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PhD THESIS

**COMPARATIVE STUDY CONCERNING MATRIMONIAL
PROPERTY REGIMES. SPECIAL REGARD ON
CONCUBINAGE’S REGULATION**

ABSTRACT

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Key words: family, marriage, matrimonial property regimes, matrimonial relations, matrimonial convention, concubinage, conventional mandate, family home, primary imperative system, the legal regime, the regime of separation of property, regime of conventional community, good morals, partnership, marriage between persons of the same sex, the New civil Code.

"The greatest happiness of the man who meditates is to investigate what can investigate and worship with serenity what can not investigate."

J.W. Goethe

Marriage is a very topical subject, but also very delicate for the simple reason that it involves issues of importance to individuals, and Plutarch's statement supports this thing: "Marriage is the most important act of human life, the foundation of the wider communion - the family. "

The family represented over time, the fundamental institution for individual survival and reproduction of society, the guardian of the traditions and values of individuals a landmark stability. In this sense the ideas, marriage and family are the major settlements and structures of existence.

The family is the purpose for concluding a marriage and the whole social order is based on this institution, so it's role is particularly important in the correct analysis and the correct perception of the size that you can take the marriage. In this sense, one can observe an inextricable link between the two institutions, the family being the impending consequence of the marriage, but at the same time, we must recognize family ties coming from external links marriage, the birth of children, free unions, recognized or not legally, according to the State of origin.

So we can see the family as a small-scale human society, which is based on the fundamental values of humanity, because it is the place where is realised a wide knowledge between generations, and the first company in the life of the individual, within its legal, social and economic role is found.

The idea of developing this theme started from the need for regulation in our legal system of the institution of matrimonial property regimes, by reconfiguring the doctrine and jurisprudence in this area, with the new regulations.

However, developing this theme I will try to show that after applying for more than half a century the Family Code, which imposed a unique, legal, and imperative nature matrimonial regime, successfully intervened new regulation which seeks reinvention

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institution matrimonial conventions that appear in highly regulated in many states law considered as benchmarks for their flexible and open national judicial systems.

During the study and development of this theme, I will try to highlight the role and importance of concubinage and economic effects entrained, in our legal system, completely non-existent in the eyes of the law, but as a omnipresent social phenomenon. Considering the social changes occurring in the traditional family, both sociological and legal foundation, it is necessary a discussion about matrimonial property regimes not only in marriages but also of cohabitation or same-sex unions.

The innovations brought by this research are based on studying the implications and effects of the application of the New Civil Code, by comparison with the effects of the Family Code, both on the married couples and to those in the state of concubinage, especially on patrimonial relations between them.

The paper is structured in five chapters through which I wanted to present the role and importance of the legal and practical implications of establishing new matrimonial property regimes in the architecture organized by the new civil legal system, especially on family relations, which enjoyed a real revival.

In the first chapter, entitled "Family and marriage - the fundamental institutions interdependent" I wanted to highlight the extremely strong link that exists between the two institutions, which although initially we were confident to say that one is the consequence of the other, factual realities come to contradict us, with the the stronger emergence of other forms of cohabitation outside traditional marriage, like marriage between persons of the same sex, who began to enjoy at international level self-regulatory legal norm, as well as concubinage.

The analysis of the two institutions took as reference the new rules of the Civil Code, continuously striving to introduce the novelty of regulations because in terms of civil law, the institution of marriage is of an overwhelming importance. Marriage status acquired by conclusion of the marriage with the whole procession of rights and obligations, filling the range of identification of attributes individuals often accompanies and complements the involvement subject of law in civil legal relations.

The new Civil Code, as a response and as a corollary of all opinions presented in specialty literature, unlike the previous legislation of the Family Code, expressly defines marriage at the art. 259, para, (1) as „freely accepted union between a man and a woman concluded by law”. From this definition, we see no possibility to give room for interpretation, that the Romanian legislation is prohibiting the same-sex marriage, stating unequivocally that

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marriage shall be concluded between a man and a woman. Thus, both by art 258, paragraph (4), which defines "spouses" as man and woman united in marriage, and through art. art. 259 paragraph (2), which clearly states that ".. the man and woman have the right to marry in order to found a family" The Romanian legislator see the predilection to preserve traditional values, explicitly stating the purpose of marriage, namely "a family", purpose for which it is considered impossible to achieve if the marriage between same sex.

