

THE ADMINISTRATIVE REFORM IN ROMANIA: THE NEW CIVIL CODE AND THE INSTITUTION OF MARRIAGE

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Abstract

The legal system in Romania has experienced an extensive change due to the adoption of the four new codes: the Civil Code, the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code. The adoption of the New Civil Code was necessary given the profound changes of the Romanian society, of the dynamics of social life and also in the context of Romania's accession to the EU and the necessity to align our legislation to the laws of European countries. One of the fields thoroughly transformed is the one of family relations. The New Civil Code incorporated the Family Code and provided a modern regulation, adapted to social realities. Its adoption was intended to create a modern tool to regulate the fundamental aspects of individual and social existence, adapted to current terminology standards.

Keywords: New Civil Code, institution of marriage, institution of engagement, marriage dissolution, matrimonial regimes.



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1. Introduction

The legal system in Romania and, implicitly, the administrative one has experienced an extensive change due to the adoption of the four new codes: the Civil Code, the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code. The major implications in social life are profound. Both the state and the legal persons as subjects of law have had their role better regulated in society. The relationship between the individual and the state has been redefined, thus creating a mechanism of reciprocal control. In other words, none of the two subjects of law is stronger than the other, neither the state, nor the person.

The New Civil Code (hereafter also NCC) can be considered the depository of these changes. Its emergence was necessary given the profound changes of the Romanian society, of the dynamics of social life and also in the context of Romania's accession to the EU. Thus, by adopting the New Civil Code it was intended to align our legislation to the laws of European countries such as France, Italy, Switzerland or Germany and, in the same time, to comply with the exigencies that arose as a result of commitments made by Romania to the European Union.

The New Civil Code replaces the Civil Code adopted in 1864, a code that regulated the entire Romanian society between 1865 and 2011, from the micro-social level, namely the private life of each person, to the macro-social level – including the economic and financial fields – banking, business and other categories of patrimonial relations.

Therefore, the New Civil Code impacts all elements that compose the two levels: micro and macro social. Although the general principles of civil law, consecrated over the years, are kept, the New Civil Code introduces new social, moral, cultural, economic and technical-scientific values, which provide greater flexibility and clarity for the legal norms of civil law, fact which guarantees for each citizen greater freedom of will and a modern legal framework in line with the Romanian society today.

The New Civil Code provisions are contained in seven books, namely Book I - About People, Book II - About Family, Book III - About Assets, Book IV - About Inheritance and liberalities, Book V - About Obligation, Book VI - About the Extinctive Prescription, declension and calculation of terms, Book VII - Private International Law Provisions. It can be noticed that this code incorporates all regulations regarding natural and legal persons, patrimonial and non-patrimonial relations, commercial relationships and even private law provisions.

2. Review of the main novelties in the field of family relations brought by the New Civil Code

One of the fields thoroughly transformed is the one of family relations. The New Civil Code incorporated the Family Code and provided a modern regulation, adapted to social realities.

Marriage conclusion and marriage dissolution have been redefined, keeping the basic idea that the family represents the central element of society, but redefining the possibility of state intervention on family life through an assembly of administrative mechanisms. For the first time, a special emphasis was placed on the meaning of state

intervention after the conclusion of the marriage, through mechanisms by which to consider the harmonious development of the family.

There have also been created mechanisms to provide spouses with the freedom to decide on their own future, as a family or as an individual. Both marriage conclusion and marriage dissolution have got new dimensions.

Among the most important new aspects introduced, there are: engagement regulation, a judicial institution that is an absolute novelty, the introduction of matrimonial regimes that give spouses the possibility to choose that particular regime that best suits their family relations, from the legal community regime, to the regime of conventional community and the one of separation of assets.

Also, new regulations are made regarding divorce, marriage dissolution being possible by both legal and administrative means or by notary procedure in cases of divorce by agreement between spouses. This type of divorce may occur only if the conditions provided by law are strictly complied with, namely that both spouses agree to divorce and that there are no minor children born in wedlock, out of wedlock or adopted. Divorce by agreement between spouses can also be ascertained by the public notary if there are minor children born in wedlock, out of wedlock or adopted, if spouses agree on all aspects of the family name to be carried after the divorce, the exercise of parental authority by both parents, setting the children's residence after divorce, the way of preserving personal relations between the separated parent and each child, and determining the contribution of parents to the expenditures with the child's raise, education, learning and professional training. These new regulations prevent the courts from becoming overloaded and at the same time give spouses the possibility to divorce faster when relations between them make the continuation of marriage impossible.

In this context in which the spouses have the possibility to divorce without fulfilling procedures which would require a large period of time, the legislature considered it necessary to regulate certain measures aimed at increasing awareness of the social importance of marriage, and implicitly to protect the guiltless spouse from divorce. Under the new regulations, the guiltless spouse is given the right to ask the spouse guilty of marriage dissolution for compensatory financing for the harm created. Independent of this right, the plaintiff spouse may request from the culprit spouse from whose exclusive fault the divorce was given, a compensation allowance designed to offset the imbalance in his/her life conditions created by the dissolution of marriage.

Another novelty is found in the field of parental authority exercise. Thus, according to the new regulations, the parental authority shall be exercised by both parents, even when they are divorced, unless the court decides otherwise. If there is good reason, considering the interest of the child, the court decides that the parental authority is exercised only by one of the parents. In these conditions, the other parent retains the right to watch over how the child is raised and educated and also the right to consent to his/her adoption. Exceptionally, the guardianship court may decide the guardianship placement to a relative or another family or person, with their consent, or in a care institution. They exercise the rights and duties of parents with respect to the child.

Following all the changes introduced by the New Civil Code with regard to family, it can be noted the legislature's concern for ensuring that all necessary measures for the protection of the family are respected.

The family was the subject to numerous studies in anthropology and sociology, nowadays reaching the apogee of its development process, representing the fundamental institution of society, as a freely consented relationship between the spouses, but also as a legal relationship created by the institution of marriage. The family represents one of the oldest and most stable forms of human community, a superior form of community – primarily of the husband, wife and their children, which is based on social and biological relationships, the main goal being the preparation of a future healthy and thoroughly educated generation, to participate in the development of society (Manoiu and Epureanu, 1996).

The importance of family and also the fundamental principles underlying it emerge even from the provisions of art. 48 in the Romanian Constitution, the family being established on the freely consented marriage between spouses, on their equality and on the parents' right and duty to ensure the upbringing and education of the children. The family is entitled to protection by society and the state, the latter being obliged to support, through economic and social measures, the marriage and also the family's development and consolidation.

