MINISTRY OF NATIONAL EDUCATION
"LUCIAN BLAGA"UNIVERSITY SIBIU
UNIVERSITY OF DOCTORAL STUDIES INSTITUTE
DOMAIN – LAW

DOCTORAL THESIS SUMMARY

PRIMARY IMPERATIVE MATRIMONIAL REGIME IN REGULATION OF THE PRESENT ROMANIAN CIVIL CODE

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SIBIU
2017

THE DOCTORAL THESIS PLAN

INTRODUCTION

The doctoral thesis subject title (*The imperative primary matrimonial regime in the regulation of the current Romanian Civil Code*) was suggested by the analysis of the matrimonial primary regime imperative in some specialized papers in the Romanian doctrine, prior to the adoption and entry into force of current Civil Code (2009).Practically, these works, even though they were based, in particular, on the provisions of the French Civil Code of 1804, prefigured Romania's current internal regulations on these legal provisions.Undoubtedly, the entry into force of the current Civil Code, which includes systematic provisions on the *Imperative Primary Matrimonial Regime*, was the decisive factor, in our option, to thoroughly analyze this topic.

Due to the absolute novelty of almost all the regulations in the field, the main objective of our scientific research consists in systematic and systemic logical and legal analysis of the provisions of the Romanian Civil Code (2009) regarding the imperative primary matrimonial regime.We consider that such an analysis is particularly useful for understanding, interpreting and correctly applying, in accordance with the legislator's intention, the regulations in the field, as well as for identifying possible aspects in order to improve and underlie possible *law ferenda* proposals.

We have also been concerned with identifying the sources of inspiration used by the Romanian legislator for various normative solutions, which are necessary both for the establishment of their logical and legal basis, but also for the effective capitalization of foreign doctrine and jurisprudence formed in time in the application of the respective regulations.

Last but not least, we paid special attention on investigating the reactions of Romanian doctrine and jurisprudence to the new regulations. In this respect, we understand to take advantages of works written by illustrious Romanian and foreign

doctrinaire infamily relations field of, such as I. Albu, Al. Bacaci, T. Bodoşcă, C. - V. Dumitrache, I. P. Filipescu, E. Florian, C. C. Hageanu, P. Vasilescu, G. Cornu, Ph. Malaurian and F. Terré. In the elaboration of the thesis the most frequently used are the books and studies published by the Ph.D supervisor, academic professor T. Bodoşcă.

In order to achieve these scientific objectives, I understood to use research methods specific to the doctrinal approaches in the field of legal sciences, especially the analytical, historical-teleological and comparative method.

In order to ensure the doctoral thesis a unitary and cursive character, as well as to provide a comprehensive picture of the subject, its theoretical and practical issues are grouped in four chapters, thus:The I-stChapter is dedicatedto the theoretical aspects regarding the matrimonial regime, contains six sections: general aspects of marriage, the definition of matrimonial regime, the primary matrimonial regime, the legal nature of matrimonial regimes, the matrimonial regimes, the classification of matrimonial regimes.The II-ndChapter on issues concerning the evolution of Romania's internal regulations regarding the juridical matrimonial regime has four sections: the genesis of the Romanian legal matrimonial regime, the legal matrimonial regime in the regulation of the Romanian Civil Code from 1864, the legal matrimonial regime in the regulation of the Family Code, overview on the regulation of the matrimonial legal regime in the current Civil Code;The III-rdChapter analyzes the patrimonial relations between spouses within the imperative primary regime regulated by the current Romanian Civil Code and includes six sections, such as: the independence of the spouses patrimonies, the spouses' obligation to inform each other, the mandate of the spouses for the exercise of patrimonial rights, act of alienation which seriously jeopardize family interests, family establishment, marriage expenses, work from the profession, right to compensation;

The IV- th chapteris dedicated for the selection, amendment, completion and liquidation of the matrimonial regime and it has six sections: the choice of the matrimonial regime, the matrimonial convention, the modification of the matrimonial regime, the termination of the matrimonial regime, the liquidation of the matrimonial regime.

Regarding the precipice provision, although it is placed in the general context of the matrimonial regime selection (article 333 Civ. C.), it has as its object only the *condominium goods of the spouses*. In fact, this clause is specific to matrimonial community regimes, being unspecific to the separation of goods regime. Given this normative situation, I considered that its treatment, in the general context of the imperative primary matrimonial regime, would go beyond the aims proposed by this doctoral thesis.

Key words: marriage, family, non-patrimonial effects, patrimonial effects, matrimonial regimes, primary imperative matrimonial regime, independence of patrimonies, matrimonial convention, patrimonial rights and obligations of the spouses, family establishment, change of matrimonial regime, liquidation of matrimonial regime

CHAPTER I
THEORETICAL PERSPECTIVES REGARDING JUDICIAL MATRIMONIAL REGIME

SECTION 1.1.
GENERAL CHARACTERS OF THE MARRIAGE EFFECTS

1.1.1.Preliminary remarks

Etymologically, the term marriage comes from combining the noun word*house* with the suffix-*ător* the sense of legal union, freely consented between a man and a woman, for the purpose of founding a family.

In the doctrine, this term is usually dealt with in several ways (fundamental right, legal act, ceremony, legal status, legal institution).

1.1.2. Overview of the effects of marriage

In agreement with those expressed in doctrine, the marriage conclusion generates multiple and complex relationships between those who conclude it, some of which are subject of legal regulations.

The proximate and the necessary marriage effect is the foundation of a family. Because of its essential character, the other effects of marriage, whether moral or patrimonial, between family members or between them and third parties, gravitate round it, being in a veritable legal relationship of *accessoriness* with it.Because of this *accessory relationship*, the other moral or patrimonial effects of marriage, on the one hand, are meant to support the family and, on the other hand, usually do not outlast the family dissolution.

We state that, at the time of thesis drafting, there is an initiative to revise art. 48 par. (1) of the Constitution, in terms of redefining the family.Practically, it is

intended to obtain a popular consensus to prohibit same-sex marriages in Romania. From a strictly legal point of view, the revision of the Constitution, in this respect, is also required to comply with the provisions of the international normative acts, which only recognize the right of man and woman to marry and to build a family.

Irrespective of whether they are non-patrimonial or patrimonial, relations between spouses are governed by the principle of legal equality, that is their ability to decide, by mutual accord, on all matters concerning the family.

The doctrine states the questions of the relationship between non-patrimonial rights and obligations, on the one hand, and patrimonial rights and obligations, on the other hand, underlining that non-patrimonial ones are essential for the family institution.

In Title II-nd (Marriage) of Book II-nd (Family) of the Civil Code, Chapter V-th is dedicated to *the rights and obligations of the spouses* (articles 307-311), and Chapter VI-th is intended *for the husband's rights and obligations* (article 312-372).

SECTION 1.2.
DEFINITION OF LEGAL MATRIMONIAL REGIME

In consensus with those expressed by doctrine, in order to substantiate a definition of this important legal institution of family law, the approach must folllow two plans, one etymological and the other legal.

The matrimonial regime subsumes all the patrimonial effects of marriage.

In the family law doctrine, for the "matrimonial legal status of spouses" many definitions have been formulated, which present some common elements: the matrimonial regime represents a set of law rules governing the patrimonial relations generated by the legal act of marriage; patrimonial relations mainlyconcern the spouses; third parties may also be impacted by the pecuniary effects of marriage.