Also, a family can be achieved through the adoption of a child by an unmarried person. The right to found a family is not subject to the right to marry, but - rather - the right to have children, so to procreate and the right to adopt children who can be born and grow and outside the institution of marriage still enjoying the same legal protection measures, they are not required to bear the legal consequences of parents' decision not to formalize the relationship.

But the the reverse is true: whereas marriage is always based family, even if the spouses fail to procreate or adopt a childshows that right to marriage always involves the right to found a family. Instead, para. (2), art. 259 establishes only a fundamental right to enter into marriage "to" starting a family. So a family is cause of the marriage.

The state of marriage is the logical consequence of the conclusion of the legal act of marriage consequently all requirements of law, having as support the spouses expressed consent. This state of marriage generates a series of specific rights and obligations between spouses, which can not be found in any other type of legal relationships between the topics of law, both personal non nature and heritage, which is based on the principle of full equality between spouses [Article 48 paragraph (1) of the Constitution]. Marriage is the state law that causes significant pecuniary changes on the patrimony of each spouse.

Property relations between spouses complement the personal relationships between them. Common life, common household and raising children causes intertwining property interests of spouses, both in terms of rights and obligations, subordinated same finality: providing material support necessary existence and, if possible, the comfort of the family. So I consider necessary to perform this comparison, given that the Family Code has been for a very long time in the modern era, the only regulation, therefore it has put in an overwhelmingly footprint and, the new Civil Code came as a liberalization of relations between spouses could suffer during the time, which had been in seclusion during original communist regulation.

New Civil Code are regulating the matrimonial property relationships in Chapter VI "The rights and obligations of the spouses property" where resumes, according to the former

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Civil Code of 1864, matrimonial regimes, embodied in marital relations as a reality of the society. This faculty of choice between applicable matrimonial had become imperative and required legal realities faced by spouses in everyday life, economic relations constitute an important element in family life, sometimes at the expense of personal relationships, affection between family members.

The legal importance of the new regulations must be regarded in a mirror to the former regulation of Family Code, because precisely the imperfections of the second, have led to the birth of the first, and more than that, given into account the principle of non-retroactivity of law, a large part of the patrimonial regimes of married couples, until the entry into force of the civil Code were under family code provisions.

However, to prevent any discriminatory situations that might arise for married couples before the entry into force of the new Civil Code, the legislature and offers them the possibility to choose if they wish, on one of the desired matrimonial, with formalities advertising required. After the entry into force of the Civil Code may conclude agreements by married people dating even before the date of 1.10.2011, date of entry into force of the New Civil Code, and the solution gives art. 369 of the Civil Code and art. 37 of Law nr.71/2011. Article 369 provides that the matrimonial regime may be modified at any time during the marriage by concluding matrimonial convention, that convention that is done in authentic form notarized, in compliance with all other agreements under the new Civil Code. The only condition is that the matrimonial regime change to be passed one year after the marriage. Therefore, implementing Law provides that Art.369, which allows changing the matrimonial regime during marriage applies to marriages concluded before the entry into force of the Civil Code, which equalizes the position spouses of marriages under the Family Code empire, that do not enjoy this option.

However, being an introductory chapter I wanted to establish some basic elements, as lines starting our research, of clarifying of concepts, which we will use throughout our research.

Thus, sharing opinions from doctrine, the deepening of the research start by defining the matrimonial regime, considering that it is the synthesis of all the rights and obligations of spouses pecuniary valence, having its origins in the institution of marriage, leaving outside their regulatory and other economic issues that may arise property relationships between spouses, as: maintenance obligation, liberties, rights of Inheritance.

Specific rules provide for matrimonial property regimes how to manage those assets. We are talking mainly about whether each spouse can manage alone the goods from its assets,

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or if the provision and management rights are concentrated in the hands of a spouse, or they are divided between husband and wife.

Economic and social factors have an important contribution to the regulation of base that must obey all married couples, which may differ in each country according to local traditions, the perceptions of marriage, but evolving and may even adaptation and change, as happened with the return of the New civil Code regulate matrimonial regimes, which urged the doctrine and the realities of daily market economy changed substantially compared to the previous provision of the Family Code, we can say that it was outdated.