The New Civil Code regulates family relations in Book II, entitled 'About Family', articles 258-534.

The current legal provisions introduce a number of changes and innovations, regulating in detail and explicitly the aspects resulted from the personal and patrimonial relations arising from marriage, kinship, adoption and also from other legal relations, family relationships in some aspects. At the same time, the *lex ferenda* proposals have been exploited, outlined in doctrine and jurisprudence, responding to the evolution trends and needs of the 21st century society. By this, the rules on family law have been aligned to the European standards in the field and also to the international conventions Romania is part of.

We will briefly analyze some novelties brought in the field of marriage, a specific institution of family law.

3. The institution of engagement

A first novelty introduced by the New Civil Code in the field of family relations is engagement. This new legal institution is regulated in articles 266-270 NCC, representing the mutual promise of two persons to marry. Engagement is recognized as a reality that produces legal effects.

A valid conclusion of the engagement is conditioned, in principle, by the fulfillment of the legal provisions with regard to marriage conditions, except some rules which regulate the marriage of the underage persons, respectively the marriage between collateral relatives of fourth degree, more precisely the medical opinion and the authorization given by the administrative body. By analogy, the validity conditions of

engagement refer to (a) the personal and free expression of the consent of two different persons of different biological sexes, and (b) the minimum age of 18 years for both man and woman, noting that, for good reasons, the minor who has reached the age of 16 can only be engaged with the consent of parents or, where appropriate, of the guardian or of the person entitled by the public authority to exercise parental rights. Besides these two conditions, as in the case of marriage, the lack of obstacles is also required, meaning the lack of any of the following situations: the state of a married person; natural or adoptive kinship in a straight line, regardless of the degree and also in collateral line up to grade four inclusively; the state of guardianship; insanity or mental illness. With respect to formal conditions, the conclusion of the engagement is not subject to any formality and may be proven by any means.

Although in our old legislation, such as the Calimachi Code¹ (Florian, 2011, p. 13) or the Caragea Code, the engagement was regulated as a contract in which the parties committed themselves to marry, the New Civil Code does not establish the engagement as a binding prior stage of marriage. It can neither be seen as a pre-contract between the future spouses, nor as a certainty of conditionality of the future marriage, not being invested with a binding force. The engagement can be broken at any time, even unilaterally, by any of the fiancés. However, breaking the engagement is followed by the production of legal effects of patrimonial nature, resulting in the liability for the damage created for the other fiancé.

A first patrimonial effect of breaking the engagement, provided by art. 268 NCC, refers to the obligation to return the engagement gifts, an obligation to be executed in nature, and if this is impossible, to the extent of enrichment. This effect occurs both when the engagement rupture is the result of the consent of both fiancés and also in the case in which only one of the fiancés is guilty. Subject to restitution are those gifts that the fiancés have received in consideration of their engagement or during the engagement, with a perspective of marriage, with the exception of usual gifts. This obligation does not emerge if the engagement is followed by marriage or ended because of the death of a fiancé, these having a different cause from the promise of marriage.

The second patrimonial effect makes reference to the situation in which the disengagement occurs abusively, thus the 'guilty' fiancé being obliged to provide compensation for both the past or contracted expenses for marriage, its celebration, for preparing the marital home and also for any other material or moral damage caused. Therewith, the guilty party who has determined the other to break the engagement may be asked to provide compensations under the previously mentioned conditions. In these cases, liability is rather caused by the way in which the unilateral disengagement

1 'In the old Romanian Code, the Calimachi Code, articles 83 and 85 regulated engagement as a binding 'matrimonial preamble' followed by marriage within 2-4 years; engagement dissolution was permitted only in exceptional circumstances' (Hamangiu, Rosetti-Bălănescu and Băicoianu, 1996, p 188, no. 395).

took place, for example in an unexpected, abusive, insulting manner² (Florian, 2011, pp. 18-19).

The competence of determining the part responsible for disengagement belongs to the guardianship court and the right of action, for both categories of claims, is prescribed within the special term of one year after the disengagement.

4. The institution of marriage. Changes and completions regarding substance conditions for the conclusion of marriage

In the field of the institution of marriage, the New Civil Code makes a number of changes and completions designed to clarify some aspects which, in the regulation of the Family Code, could only be inferred by way of interpretation.

Marriage is still defined as the freely consented union, but the New Civil Code stipulates that it can only be between men and women, sex differentiation being one of the first fundamental conditions for a valid marriage. Marriage is concluded under the legal provisions, primarily producing civil effects, the religious celebration being possible to take place subsequently. Establishing a family is the determinant cause of marriage.

The substance conditions which have to be met to conclude a marriage virtually remained the same. Therefore, marriage is concluded between a man and a woman by their personal and free consent, and the future spouses must have had reached the age of 18 years.

As mentioned previously, the New Civil Code expressly provides a new substance condition for sex differentiation, a condition referred to in art. 271. Following this principle, art. 277 prohibits the equivalence between certain forms of cohabitation and marriage. Thus, same-sex marriages concluded or contracted abroad, either by Romanian citizens or foreign citizens, are not recognized in Romania. Also, civil partnerships between persons of the opposite sex or same sex, concluded or contracted abroad, either by foreign citizens or by Romanian citizens, are not recognized in Romania.

Sex differentiation is particularly important in cases of serious genital malformations or of trans-sexuality. The provisions of art. 46 of Law no. 119/1996 on civil status are applicable in the latter case, according to which birth certificates and, where appropriate, marriage and death certificates contain mentions of the changes in the person's marital status, including the situations of sex change, after the final and irrevocable injunction.

2 'As an example, getting inspired by the solutions given by the French courts, a fiancé's marriage with another person after his/her promise to marry with his/her fiancé has been reaffirmed repeatedly and publicly, or the 'brutal' manner in which the rupture took place, the spontaneity of the gesture 'without any prior dialogue', or it may be related to the chosen moment, namely with just days before the scheduled celebration of the marriage – or after a suite of acts attributable to one of the fiancés, such as, his/her unacceptable behavior, accompanied by humiliating, insulting manifestations with respect to the other' (Florian, 2009, pp. 631-632 and the indicated legal solutions).

As a result, the person who has changed his/her sex through a medical intervention can marry a person of his/her original sex.

