



ORIGINAL PAPER

Romania in the European Context: Social and Legal Effects of the Matrimonial Property Regimes in Contemporary Society

Cristina Ilie Goga¹⁾, Andreea Mihaela Niță²⁾

Abstract

The reconfiguration process of Romanian society after December 1989 was slow and arduous. Unstable political climate has inducted to an effervescent dynamics of legislative changes, thus the first Family Code from the year 1953 and entered into force in 1954, has undergone substantial changes until its abrogation by Law no. 71/2011 for the implementation of the Civil Code of 2009. In order to ensure the compatibility of the Civil Code with the rest of the laws in force, it was chosen to integrate the provisions regarding family relations with changes adapted to the evolution of the society. And in the case of matrimonial property regimes, the changes considered the principles of the pluralism and the flexibility, abandoning the principle of mutability. The risks derived from the matrimonial cohabitation in contemporary society imposed this change: occupational migration, change of family roles, accentuation of economic cleavages, acute poverty etc. The regime of separation of property and the regime of conventional community were established through the possibility of concluding a matrimonial agreement. Although the judicial practice confirms the utility of the convention, social statistics disprove it. The typology of post-modern family is based on the characteristics of the traditional family, even it is modeled by the phenomena and the processes of the globalization era. The values on which the marriage is based are the love and the trust, the feelings prevailing over the reason. This is also the reason for knowingly ignoring the two regimes, choosing a priori the regime of legal community. Are the partners aware of the effects of ignoring the regimes of separation of property and conventional community? This article attempts to analyze the answer to this question from a social and a legal point of view.

Keywords: *matrimonial property regimes; family; marriage; matrimonial agreements; Romania; European states.*

¹⁾Assistant Professor, PhD, University of Craiova, Faculty of Social Sciences, Sociology specialization, Phone: 0040766291455, Email: cristin_il@yahoo.com.

²⁾Lecturer, PhD, University of Craiova, Faculty of Social Sciences, Sociology specialization, Phone: 0040743108885, Email: andreea_nita2005@yahoo.com.

About family and marriage: from theory to legal perspective

The family is an institution that appears as an area of multidisciplinary convergence, combining elements of sociological, juridical, economic, religious, philosophical origin, thus, a large number of definitions can be found in the literature (Chirilă, 2012: 6; Trebici 1995: 67). The family is the group of people "joined by marriage, filiation, kinship, characterized by community life, feelings, aspirations and interests" (Voinea, 2005: 9). The family is also seen from a sociological and anthropological point of view, as a "social group characterized by common residence, economic cooperation and reproduction. It includes adults of both sexes, of which at least two have socially recognized sexual relations and have one or more children of their own or adopted, whom they grow and care" (Murdock, 1949). We find family functions as internal and external (Voinea, 1993) and can also these functions can be divided into biological, economic, of social solidarity and pedagogical (Voinea, 1993: 45-46).

From a legal point of view, the family is a group of persons regulated by legal norms between which, rights and obligations have been established. The conclusion of the marriage generates, together with rights and duties of a personal nature between the spouses, a range of pecuniary rights and obligations (Ermese, 2015).

It seems like, from of all the legal acts and facts that produce family legal relationships, the marriage produces the most numerous patrimonial effects on a person (Avram, Nicolescu, 2010: 1).

According to article 258 from the Romanian Civil Code "(1) The family is based on the freely agreed marriage between spouses, on their equality, as well as on the right and duty of parents to ensure the raising and education of their children. (2) The family is entitled to protection from society and the state. (3) The State is obliged to support, through economic and social measures, the conclusion of marriage, as well as the development and consolidation of the family.(4) For the purposes of the Civil Code, spouses are men and women united by marriage" (Romanian Civil Code, art. 258). According to the Romanian Constitution, "the family is based on the freely consented marriage between spouses, on their equality, and on the right and duty of parents to ensure the raising, education and training of children" (Romanian Constitution, art. 48, al. 1).

So, as we can see, the family is primarily based on marriage and kinship.

From a sociological point of view, marriage is the socially accepted way in which two or more people establish a family.

From a legal point of view, in Romanian law, "marriage is the freely consented union between a man and a woman, completed under the law, in order to establish a family" (Romanian Civil Code, art. 259, al. 1). In national law, we can find some specific aspects of marriage: first, marriage is monogamous, second, equality between spouses, third, the only purpose for marriage is to establish a family, and the religious celebration of marriage can be made only after the civil marriage (Romanian Civil Code, art. 259).

For the legal conclusion of the marriage, several essential conditions and formalities needs to be met in Romania. The essential conditions are: -consent to marriage is personal and freely expressed; -the legal age of marriage is 18 years (or 16 years with the consent of the parents or the guardianship authority); - interdiction of marriage between relatives in the straight line and collateral line up to the 4th; -

Romania in the European context: Social and Legal Effects of the Matrimonial...

interdiction of same-sex marriage and even same-sex civil partnerships or contracts; - banning marriage for alienation and mental debilitation; - banning the marriage between the a person and his/her custodian if he/she is under 18 years of age; -the marriage of a married person is forbidden (Romanian Civil Code, art. 271- 277).

The matrimonial property regimes and matrimonial conventions in European Union

The relationship between marriage and money is the essence of matrimonial regimes, "which encompass all rules of legal or conventional origin, concerning patrimonial relations between spouses and spouses and third parties" (Roşioru, 2012: 18). In conclusion, the matrimonial regime deals with the economic aspect of marriage.

The purpose of the matrimonial regime is to balance the economic interests of the parties: "of the spouses in relation to the third parties; the personal interest of one of the spouses in relation to the general interest; the husband's interest in relation to his wife's interest etc." (Perkumiene, 2014: 131). However, the matrimonial property regime does not cover all the patrimonial relations between spouses or between spouses and third parties, such as the obligation of support, the inheritance rights, the liberalities, but only those patrimonial relations that have their direct origin in the marriage (Avram, Nicolescu, 2010: 3).

