character of the new regulation, we should mention that the Romanian law giver included provisions of French origin, dating back to 1804[3], as

[2] E.g C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, *Romanian Civil Law Treaty*, vol. I, 2nd edition, Ed All, Bucharest; I. Albu, *Family Law*, Didactic and Pedagogical Edition, Bucharest, 1975.

[3] E.g: the mandatory primary regime on which the marriage regime chosen by spouses will be graded, the preciput clause.

well as contemporary provisions of Quebec Province Code origin[4], all placed in Book Second, *About the Family*.

The analysis of the legal text reveals, from the outset, one of the utmost innovative elements: family law provides a body of fundamental, imperative rules governing the rights and obligations of the spouses[5], namely, a set of common rules to which the doctrine assigned the name of primary imperative matrimonial regime (Vasilescu, 2003). It should be emphasized that, these provisions do not represent a separate matrimonial regime, but govern the common law provisions applicable irrespective of the matrimonial legal regime to be subsequently elected.

In addition to the mandatory rules governing any matrimonial regime, the legislator establishes, under the provisions of art. 329, the regime of the legal community as a common law regime, from which the parties may derogate, by concluding a matrimonial convention. From *per a contrario* interpretation of art. 329 Civil Code provisions, the presumed intention of the spouses to fall under the exclusive scope of the legal community regime, if they did not conclude a matrimonial convention. It should be noted that, at one time, there is only a single marriage regime to rule the patrimonial regime of spouses, the coexistence and mixing of regimes being practically inadmissible and void of law.

The following legal provisions concern the choice of the matrimonial regime (article 329–338 of the Civil Code), the conditions under which the matrimonial convention may be concluded, which are its forms of advertising, after which the legal text analyses, in part, each of the three matrimonial regimes governed by the provisions of the Civil Code: the regime of the legal community (article 339–359 of the Civil Code), the regime of assets separation (articles 360–365 of the Civil Code) and the regime of the conventional community (article 366–368 Civil Code). In the next section of the same chapter, the legislator stipulates that spouses can choose two ways to modify the matrimonial regime, by conventional means (article 369), respectively, by judicial process (articles 370–372).

Being in the presence of a legislative void, with respect to the newly introduced juridical institution of the matrimonial convention, the Romanian doctrine (Vasilescu, 2003) seems compelled to define and establish its juristic characters.

---

[4] E.g: The Principle of Freedom of Matrimonial Conventions.

[5] Common Provisions: *About the General Matrimonial Regime* (Article 312–320Civil Code), Family Lodging (Articles 321–324 of the Civil Code), Marriage Outgoings (Art. 329–338 Civil Code).

As a consequence, the matrimonial convention was defined *as a solemn, public legal act of a conventional nature whereby the future spouses regulate, prior to the marriage, the essential patrimonial relations that will exist between them during the marriage or that convention concluded during marriage, through which spouses decide the current marital status or another type of matrimonial regime recognized by law.*

In summary, the matrimonial convention is that solemn legal act having as qualifying parties – future spouses who, by mutual consent, decide to submit their patrimonial relations to the regime of the conventional community or to the separation of goods, in terms of rights and obligations, in order to derogate from the legal community regime. Thus, lining up to one of the conventional matrimonial regimes can be achieved by concluding a matrimonial convention either before marriage[6] or at the least one year after the valid marriage conclusion.

As a consequence, the Romanian legislator establishes that the legal matrimonial regime operates, *de jure*, simultaneous with marriage conclusion, in all cases where the spouses do not conclude a matrimonial convention. This is the necessary condition in order to line up to another matrimonial regime. Thus, the choice of legal community matrimonial regime becomes effective without any formality, presuming the spouses' intention, to place their patrimonial relations strictly and exclusively under the law provisions.

Although the legislator expressly does not attribute the character of the legal regime to this matrimonial regime, thisunequivocally appears from its marginal name, as it is mentioned, for example, in art. 313, the final thesis. The same conclusion arises and from the interpretation of the various articles that regulate it[7]. This regime broadly corresponds to the single marriage regime established by the provisions of the Family Code, abated with the entry into force of the Civil Code. It is worth mentioning that the unique, exclusive property, in condominium, regulatedby the Family Code continues to apply, in the form of the legal goods community, in the regulation of the current Civil Code, in a more complex and elaborate form.