With regard to the consent to marriage and marital age, the regulation is in essence similar to that of the Family Code. To be valid, the consent to marriage of the future spouses must exist, must be free, must emanate from a person with discernment, must not be vitiated and must be expressed in the purpose of forming a family. The lack of intention of founding a family brings the fictitious marriage into discussion, explicitly regulated in art. 295 of the NCC, and defined as being the marriage concluded in order to achieve some side effects which are not specific to marriage, but which cannot be obtained otherwise. It is also necessary to prove the intent to violate the law with the purpose of creating adjacent effects to marriage³ (Roșu and Rădulescu, 2011, p. 3).

The minimum marital age is set at 18 years, a maximum age not being specified, the marriage also being possible to be concluded in *extremis vitae*. By derogation from the rule, for technical reasons such as: the pregnancy state of the woman or childbirth, the minor who turned the age of 16 can marry provided a medical opinion, with the consent of his/her parents or, where appropriate, of his/her guardian and with the authorization of the guardianship court in whose jurisdiction the minor resides. In the previous legislation, the authorization for the minor's marriage was given by the General Direction of Social Assistance and Child Protection.

We specify that, applying the principle of full assimilation of the situation of the child out of wedlock with the legal situation of the child in wedlock, and also of the adopted children, the parent status in wedlock, outside wedlock, but with established legal parentage, or of the adoptive parent, held at the time of exercise of this prerogative of parental authority on child marriage consent is irrelevant.

If a parent refuses to approve the marriage, the guardianship court shall act on such differences, considering the superior interest of the child. If one parent is deceased or is unable to manifest his will, the consent of the other parent is sufficient. Therewith, in the case of marriage dissolution, when the court, considering the superior interest of the child, decides that parental authority is exercised only by one of the parents, by derogation from the rule of preserving parental authority by the divorced parents, the consent of one parent is also sufficient. If there is no parent or guardian to approve the marriage, the approval of the person or authority empowered to exercise parental rights is necessary.

A final aspect we wish to emphasize regards the form in which the consent is given by parents or others. If previously the form of the consent was not expressly provided by law in the Family Code, more solutions being possible, such as: verbal consent given by parents during the celebration of marriage or the consent given in the form of an authentic paper, the New Civil Code clarifies this issue. According to art. 280 par. 3,

3 With reference to Decision no. 4082 from May 28, 2004 of the High Court of Cassation and Justice, The Civil Section and Intellectual Property, in this case, the defendant aimed to obtain the German citizenship.

‘the parents or, where appropriate, the guardian, will personally make a statement by which they approve the marriage’.

5. Impediments to marriage according to the New Civil Code

Besides the above analyzed substance conditions, largely mimicking the provisions of the previous settlement, articles 273-276 NCC address the impediments to marriage. These are factual and legal circumstances, which, if present, prohibit the marriage.

A first impediment is the status of a married person – bigamy. According to art. 273 NCC, ‘the conclusion of a new marriage by a married person is prohibited’, thus respecting the principle of monogamy, a fundamental principle in most modern laws. The failure to comply with it attracts civil and criminal penalties.

Marriage prohibition regards that person who, at the moment of the conclusion of the subsequent marriage, already has the quality of spouse which results from a previous marriage into being, in the sense that the first marriage has not been terminated by the death of a spouse, has not been dissolved by divorce or annulled on grounds of nullity. The disregard of the prohibition is sanctioned by absolute nullity of the second marriage.

The marriage is terminated by the physical or presumed death of a spouse. In the case of the judicial declaration of the presumed death, if the surviving spouse remarries and the decision is canceled due to the reappearance of the spouse, it remains valid provided that the spouses acted in good faith when the marriage was concluded, and the first marriage is terminated at the conclusion of the second.

In the case of dissolution of marriage by divorce, the quality of spouse is lost when the final decision on the dissolution of marriage is taken, the former spouses now being able to remarry.

If after the conclusion of the second marriage the first marriage is declared null or canceled, the subsequent marriage is valid because in marriage the effects of nullity are retroactive. The conclusion of several successive marriages is possible and permissible only if it does not lead to the existence of multiple marriages of the same person.

Marriage between relatives in a straight line and also between relatives in collateral line up to the fourth degree inclusively is also forbidden. However, for good reasons, marriage between relatives in collateral line of fourth degree may be authorized by the guardianship court in whose jurisdiction the person who asks for approval resides. The court may decide on a special medical opinion given in this respect. It can be noted that according to the New Civil Code, waiver of family is granted by the guardianship court, while in the Family Code, art. 6. par. 2, marriage between relatives of the fourth degree could be accepted by the Executive Committee of the People’s Hall of Bucharest or of the county in which the person who asked for the approval resided.

These provisions are also applicable in case of adoption. Therefore, in accordance with the New Civil Code provisions, marriage is prohibited both between persons who became relatives by adoption, and between those whose natural kinship stopped by the effect of adoption.

With regard to the relations resulted from guardianship, keeping the same regulation, according to art. 275 NCC, marriage is stopped between the guardian and the minor

person under tutelage. The guardianship ceases once the full capacity to exercise is attained by the minor person, the marriage with the former tutor having been prohibited up to that point.

A final impediment refers to the state of debility, temporary insanity or lack of mental faculties⁴. According to art. 9 of the Family Code, the abalienated, the mental impaired and also the one who was temporary deprived of mental faculties were prohibited to get married as long as their actions had no discernment. The provisions regarding the abalienated and the mental impaired are identically formulated and are found in art. 276 NCC. These two states are a diriment impediment, its breach causing the absolute nullity of marriage and the person found in such a situation is not able to marry any other person on the grounds of permanent insanity, not even in moments of transient lucidity.

As for the second part of art. 9 of the Family Code, it is separately regulated in art. 299 NCC, although the normative content is identical. It was opted to treat these provisions in two separate texts as the penalties are different. Thus, the temporary lack of discernment can be sanctioned only with the relative nullity of marriage, and not with absolute nullity.

6. Format conditions for the conclusion of marriage

The format conditions are not essentially different from those previously established in the Family Code, being contained in articles 278-292 NCC and also in Law no. 119/1996 on civil status, articles 27-34, as amended by Emergency Government Ordinance no. 80/2011. Format conditions can be classified as: pre-marriage formalities, formalities for completion / celebration of marriage and post-marriage formalities.

6.1. Pre-marriage formalities

In their turn, pre-marriage formalities include several stages, namely: the mutual communication by the spouses of their health statements, the submission of the declaration of marriage, the publication of the declaration of marriage and verification of the validity conditions of the marriage project by the marital status officer.

