

MATRIMONIAL CONVENTION

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Abstract

The matrimonial regime is ruled by two perspectives, the Roman law and the German one. The Romanian concepts were taken from the French law. The new Romanian Civil Code is characterized by the special attention it pays to the regulation of spouses' patrimonial relationships, and it therefore abandons the exclusivist conception and enacts several matrimonial regimes, namely: a) the regime of legal community; b) the regime of separation of assets; c) the regime of separation of assets with participation to acquisitions; d) the regime of conventional community.

The matrimonial convention represents the legal document by which future spouses, or, as the case may be, current spouses, resorting to the liberty they have been conferred by the legislator, determine their own matrimonial regime or, as the case may be, modify their applicable matrimonial regime.

Key words: matrimony, prenuptial agreement, preciput clause, spouses, under/over aged persons.

1. Preliminary views

In time, the matrimonial regime has been subject to the influence of two dominant conceptions¹. The first one was the conception of the Roman law conception, which consecrated marriage "*cum manu*", the wife being placed under the power of her husband, so that her fortune was also transferred into the patrimony of the latter. The normative evolution gradually leads to the separation of the wife's fortune from the husband's fortune, the latter being however in charge with the management of the assets that the dowry consisted of. The second conception, which is specific to the German law and which may be found in several western legal systems, maintained that the marriage conclusion resulted into a community of the assets belonging to the two spouses, community which may be modelled by the spouses convention and which is subject to the administration of the husband, acting as "leader of the marital partnership"². In the absence of a convention, this community of assets represented the legal regime applicable to patrimonial relationships between spouses.

In the Romanian law, the regulations regarding the matrimonial conventions were taken over from the French Civil Code adopted during the reign of Napoleon Bonaparte, being introduced first of all in the old laws (in the Calimach Code, for instance), then in the Civil code adopted in 1864³. However, we must mention that the latter of the normative documents referred to in the previous sentence, although it regulated the dowry regime, the existence of this regime was subject to the condition that a dowry should be expressly constituted⁴; if this condition was not met, the wife's assets had no dowry character and were not subject to the husband's administration.

The convention (also referred to as "prenuptial agreement", "matrimonial agreement", "dowry deed", "dowry allocation", "marriage agreement") was mainly used by "blue-blooded persons", who

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¹ See: Matei B. Cantacuzino, *Elementele dreptului civil. Restitutio*. All Publishing House, Bucharest, 1998, edition supervised by Gabriela Bucur and Marian Florescu, p. 697 and 698.

² *Idem*, p. 698.

³ 3 In the sense that by the adoption of the new Civil code, "it is for the first time that matrimonial conventions are acknowledged the Romanian law system", see: A.F. Dobre - *Convențiile și regimurile matrimoniale sub imperiul noului Cod civil, "Dreptul"*, magazine, No. 3/2010, p. 13.

⁴ 4 See: art. 1227 of the 1864 Civil Code.

manifested a substantial concern for the material aspects of marital life and for the determination of convenient solutions in case of divorce.

After the communists seized power in Romania, a new outlook on the matter was gradually adopted, namely the idea that the conclusion of a marital convention is an immoral and degrading act, in contradiction with the goals of the state, which assumed, among other matters, exclusivity in the regulation of family relationships. Under these circumstances, when the Family Code⁵ came into force, the possibility to settle the spouses' patrimonial relationships by means of a convention was eliminated, the only applicable matrimonial regime being the legal community one.

The new Romanian Civil Code is characterized by the special attention it pays to the regulation of spouses' patrimonial relationships, and it therefore abandons the exclusivist conception and enacts several matrimonial regimes, namely: a) the regime of legal community; b) the regime of separation of assets; c) the regime of separation of assets with participation to acquisitions; d) the regime of conventional community.

The new legal provisions give one the possibility to choose from the variants set down in the preceding paragraph, and the choice thus made must be mentioned in the marriage statement.⁶

The parties' right to make a choice does not entitle them to combine the matrimonial regimes or to benefit from any derogation from the imperative rules of any of the said regimes, except for the cases when the law permits such an exception.⁷

To the extent that the parties choose a matrimonial regime different from the legal community one, they have the obligation to conclude a matrimonial convention.⁸

However, we do not exclude the possibility for a matrimonial convention to be concluded even when the option chosen is that of the legal community regime but the parties wish to include a *preciput* clause thereto or the convention contains other legal deeds as well.