Worldwide there are many matrimonial property regimes used, each with its unique characteristics, found in the national legislations, but the most commonly used are two: common property regimes and separation of property regimes (Perkumiene, 2014; 131; Hegnauer, Breitschid, 1993: 209). The system of the community of goods is the traditional one, based on the religious principles of "marriage for life", "for good and bad", "for loss and gain", but taking into account the high rate of divorce, there was also a need for a legal regulation of the property of the spouses, in the sense of defending their common and individual interests (Perkumiene, 2014: 131-132).

In the European Union, each country has its own rules, principles and particularities, applicable to the matrimonial regimes concluded between their citizens and thus, trying to make a synthesis we have set out in the table below the main characteristics of the matrimonial regimes:

Table 1. Matrimonial property regimes in European Union states

State	Matrimonial regime
Austria Law: Civil Code	-legal matrimonial property regime: <i>separation of property</i> -the spouses "can dispose freely of their own property during the marriage" - the spouses can make a marriage contract: "the community of property and the contract of inheritance"
Belgium Law: Civil Code	-legal matrimonial property regime: <i>common property</i> („community of the property acquired after the marriage has begun") -each spouse „can dispose of her/his own assets, excepting the family home" -the spouses can choose their matrimonial property regime by a marriage contract: "the separation of property; the universal community of property and a a matrimonial property regime contract with specific regulations"
Bulgaria	-legal matrimonial property regime: <i>regime of community of</i>

Cristina ILIE GOGA, Andreea Mihaela NIȚĂ

<p>Law: family Code</p>	<p><i>property</i> ("assets acquired during marriage, excepting assets acquired before the marriage, assets acquired by inheritance or by donation during the marriage, assets used for her/his personal use, profession or trade")</p> <p>-the spouses can conclude a marriage contract, containing only provisions on the spouses' property relations ("separation of property or specific common and separate property")</p>
<p>Croatia Law: Family Act</p>	<p>-legal matrimonial property regime: <i>separate property and community property</i> ("the spouses can own separate property -the property that a spouse owns at the time of entering into the marriage remains his or her separate property and the assets acquired during marriage by inheritance or donation-; and community property-property that spouses earned from their work during marriage or the property accrued from such property-")</p> <p>-The spouses can conclude a matrimonial property agreements, "containing provisions on the spouses' property relations, specifically mentioning the assets that will be part of separate property and assets that will be part" of the community property</p>
<p>Cyprus Law: 232/1991 amended</p>	<p>-legal matrimonial property regime: <i>separation of property</i></p> <p>- each spouse "retains and acquires her/his own property after the marriage"</p> <p>- Marriage contracts (e.g. "prenuptial agreements") are not valid</p>
<p>Czech Republic Law: Civil Code</p>	<p>-legal matrimonial property regime: <i>joint property of spouses</i> ("assets acquired during their marriage, excepting assets that serve the personal needs, assets acquired as a gift, legacy or inheritance, assets acquired by a spouse by a legal act,, relating to his exclusive property etc.)</p> <p>- the spouses can make a marriage contract: "a separation of property regime or a contract for expansion or reduction of the joint property,,</p>
<p>Denmark Law: Nordic Convention on Marriage, amended by the Agreement of 2006</p>	<p>-legal matrimonial property regime: <i>deferred community of property</i> ("all property held at the time of entry into a marriage and those acquired during the marriage becomes a part of their joint property, excepting non-transferable rights and rights like specific forms of copyrights and assets related to business activities,,).</p> <p>- the spouses can make a marriage contract: a marriage contract for a separate property (for all assets or for a part of the assets)</p>
<p>Estonia Law: Estonian Family Law Act</p>	<p>- when they get married, the "spouses are must choose their matrimonial property regime, selecting between the community of property regime, the separation of property regime and the community of accrued gains regim"e.</p> <p>- legal matrimonial property regime, "if the spouses have bot chosen the matrimonial property regime, it is considered": <i>community of property</i>.</p> <p>-In community property the assets "acquired during the marriage are considered joint property, excepting property owned before marriage, personal belongings, assets acquired as succession,, etc.</p> <p>- the spouses can make a marriage contract any time they want and can choose between: "the community of property regime, the separation of property regime and the community of accrued gains regime".</p>

Romania in the European context: Social and Legal Effects of the Matrimonial...

<p>Finland Law: Marriage Act of Finland</p>	<p>-legal matrimonial property regime: <i>separation of property</i> ("the property held before concluding the marriage remains his/hers and the spouse own what he/she acquires during the marriage, but each spouse have a marital right to the property of the other spouse and the surviving spouse will acquire half of the net property" of the deceased spouse) - the spouses or "betrotheds can make a marriage contract before or during the marriage and can exclude from the marital property regime, any property they own or will later acquire".</p>
<p>France Law: Civil Code</p>	<p>- legal matrimonial property regime: <i>community of property</i> ("assets acquired after the marriage are joint, excepting property owned before marriage, personal belongings, assets acquired through gift, inheritance or legacy"). - spouses can make a marriage contract: "conventional community; universal community (all assets and debts are pooled); separation of property ; participation in acquisitions (there is no community property but each spouse, in the event of death or divorce, can receive monetary compensation)" - from 2013 couples made up of German and French citizens, can choose the "Franco-German matrimonial property regime" (a variant "of the participation in acquisitions regime, with separation of property during marriage and, after the marriage ends through divorce or death, each spouse can have half of the assets acquired during the marriage")</p>
<p>Germany Law: Civil Code</p>	<p>- legal matrimonial property regime: <i>community of accrued gains</i> (a form of separation of property regime, in which, "the goods acquired before the marriage and during the marriage are individual assets of each of the spouses", but "the increase in the spouses' assets, that occurs during the marriage, will be divided equally" after the marriage ends through divorce or death) - spouses can make a marriage contract: the separation of assets; full community of property and the "Franco-German matrimonial property regime"</p>
<p>Greece Law: Civil Code</p>	<p>- legal matrimonial property regime: -1. <i>the separation of property/participation in acquisitions system</i> ("if the spouses do not conclude a contract") (in this regime, "the assets acquired before the marriage and during the marriage are individual assets of each of the spouses, but after the marriage ends through divorce, one spouse is entitled to a part of the other spouse property, if during the marriage the spouse's wealth was considerably increased and he participated in this growth (one third of the augmentation", unless proven otherwise). -2. <i>community of property system</i> (if the spouses opt for this system) (equal shares in "each other's property, without a right for each spouse to dispose of this share in the property, excepting personal assets, assets used to carry on the profession, intellectual property rights") - spouses can make a marriage contract: the community of property regime to be applicable ("the general rules of law are respected, but spouses can specify details relating to the extent of the common property, the management of the common property, when it expires", etc.)</p>