---

[6] Hence the matrimonial character of the matrimonial convention to the marriage contract, so that it has its effects only from the date of valid marriage.

[7] For example, art. 329 Civil Code provides that *the choice of a different matrimonial regime than that of the legal community is made by concluding a matrimonial convention*, and art. 313 par. 3 Civil Code states *that failure to comply with the advertising formalities causes the spouses to be considered married under the matrimonial regime of the legal community, in relation to third parties in good faith.*

Thus, art. 339 Civil Code provisions establish that the goods acquired by any spouse, during the legal community regime are, from the date of their acquisition, common property of spouses, while the own assets of each of spouse are specified by art. 340 provisions. The latter category of own assetsis subsidiary to the first category, of common goods.

The common property of the spouses is composed by all those goods acquired during the regime of the legal community, except those listed by art. 340 Civil Code provisions. With regard to common assets, the Civil Code establishes two assumptions, as follows.

First of all, it is the assumption that all these goods are common and that the character of common assetshould not to be proved, as ruled by art. 343 par. 1 Civil Code provisions.

On the second hand, art. 357 paragraph 2 Civil Code establishes the presumption of equal contribution to the acquisition of common goods, as a relative presumption, which remains until the contrary is proven.

When the common property is acquired, all the spouses' income will be taken into account, and the household work of any spouse will also be considered a contribution to marriage expenses[8].

In order to establish the character of common asset, it is not necessary to prove the participation of both spouses in acquiring it. Also, it is not necessary for both spouses to be present at the conclusion of acquisition act, as 345 par. 2 Civil Code stipulates. i.e. *each spouse can conclude on its own (...) acts of acquiring common goods.*

Another aspect of novelty that the Civil Code brings, with regard to the previous regulation, is that the definition of common assets also clearly establishes the type of property corresponding them, namely the common property in condominium. This institution shall be regulated, expressly and distinctly from the provisions of art. 667–668 Civil Code, as that form of property in which the ownership of property belongs simultaneously to several persons, without any of them being the owner of a determined share of ownership.

The spouses'common property in condominium has its origin is the law, consequently, those who consider their patrimonial relations to be otherwise protected will come out of the matrimonial regime of the

[8] Housework, according to art. 326 Civil Code, does not resumes the previous judicial practice, according to which wife's household was considered a contribution to the acquisition of common goods. The new civil regulation absolves the spouse who does not have own income, with whom to participate in the family expenses. That spouse is relieved of this task by performing the necessary work for conjugal cohabitation.

legal community, becoming subjects to a conventional marriage regime, in which the type of property may be one per share.

The character of common asset being presumed by law, it gives the right of any spouse to mention about the belonging of a good to the community, in any register of publicity (article 344 Civil Code), whether or not one spouse has contributed to its acquisition, whether or not, one spouse has participated or not at the conclusion of the legal act of acquisition.

A category of goods whose legal regime has been highly controversial under previous legislation is represented by labor income and others assimilated to it, which, in the current Civil Code, find clear regulation, by art. 341 Civil Code provisions. Therefore, the law provisions stipulate that all such incomes are common goods, regardless of the date of their acquisition, under only one condition: the outstanding debt falls during the community. Therefore, the quality of the common assetrelative to labor income and of those assimilated to it, is certain, but conditional upon claim's maturity, the law provisions requiring claim's due to be place in the course of the existence of the legal community regime.

In relation to common goods, the spouses have equal rights, the management of their patrimony being a common one.If there is a distinction when comes to patrimony's management, it rests upon the type of act that shall be concluded: conservation, administration or alienation act.

Thus, each spouse can use the common good,whether movable or immovable, without the express consent of the other spouse (article 345 paragraph Civil Code). As a consequence, since acts of preservation and administration of common goods are acts that benefit both spouses, due to their purpose, they can also be concluded by any of the spouses without the consent of the other (article 345 paragraph 2 Civil Code).