This assertion is based, on the one hand, on the fact that the law does not deny such a solution. On the other hand, the opposite solution would create discrimination depending on the applicable matrimonial regime.

2. The notion of matrimonial convention

Since the legislator showed no concern in the sense of defining the matrimonial Convention, in the dedicated literature, under the effect of the 1864 Civil Code provisions, this convention was defined, for instance, as being "the convention through which the future spouses determine the matrimonial regime, in other words the condition of their current and future assets, in the pecuniary relationships arising from their marriage".⁹

In the recent legal doctrine, the matrimonial convention has been referred to, among other definitions, as being : "(...) the convention by which future spouses agree upon the matrimonial regime they shall be subject to"¹⁰, "the legal document by which the parties regulate the essential

⁵ That is on January 31st, 1954, when it was published in the Official Gazette of Romania, Part I, No. 9/31 January 1954, Decree No. 327/1954 for the enactment of the Family code and of the Decree regarding individuals and legal entities.

⁶ See: art. 281, paragraph (1) final thesis in the Civil Code.

⁷ According to art. 332, paragraph (1) of the Civil Code: "No derogation is allowed by the matrimonial convention, subject to the sanction of absolute nullity, from the legal provisions regarding the chosen matrimonial regime, except for the cases expressly provided by law", in the sense that the parties have, in principle, a total liberty to determine the contents of their matrimonial convention, and they may combine alternative regimes or even create a new regime, different from the legal variants proposed: See: M. Revenco - Conventia matrimoniala in sistemul de drept continental si common law, Revista Romana de Drept Privat, No. 5/2009, p. 84.

⁸ According to art. 329 of the Civil Code: "The choice of a matrimonial regime different from the legal community one shall be made by concluding a matrimonial convention".

⁹ See: C Hamangiu, I. Rosetti-Balanescu, Al. Baicoianu - Tratat de drept civil roman, vol. III, republished All Beck Publishing House, Bucharest, 1998, p. 4.

¹⁰ See: I.P. Filipescu - Tratat de dreptul familiei, All Beck Publishing House, Bucharest, 2000, p. 42.

patrimonial relationships existing between them during their marriage"¹¹, "a conventional, public and solemn legal document by which future spouses regulate, before the conclusion of their marriage, the essential patrimonial relationships existing between them during their marriage or the convention concluded during the parties' marriage and by which the spouses decide to substitute the current matrimonial regime by another type of matrimonial regime acknowledged by law",¹² or "the solemn legal act by which future spouses or current spouses, within the limits of the law regarding public order and morality, mutually agree to submit their patrimonial relationships to the conventional community regime or to the separation of assets regime and to objectify their patrimonial obligations during their marriage".¹³

In our opinion, the matrimonial convention represents the legal document by which future spouses, or, as the case may be, current spouses, resorting to the liberty they have been conferred by the legislator, determine their own matrimonial regime or, as the case may be, modify their applicable matrimonial regime.¹⁴

As to the clearness of the provisions of art. 330 paragraphs (2) and (3) of the Civil code, we do not share the opinion according to which the matrimonial convention is only "the one concluded in consideration of the marriage conclusion", the one concluded during marriage representing only "a convention of administration, preservation and partition of assets, applicable in the event of marriage dissolution"¹⁵

To sweep away the controversial issues regarding mainly the nature, the parties thereto or the contents of the matrimonial convention, we find it useful to provide a legal definition thereof.

3. The legal nature of the matrimonial convention

In our legal doctrine, starting from the interpretation of art. 1101 of the French Civil Code, a distinction is sometimes made between the term "agreement" (which may create or transmit rights and obligations) and the term "convention" (which may create transmit or terminate rights and obligations).¹⁶

Consequently, the convention represents the general and the agreement is the particular.

This opinion was justly criticized, considering that the two terms, although they have different roots, they express the same idea.¹⁷

Qualifying the matrimonial convention, we appreciate that we are in the presence of a legal document placed within the scope of family law, which beside the parties' agreement and the patrimonial relationships between the parties may also include other legal documents, such as donations made by other persons to spouses or only to one of them or acknowledgement of a child's parentage.

It was then absolutely righteous for specialists to assert that we have to do with a veritable "family covenant"¹⁸, an act having a specific legal cause (*affectio conjugalis*).¹⁹

¹¹ See: P. Vasilescu - Regimuri matrimoniale, 2nd editions, revised, Universul Juridic Publishing House, Bucharest, 2009, p. 203.

¹² See: A.F. Dobre, op. cit, p. 13 and 14.