According to the New Civil Code, the condition of mutual communication between the future spouses of their health status is provided as a format condition for marriage, unlike the Family Code, which lists it among the substance conditions. Still, the regulation is the same: the marriage is not concluded if the future spouses do not declare that they have notified each other of their health – art. 278, thesis I, NCC. This requirement is in close connection with ensuring the free and uncorrupted character of consent to

4 According to art. 211 of Law no. 71/2011 for the implementation of Law no. 287/2009 of the Civil Code: 'With respect to the Civil Code and to the civil law in force, by the expressions 'abalienation' or 'mental impairment' a mental illness or mental disability is understood, resulting in a person's mental incompetence to act critically and predictive with respect to social-legal consequences which may result from the exercise of civil rights and obligations'.

marriage. Each spouse, knowing the health of the other, can freely decide whether or not he/she wants to get married. This is completed by knowing the risks the spouses or their descendants could be exposed to because of the disease of one of the spouses.

The declaration of marriage is made by the future spouses personally, in writing, at the Community Local Public Service of People Records or, where appropriate, at the competent municipality, diplomatic mission or Consular Office where the marriage is to be concluded; for good reasons, if one of the future spouses is unable to travel to the Community Local Public Service of People Records or, where appropriate, at the competent municipality, the declaration of marriage can also be given outside the registered office (art. 28 of Law no. 119/1996). The declaration of marriage would include the unequivocal manifestation of the intending spouses' desire to marry, the mention that there is no impediment to marriage, the family name they will carry during marriage and, under the new provisions of the New Civil Code, the chosen matrimonial system. We specify that, if by their marriage the spouses would reconsider the matrimonial system, the declaration of marriage will be renewed.

With regard to the choice of name, according to art. 282 NCC, the future spouses may agree: to keep their name prior to marriage, to take the name of any of them, to both of them carry their joint names, and a last variant introduced by New Civil Code allows for the possibility for one of the spouses to decide to keep his/her name prior to marriage and for the other to carry both their names. Therefore, the legislature has responded to proposals from doctrine in the light of the European Court of Human Rights' jurisprudence in the field (art. 28 of Law no. 119/1996).

Together with the submission of the declaration of marriage, according to art. 28 par. 3 of Law no. 119/1996, the future spouses will have to submit their identity documents, birth certificates, medical certificates on their health and, where appropriate, the authorization of the guardianship court in whose jurisdiction the person who requires the consent for marriage resides, in the case of impediments resulting from natural or adoptive kinship, as provided by law, the medical opinion, the evidence of the consent of the parents or, where appropriate, of the guardian and the guardianship court's authorization in whose jurisdiction the minor resides, for the conclusion of the marriage, if there are impediments related to marital age.

Note that, unlike the marriage which can only be officiated at the city hall, the declaration of marriage can also be made outside the city hall, but only in the cases prescribed by law.

Article 283 NCC determines that, in the same day of receiving the declaration of marriage, the Registrar of Civil Status orders its publication, by posting an extract of the statement in a specially designed place at the city hall where the marriage will be concluded and on the website and, if applicable, at the city hall where the other spouse is domiciled or resident. The extract from the marriage declaration shall include: the display date, the civil status data of the future spouses and, where appropriate, the parents' or guardian's consent, and also the notice that any person may oppose the marriage within ten days from the display date.

The marriage is concluded ten days after the marriage declaration has been displayed, the term including both the display date and the date of the marriage. The mayor of the municipality, of the sector of Bucharest, of the town or commune where the marriage will be concluded may approve, for good reasons, the conclusion of marriage before the above mentioned time period, for example if the future spouse is a military on leave or the future wife is to give birth.

It can be noticed that the New Civil Code has a new provision, namely the display of the parents' or guardian's approval, if applicable. Therewith, as a novelty, art. 284 NCC introduces the renewal of the declaration of marriage, if the marriage was not concluded within 30 days after the publication of the declaration of marriage, or if the future spouses change their official statement. They will make a new declaration of marriage, ordering its publication.

The Registrar of Civil Status is obliged to ensure that the proposed marriage brought before him meets all the necessary conditions for the valid conclusion of the marriage, otherwise he is obliged to refuse the marriage celebration (art. 286 NCC). Any interested person may make intimations with regard to the failure to respect the requirements or the presence of impediments which bring the existence of a circumstance that may prevent the marriage conclusion to the registrar's notice. The declaration must be made in writing, stating the evidence underlying the opposition to marriage and it also has to respect the ten days deadline. Verifying the relevance of facts, the delegated registrar may adopt one of the following solutions: he may reject the opposition to marriage as being incomplete, or admit the opposition as a prologue of the refusal to conclude the marriage. Thus, according to art. 286 NCC, 'the registrar refuses to celebrate the marriage if, based on the verification he is required to make on the received oppositions or on the information he possesses, to the extent that the latter are notorious, he ascertains that the conditions provided by law are not carried into effect'. A third option for the delegated registrar is to postpone the marriage conclusion for a limited period of time, until the verification of the facts stated in the opposition to marriage takes place.

6.2. Formalities concerning the celebration of marriage

The second category of formalities is the one concerning the celebration of marriage. They are especially characterized by the solemnity of marriage, which consists of a set of conditions to be respected *ad validitatem*. Therefore, the marriage is concluded before an authority, respectively before the Registrar of Civil Status, at the town hall. By derogation from the rule, in the cases provided by law, the registrar may also conclude the marriage outside the registry office, but still respecting the condition of the personal and concomitant presence of the future spouses, assisted by two witnesses and also ensuring that the marriage is made public. Such cases are those when one of the future spouses is ill or dying or in the case of a disability of one of them.

As mentioned previously, the future spouses must be present in person and together at the marriage celebration in order to express their consent. This stage of marriage conclusion is done in the presence of two witnesses.

By differentiation from the provisions of the Family Code, the current legal provision includes a text specifically addressed to witnesses, namely art. 288 NCC. Thus, both their role and some special witnesses' ineligibilities are established: they attest the fact that the spouses have consented according to the rules imposed by law; the witnesses may also be relatives or in-laws, regardless of degree, with any of the future spouses, but those ineligible cannot be witnesses, together with those who, because of a physical or mental disability, are unable to fulfill their role properly.

One last aspect to be noted is about the public nature of the marriage conclusion which essentially means the free access of any person wishing to attend the ceremony, without the need for an actual presence of a specific audience.⁵

The persons belonging to national minorities can ask for a marriage celebration in their own mother tongue, provided that the registrar or the person who concludes the marriage speaks that language.