Cristina ILIE GOGA, Andreea Mihaela NIȚĂ

<p>Hungary Law: Civil Code</p>	<p>- legal matrimonial property regime: <i>community of property</i> (assets acquired after the marriage are joint, "excepting property acquired before marriage, intellectual property, assets acquired through gift or inheritance, compensation for personal injury" etc). - spouses can make a marriage contract: the separation of property system and the property acquisition regime</p>
<p>Ireland Law: Family Law Act</p>	<p>- legal matrimonial property regime: <i>separation of property</i> (the property held "before concluding the marriage remains his/hers and the spouse own what he/she acquires during the marriage", but upon divorce or separation "the non-owning spouse can claim a right in some or all of property held by the other spouse if this claim is made in the interests of justice, depending on the impact of the divorce order and the circumstances of the marriage". - in Ireland, the spouses do not have a choice of matrimonial property regimes, so, "private, inter-spousal arrangement" can be done, but cannot avoid the governing statutory provisions effective upon divorce or separation.</p>
<p>Italy Law: Civil Code</p>	<p>-legal matrimonial property regime: <i>community of property</i> (property acquired after their marriage, individually and together, "forms part of the community property, with the exception" of <i>personal property</i> – "property acquired prior to the marriage; property acquired after the marriage as a gift or inheritance; property for personal use; property needed for profession; property or money received as compensation for damages or for the loss of work capacity" etc. - and <i>property which falls into the deferred community</i> which gives " the right to credit of one spouse to be paid by the other (the owner), equal to half the value of the property, when the community of property is dissolved.- deferred community includes "the fruits of a spouse's personal property and the proceeds from his/her individual activities; property intended for the operation of a business set up after the marriage and also the increments of a business set up before the marriage, if they exist when the marriage ends"-. -spouses can make a marriage contract: the separation of property system and the conventional community of property</p>
<p>Latvia Law: Civil Code</p>	<p>- legal matrimonial property regime: <i>separation of property</i> (the property held before concluding the marriage "remains his/hers and the spouse own what he/she acquires during the marriage", but if an asset is acquired with the resources of both spouses, or with the assistance of the other spouse, is joint property) - spouses can make a marriage contract: a separation of property (each spouse is liable for her/his own debts with her/his own property) or a community of property ("the property owned before the marriage and property acquire during the marriage combined into one joint indivisible mass and it is the possibility to stipulate in the marriage contract a spouse separate property")</p>
<p>Lithuania Law: Civil Code</p>	<p>-legal matrimonial property regime: <i>community of property</i> (property acquired after their marriage, individually and together, forms part of the community property, "as well as the fruits collected from the</p>

Romania in the European context: Social and Legal Effects of the Matrimonial...

	<p>personal property and the income of each spouse or the income from intellectual activities”. with the exception of property acquired before the marriage, <i>personal assets</i>, property acquired by gift or succession during the marriage etc.)</p> <p>- spouses can make a marriage contract: the separation of property system and the conventional community of property where “property acquired by a spouse before the marriage will become common property after the registration of the marriage” or “property acquired during the marriage shall be partially divided as common property”)</p>
Luxembourg Law: Civil Code	<p>-legal matrimonial property regime: <i>community of property regime</i> (with elements of common property –“like property acquired after their marriage, individually and together, spouses' professional earnings, the income and fruits of their personal or separate property, assets acquired by each of the spouses- and elements of separate property” -like assets already owned before marriage, assets acquired during the marriage as an inheritance or gift and assets of a personal nature acquired during the marriage).</p> <p>- spouses can make a marriage contract (the spouses are free to adopt a marriage contract adapted to their personal situation): community of property regimes, separate property regime or participation in acquisitions regime.</p>
Malta Law: Civil Code	<p>-legal matrimonial property regime: <i>community of property regime</i> (the assets acquired by each of the spouses during marriage, all property acquired by spouses through the exercise of a “lucrative activity, the fruits of the property of each of the spouses”). All assets acquired during the marriage as an inheritance or donation are considered personal property.</p> <p>- spouses can make a marriage contract (the spouses are free to adopt a marriage contract adapted to their personal situation): community of property regimes, separate property regime or “community of residue under separate administration” (in this regime,” the property acquired during the marriage is held and administered by the spouse who acquired it as exclusive owner and at the termination of the marriage concluded on community of residue regime, “the final residues of the spouses remaining after deduction of debts are equalized”.</p>
Netherlands Law: Civil Code	<p>-legal matrimonial property regime (after 1 January 2018): <i>limited community of property regime</i> (“assets acquired during the marriage and associated debts are part of the community of property”, but there are also assets that are parts of the separation of property, like, “those acquired as an inheritance, as a gift, pension rights and survivor’s pensions”. “The community of property also includes assets jointly owned by the spouses before marriage (in concubinage). A special scheme applies if one of the spouses own a business”.</p> <p>- Before 1st of January 2018, a comprehensive community of property operates in the Netherlands.</p> <p>- spouses can make a marriage contract: “a limited community of property” and “an exclusion of any community, which may be combined with netting covenants”</p>