¹³ See: T. Bodoasca - Regimul separatiei de bunuri in reglementarea noului Cod civil roman, "Dreptu!" magazine, No. 11/2010, p. 57 and 58.

¹⁴ See: D. Lupascu, CM. Craciunescu - Dreptul familiei, 2nd edition, amended and updated, Universul Juridic Publishing House, Bucharest, 2012, p. 139 and 140; CM. Craciunescu - Regimuri matrimoniale, All Beck Publishing House, Bucharest, 2000, p. 11.

¹⁵ See: I. Niculescu - Despre conventiile matrimoniale, www.iuridice.ro, June 29th, 2011.

¹⁶ See: T.R.Popescu, A. Anca - Teoria general a obligatiilor, Ed. StiintificS, Bucharest, 1968, p. 21.

¹⁷ See: T. Bodoasca - Regimul separatiei de bunuri In reglementarea noului Cod civil romSn, op. Cit., p. 57, note 7.

¹⁸ See: C. Hamangiu, I. Rosetti-Balanescu, Al. Baicoianu, op. cit., p. 23.

¹⁹ See: C. Hamangiu, I. Rosetti-Balanescu, Al. Baicoianu, op. cit., p. 221; M. Avram, C. Nicolescu - Regimuri matrimoniale, Hamangiu Publishing House, Bucharest, 2010, p. 69 ; CM. Craciunescu, op. cit., p. 12.

4. Legal characteristics of the matrimonial convention

The matrimonial convention has the following legal characteristics²⁰:

a) It is fundamentally a bilateral legal deed²¹, entered by and between future spouses or current spouse, as the case may be; this does not exclude the participation of third parties (as in case of donations, for instance);

b) It is a complex legal deed, which may include several legal deeds²², each of them preserving its identity;

c) It is a solemn legal deed, in the sense that the law imposes a certain form for its conclusion;

d) It is a synallagmatic legal deed;

e) It is a legal deed accessory to the marriage, which means that it produces its effects only during the term of the marriage;

f) It is a legal deed subject to publicity formalities;

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g) It is a legal deed which is incompatible, in principle, with the modalities of the common law. As an exception, the parties may stipulate, for example, that after a certain term they change, under the provisions of the law, the matrimonial regime or terminate the matrimonial regime they have chosen;

h) It is an *intuitu personae* legal instrument.

5. Terms of validity of the matrimonial convention

The validity of the matrimonial convention is subject to the condition that all the substantive and formal requirements prescribed by law should be met.

The first category refers to capacity, consent, object and cause.

The parties' capacity to conclude a matrimonial convention is subject to the "*habilis ad nuptial, habilis ad pacta nuptialia*" principle, which means that a person that is in a position to get married may conclude a matrimonial convention.²³ Consequently and as a rule, a person who has turned 18, may also conclude a matrimonial convention. At the same time, the underage person who has acquired with anticipation full capacity of exercise may conclude this convention without any restriction. An underage person who has acquired full capacity of exercise pursuant to a prior marriage is in a similar situation, to the extent that such person still enjoys full capacity of exercise.

As an exception, a minor who has not turned 16 yet may conclude a matrimonial convention provided he meets the following requirements: a) his legal tutor has consented thereto; b) he has the permission of the tutelary court of law.

We do not share the opinion that an underage person who wants to conclude or modify a matrimonial convention needs a double approval respectively "a medical favourable opinion and the parents' consent"²⁴, the only requirements imposed by the law being the ones stipulated hereinabove.

An underage person who has not turned 16 yet may not conclude a matrimonial convention and neither may a person placed under judicial interdiction. In this latter hypothesis, if one or both spouses has/have been placed under judicial interdiction, the conclusion or amendment of the

²⁰ " In the sense that the matrimonial convention is an agreement defined, by onerous title, *intuitu personae*, with immediate enforcement, see: I. Niculescu, op. cit., www.juridice.ro, 2009.

²¹ In the sense that a matrimonial convention may not be entered between more than two parties, see; A.F. Dobre, op. cit., p. 14.

²² See: CM. Craciunescu, M.G. Berindei - *Conventia matrimoniala, Consideratii critice. Noul Cod civil. Comentarii. Academia Roma'na*, Institutul de CercetSri Juridice, coordinator M. Uliescu, Universul Juridic Publishing House, Bucharest, 2010, p. 350.