In legal terms, according to the current Romanian Civil Code, the legal act of marriage produces two categories of effects: non-patrimonial and patrimonial. In particular, art. 307-311 Civ. C. regulates *the personal rights and liabilities of spouses,* and art. 312-372 Civ. C. *patrimonial rights and liabilities of the spouses* (Chapter VI-th of Title II-2nd (Marriage) of Book II-2nd (About the Family) Furthermore, some subdivisions of this chapter (articles 312-372) refer *expressis verbisto the matrimonial regime.*

Practically, with respect of this normative topography and the marginal terms mentioned, according to Romanian legislator judgement, *the legal matrimonialregime* consists only of the legal provisions governing *the patrimonial rights and obligations of the spouses.*

Accepting that *the patrimonial legal regime of spouses* is made up of norms regulating patrimonial relations, we can not reduce it only to the provisions of art. 312-372 Civ. C., which governs *the spouses's rights and obligations*. Indeed, the very brief analysis of Book II-2nd of the Civil Code (Family) reveals that other provisions of the Civil Code may also be included *in legal matrimonial status of spouses.*

According the afore-mentioned, we define the matrimonial legal regime of spouses as *the totality of law norms that mainly regulate the patrimonial rights and duties of spouses.*

SECTION 1.3.
GENERAL ASPECTS ON PRIMARY MATRIMONIAL REGIME

In doctrine, it was appreciated that regardless of the concrete matrimonial regime applicable to spouses and irrespective of the many matrimonial regimes that a particular legal system can regulate, there is a set of rules applicable in all cases.

This set of rules, emphatically called by some authors the *constitution of matrimonial regimes*, *represents the common and imperative law* of matrimonial regimes or the so-called primary imperative matrimonial regime.

In the academic literature, the primary imperative matrimonial regime has been defined as *a set of imperative and essential rules, of immediate enforcement rules, irrespective of the spouse's matrimonial regime.*

As far as we are concerned, we define the primary matrimonial regimeas *a set of rules, usually mandatory, applicable to all matrimonial regimes under which spouses can be married.*

SECTION 1.4.
PRINCIPLES OF MATRIMONIAL REGIMES

Regardless of the nature of matrimonial regimes, there are certain general rules that can be identified in any concrete matrimonial regime: equality of rights between spouses; matrimonial regime freedom of choice; mutability; the accessibility of the marriage regime in relation to the legal act of marriage.

SECTION 1.5.
CLASSIFICATION OF MATRIMONIAL REGIMES

1.5.1. Preliminary remarks

In Romanian doctrine, matrimonial regimes are grouped according to various criteria, such as: the degree of freedom allowed by the legal norms of spouses in choosing the matrimonial regime; matrimonial regimes'origin; the degree of malleability of the legal provisions governing them; the internal structure of matrimonial regimes.

1.5.3. Classification criteria

1.5.3.1. The degree of freedom allowed to spouses by legal norms classification criterion

1.5.3.2. The source of the matrimonial regime classification criterion

1.5.3.3. The degree of malleability of legal provisionsclassification criterion

1.5.3.4. Internal structure criterion

CHAPTER II
ASPECTS ON ROMANIA'S INTERNAL REGULATIONS EVOLUTION, REGARDING THE MATRIMONIAL JURIDICAL REGIME

SECTION 2.1.
GENESIS OF THE ROMANIAN LEGAL MATRIMONIAL REGIME

2.1.1. Overview of the matrimonial regime in Roman law

Under Roman law provisions, the matrimonial regime was essentially influenced by the legal nature of marriage, as , *cum manu* or*sine manu.*

2.1.2. The matrimonial regime in the old Romanian laws

Basically, Calimach Code in Moldova and Caragea Code in Wallachia have taken over the previous regulations of *ius valahorum* (the tradition or the unwritten law) as regards the patrimonial relations between spouses.

From the patrimonial point of view, the woman was endowed by her parents in order to constitute a material support for the man who had the obligation to support the whole family.

2.1.3. *A brief historical retrospection on the matrimonial regime in Transylvania*

In Transylvania, among the Romanian spouses, the patrimonial relations were governed by *ius valachorum*, too.

Also, in Transylvania, Hungarian customary law, with its extremely complex content, has been transmitted to modern age and, anyway, it has the vocation to apply to Romanian people as well.

SECTION 2.2.
THE JURIDICAL MATRIMONIAL REGIME IN THE REGULATION OF THE ROMAN CIVIL CODE FROM 1864

2.2.1. General aspects

In terms of the analyzed topic, the Romanian Civil Code of 1864 marked the shift from customary law to written law.

Surprisingly, the Romanian legislator did not take over from the French Civil Code the legal matrimonial regime, too. From matrimonial regimes point of view, the only common aspect between the two codes is the *dowery matrimonial regime.*

The provisions of article 1224 old Civil Code established the principle of freedom of matrimonial conventions. The matrimonial regime was established prior to the moment of marriage and could not be modified, by convention, during the marriage.

The matrimonial regimes established in the old Civil Code were free, immutable, and the legal common law regime was a separatist type. Practically, the Romanian Civil Code of 1864 established an apposition between the Romanian tradition, previously strongly settled in the Calimachus Code and Caragea Law, as well as that time legislation's requirements. As noted in the doctrine, the only notable exception was the legal consecration of the marital woman's incapacity of rights exercise.

2.2.2. Legal matrimonial regime

2.2.3. The dowery matrimonial regime

2.2.4. Attainments fellowship

SECTION 2.3.
MATRIMONIAL JURIDICAL REGIME IN REGULATION FAMILY CODE

In spite of some harsh criticism to which the Family Code has been subjected, he established *expresses verbis* a set of principles that are applicable in terms of patrimonial relations, which shows its superiority in relation to previous regulations: marriage and family protection, as well as defense of child's interests (art. 1 par. (1)]; equality of rights between men and women (art. 1 par. (3) and art. 25]; the exercise of parental rights only in child's interest (art. 1 par. (4)]; legal equality of spouses (article 26).

Regarding the spouse's matrimonial regime governed by the Family Code (articles 30-36), it was an exclusively legal one. In fact, spouse did not have the legal possibility to submit to another marriage regime, to a legal or a conventional one.

The matrimonial regime governed by the Family Code was, not only a unique legal matrimonial regime, but it was also exclusively a legal regime of the community of goods, unique, obligatory, immutable and inflexible.

Under this matrimonial regime, according to the Family Code, the rule was the *condominium property of the spouses* (art. 30 par. (1)) and the exception of each of them *own goods* (article 31). To emphasize the imperative nature of art. 30 par. (1) provisions of the Family Code, par. (2) of the same article clearly stated that *"any contrary convention is null"*.

As a consequence of legal goods community, the Family Code has limitatively regulated six categories own goods. Due to the limitative enumeration provided by art. 31 of the Family Code, and also the injunction provided by art. 30 par. (2), the conventions by which the spouses would have included in the community of goods assets belonging to own property or, on the contrary, they would have considered that certain goods of their own are common goods were struck by absolute nullity.

Finally, the legal regime of the community, in the regulation of Family Code was reduced only to the future property of spouses.

The matrimonial regime ceased to exist as early as the date of the dissolution of the marriage, regardless of the fact that it was the result of nullity or annulment or cessation or divorce.