<p>Poland Law: Family and Guardianship Code</p>	<p>-legal matrimonial property regime: <i>community of property</i> (property acquired after their marriage, individually and together, forms part of the community property, with the exception of personal property of each spouse, property acquired before the marriage, property acquired by donation, inheritance or bequest during the marriage, assets obtained as a reward for personal achievements, and assets acquired in exchange for personal asset, personal assets, "property rights resulting from a joint ownership of property subject to separate regulations", inalienable rights, copyrights, intellectual property rights etc.)</p> <p>- spouses can make a marriage contract (before entering into marriage or during the marriage): the separation of property system, separation of property regime with equalisation of accrued gains and the conventional community of property.</p>
<p>Portugal Law: Civil Code</p>	<p>-legal matrimonial property regime: <i>community of property</i> ("property acquired after their marriage, individually and together and income from work forms part of the community property, with the exception of personal property of each spouse, property acquired before the marriage, property acquired by gift or succession during the marriage, assets obtained under a prior entitlement".</p> <p>- spouses can make a marriage contract: the separation of property system, the universal community of property and an atypical regime ("the spouses may select a regime that has specific characteristics of two or three of the matrimonial property regimes")</p>
<p>Romania Law: Civil Code</p>	<p>-legal matrimonial property regime: <i>community of property</i> (assets acquired during the community of property regime by each spouse are part of their common property, with certain exceptions- detailed in this article)</p> <p>- spouses can make a marriage contract: the separation of property system, the conventional community of property</p>
<p>Slovakia Law: Civil Code</p>	<p>-legal matrimonial property regime: <i>community of property</i> (with "undivided co-ownership of the property", except assets which serve the personal needs and the profession of one spouse, property acquired by gift or inheritance during the marriage, "the property held in its own name by one of the spouses", returned to the spouse who had previously lost it.</p> <p>- spouses can make a marriage contract, after concluding the marriage: "the community of property determined by law can be extended, the community of property determined by law can be reduced or the deferred community of property" (the community property is not established until the day the marriage ceases.</p>
<p>Slovenia Law: Family Code</p>	<p>-legal matrimonial property regime: <i>community of property</i> (property acquired after their marriage, individually and together and income from work forms part of the community property, with the exception of personal property of each spouse, property acquired before the marriage, property acquired by gift or inheritance during the marriage, or "from separate assets like interest and fruits")</p> <p>- spouses can make a marriage contract (agreement for the arrangement of property and legal relations):</p>

Romania in the European context: Social and Legal Effects of the Matrimonial...

Spain Law: Civil Code	<p>-legal matrimonial property regime: <i>community of acquisitions</i> (in the absence of a contract). In the community of acquisitions, income and property acquired after their marriage, individually and together, are common, and also, the system "allows personal property to become community property and vice versa by an agreement between the spouses". Assets considered to be personal property and assets considered to be common property, are listed in the Civil Code.</p> <p>- spouses can make a marriage contract: separation of property and a participation in acquisitions regime.</p>
Sweden Law: Marriage Code	<p>-legal matrimonial property regime: <i>the deferred community of property system</i> ("each spouse owns her/his property, even if the property was acquired before the marriage or during the marriage, and each is responsible for her/his own debts", but, "each spouse has a marital right, which gives her/him the right to half of the marital property's net value upon dissolution of the marriage").</p> <p>- spouses can make a marriage contract: the contract "changes the property nature of marital property or separate property" and there are special family contracts, "concerning division of property during marriage" or concerning special family issues, like "gifts between spouses".</p>
United Kingdom Law: Scottish Family Law Act	<p>England and Wales</p> <p>In England and Wales there is no community of property. We can find here a kind of <i>separation of property</i>, considering that "marriage in principle does not have a proprietary effect", but, after divorce the courts are given a great possibility of issuing "a wide range of orders" (called "ancillary relief")</p> <p>- spouses can make a marriage contract (a marital agreement), but they "can always apply for ancillary relief, even when a marital agreement" was concluded.</p> <p>Scotland</p> <p>-legal matrimonial property regime in Scotland: a version of <i>separation of property</i> ("marriage does not affect the ownership of property", but has a number of specific elements, such as: "a spouse has statutory occupancy rights in the matrimonial home, even if it is owned only by the other spouse"; in case of divorce the principle of fair sharing of matrimonial property is applied (usually means equal sharing); in case of death of one spouse, "the surviving spouse has certain protected rights, on testament, will often take the whole estate")</p> <p>- spouses can make a marriage contract</p>

Source: Conseil des Notariats de l'Union Européenne. CNUE (2019) *Couples in Europe*; Legislation of the European Union countries regarding matrimonial property regimes

We can observe that in most European states, the principle of the community of goods still prevails in national laws, which seems to be in accordance with the traditional fundamental principle of marriage, that of founding and building everything together.

This, however, does not exclude the possibility of the spouses to conclude matrimonial conventions in the form accepted by the law, which will regulate the patrimony of the spouses.

By exposing the characteristics which a matrimonial regime acquires in several systems of law, it is emphasized that both the spirit and the tradition of each people greatly influence the regulation, as well as its conventional modification (Crăciunescu, 2000).

In European Union the patrimonial relation between spouses is now regulated by "Council Regulation (EU) 2016/1103 of 24th of June 2016", and we find common rules for marriages concluded after 29th of January 2019. According to Regulation (EU) 2016/1103, the spouses have the possibility to choose their matrimonial property regime, by choosing "the law of one of the States of which at least one of the spouses is a national or the law of the habitual residence of at least one of the spouses at the time the agreement is concluded" (Regulation 2016/1103, Art. 22).

According to article 26 of the Regulation 2016/1103, "in the absence of a choice of law agreement, as mention in art. 22, the law applicable to the matrimonial property regime, is chosen, in order, according to the following criteria: "1. the spouses' first common habitual residence after the conclusion of the marriage; or, failing that; 2. the spouses' common nationality at the time of the conclusion of the marriage; or, failing that; 3. the law of the State with which the spouses jointly have the closest connection at the time of conclusion of the marriage" (Regulation 2016/1103, art. 26).

Matrimonial property regime in Romania: the legal and sociological perspective

In Romania, the matrimonial convention was abrogated by art. 49 of the Decree no. 32/1954 for the implementation of the Family Code and the Decree on natural and legal persons. The Family Code in force since 1954, established "the legal, unique, compulsory and immutable matrimonial regime" of the community of goods acquired during the marriage (Crăciunescu, 2000: V), being evident that on the way of regulating the patrimonial relations between spouses, the "collectivist" perspective of that time was very important, thus limiting the freedom of organization and functioning of the patrimonial relations between spouses (Pisarenco, 2012: 45).