²³ See: M. Avram, C. Nicolescu - *Regimuri matrimoniale*, Hamangiu Publishing House, Bucharest, 2010, p. 81; P. Vasilescu - *Regimuri matrimoniale*, 2nd edition, revised, Universul Juridic Publishing House, Bucharest. 2009, p. 325.

²⁴ See in this respect: A.F. Dobre, op. cit., p. 15.

matrimonial convention shall be achieved through the intermediary of the legal representative (tutor or curator, as the case may be).

Future spouses' or current spouses' consent to the conclusion of the marriage convention follows the general rules observed in the matter of legal documents.²⁵ It may be vitiated by error, fraud or violence, and note must be made that the said vices are not to be confused for the vices of consent upon marriage conclusion.

The object of the matrimonial convention aims at organizing the patrimonial relationships between spouses and respectively between them and third parties, by choosing or modifying the matrimonial regime applicable to the respective marriage.²⁶

The parties may also introduce a preciput clause into their matrimonial convention.

This clause represents the wilful agreement of future spouses or of current spouses, as the case may be, reached and concluded under the terms of the law and incorporated in the matrimonial convention, by virtue of which the surviving spouse is entitled to take over, without paying any consideration, before the partition of the estate, one or more common assets held in joint indivisible ownership or in co-ownership.²⁷ This obviously refers to assets regarded as *ut singuli* and not to a universality of assets, which strongly requires that such assets be individualized or a presentation of criteria by which such assets may be identified, specifications that must be included in the matrimonial convention.²⁸

Under the provisions of art. 367, paragraph d) of the Civil Code, the preciput may also make the exclusive object of the matrimonial convention.

The preciput clause generates the right to preciput, which is a contingent right subject to the suspensive condition of the beneficiary's survival. The stipulated beneficiary of such clause may be either one of the spouses or both of them.

Although the operation of coming in possession of certain assets takes place without payment of any consideration, we believe that this clause may be assimilated neither to a donation, nor to a testament or to clause of unequal partition of the spouses' common assets, having a configuration of its own and constituting a distinctive matrimonial advantage.²⁹

In the absence of any restriction provided by law, any of the common assets, owned either in joint indivisible ownership or in co-ownership may form the object of the preciput clause.

The right of preciput is different from the special right to inheritance of the surviving spouse acknowledged by art. 974 of the Civil Code, as the furniture and the household appliances/objects meant for the common use of the spouses are due to the surviving spouse by effect of the law (in addition to the inheritance she/he is entitled to) and not by effect of the parties' convention.³⁰

As regards the moment when the asset is taken over by the surviving spouse, the law stipulates only that it occurs before partition of the succession, without any reference to the partition of the common assets. *De lege ferenda*, we believe it is necessary to mention that the takeover of the

²⁵ See: art. 1204 of the Civil code, according to which: "The parties' consent must be serious, free and expressed in full awareness of the matter".

²⁶ See: D. Lupascu, CM. Craciunescu - Dreptul familiei, op. Cit, p, 143 and 144.

²⁷ See: CM. Craciunescu, D. Lupascu - Reglementarea clauzei de preciput in noul Cod civil roman, astfel cum a fost modificat prin Legea nr. 71/2011, „Pandectele Romane” magazine No, 8/2011, p. 39 and the subseq. For other detailed analyses regarding the preciput clause, see for example: I. Popa - Clauza de preciput in reglementarea noului Cod civil Abordare comparative. Revista Romana de Drept Privat, No. 6/2011, p. 137-164.

²⁸ In the same respect, see: CM, Nicolescu - Regimurile matrimoniale conventionale reglementate de noul Cod civil roman, Abordare comparative, Revista Romana de Drept Privat, nr, 4/2009, p, 112-179.

²⁹ See: D. Lupascu, CM. Craciunescu - Dreptul familiei, op, cit., p, 149-151.

³⁰ In the sense that "the assets of the household are not included in the consideration of the aggregate estate, while the assets making the object of the preciput clause, in the absence of the preciput clause, would be considered in the calculation of the aggregate estate", see: A.F. Dobre, op. Cit., p. 20.

assets also takes place before the common assets are subject to partition or, by the French model, "before any partition"³¹.

If it is no longer possible for the respective asset to be taken over in kind, the preciput clause may be also applied by equivalent, from the value of the net asset of the community, an aspect with respect to which our Civil Code needs additional clarifications.³²

The preciput is subject to reduction, which is made before donations, together with the legacies and commensurately.

As regards the deadline by which one may exercise his right of preciput, our law is "silent", and therefore the general term of prescription shall be applied, meaning a 3-year term as of the date of the other spouse's death.