Multitude of situations that lead the spouses as to marriage, putting aside personal emotional side, which theoretically is the engine formalize relationship are the foundation design and choice of matrimonial regime governing best property relations between the spouses involved the new status acquired in marriage. Thus, can be encountered situations where the spouses own property consistent with monetary side and professions which contribute to and during the marriage, they can opt for separation of property regime, the confusion wanting them. Also, a spouse may carry high risk occupations pecuniary, which may harm the common heritage and therefore wives, by mutual agreement, may consider choosing the separatist regime is the best solution for the cohabitation fairness couple.

Option for matrimonial regime is not mandatory under the new regulation, spouses may be subject to legal regime, based on a set of rules applicable to all those who wish to enter into a marriage, and there is total freedom to negotiate, because we have to dealing with a contract.

Choosing between a separatist regime type matrimonial or one community type or a mixed regime that combines specific rules of both types is based on the actual situation of both spouses and moral traditions and rules specific torque respectively. Given that any marriage involving common life in all aspects, including the material, and there is no denying that common life involves spending.

In most legal systems there is a choice between several matrimonial. Generally, the law provides a legal matrimonial regime, which applies whenever the spouses have not chosen another regime in the conventional way, and one or more of matrimonial regimes they can to establish by matrimonial agreement one which govern marital relations in their marriage.

In the study, we devoted a chapter, as the title suggests, "The Historical Roots of matrimonial property regimes and regulatory developments", a brief historical excursion of this legal institution that has experienced various forms over the years, without which the

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present time we could not appreciate the positives and the negatives inherent implementation time. Regimes have a rich history dating back which gives them jealousy and strenghtness, enjoying a rich tradition there since the time of ancient civilizations.

Thus, we can remember that Roman endow laws suffered an evolution over time and its Justinian era elements were taken of medieval law and civil codes developed later nineteenth century Europe. The future obligation to provide married women an endow turned from a simple habit to a legal obligation.

In our law system, the actual configuration of legal architecture begins came into existence with the entry into force of the first in the history of Civil Code Romanian, a genuine strong legal structure, as evidence lasted over 150 years. Civil Code of 1864, French inspiration comes with a fresh air to the existing feudal order (Code and Code Calimah Caragea) and want to implement some new institutions Romanian society. It was considered a prestigious author, (for whose guidance and support I enjoyed in preparation of this study), an undeniable step forward to modernize Romanian legislation, statutory numerous family relations, expressing the views of an era revoluted, which today may seem outdated, and incompatible with current realities, whose cornerstone is the principle of equality between spouses.

The matrimonial regimes system put into practice by the Civil Code was a Romanian according to tradition, but also with the laws of time. In general, the Code did not depart from prior law, particularly from the object endowment, as it brought spectacular novelties.

A characterization of the overall settlement of matrimonial property regimes existing in the Civil Code reveals that they were free, immutable, and type separatist regime was legal. Romanian Civil Code regulate (art.1223 and 1224) free matrimonial conventions under mandatory rules providing that special and general marriage. Matrimonial regime of separation of property remained applicable until the entry into force of the Family Code in 1954, when it was established matrimonial unique legal and mandatory community property acquired during marriage.

Thus, from the above, it can be appreciated that the community of property regime as the tradition of the Romanian people, because throughout evolution patrimonial status of the family were able to observe the application of several types of arrangements, foregoing modern age having the central figure, exponential man and everything revolved around it, which is consistent with the realities of the time, and with the dawn of the modern era, attempted legislation offering each spouse rights and freedom of choice on monetary realities faced by but this novelty positively not carried out the mission, being overshadowed by the

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inability of the woman who was bound morally and legally man and later, the momentum was cut free matrimonial standardizing ideas inspired by communism , which requires that the system unique and immutable legal regime of community property laws.

In Chapter III, "matrimonial convention - the construction of a perfect pattern adapted pecuniary needs of spouses" we intended to reveal the innovations brought by this new legal construction, the property relations between spouses perimeter, which has the legal nature of a contract, but with multiple specific components of a complex act, due precisely that its aim is to planning economic life of the spouses.