The legislator, using the same reasoning and connecting the juridical acts of acquiring the common assets by the action of common patrimony administration, (art. 345 par. 2 of the Civil Code), allows spouses to conclude acts of acquiring common goods, whether movable or immovable.

Being edited both for the purpose of facilitating the civil legal circuit and the protection of personal interests, the rules we have mentioned above state that a penalty for the prejudice caused to one of the spouses who did not participate in the act's conclusion, consists only in recovery of damages of the person who concluded the act, without any prejudice to the rights acquired by third parties in good faith – as regulated in para. 4 of art. 345 Civil Code.

Instead, the rule applied to alienation acts is that of mutual consent of spouses. The act of changinga common good's purpose is assimilated to the act of alienation, as a consequence, therefore it can only be done with the consent of both spouses (article 345 paragraph 1 Civil Code).

Article 346 Civil Code regulates the common law in the above matter. It unequivocal regulates that acts of alienation or establishing real rights, relating to common goods can be concluded only with mutual consent of both spouses. It implies both spouses participation in the conclusion of the respective legal act, either personally or through a legal or conventional representative.

Like any rule that 'stands on', this one has several exceptions.

The first exception is provided by par. 2 of art. 346 Civil Code. It refers to those documents of a pecuniary nature relating to common movable assets the alienation of which, according to the law, is not subject to certain publicity formalities. Therefore it may be concluded only by one of the spouses, under the presumption a mutually tacit mandate, a provision which is of an exceptional nature and of limited character, from two points of view. The first one is related to the nature of the goods covered by the act (only those assets which do not require the admission to perform certain publicity formalities). The second one is related to the type of act which is concluded - only acts of alienation by onerous title, those of voluntary settlement being under the general legal regime.

The second exception to the rule of common agreement for alienation act conclusion dealing with common goods is provided by art. 317 paragraph (2) and (3) Civil Code provisions. It refers to the possibility for any of the spouses to open, without the consent of the other, bank deposits, and, also, to freely dispose of the existing amounts in those accounts.

The third exception is set forth in paragraph (3) of rticle 346 Civil Code and refers to ordinary gifts, a notion which, we appreciate, will give rise to different solutions, in practice, since the nature and content of what is common is one of relative nature. Thus, we believe that it will have to be treated according to the economic and social situation, the habits, the status of the spouses, the recipient of the gifts, etc., for each case, in part.

The fourth exception is in the matter of contributions of common goods to the capital of a company. By laying down the regime of contributions in the category of alienation acts, the Civil Code establishes the same rule, i.e. the need for both spouses to agree on the supply of common goods to the capital of a company. There is no distinction between categories of goods, whether movable or immobile,

as no special regime is granted, or contributions in amounts of money, which means that all these will be analysed by common law provisions.

Therefore, in the matter of immovable goods we will apply both the rule of necessity to conclude the act in authentic form and its registering in the cadastral register. When comes to the movable assets, the spouses will act according to the rules of art. 346 Civil Code, distinguishing between goods for which publicity is required – in which case the consent of both spouses will be required – and goods for whose alienation there is no need for publicity – case, in which, mutual tacit mandate assumption will apply.

In the case of contributions consisting of amounts of money, it will operate the same tacit mandate. The provision of the final sentence of par. 1 of art. 349 Civil Code, which establishes the rule relating to the spouse who has not given his/her written consent to the use of common goods, imposes the idea of written form, both *ad probationem,* and *ad validitatem*, in all situations where the express consent of both spouses is required.

The sanction of inobservance of the general rule of the consent, regarding both spouses, when comes to common assets alienation acts of is the relative nullity, expressly disposed by the provisions of art. 347 Civil Code. The act is susceptible of confirmation, under the conditions of art. 1262–1263 Civil Code. For reasons related to the security of the civil legal circuit, the law protects third-party in good faith, defending them from the negative effects of the annulment of the act. The spouse injured by his partner's actions has an action on recovery of damages, against the other spouse.

Regarding the own assets of each spouse, it should be pointed out, that the legal enumeration of art. 340 Civil Code lacks to mention the assets acquired by any of the spouses by onerous acts, before marriage, goods referred to, in art. 31 of the Family Code. Despite this omission, the legal status of these goods will remain the same, the common law provisions being applicable to the conventions by which those goods have been acquired.