This solution drives towards the partition of the common assets, even if the beneficiary of the preciput right does not want that.

Being a component of the matrimonial convention, the fate of the preciput clause depends on the fate of the main convention.

However, there is nothing to prevent the parties from stipulating in their matrimonial convention a term within which the preciput right may be exercised.³³

The clause becomes null upon termination of the community during the spouses' lives, in case the beneficiary spouse died before the assigning spouse, when the spouses died at the same time as well as in case the assets that made the object of the said clause have been sold pursuant to common creditors' request³⁴.

The stipulation of this clause does not affect common creditors' right to claim the respective assets, even before the community comes to an end.

The matrimonial convention may also include other deeds, such as acknowledgement of a child or donations made to future spouses in consideration of the marriage to be concluded.³⁵

The parties' free will is limited from a double point of view. First of all, the imperative provisions of the law and the morality, that is the "general limits", may not be disregarded.^{36,36} Secondly, under the title of "special limits", the Civil Code institutes the interdiction to violate the legal provisions regarding the chosen matrimonial regime and the interdiction to prejudice the spouses' equality, the parental authority and the legal devolution of the estate.³⁷ For instance, the matrimonial convention may not limit the right of either spouse to exercise freely his profession, it may not determine which of the parents the child will remain with in case of marriage dissolution, it may not institute incapacities for either spouse, it may not prejudice the legal provisions of the succession law, etc.

The cause of the matrimonial convention (*affectio conjugalis*) implies the will of the future spouses to get married or, as the case may be, the current spouses' will to amend the applicable matrimonial regime.

From a formal point of view, *ad validitatem*, the law³⁸ imposes the existence of a deed authenticated by a notary public.

Criticisms were made for good reason against the limitation of matrimonial convention authentication only by the notary public in case of people getting married abroad at Romania's

³¹ See: art. 1515 of the French Civil Code.

³² See: D. Lupascu, CM. Craciunescu - Dreptul familiei, op. cit., p. 153-154

³³ OJ In the same respect, see: CM. Nicolescu - Regimurile matrimoniale conventionale reglementate de noul Cod civil roman, Abordare comparativa, op. cit., p. 135.

³⁴ See: art. 333, paragraph (4) of the Civil Code.

³⁵ See: M. Avram, C. Nicolescu, op. cit., p. 70.

³⁶ Idem, p. 84 and the suseq.

³⁷ Regarding these limits, see: T. Bodoasca - The regime of separation as regulated by the new Romanian Civil Code, op. cit., p. 59.

³⁸ See: art. 333, paragraph (4) of the Civil Code.

diplomatic missions or consular offices or before the competent local authorities, and the remark was made that the institution of the "notary public" does not exist in the respective country, the future spouses must travel back to our country in order to conclude the matrimonial convention.³⁹

However, we do not share the critical opinion according to which "the fact that «all parties» is required generates ambiguity"⁴⁰ to the extent that we support the idea of the complex nature of this legal deed, which may imply the participation of third parties, too.⁴¹

Future spouses or current spouses, as the case may be, must express their consent before a notary public⁴² either personally or by attorney appointed by a special and authenticated of attorney whose wording has been predetermined (in the sense that it must contain, in detail, the clauses of the matrimonial convention).⁴³

In our opinion, the requirement regarding the "predetermined content" of the power of attorney is strictly limited to the will expressed by the future *or* current spouses, as the case may be.

6. Publicity of the convention

In order to assure the safety of the civil circuit, the law imposes that the following forms of publicity of the matrimonial convention be complied with:

- a) mention made by the registrar on the marriage certificate;
- b) registration in the Notaries' national register of matrimonial regimes;
- c) note or, as the case may be, registration made in the land book, trade register or in other publicity registers required by law, depending on the nature of the respective assets.

As regards opposability against third parties, the Civil code makes a distinction based on the good faith or bad faith of such third parties. Thus, the matrimonial regime chosen by the matrimonial convention is opposable to third parties as of the date when the publicity formalities are completed; in the absence of such formalities, in relation the third parties in good faith, the spouses shall be deemed married under the matrimonial regime of legal community. In case of bad-faith third parties (namely the persons who have learned from the spouses themselves or from other sources of the applicable matrimonial regime), the matrimonial convention shall apply, notwithstanding the publicity default, the publicity system based on "effective knowledge" being thus consecrated.⁴⁴

7. Simulation of the matrimonial convention

If the parties to the matrimonial convention have resorted to the operation of simulation, the Civil Code⁴⁵ prescribes inopposability of the secret deed against good-faith third parties. Between the parties to the matrimonial convention and in relation to bad-faith third parties the matrimonial regime agreed upon by the secret deed may be applied.