In conclusion on the legal nature of marriage settlements, we can say that although there is a contract usually not fully subject to the common law of contracts, there is no denying, however, belong to the lineup bilateral legal acts.

Matrimonial convention occupies, as we have shown, a special place in contract law. On one hand, we apply the general rules of contract law, and, on the other hand, is subject to several special rules.

Convention matrimonial enjoy exceptional freedom that goes beyond the common law recognized the freedom of other contracts, which led to the classical doctrine to consider this Convention as a contract privileged.

Matrimonial convention differs from some situation or legal institutions, as appropriate, such as marriage, engagement, marital or cohabitation agreement brokerage with which the elements of proximity, somewhat apparent. From all this, we refine the analysis in terms of cohabitation, the favorite subject of study, and in particular we proceeded to compare the matrimonial convention, as the act governing specific pecuniary matrimonial relations Civil Solidarity Pact, a creation of the system French aimed at setting economic life of cohabitants who are in denial of the institution of marriage, which is why much of contemporary legal systems began to provide legal pattern that fits.

French legislature wanted to give such a legal relationship of cohabitation , placing under the law , property relationships arising between cohabitants , enabling them to govern monetary relations among them that are born as a result of the new state de facto that is , as a matter of notoriety , now dressed and legal consistency .The concubines choose to live and to live together , which attracts legal consequences and materially. We can see many similarities between matrimonial convention, the model law governing property relations between spouses and Civil Solidarity Pact, which covers the same property relations that arise between cohabitants , both in terms of the substance and form, both must be written in an authentic and

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known to others as it has provided a good and safe operation of civil circuit , and all those interested to know the legal realities with which it interacts .

The analysis of matrimonial convention and civil pact of solidarity, both acts of organizing property of both partners , we could see their common elements , both have written and recorded in the authentic order to arrange publicity to any interested person , the it is particularly useful for civil circuit fuse . Also , their object is the good organization of economic relations established between the parties, given that legal documents can be considered intuitu personae are not just ordinary people but must be of the spouses or partners / cohabiting , linked by affection, cohabiting , involving the birth of a series of mutual obligations pecuniary effects of which will be governed by these two " charter heritage " as they were called . We believe that the limit that separates them is the marriage because Civil Solidarity Pact, French inspiration supports those living in free union and seeks to formalize the relationship and be able to give legal value to the relationship of material nature have occurred between them.

The role of the convention matrimonial is to organize asset life of the spouses, so find the content covered multiple legal relationships that establish a matrimonial regime, which include it as part category of complex legal documents. Moreover, taking as a basis the opinions expressed in the literature that used constantly in its definition, the term "contract" or agreement, we believe that it is a legal act of bilateral origin, the product will both spouses.

Just because it establishes a true patrimonial status of marriage, a kind of "rules of procedure" of pecuniary relations between spouses, matrimonial convention emerges from the other joint contracts, the complexity of cases which determines the specific effects that occur. These effects involve both spouses, first touched by the consequences and third parties who need to know the marital status of those with whom contracteză and that between them is complete matrimonial convention that orders property relationships specific to marriage. The third parties should be aware of the existence and content of marital property charter, making it enforceable in when registered in the public register.

Being raised in doctrine question, matrimonial agreement that is mutually binding and onerous act, or conversely, may be included in the category of free acts, we proceeded to analyze the pros and cons of both views, so that we feel that the Convention matrimonial has more in common and more robust, with reciprocal obligations and onerous contracts than with unilateral and free.

Mutually binding nature of matrimonial convention lies in the fact that spouses are obliged mutually not conceivable that all obligations to return only one of them. Although

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marriage and its effects are strictly regulated by law , marriage is a legal - condition of "adhesion " to a particular legal status , spouses assume each other interdependent obligations , switches, specific provisions for consideration because it be unacceptable for one of them to oblige , and the other to be gratified , which should exceed the equality between spouses and thus would exceed the purpose of marriage . In this regard , it should be permanently subordinated nature of the convention dating from the institution of marriage , but at the same time to mention that marriage can exist and produce effects SPEF and non matrimonial convention , however, the latter shall is meant only in marriage , outside of marriage is totally unworkable.