The marriage is concluded when, after the consent of each of the future spouses, the Registrar of Civil Status declares them married (art. 289 NCC).

6.3. Formalities after the conclusion of marriage

After the conclusion of the marriage, the registrar will be required to fulfill certain procedural formalities. He immediately prepares, in the register of civil status documents, the marriage document which is signed by the spouses – with the family name they have agreed to carry during the marriage, by the two witnesses and by the registrar. On the basis of the marriage document the registrar will issue the certificate of marriage. The marriage can be proved by these two papers even if there are some cases provided by law when it can be proved by any evidence. According to art. 103 NCC, these situations are those where there were no records of civil status, the civil status registers were lost or destroyed, totally or in part, it is impossible to procure the civil status certificate or the extract of the civil status document from abroad, or the civil status document was omitted or, in some cases, refused.

Given the current provisions on matrimonial systems, the registrar must note down in the marriage document the matrimonial system chosen by the future spouses. Subsequently, the registrar must by default and without delay communicate a copy of the marriage document to the National Notarial Register of Matrimonial Systems, and, where appropriate, to the public notary who certified the matrimonial agreement. We mention that the spouses may choose between the legal community system, the system of property separation and the system of conventional community. The conclusion of the matrimonial agreement, certified by the public notary is required in the case of choosing a system other than the one of legal community, the latter being the system which will be applied between spouses without this convention.

5 In this respect, the former supreme court decided under the auspices of the previous law – The Supreme Court, the Civil Section, Decision no. 443/1978, C. D. 1978, p 142.

7. Sanctions related to the failure to respect the conditions required by law for the validity of marriage: absolute and relative nullity

Another crucial aspect concerns the sanction of nullity that occurs when failing to respect the conditions required by law for the valid conclusion of marriage. Some of the cases of absolute nullity, regulated by the New Civil Code, are set out in art. 293 NCC and make reference to the conclusion of marriage with breaching provisions on: sex differentiation of the people between which the marriage is concluded, the monogamous nature of marriage, prohibition of marriage between relatives, marriage prohibition of the abalienated and mentally impaired, noncompliance with the conditions of publication and solemnity of marriage conclusion. Considering the mentioned cases and the previous regulation, it can be noted that the lack of sex differentiation, subject to the Family Code, represented just a virtual nullity, whereas in the current regulation it represents an express nullity. Moreover, as it was mentioned, in the situation of marriage of the abalienated and mentally impaired the absolute nullity intervenes; however, the lack of discernment is only sanctioned with relative nullity, as opposed to the regulation of the Family Code.

Another cause leading to marriage dissolution is provided by art. 294 NCC according to which the marriage concluded with the minor under the age of 16 years is null and void. However, the nullity of marriage is covered if, until a final judgment is made, both spouses turn 18 years old or if the wife gave birth or conceived. Here too, the New Civil Code distinguished between the marriage concluded with the minor under the age of 16 years, which is considered null, and the marriage concluded with the minor who turned the age of 16 years, but which was made without the consent required by law, the sanction being a relative nullity.

The absolute nullity also occurs in the case of a fictive marriage. However, according to art. 295, par. 2, NCC 'the nullity of marriage is covered if, by the time a final judgment exists, the coexistence of spouses occurred, the wife gave birth or conceived or two years have passed from the conclusion of marriage'.

We note that, through the New Civil Code, a series of virtual nullities subject to the Family Code became explicit nullities. At the same time, the absolute nullity of marriage for failing to publish the declaration of marriage provided by the Family Code was not assumed by the New Civil Code, being considered as an excessive situation.

The action for declaration of the absolute nullity of marriage may be brought by any person having an interest, and by the prosecutor only in the cases in which he/she acts to protect the rights of minors or of the persons under interdiction. By applying the rule of common law, unless the law provides otherwise, the absolute nullity may be invoked at any time, either by action or by way of exception. Thus, the action for declaration of absolute nullity of marriage is not subject to any limitation period.

As for cases of relative nullity of marriage, they are largely identical in the New Civil Code. Thus, the marriage is voidable at the request of the spouse whose consent was vitiated by error (as long as it falls on the physical identity of the future spouse), fraud or violence. At the same time, the marriage concluded by the person temporarily

deprived of discernment is also voidable. In all four cases, the term of six months within which the annulment of marriage can be requested flows from the cessation of violence or, as appropriate, from the date when the concerned party was aware of the fraud, error or of the temporary lack of discernment.

The annulment can also be invoked in the absence of a prior consent or authorization in the case of the marriage with the minor of 16 years. The proceedings may be brought only by the person whose consent was necessary, therefore by the parents or, where appropriate, by the parental authority, by the guardian, guardianship or by the person, respectively by the authority entitled to exercise parental rights. According to art. 301, par. 2 NCC, the limitation period begins to run from the date when those whose consent or authorization was necessary for the marriage conclusion became aware of it. However, marriage annulment is covered when the consent and authorizations required by law were obtained until the judgment became final.

The current legislation also brings some changes in terms of guardianship, transforming it from a prohibitive impediment into a diriment impediment. If, under the Family Code, the guardianship required sanctioning of the registrar who officiated the marriage by disregarding this impediment, the New Civil Code sanctions the conclusion of marriage between the guardian and a minor person under tutelage with relative nullity. The action term of six months starts from the date of the marriage conclusion.

Finally, in all the circumstances presented, in addition to the special causes of coverage of relative invalidity, two general causes are also provided. The relative nullity of marriage is covered if in the meantime both spouses have reached the age of 18 years or if the wife gave birth or conceived.

8. Legal effects of marriage in the New Civil Code

8.1. *Effects regarding personal relations*

Marriage produces a number of legal effects in addition to moral or social effects. The first category of legal effects considers the legitimacy of personal relations between spouses, generated by the rights of spouses, but also by their obligations to each other. It can be stated that personal relations between spouses underlie their relations, even when it comes to economic relations that complement personal relationships (Bodoaşcă, 2005, p. 115). Personal relations between spouses are governed by the principle of equality between men and women. In this respect, the New Civil Code reflects the provisions of art. 26 of the Family Code, reiterating in art. 308 NCC the co-decision principle. Thus, spouses must decide by agreement in all matters of marriage. However, the law does not specify what happens when spouses disagree. In principle, in this situation, the spouses cannot address the guardianship court to decide regarding any dissension, therefore they can get to divorce (Lupaşcu and Crăciunescu, 2011, p. 81).