The matrimonial convention was reintroduced into the new Civil Code adopted by Law no. 287 of July 17, 2009 but entered into force on 1st of October, 2011. The reintegration of the regulation of family relationships in the Civil Code is not only an element of legislative technique, but also implies the establishment of connections with the other major institutions of civil law, such as assets, obligations or successions (Avram, Nicolescu, 2010). The new civil code establishes the principle of freedom of choice of matrimonial regime (Apetrei, 2013). The reintroduction of the matrimonial convention into Romanian law represents an important step towards harmonizing our legislation with the European legal systems and becomes an important and modern tool for the regulation of the fundamental aspects of the social life, adapted to the present realities and is also an instrument that comes to meet the needs of some of the contemporary Romanian families (Buda, 2012: 48; Dariescu, 2009). As such, the matrimonial convention proves to be a legal institution useful to contemporary Romanian society (Dariescu, 2007: 32-33). The risks derived from the matrimonial cohabitation in contemporary society imposed this change: occupational migration,

Romania in the European context: Social and Legal Effects of the Matrimonial...

change of family roles (Sorescu, 2016; Motoi, 2018: 145), accentuation of economic cleavages (Grignoli, Şerban, 2018: 11), acute poverty etc.

The regime of the separation of goods and the regime of the conventional community are applicable where, by matrimonial convention, it derogates from the provisions on the legal system of the community and the matrimonial convention concluded in this case may restrict or broaden both the separation of goods and the goods community (Dariescu, 2008: 98-110).

The Romanian Civil Code, contains a set of mandatory rules, personal and patrimonial obligations, which aims to protect "the marriage and balancing the patrimonial relations between spouses" (Banciu, 2011: 21).

Those who want to get married will personally make the declaration of marriage, at the town hall where marriage is about to be concluded (Art 280 RCC). In the marriage statement, future spouses will show that there is no legal impediment to marriage, and will state the surnames they will carry during their marriage, as well as their chosen matrimonial regime (Art 281 RCC). On the same day as the marriage declaration was received, the civil status officer orders the publication by displaying it in a special place at the headquarters of the City Hall and on its website where the marriage is going to be concluded and on the headquarters of the town hall where the other spouse is domiciled or resident. Marriage is concluded in 10 days after the marriage statement is displayed, which includes both the date of appearance and the date of marriage, or the marriage may also be forfeited before this date for good reason (Art 283 RCC).

There are three types of matrimonial regimes in Romanian legislation: - The regime of the Legal Community (Romanian Civil Code, Articles 339-359); -The Separation of Goods Regime (Romanian Civil Code, Articles 360-365); -The conventional Community Regime (Articles 366-369).

The choice of a different matrimonial regime other than of the legal community is done by concluding a matrimonial convention.

Under the sanction of "absolute nullity", "the matrimonial convention is concluded by an certificate authenticated by the public notary". "The marriage contract concluded before marriage takes effect only from the date of marriage. A convention concluded during the marriage shall take effect from the date specified by the parties or, failing that, from the date of its conclusion" (Art. 330, RCC). So, the Romanian civil code also introduced "the principle of the mutability of matrimonial property regimes", so, the spouses can change, during their marriage, the matrimonial regime applicable (Moldovan, 2015: 47).

The matrimonial convention cannot affect equality between spouses, parental authority or lawful inheritance, but may include a preciput clause (Art 332-333, Romanian Civil Code). In order to be opposable to third parties, matrimonial conventions are registered in the Notarial National Registry of Matrimonial Regimes (334, Romanian Civil Code).

The regime of the Legal Community

According to The regime of the Legal Community "Goods acquired during the legal regime of any spouse are, from the date of their acquisition, joint property of the spouses" (Art 339, Romanian Civil Code).

According to the Article 340 of the Civil Code, are not common goods but individual property of each spouse: "a) property acquired by legal legacy, testament or donation, unless the donor has expressly provided that they will be common; b) goods for personal use; c) goods intended for the exercise of the profession of one of the

spouses, unless they are elements of a commodity fund which is part of the commodity community; d) the patrimonial intellectual property rights on its creations and the distinctive signs it has registered; e) goods acquired as a prize or reward, scientific or literary manuscripts, drawings and artistic projects, designs of inventions and other such goods; f) insurance indemnity and compensation for any material or moral damage to one of the spouses; g) the goods, the amounts of money or any values that replace a good, as well as the good acquired in exchange for them; h) fruit of own goods". (art 340, RCC)

Under the regime of the community of goods on joint debts, spouses respond with common goods to: "a) obligations arising in connection with the conservation, management or acquisition of common goods; b) the obligations they have contracted together; c) the obligations assumed by either spouse to cover the ordinary expenses of marriage; d) reparation for damage caused by the acquisition by one of the spouses of goods belonging to a third party, to the extent that they have increased the common property of the spouses" (Art. 351 RCC).

To the extent that the common obligations have not been covered by the "pursuit of joint property", the spouses "are jointly and severally liable with their own property". In this case, "the person who paid the common debt subrogates to the creditor's rights for what he has sustained over the share that would come from the community if the liquidation would be made at the time of debt payment". The spouse who has paid the joint debt in the above specified has a right of retention over the other spouse's assets until the claims of the other spouse are fully covered (Art. 352 RCC).

The Separation of Goods Regime

Under the regime of "separation of goods", each spouse is the sole owner of the property acquired before the marriage, as well as of those acquired in its own name after that date. By matrimonial convention, "the parties may lay down clauses on the liquidation of this scheme according to the mass of goods purchased by each of the spouses during the marriage, on the basis of which the participation receivable will be calculated. Unless otherwise agreed by the parties, the participation receivable represents half of the value difference between the two masses of net purchases and will be due by the spouse whose net purchases are higher and can be paid in cash or in kind" (Art 360 RCC). When adopting this regime, "the public notary draws up an inventory of their own movable assets, regardless of their acquisition" (Art 361 RCC). According to article 364 of Romanian Civile Code, "none of the spouses can be held responsible for the obligations arising from acts committed by the other spouse. However, the spouses are jointly and severally liable for any of their obligations to cover the ordinary expenses of marriage and those related to raising and educating children" (Art 364 RCC).