From the analysis of the elements that make up and give life dating convention , producing specific effects reveal a complex legal document that includes a whole host of legal relations that structure pecuniary relations between spouses during marriage , noting fundamental bond between these two institutions, that define each other . Freedom regulating property relations between spouses through dating convention is the perfect expression of mirroring and in relation to family law developments everyday social and economic life , the transition from closed economy to the open , capitalist , leaving total discretion spouses for all relations between them. Thus, we could try a more plastic expression to say that by organizing pecuniary aspects of marital life , marital agreement can be considered " law spouses " .

Further study in Chapter IV "Matrimonial property regimes - free expression of the will of the spouses in organizing economic life of the family", we wanted to achieve a constant comparative analysis of matrimonial regimes, trying to identify the elements that constitute the strengths of each mode, remaining sole discretion to choose the spouses, which we will consider the most appropriate for managing monetary relations among them, having always as a standard, and as central, basic primary system imperative, from which you can not deviate, and that I can not circumvent the conventional stipulations.

In making comparative analysis, I referred constantly to foreign doctrine, which is a pillar in this study because in our system of law and institutions are relatively new concepts, they borrowed elements from other legal systems.

The rules established in these regimes refers to the ownership of property, goods or other governing separation of property each spouse composition. Through them you can determine on the one hand, if certain goods that they had wives when the marriage or after they have acquired during marriage, shall remain their individual or in whole or in part in

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mass commons, on the other hand the rules governing the distribution of patrimonial liability of each spouse.

Form of distribution of goods, assets and liabilities, is specific and depends on each matrimonial importance given to the separatist community spirit by both systems of law governing family law rules and the spouses exercise their faculty choose which matrimonial their conception considers appropriate.

Traditionally, the influence of the French went to community spirit, that the marriage is intended in the sense that personal union association determines heritage, while separatist conception of Anglo-Saxon heritage refused the idea that the association would necessarily arise in personal union, so in terms of heritage husbands and relations concerning him, husbands will have no other treatment than any other subject of law, they not benefit the common law regime differentiated specific.

Another part of every matrimonial property regime specific rules relate to how provision and management of these assets. We are talking mainly about whether each spouse can manage one property of its assets, or if the provision and management rights are concentrated in the hands of a spouse, or they are divided between husband and wife. It is also important to establish, for the patrimonial liability, how the spouses assume debts and how they respond to creditors for debts common divisible or jointly and also how they will proceed to regularize claims that may arise between them, following the completion of legal documents among themselves and would look commons.

Social factor has an important contribution to the regulation of base that must obey all married couples, which may differ depending on local traditions and, in each country, the perceptions of marriage, but may even evolving and adapting and change, as happened with the return of the New civil Code regulate matrimonial regimes, which urged the doctrine and the realities of daily market economy changed substantially compared to the previous provision of the Family Code can say that it was outdated.

Multitude of situations that lead the spouses to marriage, putting aside personal emotional side, which theoretically is the engine formalize relationship underpin the design and choice of matrimonial regime to govern the property relations between spouses better trained the new status acquired in marriage. Thus, you may encounter situations where the spouses own property consistent with monetary side and professions which contribute to and during the marriage, they can opt for separation of property regime, the confusion wanting them. Also, a spouse may carry high risk occupations pecuniary, which may harm the

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common heritage and therefore wives, by mutual agreement, may consider choosing the separatist regime is the best solution for the cohabitation fairness couple.

Option for matrimonial regime is not mandatory under the new regulation, spouses may be subject to legal community regime, based on a set of rules applicable to all those who wish to enter into a marriage, and there is total freedom to negotiate, because we dealing with an actual contract.

Choosing between a separatist regime type bed or one community type or a mixed regime that combines specific rules of both types is based on the actual situation of both spouses and moral traditions and rules specific torque respectively. Given that any marriage involving common life in all aspects, including the material, it is generally accepted that common household carries specific expenditure.

In most legal systems there is a choice between several matrimonial. Generally, the law provides a legal matrimonial regime, which applies whenever the spouses have not chosen another regime in the conventional way, and one or more of matrimonial regimes they can to establish by matrimonial agreement one which govern marital relations in their marriage.