SECTION 2.4.
OVERVIEW ON REGULATION OF LEGAL MATRIMONIAL REGIME IN THE CIVIL CODE

Regarding the regulation of matrimonial regime in the current Civil Code, the national legislator took as inspiration source the French Civil Code and the Civil Code of the Québec Province.

In particular, Chapter VI-th of Title II-nd (Marriage) of Book II-nd (Family), under the marginal name "spouse's rights and obligations" (article 312-372), contains a set of rules on the matrimonial regime, which, applies overall to all married persons irrespective of the marital regime under which they are married.According to some assessments of the academic literature, these represent *the basic patrimonial status* (or, in other words, *the imperative primary matrimonial regime*) whichaccording to the Civil Code includes thefollowing aspects: *the matrimonial regime in general* (article 312 320) *family establisment* (article 321 324) and *marriage expenses* (article 325-328).So, these rules do not constitute a distinctive patrimonial regime, but have the role of establishing *a body of fundamental*, imperative and common rules applicable to any of the matrimonial regimes envisioned by law.

Under the marginal term of the *matrimonial regime selection* (article 329-338), the Civil Code regulates the conditions under which the matrimonial convention can be concluded and its forms of publicity, after which it presents the

three matrimonial regimes: the legal community regime (article 339-359 C. civ.), the separation of goods regime (article 360-365 C. civ.) and the conventional community regime (article 366-368 C. civ.).

Finally, the conventional (article 369 C. civ.) or judicial (article 370-372 C. civ.) amendment of the matrimonial regime is regulated. In the context, we underline that, within the proposed thesis, we have found it appropriate to consider the amendment, cessation and liquidation of matrimonial regimes, since the provisions devoted to these institutions have an obvious general character, of common law.

In terms of the patrimonial effects of marriage, the current Civil Code contains some novelties which, according to some doctrinal viewpoints reveals its superiority in relation to the previous regulations in the field.

CHAPTER III
PATRIMONIAL RELATIONSHIPS BETWEEN SPOUSES IN THE IMPERATIVE PRIMARY REGIME, REGULATED BY PRESENT ROMANIAN CIVIL CODE

SECTION 3.1.
INDEPENDENCE OF SPOUSE'S PATRIMONY

3.1.1. The meaning of the patrimony term

Traditionally, in the Romanian doctrine, the patrimony is defined as "all rights and obligations that have economic value, belonging to a person".

Currently, art. 31 par. (1) C. civ. consecrates patrimony to express definition. In particular, according to this text, "any natural person or legal person is the owner of a patrimony that includes the rights and liabilities that belong to him/her andcan be valued in money".

We note that of the two elements that come into good contents, only the rights are included in the patrimony, and things are excluded. Indeed, art. 535 C. civ. envisages that "goods are tangible or intangible assets, which represent the object of a patrimonial right". Basically, there is the question of logical and legal basis of this novelty. In our opinion, the solution is justified by the legislator's concern not to create situations where the same assets are included in two or several patrimony.

From the definition given by art. 31 par. (1) C. civ., together with the fact that it represents *a juridical universality*, can reveal four essential features, namely: *personality, inalienability, universality and uniqueness.*

3.1.2. Independence of spouse's patrimonies in the regulation of the Romanian Civil Code of 1864

In consensus with those appreciated in the academic literature, *the principle of spouses patrimonial independence* represents an innovation for Romanian law, although its necessity has been frequently asserted in doctrine under the old Civil Code and the Family Code. We underline that the provisions of art. 106 - Family Code only stipulated the independence of the children's and his/her parents' patrimony.

The old Civil Code, in the context of the regulations enacted by dowery matrimonial regime, regulated the wife's right to demand the separation of patrimony, according to art. 1256 *et sequens*. However, between patrimony independence as a principle of patrimonial relations between spouses and the separation of patrimony covered by the provisions of art. 1256 et seq. of the old Civil Code can not be set the sign of identity. Therefore, the principle of patrimonial independence represents the benchmark for all matrimonial regimes. On the other hand, in the old regulation, the separation of patrimony was applicable only within dowery marital regime.

In a timid attempt to implicitly affirm the principle of the spouses' patrimonial independence, under the provisions of old Civil Code, by way of exception to freedom of legal acts concluding, respectively from the irrevocability of donations, the sale-purchase contracts between the spouses were forbidden, and the donations between them were declared revocable.

3.1.3. Independence of the spouses' patrimony in the regulation of the Romanian Civil Code

The status of a married person should not hinder one's participation to the civil circuit.

The current Civil Code, by art. 317 C. civ. provisions, establishes *expressis verbisthe principle of spouses' patrimonial independence*. In particular, according to art. 317 C. civ., "Unless otherwise provided by law, each spouse may conclude any legal acts with the other spouse or with third parties" (para. (1)]. In the particularity of this principle, "each spouse has the right to make, without the consent of the other spouse, bank deposits, as well as any other transactions in connection therewith" (para. (2)]. Also, hereinafter the provisions of art. 317 (2), state that "in relation to the banking unit, the spouse who is titular of the account has, even after marriage dissolution or cessation, the right to dispose of the deposited funds, unless by enforceable decision the court has otherwise decided" (par.(3)].

As stated in by doctrine, basically, the provisions of art. 317 C. civ., contrary to their categorical marginal name "the patrimonial independence of spouses", only suggests that each spouse has its own patrimony, distinct from the other's patrimony. That idea arises implicitly from the possibility for each of them to conclude any legal acts with the other or with third parties. Therefore, the legislator focused on the consequences of patrimonial independence, avoiding to envisage *expressis verbis* that each spouse has its own patrimony, distinct from the other spouse's patrimony.

3.1.4. Presumption of bank deposits

Art. 317 para. (2) and paragraph (3) C. civ. establishes *the banking presumption*, a phrase inspired by the French doctrine, rather art. 221 of the French Civil Code and art. 218 of the Belgian Civil Code.

The reason for the *banking presumption* introduction, in the Romanian legal system, consist of the legislator intention to simplify the banking circuit and to remove the responsibility of the depositary, which is thereby dispensed of the

obligation to make inquiries regarding the nature of deposited sums or of the matrimonial regime under which the person of the depositor stays.

SECTION 3.2.
THE SPOUSES MUTUAL LIABILITY TO INFORM EACH OTHER

As an absolute novelty for the patrimonial relations between spouses in the Romanian legal system, art. 318 C. civ., under the marginal title "right to information", establishes some rules on the right of each spouse to request the other spouse to inform him/her about his/her goods, income and debts.

"Right to information" is a legal institution capable of operationalizing the sincerity of patrimonial relations between spouses, as essential aspect for the fidelity obligation fulfillment, provided by art. 309 C. civ.

SECTION 3.3.
THE SPOUSES MANDATE FOR THE EXERCISE OFECONOMIC RIGHTS

3.3.1. Preliminary remarks

The Civil Code regulates the conventional mandate (article 314) and the judicial mandate (article 315) of the spouses for the exercise of patrimonial rights.

3.3.2. Conventional mandate

The conventional mandate of the spouses is regulated by art. 314. However, being in the presence of a conventional mandate, as long as the provisions of art. 314 C. civ. do not expressly derogate, the provisions of art. 2009-2071 C. civ, as common law of *mandate contract*, are still applicable. Being in the presence of a

conventional mandate with representation, this stays also under the provisions of representation applicable to contracts, according to art. 1295-1314. In addition to generic reference to *rights exercise,* the mandate provided for, under these circumstances, is a general mandate. As a consequence, it is subject to the requirements of art. 2016 C. civ. In particular, under this mandate, the trustee spouse can only carry out acts of conservation and administration [(para. (1)]. Instead, in order to enforce acts of alienation or mortgage, transactions or trade-off, in order to be bound by bills of exchange or promissory notes or to bring legal actions and to conclude any other alienation acts, the trustee spouse must be expressly invested with [para. (2)].