The only exception is related to parties' manifestation of the will, when the spouses apply for a conventional matrimonial regime and establish to extend the community of asstets to certain property acquired, through onerous acts, before marriage,

With respect to movable assets, whose possession is presumed to value property, in order to avoid ambiguities regarding the form of property applicable to those assets, acquired before the marriage conclusion, 343 paragraph 3 of the Civil Code establishes the obligation of the spouses to draw up a stock list, in written form, authentic or under

private signature, before the marriage is concluded. The stock-list's role is to prove the character of own asset contained therein, the lack of such a document leading to the application of the relative legal presumption, that thoseassets are common.

The stock list rule does not apply to immovable assets, acquired before marriage conclusion, by means of onerous acts, because this kind of acts must respectlegal special formalities, including those of publicity, in order to make effective the transfer of real rights.

All goods acquired by spouses by legal or testamentary inheritance, as well as by donation, regardless of whether the time of acquisition is located during or before marriage, will also be included in own assets category. The exception to this rule applies when the possessor, the granter or the testator disposed that the goods become common, by his will action.

The donation agreement signed only by one of the spouses (the grantee), we consider it to be valid, both spouses acquiring the good, if the granter decides so, without the consent of the other spouse. The provisions of article 345 (2) Civil Code allows any spouse to conclude acts of acquiring common goods. The legislator does not distinguish between the onerous or gratuitous type of act. We appreciate that the same legal status applies toassets acquired from a donation with liabilities, establishing the character of the obligation as a personal one of the grantee spouse, who concluded the contract, while the acquired good becomes common.

The same conclusion could arise if the act is to be regarded as having the character of a stipulation for another, the spouse of the grantee having the title of a third party, so his/her presence at the contract conclusion is not compulsory.

Also, there are personal assets those used for personal purpose, as well as those used for the exercise of the profession of any of the spouses (if they are not part of a stock-in-trade), as well as the fruits of own assets,or any assets replacing a personal asset.

Apart from the limited list of own assets, the legislator establishes rules on the rights each spouse has regarding his own goods.

Regarding to goods' management, the basic principle is that of owelty, i.e. each spouse can fully manage his/her possessions without the consent or authorization of the other spouse. The only exceptionis related to the family home, together with the allassets that furnish and decorate it.

In order to protect the family's interests when family dwelling belongs only to one of the spouses,the legislator established a genuine limitation to the right of property. Thus, according to art. 322 Civil

Code, the exclusive owner will not be able to conclude any act of alienation,concerning the family dwelling and will be forbiddento affect the use of it, except with the written consent of the other spouse. The consent of the non-owner spouse will also be necessary to alienate or to move from the family home those movable assets that decorate and furnish it, even if they are the exclusive property of one spouse.

As regards matrimonial regime of the legal community for its modificationto take place, it is not enough spouses concurrent manifestation of the will. The legislator agists the cumulative condition of term fulfillment, i.e. at least one year from the date of marriage conclusion (article 369, paragraph 1 Civil Code). Only after this time limit, spouses are allowed, whenever they intend to change the legal matrimonial regime, by replacing it with another regime, in compliance with the legal provisions on matrimonial conventions.

From a procedural point of view, in order to modify the regime of the legal community, the spouses will conclude an act of liquidation, followed by the conclusion of a matrimonial convention[9] reflecting mutually agreed rules, relative to their patrimonial relations.

Modification of the matrimonial regime of the legal community may operate during marriage when spouses, without wanting to replace it, decide only to change or add certain aspects whose existence or content is left to the discreetness of the parties. In this case, the spouses will conclude a matrimonial convention, without the need for a previous act of liquidation of the matrimonial regime, the matrimonial convention which, in order to be validconcluded, must comply with the conditions of authentic form and publicity formalities, required by law.

As regards legal matrimonial regime cessation, it is governed by the general rules contained in art. 319–320, art. 369 Civil Code, which arecomplemented by the special rules, provided by art. 355–357 provisions.