The conventional Community Regime

If the conventional community is adopted, the matrimonial convention may refer to one or more of the following: "a) the incorporation in the community, in whole or in part, of the acquired goods or of the debts incurred before or after the marriage, with the exception of personal property and goods intended for the exercise of the profession; b) the restriction of the community to the particular goods or liabilities determined in the matrimonial convention, regardless of whether they are acquired or, as the case may be, born before or during the marriage, except for the obligations assumed by either spouse to cover ordinary marriage expenses; 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 will or abusively opposes, the other spouse may conclude the act itself, but

Romania in the European context: Social and Legal Effects of the Matrimonial...

only with the prior consent of the tutelage court; d) inclusion of the precipice clause; execution of the precipitation clause is done in kind or, if this is not possible, by the equivalent of the net asset value of the community; e) modalities for the liquidation of the conventional community” (art. 367 RCC).

In Romania, in 2018, there were 143292 marriages (91960 in urban and 51332 in rural), thus registering 6.5 marriages per 1000 inhabitants. In 2017, there were 142,613 (91212 in urban and 51401 in rural), with 679 fewer marriages than in 2018, thus observing an increase in the nuptiality rate in our country (NIS, 2019: 21).

According to the National Institute of Statistics report, ”Demographic events in 2018”, most marriages, namely 14.4% of the total number of marriages, were concluded by men and women in the age group 25-29 years, followed by those concluded by men in the same age group as women in the age group 20-24 years, ie 12.2% ”(NIS, 2019: 21).

In our country, the average age at marriage, in 2018, was 32.2 years, namely 33.8 years for men and 30.6 years for women, rising compared to 2017, when the average age at marriage it was 31.7 years, more accurate, 33.3 years in men and 30.1 years in women (NIS, 2019: 22). However, the average age at first marriage is slightly lower, in 2018, it was 31.9 years for men and 28.7 years for women, up from 2017 with 0.4 years for men and with 0.5 years in women ”(INS, 2019: 23). Over the last 30 years, the average age of marriage has increased in our country by approximately 6 years (OECD, 2019: 3).

In our country, the matrimonial regime adopted by spouses is mentioned in the National Notarial Register of Marriage Regimes (RNNRM), thus:

- marriage documents for marriages concluded from 01.10.2011;
- matrimonial conventions;
- the acts of modification of the matrimonial regime.

Regarding the number of matrimonial conventions authenticated by the Romanian public notaries, there is a very large increase in their number in the period 2011-2018. Thus, according to the data issued by the National Notarial Registry of Matrimonial Regimes, as a result of a request addressed to this institution, from the establishment of the RNNRM until 29.07.2019 (the date of issue of the address), there are in Romania 19507 matrimonial conventions, authenticated by the Romanian public notaries , distributed as follows, depending on the year of registration:

- in 2011: 234 matrimonial agreements;
- in 2012: 1288 matrimonial agreements;
- in 2013: 1582 matrimonial agreements;
- in 2014: 1972 matrimonial agreements;
- in 2015: 2452 matrimonial agreements;
- in 2016: 2739 matrimonial agreements;
- in 2017: 3369 matrimonial agreements;
- in 2018: 3635 matrimonial agreements;
- in 2019: 2236 matrimonial conventions until July 2019 (CNARNN, 2019).

Thus, we notice that the introduction of the possibility of concluding a matrimonial agreement in the national legislation, was an aspect that more and more aroused the interest of the population, and, more and more people resort to this type of matrimonial contract, thus concluding that the relations of patrimonial nature are an important aspect of the newly founded families through marriage in Romania.

However, in relation to the number of completed marriages, the number of matrimonial conventions is very low, of 2.5% maximum. The question remains: the 10 years since the publication of the current civil code were not enough for the information regarding the matrimonial regime to be sufficiently spread among the citizens, or the typology of post-modern Romanian family is based on the characteristics of the traditional family, even it is modeled by the phenomena and the processes of the globalization era? However, at the time of writing the declaration at the marriage, 10 days before the conclusion of the marriage, the employees of the civil status office inform the future spouses on the conditions of the marriage, including the possibilities of the matrimonial regime, and yet, even being informed, very few of them chose to conclude a marriage agreement. It seems like in the national culture, the values on which the marriage is based are love and trust, the feelings prevailing over the reason. This is also the reason for knowingly ignoring the two regimes, choosing a priori the regime of legal community.

In the European Union, the data for 2017 show that Romania is among the countries with a high nuptiality rate of 7.3 ‰, next to Lithuania (7.5 ‰), Cyprus and Latvia (6.8 ‰) and Malta (6.3 ‰), followed by Slovakia (5.8 ‰), Denmark (5.5 ‰), Sweden and Hungary (5.2 ‰), Austria and Poland (5.1 ‰), Germany and the Czech Republic (5 ‰), Croatia and Estonia (4.9 ‰). In the second part of the ranking, we find the following countries: Finland and Ireland (4.8 ‰), Greece (4.7 ‰), United Kingdom (4.4 ‰), Bulgaria (4 ‰), Belgium (3.9 ‰), The Netherlands (3.8 ‰), Spain (3.7 ‰), France (3.5 ‰), Portugal (3.3 ‰) and the last three places are Luxembourg and Italy (3.2 ‰) and Slovenia (3.1 ‰) (Eurostat, 2019). In the states of the European Union, marriage rates are 4.3 marriages per 1,000 inhabitants.

However, we note that the marriage rate in Romania is among the highest in the OECD countries, along with countries such as China, Russia, Lithuania, Turkey and the United States. Moreover, we note that Romania is the only state in which the crude rate of marriages has changed very little in the last 50 years, maintaining a high level, being a very low difference between the marriages rate in 1970, 1995 and 2017 (OECD, 2019: 2). In most OECD states, there is a dramatic decrease between the current rate of marriages, compared to the rates from the years 1970 and 1995.