The New Civil Code governs more clearly and more completely the personal rights and obligations of spouses, confirming what the Romanian law and jurisprudence implied in the Family Code (see, for example, Filipescu and Filipescu, 2006, pp. 52-53; Banciu, 2008, pp. 50-53). To enumerate, the spouses owe each other respect, fidelity and

moral support. These are completed by the duty of cohabitation and the conjugal duty, the latter duty arising from the nature of marriage, not being expressly consecrated previously in the Family Code or in the current regulation.

A final duty of spouses concerns their obligation to carry the name declared in front of the Registrar of Civil Status. We recall that spouses may keep the name carried before the marriage was concluded, may decide to carry the name of either spouse as a common name, they may adopt their joint family names as a common name or a spouse may decide to keep the name carried before the marriage and the other to carry their joint names. If the spouses have agreed to carry a common name during their marriage, none of the spouses may request a change of name by administrative means except with the consent of the other spouse. Also, the same will be done in the case of the adoption of one of the spouses (a person with full legal capacity may be adopted if, during minority, he/she was raised by the person willing to adopt). The spouses with different surnames can ask for a change of name by administrative action or they can change their name by the effect of adoption without having to receive the consent of the other spouse.

The New Civil Code, art. 310, also consecrates the spouses' independence, prohibiting censorship of correspondence, of social relations or the other spouse's career choice. Thus, none of the spouses has the right to control the social relations of the other spouse, which fall in the field of social privacy. At the same time, the spouse has no right to censor correspondence, the inviolability of correspondence covering not only the actual content of communications between people, but also the integrity of the communication means, destruction, detention, voluntary delay of delivery of correspondence, etc. being sanctioned; the respect of correspondence does not apply to the documents already received and kept by the recipient (Chiriță, 2007, pp. 449-450 *apud* Florian, 2011, p. 78). Eventually, professional independence implies each spouse's freedom to choose their profession, without any discrimination between man and woman.

8.2. *Patrimonial effects of marriage*

Besides the personal rights and obligations of spouses, marriage also generates a number of patrimonial rights and obligations. Traditionally and in a narrow, technical respect, the legal rules governing the relations between spouses and also the relations between them and third parties regarding the spouses' assets and liabilities, are designated by the phrase 'matrimonial regime' (Chiriță, 2007, pp. 449-450 *apud* Florian, 2011, p. 79). It must be noted that the matrimonial regime only deals with the pecuniary rights and obligations directly issued from marriage, some aspects such as sustenance, liberties or inheritance rights are not governed by it.

8.2.1. *Principles regarding the patrimonial effects of marriage*

The New Civil Code introduces a completely new and innovative regulation, going back to the principle of freedom of matrimonial conventions, the spouses are given the opportunity to organize the economic aspects according to their needs and

lifestyle. Since the regulation of matrimonial regimes is complex, requiring a detailed development, we will only briefly present some basic elements of great interest.

In their diversity, matrimonial regimes are governed by a number of general principles consecrated in most modern legal systems. These principles are also applicable to the matrimonial regimes in our legislation, and hence the patrimonial relations between spouses. A first principle is that of equal rights of spouses, a principle not only applied in pecuniary matters, but also generally in the relationship between spouses. With regard to patrimony relations, this principle is reflected by the fact that the spouses' property is, under the law, common or owned, without distinction of their acquisition or, where appropriate, they belong to the man or woman. In this respect, the spouses administrate, use and dispose together of the common assets, under conditions of perfect equality (Filipescu and Filipescu, 2006, p. 43 *apud* Lupașcu and Crăciunescu, 2011, p. 86).

The second principle provides spouses the freedom to choose and change the matrimonial regime. The New Civil Code provides that the spouses' discretion is limited. Specifically, a legal regime is established – the regime of property community and two types of conventional regimes – the separation of property regime and the regime of conventional community. The spouses can choose by matrimonial agreement between the separation of property regime and the regime of conventional community, the latter being applied if failing to agree. Regardless of the chosen matrimonial regime, they will have to meet a set of basic, fundamental and imperative rules applied to all marriages, rules that constitute the imperative primary regime.

During their marriage, the spouses can change the matrimonial regime chosen when they married; in this respect it is necessary to conclude another matrimonial convention. Thus, the spouses may change, by convention, the chosen matrimonial regime if at least one year of marriage has passed; this option is also conditioned by the requirement to respect the conditions provided by law for the conclusion of matrimonial conventions and by using all forms of publicity provided by law. The conventional change may be aimed at an integral change of the applicable matrimonial regime, but also at a partial change, aiming to modify just certain aspects of the applicable matrimonial regime (Filipescu and Filipescu, 2006, p. 43 *apud* Lupașcu and Crăciunescu, 2011, p. 178). The change of the matrimonial regime can also be achieved by legal means.

A final principle establishes the subordination of the matrimonial regime to the purpose of marriage and family interests. By correlation, the matrimonial convention is also a special causative act, being animated by a specific legal cause – *affectio conjugal*, its diversion from that purpose not being permitted.

8.2.2. Matrimonial regimes regulated by NCC

As mentioned previously, the New Civil Code regulates three matrimonial regimes. The spouses may choose one of these, which will be applied to their marriage. They cannot change or combine rules specific to the different regimes to form a new matrimonial regime. The spouses' option for the legal community regime or for the

regime of separation of property or, as appropriate, the conventional community regime will be expressed by the conclusion of a matrimonial agreement.

The matrimonial convention is the legal act by which the future spouses, making use of the freedom conferred by the legislature, establish, by their agreement, their matrimonial regime or they change, during the marriage, the matrimonial regime under which they were married (Crăciunescu, 2000, p. 11). With regard to the legal character of the matrimonial convention, this is a bilateral legal act which includes the prospective spouses' or current spouses' agreement on the matrimonial regime applicable to their marriage; it is a complex contract which may encompass several legal papers, however, each retaining its identity and legal characters (Crăciunescu and Berindei, 2010 *apud* Uliescu, 2010, p. 350); it is also a solemn writ, according to art. 330 par. 1 NCC it is authenticated by a public notary under the sanction of absolute nullity; it is a mutually binding paper, the obligations arising from it being mutual and interdependent; it is a special causative writ and finally, a public paper, the matrimonial agreement being inscribed in the National Notary Register of Matrimonial Regimes, required in order to ensure opposability against third parties.