3.3.3. Judicial amendment

Art. 315 C. civ., in some wise inspired by art. 219 French Civil Code "If one of the spouses is unable to manifest his will, the other spouse may ask the guardianship court to consent to represent the unable spouse' exercise of rights, according tomatrimonial regime they stays under [paragraph (1), sentence I].By the pronounced decision, the terms and the validity period of this mandate are ascertained[para. (1) and II-a)]. Except in other cases provided by law, the mandate ceases when the represented spouse is no longer in the situation stipulated in par. (1) or when a tutore or a guardian is assigned [para. (2)]. The provisions of art. 346 and 347 are applicable accordingly "(par. (3)].

The judicial mandate governed by the legal texts reproduced concerns both the interest of the trustee who, owing to the situation of his/her spouse, who is unable to exercise certain rights and to conclude legal acts togheter with him/her and the protection of her husband inability to manifest their will. Indeed, for the husband in this situation, the judicial mandate acts as a protective measure. This is the only reason why this mandate ceases *de jure* when a guardian or curator is appointed.

SECTION 3.4.
ACTS OF ALIENATION WHICH ENDANGER FAMILY INTERESTS

Art. 316 C. civ., under the marginal title "acts of disposition seriously endangering the family interests", regulates the conditions in which the guardianshipcourt may decide that one of the spouses may dispose of certain goods within a determined time period only with the express consent of the other spouse. Thus, under art. 316 par. (1) sentence I C. civ., "if one of the spouses concludes legal acts seriously endangering the family interests, the other spouse may request theguardianship court that for a certain period of time, the right to dispose of certain goods may be exercised only with his express consent ".

Because the cited text generally refers to *legal acts*, the doctrine has appreciated that these acts may be of use, administration, conservation or alienation,acts of valuable consideration or voluntary settlement. The compulsory requirement for all acts concluded by one of the spouses is to seriously jeopardize the family interests.

SECTION3.5.
FAMILY ESTABLISMENT

3.5.1. Preliminary remarks

As absolute novelty for the Romanian legal system, art. 321-324 C. civ. regulates a special legal regime for the family dwelling, as well as for the goods that furnishes or decorates it.

Establishing a special legal regime for family dwelling denotes, with the power of evidence, the major importance the legislator grants to it.

3.5.2. The legal significance of the expressions family establisment and the goods that furnishes or decorates it

3.5.2.1. Definition of familyestablisment

The family dwelling has been defined as a building, consisting of one or more living rooms, with the necessary outbuilding,facilities and utilities, in which the spouses or the spouse along with the children actually live.

From the point of view of its legal nature, it was appreciated that the common dwelling of spouses may be their common property, one of them property, or even may be leased or held with any other title (use, usufruct, etc.) by both or only one of spouses.

3.5.2.2. The goods that furnish or decorate the family establishment

Goods that move or decorate family dwelling are subject of special restrictions, in the sense of *circulation* and *alienation* provisions related to them.

The special legal regime of acts dealing with such goods was determined by their major importance for the daily living of family members.

3.5.3. Juridical acts relating to the family establisment and the goods that furnishes or decorates it

3.5.3.1. Legal acts on family establisment

According to art. 322 par. (1) C. civ., "Without the written consent of the other spouse, none of the spouses, even if he/she is the singular owner of the dwelling, can not dispose of family dwelling rights (sentence I) and can not conclude acts that would affect the use it "(second sentence).

In case, the titular of the right of property on the family dwelling is one of the spouses, the restriction provided by art. 322 par. (1) C.Civ. establishes, in fact, a restriction of right exercise.

As far as *acts affecting the use of the dwelling* are concerned, because of text's lack of distinction, in relation to their legal nature, we should admit that they may be acts of disposal, administration, use and conservation.

However, when comes to acts that partially affect the use of family dwellings, they fall into the second sentence, of the afore-mentioned article. On the other hand, those that affect entirely the use of family dwellings fall into the category provided in thesis I, of the same article.Another interpretation would lead,in this respect, to superposingof the second thesis with the first thesis of the art. 322 par. (1) C. civ., and in this manner the realization of a parallelism, contrary to the elaboration of normative acts tehnique.

Regarding the legal nature of the acts provided by art. 322 par. (1) C. civ, the question is whether they are *material acts or legal acts*, or they may be of both categories. As far as we are concerned, we consider it to be exclusively legal acts. Indeed, this is the only explanation why art. 322 par. (4) C. civ gives to the spouse who has not given his/her consent the faculty to request act annulling.

Regardless of whether they are alienation acts or acts that affect the use of the dwelling, in order to be valid, the written consent of the non-participating spouse is required upon their conclusion, according to art. 322 par. (1) C. civ.

3.5.3.2. Legal acts relating the goods that furnish or decorate family establisment

According to art. 322 par. (2) C. civ., "A spouse also can not move the assets that furnish or decorates the family dwelling and can not dispose of them, without the written consent of the other spouse."

In the case governed by this text, the written consent of the other spouse is necessary to move from home or dispose of goods that move or decorate the family home. Per a contrario, the written consent of the other spouse is not required for other legal acts, such as those affecting the use of these goods.

In the case governed by this legal text, the written consent of the other spouse is necessary to move outside the dwelling or to dispose of goods that furnish or decorate the family home. Per a contrario, the written consent of the other spouse is not required for other legal acts, such as those affecting the use of these goods.

3.5.3.3. Common issues related to family establisment and the goods that furnish or decorate it

Art. 322 para. (3) - (6) C.C. regulates the cases when the consent of a spouse is refused without legitimate reason, the possibility of the spouse who did not consent to the annulment of the act and also the lack of markingthe family dwelling in the cadastral register.

3.5.4. Spouse's rights over rented accommodation

Temporally, the locative rights of the family members on the rented dwelling have been the subject of interesting doctrinal disputes, fueled by the ambiguity, gaps and sinuous evolution of legislation in the field.

Unlike Law no. 5/1973 on the locative fund administration and the relations between owners and tenants regulation, The Dwelling Law no. 114/1996 does not contain special rules on the rental agreement. Therefore, at present, the lease is subject to the rules of the common law, provided by art. 1824-1835 C. civ. (private rules in the field of rental housing), in the context of the lease contract (article 1177-1850 C. civ.).

At present, the dwelling rights of the family members on the rented establishment are regulated, in particular by art. 323 C. civ. provisions, and, as a general rule, by art. 1824 et seq. C. civ. If both spouses are the owners of the lease contract and the lease contract has occurred before or during the marriage, there are no special legal problems, which is why the Civil Code, in the context of family

dwelling regulations, does not specify *expressis verbis* this hypothesis. In fact, the fact that, in this hypothesis, each spouse has locative rights over rented dwellings, results quite easily from *a fortiori* interpretation of art. 323 par. (1) C. civ. provisions.

When the contract is concluded before marriage by one of the intended spouses, during marriage he/she continues to be the only "tenant of the lease". In return, if the contract is concluded before the marriagetogether by future spouses, during the marriage both spouses will continue to be holders of dwelling lease contract.