Regarding the divorces, in 2018, “the number of divorces pronounced by final court decisions or by administrative path was 30857, less than in 2017, when 30,563 divorces were pronounced. The divorce rate was 1.39 ‰ in 2018 and 1.40 divorces per 1000 inhabitants in 2017” (NIS, 2019: 24). We note that Romania, the divorce rate has increased by more than one percentage in the last 50 years (compared to 1970), but has not changed much in the last 15 years (compared to 1995) (OECD, 2019: 4). The average age of the spouses divorced in 2018 was 43.0 years for men and 39.3 years for women. Also in 2018, out of the total divorces pronounced, 66.6% were performed "with the agreement of the parties", by the civil status officer or the notary public, and the rest in the court, for various reasons, such as: marital infidelity (2.4%), physical violence (1.8%), alcoholism (1.5%), combined causes (3%), other situations (24.7%). (NIS, 2019: 24-26)

In 2016, compared to the other countries of the European Union, Romania having a divorce rate of 1.5 ‰, recorded an average level. The lowest divorce rates at European Union level were in Malta (0.8 ‰) and Greece (1.0 ‰) and the highest divorce rates were in Latvia and Lithuania (3.1 ‰) and in Denmark (3.0 ‰) (NIS, 2019: 26). We also note that among the OECD states, Romania is among the countries with a

Romania in the European context: Social and Legal Effects of the Matrimonial...

low divorce rate, along with Iceland, Turkey, Italy, Bulgaria, Croatia, Slovenia, Mexico, Ireland, Malta and Chile (OECD, 2019: 4). Among the OECD countries with a high divorce rate, we find first, the Russian Federation, with a big difference from the rest of the top states, such as Latvia, Lithuania, United States of America, Denmark and Costa Rica (OECD, 2019: 4).

We can conclude that we have observed a directly proportional link between the legislation regarding matrimonial regimes in Europe and the rate of nuptiality and divorces. Of course, these aspects are also correlated with other indicators, such as the high standard of living (Ilie Goga, 2014: 200), the traditionalism of some regions, the degree of religiosity, family influence, the emancipation of women (Porumbescu, Pogan, 2018), urbanization (Pricină, 2018) or change in social perceptions (Niță and Goga, 2017).

However, the relative stable rate of marriages in Romania and the low number of concluded marriage conventions in our country, causes us to consider the fact that traditional principles still work in the founding of the Romanian family.

References:

- Avram, M., Nicolescu, C. (2010). *Regimuri matrimoniale*. Bucharest: Ed. Hamangiu.
- Apetrei, I. (2013). *Regimul primar imperativ al soților în reglementarea actualului cod civil român*. The volume of International Conference. The XXIst Ed. Universality, Multidisciplinarity, Knowledge.
- Banciu, A. (2011). *Raporturile patrimoniale dintre soți potrivit Noului Cod Civil*, Bucharest: Hamangiu.
- Buda, D. (2012). The administrative reform in Romania. The new civil code and the institution of marriage. *Transylvanian Review of Administrative Sciences*, no. 36, 27-49.
- Centrul Național de Administrare a Registrelor Naționale Notarial CNARNN (2019). *Adresa privind numărul convențiilor matrimoniale în România nr. 3100 din 29.07.2019*.
- Chirilă, I. (2012). Căsătoria și elementele de drept succesoral în legislația bisericească. *Studia Universitatis Babeș-Bolyai, Iurisprudentia*, No. 2 (April-June), 5-16.
- Conseil des Notariats de l'Union Européenne. CNUE (2019) *Couples in Europe*. Retrieved from: <http://www.coupleseurope.eu/>.
- Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R1103&from=RO>
- Crăciunescu, C. M. (2000). *Regimuri matrimoniale*, Bucharest: Ed. All. Beck.
- Dariescu, N. C. (2007). *Convenția matrimonială în dreptul internațional privat roman*. Iași: Lumen.
- Dariescu, N. C. (2008). *Relațiile patrimoniale dintre soți în dreptul internațional privat*. Bucharest: Ed. C. H. Beck.
- Dariescu, N. C. (2009). Reglementarea convenției matrimoniale în codul civil românesc, Volume of International Conference of Young researchers, VII-th Edition, *Moldovan Assoc. of Young Researchers "PRO-Science"*, Chișinău.
- Ermese, F. (2015). *Regimuri matrimoniale*, Bucharest: C. H. Beck.
- Eurostat (2019). *Marriage Indicators for 2017. Crude marriage rate*. Retrieved from: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20190214-1>
- Hegnauer, C., Breitschid, O. (1993). *Grundriss des Eherechts*, Bern: Verlag.

- Grignoli, D., Șerban, I. (2018). Propulsive Welfare for the “risk societies”: a project for solidarity and communication in the social-health system. *Sociology and Social Work Review*, no. 3, vol. 1, 6-12.
- Ilie Goga, C. (2014) The status quo of regional social policy in the European Union. *Revista de Științe Politice. Revue des Sciences Politiques*, No. 43, 194-206.
- Motoi, G. (2018). The role of the social class and the family in the formation of values in the context of the democratisation of education. *Social Sciences and Education Research Review*, Vol. 5, No. 1, 136-147.
- Murdock, G. P. (1949). *Social structure*, New York: Macmillan.
- Moldovan, I. F. (2015). Matrimonial regimes. *Journal of legal studies*, Volume 16, Issue 30, 47-54.
- National Institute of Statistics. NIS (2019) *Evenimente demografice în 2018*, Bucharest: Editura Institutului Național de Statistică. Retrieved from: http://www.insse.ro/cms/sites/default/files/field/publicatii/evenimente_demografice_in_anul_2018.pdf.
- Niță, A. M., Ilie Goga, C. (2017). Cultural values of urban population. Case study. Cultural values of the Romanians in the regions South-West Oltenia, South-Walachia and West. *Sociology and Social Work Review*, no. 1, 6-21.
- OECD. Social Policy Division - Directorate of Employment, Labour and Social Affairs (2019) Family database. Marriage and divorce rates. Retrieved from: https://www.oecd.org/els/family/SF_3_1_Marriage_and_divorce_rates.pdf
- Pisarenco, O. (2012). Evoluția istorico-juridică a regimului matrimonial contractual. *Revista națională de drept*, no. 5, 39-47.
- Perkumiene, D. (2014). *The institution of marriage in the canon and lithuanian civil law in regard to the intenational relations*. Dissertation submitted for the degree of Doctor of Law of the Ghent University. Retrieved from: <https://docplayer.net/81235580-Faculty-of-law-institute-for-private-international-law-by-dalia-perkumiene.html>.
- Porumbescu, A., Pogan, L. (2018). Social Change, Migration and Work-Life Balance, *Revista de Științe Politice. Revue des Sciences Politiques*, no. 60, 16-26.
- Pricină, N. G. (2018). Sociological research perspectives of urban symbolism. *Sociology and Social Work Review*, vol. 2, no. 2, 39-46.
- Romanian Civil Code. RCC, adopted by Law no. 287 of July 17, 2009, republished (2009). Retrieved from: <https://idrept.ro/DocumentView.aspx?DocumentId=00141529>
- Romanian Constitution, republished (1991). Retrieved from: <https://idrept.ro/DocumentView.aspx?DocumentId=00000690>
- Roșioru, F. (2012). Tradiție și inovație în Noul Cod Civil în materia raporturilor patrimoniale dintre soți – aplicații ale teoriei datoriiilor de valoare în cadrul comunității matrimoniale, *Studia Universitatis Babeș- Bolyai, Iurisprudentia*, No. 2 (April-June), 17-52.
- Sorescu, E. (2016). Cultural and practical challenges for child protection. In *Forum on Studies of Society. Conference proceedings. First edition*, Bucharest: Pro Universitaria.
- Trebici, V. (1995). *Familia între demografie și sociologie*, Bucharest: Editura Academiei Române.
- Voinea, M. (2005). *Familia contemporană. Mica enciclopedie*, Bucharest: Focus.
- Voinea, M. (1993). *Sociologia familiei*, Bucharest: Editura Universității din București.
- ***
- Austrian Civil Code amended (1811) Retrieved from: <https://www.icj.org/wp-content/uploads/2013/05/Belgium-Belgian-Civil-Code-2007-fre.pdf>