Although the New Civil Code does not address the substance conditions to be met for the valid conclusion of the marriage convention, it is inferred that it is necessary for the parties to meet the same conditions as those required by law with reference to marriage but, unlike marriage conclusion, the matrimonial convention may be also concluded by a stakeholder with an authentic trust deed with a predetermined content (art. 30 NCC). The parties' capacity is required by law under the same conditions as for marriage, according to the *habilis ad nuptias, habilis ad pacta nuptialia* principle. The matrimonial convention must be completed in an authentic notary form, required *ad validitatem*.

The civil law provides a set of rules of general application, regardless of the matrimonial regime chosen by spouses. These rules are provided in the New Civil Code, Chapter VI – The Patrimonial Rights and Obligations of Spouses, in Section I – Common Provisions, forming the primary imperative regime.

a) **The primary imperative regime** represents the lowest common ground compared to the plurality of matrimonial regimes applicable in a national legal system (Vasilescu, 2003, p. 33). It includes a set of mandatory and essential rules, rules of an immediate applicability, regardless of the specific matrimonial regime of spouses, being aimed at protecting the marriage and balancing the patrimonial relations between spouses, adopting rules for both normal times of marriage and for times of marital crisis (Banciu, 2011, p. 21).

We will further present some new aspects covered in the section intended for the primary imperative regime.

A first aspect makes reference to the reformation of the institution of the tacit presumed mandate of the spouses, previously regulated in the Family Code. By articles 314-315, the New Civil Code introduces the conventional mandate, respectively the judicial mandate.

In the case of the conventional mandate, a spouse can give mandate to the other spouse and can represent him/her for the exercise of the rights under the matrimonial regime. Thus, representation can arise only from the actual will of the other spouse, the presumption of this will, as it was previously covered in the Family Code, being excluded. The conventional mandate is governed by the common law provisions on the mandate contract.

The situation is different in the case of the judicial mandate because the cases when it can be solicited are expressly provided by law, namely when one of the spouses is unable to manifest his/her will the other spouse may request the consent of the guardianship court to represent him/her in exercising the rights under the matrimonial regime. The judgment shall determine the conditions, limits and the validity period of this mandate. It can be considered that the legal mandate finds its application both when failure to manifest one's will is caused by a physical condition (for example, if one spouse is in a coma, paralyzed, etc., being unable to be validly express his/her will) and when it is caused by a social condition (long absence, imprisonment etc.). The judicial mandate terminates when the represented spouse is no longer unable to manifest a desire, or when guardianship or, where appropriate, trusteeship is established.

The New Civil Code, by art. 317, also brings novelties on the spouses' right of disposition of their assets, basically each spouse being able to conclude any legal documents with the other spouse or with third parties; certain prohibitions, such as that of the sale between spouses, are removed. Moreover, each spouse can have bank deposits and can make any other operations in this respect, without the consent of the other spouse. In relation to the bank company, the spouse who is also the account holder has the right to dispose of the deposited funds even after marriage dissolution, if by an enforceable judgment is not decided otherwise. These new provisions give spouses greater economic and social independence, each of them acting in accordance with their own needs without having to obtain the other spouse's presumed consent.

Along with the above mentioned provisions, each spouse is free to exercise a profession and dispose of its revenues, under the law and in compliance with its obligations with respect to the household expenses; the spouse who has actually participated in the other spouse's professional activity, beyond the limits of financial support and of the obligation to support the marriage expenses, may obtain a proportional compensation to the latter's enrichment; if not provided otherwise by law, each spouse may conclude any legal acts, both with the other spouse – for example a sale contract, a contract of employment – and with third parties (Florian, 2011, p. 94).

However, the legislator considered necessary to create a balance and to take certain measures to protect the spouses. Such a measure is regulated by art. 318 NCC, according to which each spouse can ask the other to inform him/her with respect to his/her assets, income and debts, and in case of an unjustified refusal, he/she may address to the guardianship court. The court may oblige the spouse of the person who made the complaint or any third party to provide the requested information and to submit the necessary evidence. Third parties may refuse to provide the requested information

when, according to the law, the refusal is justified by professional secrecy. When the information requested by a spouse can be obtained, according to the law, only at the request of the other spouse, his/her refusal to ask for the information gives rise to the relative presumption that the plaintiff spouse's allegations are true (art. 318 NCC).

The New Civil Code also introduced a series of newly established provisions regarding the notion of 'family home'. By the notion of 'family home' is understood the common dwelling of spouses or, in its absence, the home of the spouse where the children live. It should not be confused with the common domicile of the spouses, there being the possibility that the spouses have separate residences, but also a common dwelling, considered to be for the family. In the situation in which only one spouse lives with the children and the other spouse has a separate dwelling, only the first real estate has the function of family home.

Mandatory rules which did not exist in the previous legislation now protect the family home, this benefiting from a special protection if noted in the land registry book. The notation can be requested by either spouse, even if he/she is not the owner of the building. This protective system includes provisions that establish the limits and conditions for the exercise of the spouses' property rights with regard to family dwelling and to the furniture or decoration assets. Thus, according to art. 322 NCC, 'without the written consent of the other spouse, no spouse, even if he/she is the exclusive owner, may exercise any right with regard to the family home and neither can conclude legal papers which would affect its use'. Also, a spouse cannot move the furniture or decoration assets from the family dwelling and neither can he/she dispose of them without the written consent of the other spouse (art. 322 NCC).

Analyzing the text of the mentioned article and given the principle of *ubi lex non distinguit, nec nos distinguere debemus*, it results that the nature of the right, which may be real or of claim, is unimportant with respect to the family home. Therefore, it can be both about a property right, usufruct, habitation and about a right of claim under a lease contract. When consent is refused without a legitimate reason, being in the presence of an abuse, the other spouse may refer to the guardianship court, requesting the authorization to conclude the document.

The sanction for not respecting the legal requirements mentioned above consists in the annulment of the paper. The action for annulment may be brought by the spouse who has not consented to the conclusion of the paper, within one year from the date he/she became aware of it, but not later than one year after the termination of the matrimonial regime.

One last aspect we want to emphasize makes reference to the criteria of preference for assigning the common home in case of divorce, criteria that are expressly stated in the New Civil Code, unlike the Family Code. These criteria will be applied both to the assignment of the benefit of the lease contract of the property which is the family dwelling at the time of the marriage dissolution and to the assignment of the benefit of using the family dwelling which is a common good of the spouses but, in this case, until the division of the joint property. So, the first criterion to be considered by the

court is the best interests of the minor children. If this criterion cannot be applied, for example the spouses do not have minor children, the subsequent criterion provided by law is that of the fault in the marriage dissolution. In a last phase, the court will decide taking into account the former spouses' locative possibilities.