The legislator establishes two ways to modify the legal matrimonial regime: a conventional one[10], born during marriage, as a

---

[9] *Per a contrario*, when spouses are subjects of the matrimonial separation or goods regime, or of the conventional community regime, to cease the effects of any of them, only the act of liquidation of the conventional matrimonial regime will be concluded, at that time, without the conclusion of another formality, spouses entering automatically under the regime of the legal community.

[10] In fact, any hypothesis to change the matrimonial regime requires the cessation of its effects either as a result of the spouse's will or as a result of a judicial procedure. We note the lack of accuracy and terminological coherence of legal provision regarding situations where spouses agree to replace / modify the legal matrimonial regime with another.Procedurally speaking, first the dissolution of legal matrimonial regime existing at that time, must take place. *Cessation* refers to legal situations involving the reversal,

result of the spouses' express will to change their matrimonial regime, respectively, a judicial one.

When comes to procedural rules, no other matrimonial regime will be able to start before the matrimonial regime of the legal community has ceased, by virtue of dissolution act, issued either in authentic, notarial (The dissolution act, concluded in the authentic notary form, is subject to the publicity formalities provided by art. 334–335 Civil Code.) or judicial form (article 320, corroborated with article 355 paragraph 1 of the Civil Code). Once the dissolution has been completed, the matrimonial regime of the legal community ceases, even if the act ofpartition deed has not been concluded. The main legal effects of the dissolution act is the cessation of the matrimonial regime, during marriage time, with the consequence of sharing the spouses' common assets and of regularizing their debts. Also, through the act of dissolution of the matrimonial regime, spouses are credited with their own assets, as exclusive property or share property.

In order to complete legal matrimonial regime modification, there is necessary to conclude a matrimonial convention, on the newly chosen marital status[12].

The modification of the legal matrimonial regime that takes place during marriage, either as a result of concurrent will of spouse[13], or as a manifestation of the will of one of spouse, for legitimate reasons[14], is fundamentally distinct from legal matrimonial regime cessation, by the effect of the law, as a result of annulment, declaration of nullity, dissolution or termination of the marriage.

Fundamentally different from the situation of legal matrimonial regime modification, its cessation as a result of annulment, declaration of nullity, dissolution of marriage, entails two distinct cases, when the notions of matrimonial regime cessation and matrimonial regime liquidation no longer coincideregarding to itscontent. Therefore, the

---

the dissolution of the matrimonial regime, while the l*iquidation* involves the act, the legal process, the form in which the matrimonial regime ceases, virtually equivalent to the act itself.

[12] Notary practice claims that the two acts must be concluded on the same day, successively with each other, of course the first being the act of liquidation, since according to the law, whenever the spouses do not conclude a matrimonial convention, they are presumed to be under the regime of the legal community of goods, which would mean that for any period elapsed between the liquidation act and the conclusion of the matrimonial convention, it would be necessary to conclude a new act for the liquidation of the matrimonial regime.

[13] Conventional modification.

[14] Judicial change.

moment of cessation of the matrimonial regime is the one stipulated by the law, depending on the concrete situation, whereas in all cases the liquidation has no relevance and does not represent a condition of cessation.

The separation of goods matrimonial regime is another innovation setby Civil Code provisions, in field of property rights between spouses / future spouses. Its essential feature is the existence of two distinct and independent patrimonies, one belonging to the husband, and the other to wife. It gives each of them full and exclusive ownership, with all its patrimonial attributes. Under this matrimonial regime, each spouse is the only owner of the property acquired before the marriage conclusion, as well as of the property acquiredduring marriage.

Separation of assets refers to both assets and the liabilities, being set either by way of convention or by judicial way. Spouses can establish this aspect from the beginning or later, through a matrimonial convention, or by court order. The latter mean of determining the separation of goods, always takes place, after the marriage has been concluded, at the request of one of the spouses, as a sanction against the other spouse, if the court finds that one of the spouses concludes legal acts that seriously endanger the patrimonial interests of the family.

The matrimonial convention is an expression of the free will of spouses / future spouses, being accessory to the legal act of marriage.Its main legal characters are: bilateral act, causal act, *intuitu personae* act, solemn act, public act, unaffected of condition act.

As to the specific substantial conditions to be met by the matrimonial convention, in order to be valid, the quality of the parties is circumscribed only to that of spouses or future spouses[15].