We conclude that the entire odyssey of matrimonial property regimes in the New Civil Code is based on the principle of freedom of choice of matrimonial property regimes, but as we have seen, freedom is not complete, but limited, restricted, even husbands having "beach" limited option, you must be within the legal tender. The spouses have a choice or not, one of the two conventional matrimonial property regime provided by law, the separation of assets or the conventional community in this regard is necessary that this option should take the form of a convention dating, failing its wives are considered to be married under the legal community. But whatever the matrimonial regime chosen matrimonial contract terms will not exceed or infringe the rules imposed by the primary system.

Rules that compose the primary regime are imperative, on the other hand, tailored as wives or live in harmony as their housekeeping undergoing a marital impasse. For harmony between the couple, the primary imperative regime tries to keep a reasonable stability between independence and autonomy of individual natural and specify the default unit spouses and conjugal relations which should exist in terms of their heritage. This goal seeks to fulfill a crucial , imperative and at the same time thankful for spouses, rules may vary considerably, depending on the basic design of the system of maritime law which encompasses so in systems that have a tendency to the separatist regime , the regime will

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dominate primary Community rules and vice versa, in law systems which prefer Community systems, as a rule, the regime will comprise mainly primary origin rules breakaway .

We believe that the primary regime can be seen as a fundamental marital status, through the imposition of basic minimum, but imperative, trying to be fair to all those who choose to enter into a marriage while protecting individual freedom, but always seeking to specific unit ensured a family who could not be defeated by individualistic tendencies of one of them by conventional provision.

In the primary system, new institutions drawn notice that until now did not have statutory regulation, is the subject of many situations found in practice. One of the changes relate to the mandate between spouses. Daily activity of the spouses and their relationships with third parties would be paralyzed if all legal documents concluded during the marriage would require a double consent, the legislature has provided for the empowerment of one spouse to represent the interests of both the exercise of the rights that you have the right system bed. The mandate is the most commonly used contract in relations between spouses that facilitates the management of common interests, therefore the legislature granted a special text in the provisions relating to the mayor.

New Civil Code comes with an air of novelty in this area institution lending mandate spouses of French law, making major changes, important, which are designed to give greater discretion spouses in respect of acts which they enter into management everyday life, but they also require greater formality in their conclusion by substantial acts heritage bed. We see thus that the establishment of conventional mandate between spouses, as well as the judiciary, the legislature has chosen to abandon mutual tacit mandate of the old regulation, which we believe is replaced by rule of parallel management of assets of spouses, including, somewhat similar, but yet more freely, the conclusion by one spouse of legal documents on common property without consent of the other spouse even alleged.

In this regard, we believe that conventional office and judicial mandate can be considered as management tools in the interests of spouses fan patrimonial relations.

The liberal spirit established by the Civil Code the legislator provides freedom of action for each of the spouses will be able to act in an independent manner from economically and socially, to choose their profession and exercise alone, conclude single legal acts is still limited by the obligation to inform the other spouse on the assets, income and debt.

Patrimonial independence of the spouses is a new concept not found in the Family Code, and must be understood in conjunction with the unity and interdependence of the

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couple-specific, so we are asking ourselves the question how will this autonomy of the spouses, if it can meet the needs specific converged life together in marriage.

Given the important role that the family home has the proper economy of family relationships the legislator, due to reinvigorate family law by the new Civil Code, decided that the primary imperative regime rules include references guiding the family home.

Common residence of the spouses did not receive until the advent of new regulations explicit legal protection, but it was presumed the existence of the obligation imposed on husbands to cohabit which assumes a common housing.

This new regulation should be regarded with caution , studying the possibility of a possible unconstitutionality of these provisions and non-compliance with the European Convention of Human Rights towards the achievement of the right to property . This raises the question whether the desire to provide broad protection of the family , it is not an obstacle to free and unfettered exercise of property rights owner of the property of the husband . It does not take more fragile situation where the property is in joint ownership as having a wife in condominium ownership in the property , which is the family home , the decisions regarding this will be taken of them together under co-management assets common property . We also have a more delicate when the right to use a property leased and the lease holder is just one spouse , the new regulation gives the spouses equal rights to use , with no importance which of them is the contract holder . From this point of view there is a return to a previous regulatory Law . 116/1996 , namely Law No. 5 /1973 , which each spouse a right proper housing .