8. Caducity of the matrimonial convention

A matrimonial convention becomes invalid in the following circumstances: a) the parties have given up the marriage they were planning to conclude;

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³⁹ See: T. Bodoasca - Aspecte privind reglementarea generala a regimului juridic matrimonial in noul Cod Civil roman, „Dreptul” Magazine, No. 5/2010. P. 60-61.

⁴⁰ Idem, p. 61.

⁴¹ As regards the parties to a matrimonial convention, also see: M. Revenco, op. cit., p. 91, note 37.

⁴² The role of the notary public is not only to authenticate the respective convention, but as a specialist, also to give advice to the parties thereto, helping them to choose the most suitable solution.

⁴³ In the dedicated French literature we find the opinion that in case a matrimonial convention is concluded, the mandate is imperative, in the sense that it shall include all the clauses of the respective convention, see: L. Rautent, Y.-H. Leleh - Les regimes matrimoniaux. Contrat de mariage et modification du regim matrimonial, Larcier, 1997, p. 75.

⁴⁴ See: M. Avram, C. Nicolescu, op. cit., p. 102. 5

⁴⁵ See: art. 331.

- b) the marriage was ascertained invalid or was annulled (except the putative marriage);
- c) the tutelary court decided that the community matrimonial regime be modified and the regime of assets separation be applied.

The caducity of the matrimonial convention does not affect the deeds which have their own individuality (such as, for instance, a donation or a deed of acknowledgement of filiation).⁴⁶

9. Modification of the matrimonial convention

A matrimonial convention concluded before marriage may be modified at any time. The spouses may modify the applicable matrimonial regime only after period of at least one year has elapsed since their marriage was concluded.⁴⁷

A matrimonial convention may be modified totally or partially.

The operation of modification is subject to the same substantial, formal and publicity conditions applicable to the conclusion of a matrimonial convention.

To the extent that creditor third parties were prejudiced by the modification or liquidation of the matrimonial regime, they may resort to the following mechanisms in order to take advantage of their own rights:

- a) they may file a revocatory action with the tutelary court, within one year as of the moment when the publicity formalities are duly completed or, as the case may be, as of the earlier date when they learned such facts from other sources;
- b) they may invoke at any time the inopposability of the matrimonial convention modification.

10. Nullity of the matrimonial convention

Non-compliance with the substantial and formal legal requirements to be met in concluding a matrimonial convention shall lead to the sanction of nullity applied thereto. The facts listed hereinafter represent cases absolute nullity:

- a) absence of consent;
- b) inclusion of certain clauses representing derogations from the legal provisions regarding the chosen matrimonial regime;
- c) inclusion of certain clauses which prejudice the equality between spouses, the parental authority or the devolution of the legal succession;
- d) noncompliance with the form prescribed by law;
- e) conclusion of the matrimonial convention by a minor who has not turned 16 yet;

The sanction of relative nullity shall apply:

- a) in case the consent is vitiated by error, fraud or violence;
- b) in case the matrimonial convention is concluded without the approval or the authorization prescribed by law.

Ascertainment of nullity or, as the case may be, annulment of the matrimonial convention leads to the application between the spouses of the legal community regime.

Good-faith third parties are protected in the sense that the rights they have acquired shall not be affected.

11. Conclusions

In this field of family relationships, the new Romanian Civil code restores the adequate efficiency of the traditional principle of matrimonial convention liberty, thus realigning our legislation with the modern judicial systems.

⁴⁶ See: C. Hamangiu, I. Rosetti-Balanescu, Al. Baicoianu - op. cit., p. 36 and the subseq.

⁴⁷ See: art. 369 of the Civil Code.

The possibility conferred to future spouses or to current spouses, as the case may be, to choose the applicable matrimonial regime allows an adequate adaptation of legal "patterns" to the parties' effective needs.

Being concerned to confer stability to the patrimonial relationships between spouses, in the due legal variant, the legislator has not ignored the interests of third parties either, imposing substantial, formal and publicity-related requirements which are meant to satisfy such requirements.

The solutions adopted in this matter are flexible and modern, and they are to prove their effectiveness in practice.

However, from certain points of view - which we have highlighted hereinabove -they are criticisable and necessitate legislative interventions.

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