The capacity of spouses / future spouses to enter into a matrimonial convention generally takes into account the age at which a person acquires full exercise capacity, which is the same as matrimonial age: 18 years.

For well-founded reasons, the minor who has reached the age of 16 may be married on the basis of a medical letter of advice, with the consent of his/her parents or, as the case may be, of the his/her tutore and with the authorization of the court-appointing tutore, in whose

[15] The phrase "the participation of all parties, used by the legislator, generates a note of ambiguity that the status of partie in the context of the matrimonial convention is given only by future spouses or spouses who can opt for the choice of the matrimonial regime; parents, other legal protectors, donors in favor of spouses or one of them, being inappropriately called parties, these individuals being unable to circumscribe their capacity as parties, but rather the quality of persons to whom the convention is opposed at the very moment of its conclusion".

jurisdiction the minor is domiciled. At the same time, the minor who has reached matrimonial age may conclude or modify a matrimonial convention, only with the consent of his legal tutor and the authorization of the court-appointing tutore.

Per a contrario, a minor, under the age of 16, can not be part of the matrimonial convention, the same situatation as for those people under the legal restraint.

The cause of the matrimonial convention represents the choice, modification or replacement of the matrimonial regime (article 312, article 329, article 369 Civil Code), which must be licit and moral, the lack of cause making voidable the act, except those caseswhen the act was wrongly qualified, and it may produce other legal effects[16].

Regarding the formal conditions, under the sanction of absolute nullity, it is necessary to conclude the matrimonial convention in the form of an authentic document, legalized exclusively by the public notary.

In terms of legal content, the matrimonial convention establishes only a set of rules under which spouses / future spouses will acquire goods, incur costs, will bear their own or common debts etc.

The matrimonial convention does not transfer rights related to goods that will be acquired in the future by spouses during marriage. Also, it is not a contract for acquiring future goods or certain debts.But it represents a set of rules after which the rights and obligations of spouses/future spouses will respect related to their future patrimonial actions.

In case of divorce, depending on these rules, the partition deed will be done. Also, if the spouses do not agree, the courts will settle the divorce, according to these rules on the matrimonial convention, along with the provisions of Civil Code, established for each chosen matrimonial regime,

The matrimonial convention may contain only “modalities for the liquidation of the conventional community”, so it is not an anticipated partition deed.

The matrimonial convention governed by the Civil Code does not allow spouses or future spouses to agree unconditionally as to their matrimonial regime

Concluding, the effects of the matrimonial convention, from a substantial point of view, will result in a community or separation

[16] The act is also valid when the case is not expressly mentioned, the existence of a valid cause being presumed until the contrary is proved.

patrimonial status or combined elements thereof. In addition to the essential, specific effects, the convention also produces evidence effects.

The cessation of this matrimonial regime may be done *de jure,* through the dissolution of marriage (by divorce), the death of one of the spouses or the will of the spouses, by partition of the common property, acquired under the rules of the legal community without involving the goods acquired before the marriage conclusion, or after marriage conclusion, by one and in the name of one of the spouses, only the goods acquired *expresbis verbis* on shares.

The liquidation of this regime implies the delimitation of own property where there is doubt about their belonging, the division of the property acquired in the joint ownership, transforming that joint ownership into a full and exclusive right of each of the spouses, the payment of common creditors for the debts contracted to fulfill marriages, making of mutual payments between spouses, compensation for the use of a spouse's property by a spouse, etc.

Except for the right of retention, all other rules related to the liquidation of legal matrimonial regime belong to the common law[17].

The third matrimonial regime governed by the Romanian legislator, the regime of the conventional community can restrict or broaden, within certain limits, the regime of the legal community. The Civil Code specifies, limitatively, by art. 367 provisions, aspects that can be modified from the legal community regime by concluding the matrimonial convention.