One has to bear in mind that the spouse who was given the benefit of the lease contract is obliged to pay the other spouse a compensation to cover the installation in another home, unless the divorce was pronounced by the exclusive fault of the latter. If there is common property, when the property division is made the compensation may be attributable to the share of the spouse who was given the benefit of the lease contract (art. 324 par. 2 NCC).

As in the regulation of the Family Code, the spouses have the obligation to contribute to the expenses of marriage, their contribution being established according to each spouse's means. However, the New Civil Code expressly provides that the work of any spouse in the household and for child raising represents a contribution to marriage costs. By art. 325, par. 3 NCC the existence and compliance with this obligation is reinforced, being settled that 'any agreement which provides that marriage expenses represent only the obligation of a spouse is deemed unwritten'.

In the following we will review the types of matrimonial regimes governed by the civil law.

b) **The regime of legal community** is governed by articles 339-359 NCC and is applicable when the spouses or future spouses do not choose another regime by matrimonial agreement and also in the case of the matrimonial convention nullity. This regime has not changed radically as a result of the entry into force of the New Civil Code, the new elements introduced mainly referring to the regulation and exercise of disposition rights, of administration and use of the spouses' property. As before, the patrimony active consists of the property acquired by either spouse, assets that are considered joint property starting with the date of their acquisition, plus, by exception, the spouses' own property, assets that are specifically listed by law.

One can notice the introduction of new categories of own property in comparison to the old regulations; therefore the following are also considered to be the spouse's property: the patrimony and intellectual property rights on his/her creations and on the distinctive signs he/she registered and also the fruits of the own property. It is also notable that according to the current regulation, the property acquired before marriage is no longer defined as an own good, because the spouses, by their agreement, may determine that the property acquired before marriage enters the category of common goods. Each spouse may freely use, administer and dispose of its own goods, under the law. By derogation from this rule, the spouse cannot conclude papers of disposition with reference to the family home without the consent of the other spouse, even if it concerns an own good.

As for the common property management, the rule consists in their parallel management so that any of the spouses can validly conclude, without the express consent of the other spouse, papers of conservation and administration, papers of use

and acquisition of common property, papers of disposition of onerous title regarding the common movable assets whose abalienation, by law, is not subject to certain publicity formalities, as well as regular gifts. It must be noted that if the interests of the spouse who has not consented, interests of common property, have been harmed by a legal act, it can only claim damages from the other spouse, without affecting the rights of third parties in good faith (art. 345 par. 4 of the New Civil Code).

The other spouse's consent is required for: the change of use of the common good, the disposition papers (consisting of papers of abalienation and encumbrance of real rights) of real estate, disposition papers by onerous title regarding the common movable property subject to registration formalities, disposition papers by gratuitous title regarding the movable property, except the usual gifts.

In terms of the passive patrimony, they are considered common debts, determining the spouses' accountability with their common property only the following obligations: those emerged from the conservation, management or acquisition of joint property; the obligations they have contracted together; the obligations assumed by either spouse for the ordinary expenses of marriage; the reparation of the damage caused by the seizure of one of the spouses on the assets belonging to a third party, provided that thereby the joint property of the spouses was increased.

c) **The separation of property regime** is an absolute novelty for the legislation in Romania, this regime being inexistent until the entry into force of the New Civil Code. It can be chosen by the parties by marital agreement both before marriage, when it produces effects from the date of marriage conclusion and during marriage, when it shall take effect from the date stipulated by the parties in the convention, or in the latter's absence, from the date the convention was concluded. It can also be ordered by the court as a result of the request of one of the spouses when the other spouse concludes papers seriously threatening the family's property interests, in which case the separation regime replaces the regime of legal community or the regime of conventional community.

This matrimonial regime is characterized by the fact that each spouse has exclusive ownership of the property acquired before the conclusion of marriage and of those acquired on its own after that date. However, the spouses are not forbidden to acquire common property, each spouse having exclusive ownership of its share, *prima facie* presuming the equal shares of the spouses, as opposed to the regime of legal community where the spouses have the joint ownership of the property acquired during marriage, without setting the share of each of them.

In terms of patrimony passives, both spouses are individually accountable for the assumed obligations and will be pursued by its creditors for their execution. None of the spouses may be required to have accountability for the obligations arising from the papers signed by the other spouse. Exceptionally, they may be solidary liable for the obligations of any of them to cover ordinary marriage expenses and those related to raising and educating children.

d) **The conventional community regime** is the last regime provided by the civil law, and it is built by derogation from the provisions of the legal community matrimonial

regime. Articles 366-368 NCC expressly and restrictively provide the areas that may be derogated from the legal matrimonial regime by convention. As a result of the binding nature of these provisions, any other clauses that would change the legal community regime will be null and void. Through these clauses, the spouses may choose from a wide range of aspects such as the common property which may be extended or restricted, the conditions of common property management, ways to eliminate the conventional community and the inclusion of the preciput clause. This last mentioned clause represents the agreement of the spouses or, where appropriate, of the intending spouses, contained in the matrimonial convention, under which the surviving spouse is entitled to take, without pay, before the partition of the inheritance, one or more of the common property, commonly or jointly owned.

9. Conclusions

Due to the major changes brought by the New Civil Code and analyzed within this article, we can argue that the NCC, which incorporates legal provisions regarding family relations, strives to become a modern instrument for the regulation of the fundamental aspects of the individual and social life, adapted to the present realities.

The adoption of the New Civil Code represented a necessary endeavor given the profound modifications taking place within the Romanian society and the accession process to the European Union followed by the need to harmonize the Romanian legislation with the existing legal regimes governing family relations from other EU member states.

During the rewriting of the Family Code, the institution of marriage has been redefined – both the conclusion and the dissolution of marriage have received new dimensions; the need for the state to support family as the central element of society was re-emphasized together with the state's intervention after the conclusion of the marriage through mechanisms which take into account the harmonious development of the family. Also, new legal institutions are regulated in the NCC – the engagement as a legal institution represents a novelty. A variety of matrimonial regimes were also introduced – the legal community regime, the separation of property regime, and the conventional community regime –, giving the spouses the possibility to choose the regime that best fits their family relations, offering them in the same time the possibility to organize their family life according to their standards and wishes. Certain prohibitions were excluded from the NCC – *i.e.* transactions between spouses.

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