Regardless of when the dwelling is rented under art. 323 par. (1) C. civ., each spouse has his/her own locative right, even if it is not party of lease contract. Obviously, this right derives from law and it is essentially determined by the status of spouse of the contract holder.

According to art. 323 par. (3) C. civ., "In the event of the death of one of the spouses, the surviving spouse shall continue to exercise his locative right, unless he expressly resign it, within the time limit provided by art. 1834 ". Even if art. 323 par. (3) C. civ. refers only *to death*, this clause is the incident both in case of death physically determined, and in case of the judicial declaration of death, under the provisions of art. 49-57 C. civ. and art. 944-951 C. pr. civ.

3.5.5. Adjudgement of lease contract benefit of family establisment, as common property of spouses

Art. 324 C. civ., under the marginal title “Adjudgementof lease contract benefit", establishes the special legal framework applicable toadjudgement of lease contract benefit, in the case of divorce. Furthermore, pursuant to par. (4), the provisions of paragraph (1) to (3) shall apply, in the same way, if the family home is the common property of the spouses.

Under this last aspect, the only difference between the attribution of lease contract benefit and the assignment of the common dwelling is that the former is final and the last temporary.

SECTION 3.6.
MARRIAGE EXPENSES

3.6.1. Preliminary remarks

Under the marginal name "marriage expenses", the Civil Code regulates the following aspects: Spouses' contribution (article 325); Housework in family establishment (article 326); Income from professional activity (article 327); The right to compensation (article 328).

3.6.2. Patrimonial obligations of spouses

According to art. 325 C. civ., "The spouses are obliged to provide mutual material support [para. (1)]. They are obliged to contribute, in relation to each one's means to marriage expenses, if the matrimonial convention has not stipulated otherwise [para. (2)]. Any convention stipulating that the cost of marriage falls only on one of the spouses, is considered to be unwritten "[para. (3)]. So, this article, even though it has the marginal name "spouses' contribution", in fact regulates two distinct patrimonial obligations: "material support liability"; „contribution to the expenses of marriage liability".

3.6.3. Housework in the family establisment

The Romanian legislator, aware of houseworkimportance in the context of the spouse's contribution to marriage, found it appropriate to devote it a distinct

regulation. Thus, according to art. 326 Civ. C,, "Any spouse housework and activity for raising children represents a contribution to marriage expenses."

Topography art. 326 Civ. C., in the general context of marriage patrimonial effects, concludes that its provisions are incident for all matrimonial regimes governed by the current Romanian Civil Code.

The provisions of art. 326 Civ. C. have taken a substantiated solution in the specialized doctrine and established in jurisprudence under the empire of the Family Code. The analysis of the normative content of art. 326 Civ. C. reveals that it concerns two categories of work (work): housework and child raising.

SECTION 3.7.
INCOME FROM PROFESSION

According to art. 327 Civ. C., "each spouse is free to exercise a profession and to dispose, according to the law provisions, of the income received, in compliance with his obligations regarding marriage expenses." We specify that the text of this article is a translation of art. 223 French Civil Code.

Although article 327 Civ.C is set under marginal title "income from professional activity" it refers to "the spouse's freedom to practice a profession" and "his/her right to dispose of the income earned". *A fortiori*, the freedom of profession implies not only spouse's right to practice a certain profession, but also his/her faculty to freely choose the profession. Practically, under art. 327 Civ. C. I-st thesis a spouse can not oppose the other spouse the decision of the other husband to choose and practice a certain profession.

SECTION 3.8.
THE RIGHT TO COMPENSATION

Art. 328 C. civ., inspired by art. 165 of the Swiss Civil Code provides that "a spouse who has effectively participated in the other spouse's professional activity may receive compensation, in so far, as the latter is enriched, if the participation has exceeded the limits of the material support obligation and the obligation to contribute to the cost of marriage ". The right to compensation is based on the unjust enrichment of the spouse who is entitled to the actual participation of her husband in his/ her professional activity. In this manner, if art. 328 Civ. C does not provide otherwise, the specification of art. 1345-1348 Civ. C., as a common law are applicable.

Forright to "compensation birth", according to art. 328 Civ. C., three requirements have to be fulfilled cumulatively, namely: there must be an effective participation of one spouse to the professional activity of the other spouse; the participation has to exceed the limits of the material support obligation and the obligation to contribute to the expenses of the marriage; the participation of one spouse to the professional activity of the other spouse has led to latter enrichment.

CHAPTER IV
SELECTION, AMENDMENT, COMPLETION AND LIQUIDATION OF THE MATRIMONIAL REGIME

SECTION 4.1.
SELECTION OF THE MATRIMONIAL REGIME

4.1.1. Preliminary remarks

According to art. 312 par. (1) Civ. C., "future spouses can choose as a matrimonial regime: the legal community, the separation of goods or the conventional community" [para. (1)]. "Regardless of the chosen matrimonial regime, one may not derogate from the provisions of this section unless otherwise is provided by law" [para. (2)].

The selection of the matrimonial regime can not be assimilated to matrimonial convention conclusion. Indeed, the selection concerns all the modalities of the matrimonial regime, including that of the legal community. Instead, the conclusion of the matrimonial convention is only necessary if the future spouses opt for the regime of the conventional community or the separation of goods.

4.1.2. Matrimonial regime date of the effects

The date from which the chosen matrimonial regime produces effects must be analyzed differently, as the effects occur in relation to spouses or third parties. Between the spouses, even if the selection of matrimonial regime is recorded in the marriage declaration or, as the case may be, the matrimonial convention is concluded before the marriage ends, the matrimonial regime takes effect only starting with the day of the marriage, 313 par. (1) Civ. c. Instead, to third parties,

the matrimonial regime is enforceable from the date of publicity formalities fulfillment, unless they have known from a different source. In this respect, the provisions of art. 313 par. (2) Civ. C. are unequivocal.

SECTION 4.2.
MATRIMONIAL CONVENTION

4.2.1. Preliminary remarks

Now, as has already been said, the choice of a marital regime other than that of the legal community involves the conclusion of a matrimonial convention by future spouses.

4.2.2. Definition of matrimoniale convention

Although many texts of the Civil Code refer to the matrimonial convention, they do not consecrate to define it. As a consequence, it is up to doctrine of the field to carry out this approach. Under the Civil Code of 1864, the Romanian doctrine in the field reserved numerous definitions to matrimonial conventions. In recent doctrine, some authors have defined the matrimonial convention as "the solemn legal act by which the future spouses choose or modify the matrimonial regime applicable during their marriage." This synthetic definition contains the main legal characters of the matrimonial convention, its parties, its object and its duration. However, we note that the definition only evokes *the change in the applicable matrimonial regime*. Obviously, in order to be amended, the matrimonial regime must be established beforehand. Personally, we define the matrimonial convention as *the solemn legal act by which the future spouses or spouses decide on the matrimonial regime and by which they materialize their patrimonial rights and obligations during their marriage.*

4.2.3. The legal characters of the matrimonial convention

The matrimonial convention has the following legal characters: legal bilateral act, complex, causal, *intuitu personae*, sinalagmatic, solemn, simply and solely, accessory, and opposed *erga omnes*.

4.2.4. Matrimonial convention constraints of content

4.2.4.1. Subject of the matrimonial convention

Common law, according to art. 1225 Civ. C, "the object of the contract is the legal transaction, such as sale, lease, loan and other alike, agreed by the parties, as evidenced by all contractual rights and obligations."