Romania in the European context: Social and Legal Effects of the Matrimonial...

- Belgium Civil Code updated (1804). Retrieved from:
<http://www.ejustice.just.fgov.be/loi/loi.htm>
- Bulgarian Family Code (2009). Retrieved from:
https://www.mlsp.government.bg/ckfinder/userfiles/files/admob/ Family_Code.pdf
- Croatian Family Act amended (2003). Retrieved from:
<http://pak.hr/cke/propisi,%20zakoni/en/FamilyAct/EN.pdf>
- Cyprus Law 232 (1991). Spouses Property Relations (Regulation) Laws 1991. Retrieved from:
[http://www.olc.gov.cy/olc/olc.nsf/all/892284DEBF4AB36E422579420035457C/\\$file/The%20Spouses%20Property%20Relations%20\[Regulation\]%20\[Amendment\]%20Law,%202008.pdf?openelement](http://www.olc.gov.cy/olc/olc.nsf/all/892284DEBF4AB36E422579420035457C/$file/The%20Spouses%20Property%20Relations%20[Regulation]%20[Amendment]%20Law,%202008.pdf?openelement)
- Czech Republic Civil Code (2012). Retrieved from:
<http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf>
- Estonian Family Law Act (2009). Retrieved from:
<https://www.riigiteataja.ee/en/eli/506062016002/consolide>
- Nordic Convention on Marriage amended by the Agreement of 26 January 2006 (2006). Retrieved from:
<https://www.retsinformation.dk/Forms/R0710.aspx?id=122210>
- Marriage Act of Finland amended (1929). Retrieved from:
<http://www.finlex.fi/en/laki/kaannokset/1929/en19290234.pdf>
- France Civil Law updated (2004). Retrieved from:
<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721&dateTexte=20190824>
- German Civil Code amended (2002). Retrieved from:
http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p4710
- Greek Civil Code (1946) Retrieved from:
<http://www.ministryofjustice.gr/site/kodikos/%CE%95%CF%85%CF%81%CE%B5%CF%84%CE%AE%CF%81%CE%B9%CE%BF%CE%91%CE%A3%CE%A4%CE%99%CE%9A%CE%9F%CE%A3%CE%9A%CE%A9%CE%94%CE%99%CE%9A%CE%91%CE%A3/tabid/225/language/el-GR/Default.aspx>
- Hungarian Civil Code (1995). Retrieved from:
https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96512/114273/F720272867/Civil_Code.pdf
- Irish Family Law Act (2013). Retrieved from:
<http://www.irishstatutebook.ie/eli/1995/act/26/enacted/en/print>
- Italian Civil Code updated (1942). Retrieved from:
<https://www.altalex.com/documents/codici-altalex/2015/01/02/codice-civile>
- Latvian Civil Code updated (1937). Retrieved from:
<http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018388.pdf>
- Lithuanian Civil Code amended (2000). Retrieved from:
<https://www.wipo.int/edocs/lexdocs/laws/en/lt/lt073en.pdf>
- Luxembourg Civil Code updated (2000). Retrieved from:
<http://legilux.public.lu/eli/etat/leg/code/civil/20190428>
- Maltese Civil Code (1870). Retrieved from:
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580&l=1>
- Dutch Civil Code updated (2012). Retrieved from:
<https://wetten.overheid.nl/BWBR0030068/2012-01-01#Boek10>
- Polish Family and Guardianship Code updated (1964) apud. Wojciech J. Kosior, Jakub M. Łukasiewicz (2018) *Family Law in Poland*, Rzeszów: Legal Publishing House, Retrieved from:
<https://depot.ceon.pl/bitstream/handle/123456789/16062/FAMILY%20LAW%20-%20BOOK.pdf?sequence=3&isAllowed=y>

Portuguese Civil Code updated (1966). Retrieved from:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&tabela=leis&so_milo=

Slovak Civil Code, consolidated version (1964). Retrieved from:

<https://www.mindbank.info/item/2196>

Slovenian Family Code (2017). Retrieved from:

http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/Druzinski_zakonik__ANG_.pdf

Spanish Civil Code, updated (1889). Retrieved from:

<http://derechocivil-ugr.es/attachments/article/45/spanish-civil-code.pdf>

Swedish Marriage Code, updated (1987). Retrieved from:

<https://www.icj.org/wp-content/uploads/2013/05/Sweden-Marriage-Code-1987-eng.pdf>

Scottish Family Law Act, updated (1985). Retrieved from:

<http://www.legislation.gov.uk/ukpga/1985/37/contents>

Article Info

Received: October 21 2019

Accepted: December 04 2019