Thus, according to the provisions of art. 366 Civil Code, the regime of the conventional community is defined as a derogatory rule from the legal community regime, according to the agreement between the parties, the object of the matrimonial convention may include one or more of the following aspects, provided by the text of article 367 Civil Code:

(a) the inclusion into the community of personal goods, acquired before or after the marriage, except those of personal use and assets used for the exercise of the profession of one of the spouses;

b) the restriction of community to thoseassets specified in the matrimonial convention, whether acquired before or during marriage;

c) the obligation of both spouses to conclude certain acts of administration; in this case, if one of the spouses is unable to express his/her will or abusively opposes, the other spouse, alone, may conclude the act, but only with the prior consent of the tutore appointing court;

[17] It is the matter of partition deed, business management, unjust enrichment etc.

d) inclusion of the preciput clause; execution of the preciput clause done in nature or, if this is not possible, by the equivalent, accordingto the net asset value of the community;

e) ways of conventional communityliquidation

Thus, according to art. 368 Civil Code, the conventional community regime is supplemented by provisions on the legal community regime, unless otherwise provided by convention.

Just as in the case of the legal community, three distinct patrimonial masses are constituted, the difference of which consists only in the extent of the masses of common goods, that future spouses affects their marriage through the matrimonial convention.

As with the legal community regime, its cessation can take place in two different ways. The first, matrimonial regime of the conventional community cessation,takes place during marriage, exclusively,by will of the parties (in fact, a change in the matrimonial regime of the conventional community). Secondly, the matrimonial regime cessation comes as a result of annulment, declaration of nullity, dissolution or termination of the marriage, produced *ope legis*, with the consequence of definitive cessation of patrimonial relations between spouses.

In the case omatrimonial regime cessation, as a result of annulment, declaration of nullity, dissolution or termination of the marriage, the notions of matrimonial regime cessation and matrimonial regime liquidationare no longer the same, from content's point of view.Also, the moment of matrimonial regime cessation will be the one stipulated by law provisions, depending on the concrete situation, while its liquidation has no relevance and no representation of a cessation condition.

Even though the regulation of matrimonial regimes is far from being complete and unambiguous, we consider it responds to the increasingly complex and varied needs of private law subjects, needs that are in continuous dynamics.

REFERENCES:

Avram M., Nicolescu C., *Matrimonial regimes*, Hamangiu Publishing House, Bucharest, 2010.

Banciu, A. Al*., Some aspects of patrimonial relations between spouses, for the first time regulated as legal institutions by the new Civil Code, in Fiat Justitia magazine*, no. 2/2010 of the Faculty of Law Dimitrie Cantemir, Cluj-Napoca, Argonaut, Cluj-Napoca, 2010.

Bacaci Al., Dumitrache V.C., Hageanu C.C., *Family Law*, 4th Edition, All Beck Publishing House, Bucharest, 2005.

Bacaci Al., *Patrimonial Legal Relations in Family Law*, 2nd edition, Hamangiu Publishing House, Bucharest 2007.
Bacaci Al., Dumitrache V.C., Hageanu C.C., *Family Law in the Regulation of the New Civil Code*, 7th Edition, C.H. Beck Publishing House, Bucharest, 2012.
Banciu A. Al. *Patrimonial relations between spouses according to the new Civil Code, 1st and 2nd edition*, Hamangiu Publishing House, Bucharest, 2011.
Crăciunescu C. M., *Matrimonial Convention. Critical considerations. New Civil Code, Comments,* coordinator Marilena Uliescu.
Dobre A. F. *Matrimonial conventions and regimes under the new Civil Code*, in the Law no. 3/2010.
Florian E., *The Family Lawas regulated by New Civil Code*, 4th edition, C.H. Beck Publishing House, Bucharest, 2011.
Imbrescu, I., *Family Law Treaty*, Lumina Lex Publishing House, Bucharest, 2006.
Hamangiu C., Rosetti-Bălănescu I., Băicoianu Al., *Romanian Civil Law Treaty*, vol. I, 2nd ed., All Beck, Bucharest, 1998.
Şerbănescu Sc., *Family Code commented and annotated*, Scientific Publishing House, Bucharest 2005.
Uliescu, M., *The New Civil Code. Comments,* Third edition revised and added, Universul Juridic Publishing House, Bucharest, 2011.
Vasilescu, P., *Matrimonial regimes*. General part, Rosetti Publishing House, Bucharest, 2003.