In the case of the matrimonial convention, it can not be said that its object shall be a legal transaction, as such. In fact, the subject of the matrimonial convention is either the future spouses choice of another matrimonial regime than that of the legal community, or the replacement of the matrimonial regime under which they are married.

4.2.4.2. The capacity of the parties

Parties to the matrimonial convention may only be future spouses or spouses, as appropriate, according to the classic Latin *ad habilis ad nuptias, habilis ad pacta nuptiala.* Instead, others are excluded from being considered as party of the matrimonial convention. In relation to this normative reality, the matrimonial convention can only be concluded by a man and woman who meet the legal conditions to marry, including those related to matrimonial age and exercise capacity.

4.2.4.3. Consent of the parties

Consent was defined as legal act's generic, essential condition of content, which consists in the decision of the subject of law to conclude, amend or extinguish a civil legal act, a decision which is externalized.

The consent, in order to determine the conclusion and validity of legal act, must meet certain general and compulsory requirements on any legal act, and some special requirements specific to certain legal acts.

The general conditions of consent are: to come from a person with discernment; to be expressed with intent to produce legal consequences; to be exteriorized; not to be affected by vices.

Instead, in case of matrimonial convention, art. 330 par. (1) Civ. C. only refers to the condition of being "expressed personally or by a trustee".

4.2.4.4. The cause of the matrimonial convention

Under common law, art. 1235 Civ. C., "the cause is the reason for each party to conclude a legal act". In this context, we reiterate that goal together with consent represent legal will. In order to be valid, the cause must exist, be licit and moral. Under provisions of art. 1238 par. (1) Civ. C., the cause's absence leads to the annulment of the legal act, unless the act was wrongly qualified and may produce other legal effects.

The cause of the matrimonial convention is the selection, amendment or change of a particular matrimonial regime. In this respect, for example, the provisions of art. 312, art. 329 and art. 369 Civ. C. may be interpreted.

4.2.5. Formal conditions of the matrimonial convention

In doctrine, the formal conditions of the matrimonial convention are classified into conditions established for matrimonial convention validity and conditions laid down for its opposability.

It is considered as necessary condition for the validity of matrimonial convention to be concluded in authentic form, by the public notary. In the second category of formal requirements we include the *enrollment of the matrimonial convention in the Notary Public Register of notary regimes.*

SECTION 4.3.
AMENDMENT OF THE MATRIMONIAL REGIME

4.3.1. Preliminary remarks

The current Civil Code, as a novelty, provides the possibility of modifying, during marriage time, the matrimonial regime under which spouses are married. Thus, art. 369 regulates the conventional amendment (by concluding a matrimonial convention), and art. 370-372 judicial modification (by court order).

4.3.2. Conventional modification of the matrimonial legal regime

Under art. 336 Civ. C., "the matrimonial convention may be amended before marriage conclusion, in accordance with legal conditions provided by art. 330 and 332 (I-st thesis I). The provisions of art. 334 and 335 are applicable "(II-nd thesis).

Instead, under art. 369 par. (1) Cic. C. provisions "after at least one year since marriage conclusion, the spouses may replace, whenever they wish, the existing matrimonial regime with another matrimonial regime or may modify it, in accordance to the conditions laid down by law regarding matrimonial conventions conclusion".

The text reproduced concerns two legal transactions, one of changing and another of replacing the marital regime under which spouses are married.

Regardless if change or replacement of matrimonial regime is intended, in the silence of the legislator, the spouses are not obliged to prove their reasons or to obtain the approval or authorization of any state authority. Simply, the two operations can be fulfilled because the spouses have decided to do so.

The amendment has the meaning of changing some rules of the existing matrimonial regime. Instead, replacement has the effect of changing the marital status under which spouses are married, to another matrimonial regime.

For both change and replacement of the matrimonial regime within marriage period, in order to be valid, two cumulative conditions must be fulfilled: one year of marriage to be passed; the conditions laid down by the law for matrimonial conventions conclusion to be respected.

4.3.3. Judicial modification of the matrimonial legal regime

4.3.3.1. General aspects

The judicial modification of the matrimonial regime is regulated by art. (370), the effects of separation between spouses (article 371) and its effects on third parties (article 372). Art. 370-372 Romanian Civil Code took over, in great measure, the normative solutions provided by art. 488-491 Civil Code of Francophone QuebecProvince.

4.3.3.2. Separation of goods conditions

According to art. 370 par. (1) Civ. C., "if the spouses' matrimonial regime is that of the legal or conventional community, the court may, at the request of one of the spouses, pronounce the separation of assets, when the other spouse concludes acts which endanger family's patrimonial interests. ". Regarding the requirement for spouses to be married under the regime of the legal or conventional community, *per a contrario*, the separation of goods can not be ordered when spouses are married under the goods separation regime. This is an innate solution, since under

the separation of goods regime, the spouses have no common goods in condominum, but only own goods and common goods on quotes. However, under this regime, the separation of goods already exists through the effect of the law.

For the court to admit the request for separation of goods, it is necessary one of the spouses to conclude acts that jeopardize the family's patrimonial interests.

4.3.3.3. Effects of separation of goods between spouses

Art. 371 Civ. C., under the marginal title "Effects between spouses", states that "the separation of goods pronounced by the court renders the previous matrimonial regime to cease, therefore the spouses to be subject of the matrimonial regime provided in art. 360-365 "[para. (1)]. "Between the spouses, the effects of the separation shall occur from the date of summons, unless the court, at the request of either of them, orders them to apply to them from the date of fact separation." [para. (2)].

The matrimonial regime cessation, determined by court granting of separation of the patrimony summons, is a special way, which is added to those enumerated by art. 319 par. (1) Civ. C., i.e, nullity, annulment, dissolution or termination of marriage.

Also, in case of matrimonial regime cessation, the provisions of art. 320 C. civ., according to which "the matrimonial regime is liquidated according to law provisions, amicably or, in case of difference, by judicial means".

4.3.3.4. Effects of the separation of goods in relation tothird parties

According to art. 372 Civ. C., (under marginal name ‘effects on third parties"), "the spouses' creditors can not demand the separation of goods, but they may intervene in case" [para. (1)].". The provisions of art. 369 par. (3) and (4) shall apply accordingly "[par. (2)].

Referring to art. 372 par. (1) Civ. C, when comes to the faculty of the spouses' creditors to intercede in the matter, without distinguishing the way of the intervention, we consider that it be, according to art. 61 and following. Civil Pr. C., in the form of intervention in one's own interest or in the interest of one of the parties.

SECTION 4.4.
CESSATION OF THE MATRIMONIAL REGIME

Art. 319 Civ. C., being placed in the context of *common regulations* regarding spouses' patrimonial rights and obligations (article 312-320), under the marginal title "Cessation of the matrimonial regime", stipulates in para. (1), the cases of matrimonial regime cessation and, in para. (2), evokes the possibility of changing the matrimonial regime during marriage, according to the law provisions.

Under art. 319 par. (1) Civ. C. provisions, the legislator determines matrimonial regime cessation by the declaration of nullity findings, anulling, dissolution and cessation of marriage. Also, as stated above, it determines the previous matrimonial regime cessation the court decision by which separation of goods is ordered, under the conditions of art. 371 Civ. C.

The legislator's solution to essentially conjoin cessation of matrimonial regimes to marriage abatingis innate, since the first institution depends on the mariage existence.

The date on which the matrimonial regime ceases to exist is different in relation to the status of those unto it takes effect, (that is to say, to spouses or third parties), and to the cause which determines it, namely the nullity or annulment of marriage, divorce or its cessation and patrimony separation.

SECTION 4.5.
LIQUIDATION OF THE MATRIMONIAL REGIME

Art. 320 Civ. C., being placed in the context of general provisions on matrimonial regime (articles 312-320), regularizesthe liquidation of the matrimonial regime. The current Civil Code also establishes other rules for matrimonial regime liquidation, which are of special applicability.

According to art. 320 Civ. C. provisions "in case of cessation or changing, the matrimonial regime is liquidated according to law provisions, amicably, or, in case of difference, by judicial process" (I-st thesis). "The final judgment or, as the case may be, the authenticated notarial document constitutes a liquidation act" (2nd thesis).

The expression „*to be liquidated*",has the afore-mentioned meaning, according to the Civil law provisions, which regulates various particular aspects of matrimonial regime the liquidation.

The current Civil Code dedicates a more detailed regulation to the liquidation of the legal community of goodsregime (articles 355 and 357).

Article 357 of the Civil Code regulates, on the one hand, *the liquidation of the matrimonial* regime and, on the other hand, *the partition*.

In turn, the liquidation of the matrimonial regime implies *the takeover of the own assets* and *the debt settlement.*

In case of *partition*, in the absence of special rules derogating from the common law, the provisions of art. 669-686 Civ. C., respectively of art. 984-996 Pr. Civ. C.

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CONCLUSIONS AND PROPOSALS FOR *LAW FERENDA*

Far from claiming a complete and perfect work in connection with the primary imperative matrimonial regime, we express the hope that the proposed thesis may be add on to scientific approaches in the Romanian doctrine, devoted to the in-depth analysis of the new regulations on patrimonial relations between spouses, being a modest contribution to understanding the legal norms in the field.

The elaboration of the doctoral thesis has given us the opportunity to find out that in the doctrine, sometimes bypassing the in-depth analysis of the provisions of the Civil Code, abuses of references to foreign doctrine. Regarding this, I noticed that the Romanian legislator, even if he used some foreign regulations when adopting the current Civil Code, did not take them ad literate. In fact, there are relatively many cases in which the internal normative framework has been capitalized or normative solutions based on the Romanian doctrine have been put into operation, or the takeover contains unprecedented aspects.

The elaboration of the doctoral thesis has given us the opportunity to find out that in the doctrine, sometimes avoiding the in-depth analysis of Civil Code provisions, law practician often abuses of references to foreign doctrine. Regarding this, we noticed that Romanian legislator, even if he used some foreign regulations when adopting the current Civil Code, did not take them *ad-litteram*. In fact, there are relatively many cases in which the internal normative framework has been capitalized or normative solutions based on the Romanian doctrine have been put highlighted, or the takeover contains inedit aspects.

Consonant with the objective of scientific research on the contribution to the improvement of those provisions that make up the legal imperative matrimonial regime, within thesis content, under the careful and qualified guidance of the doctoral supervisor, Ph. D. Teodor Bodoaşca, we have underlain a series of*law ferenda* proposals. We appreciate that our approach can be a basis for initiating

some doctrinal analyzes, having as object the normative subjects susceptible of improvement.

In the following lines, we find it helpful to present some of these *law ferenda* proposals:

- art. 314 Civ. C., regulating the conventional mandate of the spouses, refers exclusively to *rights exercise*, being excluded, *per a contrario*, from the *liabilities fulfillment*. As far as we are concerned, we also appreciate that fulfilling the obligations sometimes involves the conclusion of legal acts. Basically, in this respect, we are in the presence of a legislative gap which, by *law ferenda*, should be eliminated;

- in doctrine, it was noticed that art. 316 Civ. C. (Alienation acts which seriously endanger the family interests) generally refer to *legal acts*, without distinguishing in relation to their nature. As a consequence, it has been appreciated that these legal acts may be of use, administration, conservation or alienation, acts acts of valuable consideration or voluntary settlement. However, we note that art. 316 par. (1) I-st thesis C. civ., after referring generically to legal acts, refers to the *right to dispose*, a fact which reasonably supports the idea that such legal acts are exclusively *acts of alienation*. In fact, the marginal name of art. 316 Civ. C. confirms our interpretation. However, we appreciate that, from the practical point of view, the normative solution provided by art. 316 par. (1) Civ. C. is unreasonable. Therefore, legal acts of administration or preservation can be easily imagined as damaging as alienation acts. For these reasons, we consider it appropriate for the legislator to intervene for amending art. 316 par. (1) I-st thesis provisions, so as to refer to *spouses's right to conclude legal acts in relation to certain goods*. In accordance with this normative change, the marginal name of art. 316. Civil Code should be reformulated, meaning *legal acts that seriously endanger the familiy interests*;

- in academic literature, it was appreciated that, despite the fact that art. 322 par. (1) and par. (2) Civ. C., as all the texts devoted to "family dwelling" are placed in a general context (common provisions), they have a special character in relation to art. 345 and art. 346 Civ. C. Former special nature would be determined by the fact that they deal with legal acts which concern exclusively the "family establishment" and "the goods that furnish or decorate it", and the general character of the latter is determined by the fact that they have envisaged legal acts related to common assets own by spouses, without naming or excluding different categories of common goods.As far as we are concerned, we consider that the priority of applying the provisions of art. 322 par. (1) and par. (2) Civ. C. is determined by art. 345 par. (3) Civ. C. Thus, it states that "the provisions of art. 322 remain applicable ". Inexplicably, art. 346 C. civ. does not contain a norm similar to that provided by art. 345 par. (3). In the absence of a plausible motive, we must admit that we are in the presence of a legislative gap which, by *law ferenda*, should be eliminated;

- in doctrine, it was expressed the opinion that, regarding the indiscriminate reference of art. 323 par. (3) Civ. C. related to the death of one of the spouses, this applies also to the case when the deceased spouse is titular of lease contract. As far as we are concerned, we agree that the text of art. 323 par. (3) Civ. C. does not use the most appropriate terms, but we also believe that it also suggests the death of the un-titular spouse of lease contract. This is the reason why the text under discussion relates *to exercise of locative right continuation, and not to the continuation of lease contract*. In fact, the following article (article 324) regulates the adjustment of lease contract. In order to avoid various interpretations on this issue, we consider it necessary for the legislator to intervene, with *law ferenda* provisions regarding art. 323 par. (3) Civ. C. Therefore, the afore-mentioned article, shall be amended as follows "in the event of death of lease contract titular, the surviving spouse shall continue to exercise his locative right, unless he expressly renounces it, within the time limit laid down in article 1834 ";

- in principle, the question arises whether art. 324 Civ. C. is an incident in the case of any divorce, irrespective of thefollowed procedure (judicial, administrative or notary).Referring to par. (1) - *the dissolution of the marriage* without making a distinction as to the nature of the followed procedure, it would appear that art. 324 Civ. C. is incident in all cases.However, we note that par. (3) of this article, establishing some procedural rules, refers to the *locator's summoning* and the *final court judgment*, specific aspects for judicial proceedings. In practice, in an interpretation *per a contrario*, the provisions of paragraph (3) assert the conclusion that art. 324 Civ. C. is only incident in case of judicial divorce. In our opinion, a restrictive interpretation of the provisions of art. 324 par. (3) Civ. C. is irrational, contrary to the identity of reason in all the ways of divorce, irrespective of the followed (procedure judicial, administrative or notary). For these reasons, we consider it useful, as *law ferenda provisions*, art. 324 par. (3) to be completed, for the purpose of introducing a rule stating that "its provisions shall apply accordingly in the case of divorce by administrative or notarial procedure. In these cases, the lessor will be summoned by the civil status officer or by public notary, and the benefit of the lease contract adjudgement will take effect from the date of divorce certificate issuance, under the conditions of art. 375 Civ. C.

- for the incidence of the provisions of art. 324 par. (1) Civ. C., two cumulative conditions are imposed: *the use of dwelling is not possible of both (former) spouses* (p.n.); *they do not get along*(about how to use it). Indeed, in the content of the analyzed text, the two conditions are linked by the cumulative conjunction. In practice, several cases are possible, i.e. the house to allow it to be used by both spouses, but the spouses do not get along, or, even if they do get along, it is not possible to use it by both of them. As far as we are concerned, we consider that, in both variants, the normative solution is unreasonable, which is why we suggest to the legislator that, by *law ferenda*, to modify this text in the sense of replacing the conjunction*and* by the conjunction*or*;

- restrictive reference to art. 324 par. (4) Civ. C to partition the decision, exclude, *per a contrario*, its incidence in the case of voluntary partition. We believe that, despite the fact that paragraph (1) states that spouses do get along on dwelling , there is nothing to prevent the partition being made voluntarily. In our opinion, we are in the presence of a legislative gap. Indeed, for identity of reason, that text should also be an incident in the case of voluntary partition and, accordingly, amended as mentioned. On this occasion, the term *conjugal* should be replaced by the term *family,* while the term *spouses*should be replaced by the expression of *former spouses.* So, we suggest to the legislator that, by *law ferenda*, art. 324 par. (4) to be amended, in the sense that "the provisions of paragraph (1) - (3) shall also apply in the same way if the good is the common property of the two former spouses, the adjudgement of lease contract benefit of the family dwelling having effect until the date when partition decision is unappealable or until the date of partition deed, as the case";

- the provisions of art. 327 Civ. C. can be considered a concrete application of the provisions of art. 41 par. (1) second thesis of the Constitution. Thus, this constitutional text provides explicitly that "the choice of profession, occupation or job, is free." In fact, in doctrine stated that, by reference to the provisions of art. 41 par. (1) of Constitution, the provisions of art. 327 Civ. C. I-st thesis are useless.Moreover, because Civil law provisions refer exclusively to the exercise of the profession, thus omitting its choice, they are generating ambiguity and even contrary to the constitutional text. We observe that the constitutional text is also incomplete, as it has failed to refer to the exercise of the profession, or occupation. Furthermore, the terms profession, occupation and job being synonyms, give the constitutional text an obvious pleonastic character. On condition of Constitution art. 41 par. (1) second thesis the review, in the sense of referring exclusively to the profession and its exercise, we consider it appropriate, as *law ferenda* proposal, art. 327, I-st thesis Civ. C. to be abated.

-the circumstance that the option for legal community of goods regime does not imply, according to art. 329 Civ. C., the conclusion of a matrimonial convention, led some authors to consider that this legal regime is governed solely by juridic imperative rules from which spouses can not derogate. We report that art. 359 Civ. C. sanctions with absolute nullity any convention contrary to the provisions regarding legal community of goods regime, but to the extent that it is incompatible with the regime of the conventional community (s.n.).Although the provisions of Art. 329 and art. 359 Civ C. convincingly support the doctrinal assertion presented, the analysis of the provisions of art. 340-358 Civ. C, devoted to legal community regime prove the opposite.We consider, for example, the provisions of art. 344 (any of the spouses may request to be mentioned in the land book or, as the case may be, in other publicity registers provided by law on the good status related to the community) and those of art. 348 (common goods may be contributed to companies, associations or foundations, under the law). In such situations, as the legislator provides for options, future spouses should have the legal possibility to operate these options. If it is legislator's intention to sanction disregard of all provisions of art. 340-358 with absolute nullity of the matrimonial convention, it is necessary, by *law ferenda,* to amend all texts, such as those of art. 344 and art. 348 Civ. C.

- we notice that art. 313 par. (1) Civ. C. refers to the *day of marriage conclusion,* and art. 330 par. (2) Civ. C. at the *date of marriage conclusion*. Even if these expressions use different terms, they can be considered synonyms. However, the expressions in question are discordant with the provisions of art. 289 Civ. C., which are established under the marginal term of the*moment of marriage conclusion*. Thus, according to these provisions, "the marriage is conclude when, after the consent of each of the future spouses is given, the civil status officer declares married" (s.n). Obviously, between the terms *day* and *date,* on the one hand, and the *moment* of time, on the other hand, there is no identity. Thus, the

term day usually has the meaning of the time span between sunrise and sunset. This term is also used in a 24-hour time span, corresponding to a rotation of the Earth around its axis. In turn, the date has the meaning of a calendar day (from a certain month and year). Instead, the moment represents a short period of time, that is, an instant or a second. Practically, art. 313 par. (1) and art. 330 par. (2) Civ. C., refer only to *the calendar date*, since art. 289 Civ. C. refers to*date, time, and even minute* when marriage is considered concluded. As far as we are concerned, we consider that, in terms of the moment of marriage, conclusion the provisions of art. 289 Civ. C., having a special character, have priority in relation to those of art. 313 par. (1) and art. 330 par. (2) Civ. C. As a consequence, we must agree that between the spouses the chosen matrimonial regime takes effect only from *the moment of marriage conclusion*. In order to avoid various interpretations on this issue, we consider useful, as *law ferenda* proposal, art. 313 par. (1) and art. 330 par. (2) Civ. C. To be amended, in order to refer to the moment of marriage;

- according to art. 370 par. (1) Civ. C, "If the spouses' matrimonial regime is that of the legal or conventional community, the court may, at the request of one of the spouses, pronounce the separation of goods, when the other spouse concludes acts which endanger the family's patrimonial interests".Regarding the requirement for spouses to be married under the legal or conventional community regime, *per acontrario*, the separation of goods can not be ordered when spouses are married just under separation of goods regime.The solution is fair, since under this matrimonial regime the separation of goods already exists, through the effect of law. The fact that the separation of goods can be disposed only in matrimonial regimes ofcommunity,call in question the topography of art. 370-372 Civ. C., in context of common provisions (article 512-372) on the matrimonial regime. For these reasons, we suggest that the legislator, as *law ferenda* amendment, shall place art. 370-372 Cic. C. in the context of matrimonial regimes of community rules;

- with reference to art. 370 par. (1) Civ. C related to *legal acts* without distinguishing in relation to their nature, it can be concluded that the acts of use, administration, preservation and alienation fall within its scope. Also, in the silence of the legislator, we should draw the conclusion that prejudicial acts may concern both common goods in condominium and own goods. However, with regard to the finality of action (the separation of goods), we must unquestionably accept that these acts relate only to common good of the spouses. In order to avoid various interpretations on this issue, we consider it necessary, as *law ferenda* amendement, art. 370 par. (1) Civ. C. to be reworded, considering *acts on common goods.*