The issue of possible unconstitutionality or non-compliance with the European Convention on Human Rights examined the regulation could make the assumption that the exclusive owner of the affected property as the family home, it is only one of the spouses and of content rules presented above is evident that establishes a limitation owner husband in exercising its ownership.

The doctrinal views expressed so far is considered that this limitation would be accepted, when consented to the notary in the land under Art.321 NCC building, owned by his family as a dwelling, but which aspect not fully shared, requiring a more thorough discussion of the problem in terms of practical implications.

The purpose of regulation has unilaterally prohibition family home was to protect the family, the children from harmful acts of the husband owner. Rule express consent of both spouses for any act provides the family home does not mean that the housing becomes noticeable. On the contrary, the husband owner may dispose of by will, property can be

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shared if it is jointly owned indivisible good can be pursued by creditors debtor spouse's owner, the property can be expropriated.

The legislature appointed a primary imperative regime that will apply to all married couples, regardless of the matrimonial regime chosen, and includes rules on the "family home", wanted to give a safe family home, now rests with the spouses to manage properly and judiciously this right granted by the legislature.

Taking as a starting point the fact that the matrimonial property regimes are the heart of right of marriage, covering pecuniary relations between spouses occur inherently conclusion of any marriage, and retaining all the novelty changes implemented by the new Civil Code, in the regime of the community law remains the main reference point for organizing property relationships between spouses, if they do not get to bring changes through a matrimonial convention, turning it into a conventional system.

Separatist regimes are pure expression of the freedom of will of the spouses which by convention dating wish to arrange relations between them, in an individualistic manner, protecting their own heritage, but maintaining a specified minimum ratios of family cohesion, meaning to help in relation to their own means to support the common household. Choice of the most suitable matrimonial couple realities, namely, separation of property regime is the recognition of individual freedom of opinion, in the sense that no one is unique, it has the same needs, the same social and economic status, and according to them may decide what is most appropriate for them in managing monetary relations between them.

Property relationships arising between the couple, who are under the rule of separation of goods, even maintaining their individualistic spirit will be totally different from those that take place between strangers, therefore, these ratios pecuniary marital printed character. In the regime of separation of property, each spouse retains exclusive ownership and independent administration of his property, they may have discretionary.

Specific lifestyle perfect marriage does not allow a separation of property and interests between spouses, because daily life involves a combination of interest, the spouses can say natural, as is the common house regime, which may not depart from it having its roots in the primary nucleus imperative on which they must take some common decisions any act related to this consimțământul requiring both. We believe it is this intertwining of the separatist community accents will make it more difficult and possibly dissociating shared between spouses.

In an attempt to conclude , we can say that the regime of separation of property, goes beyond the individualistic spirit that a superficial analysis , I tend to think it is based and

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offers the opportunity to organize their husbands discretion of better words, the relationship property of them, provided the maintenance of separate patrimonies without excluding any moment ratios of common household natural cohesion. It should however be noted that although the Romanian legislator intended that by inserting the new Civil Code of the possibility of electing the matrimonial regimes to liberalize this area of family relations , which recently benefited from a clean air regulation , the population was very responsive to these changes so that the entry into force of the New Civil Code, have been concluded only around 500 matrimonial convention , which had opted for the scheme. For practical analysis , we see that appetite for this type of system is found especially among persons with and also develop and acquire some property, they want to put safe from any selfish or wasteful tendencies of the other spouse, and when both consent to the conclusion of such an agreement, it can not be brought into question, shaking traditional family spirit because everyone is free to live in the spirit of his own conscience .

Therefore, we can conclude that economic relations as the basic element of the functioning of the institution of marriage, they met again with reintroduction of family relations in the Civil Code, substantial changes that have fundamentally altered the relationship between spouses, giving them more independence asset and decision, which was hitherto denied them the old regulation, where they were subjected to a single regime, legal, immutable. These changes occur due to multiple requests for reconsideration of the doctrine and realities adapt legislation according to which the provisions of the Family Code no longer corresponded being exceeded, a tributary of communist thinking.

Therefore, freedom of contract, specific to a open, free economy, together with the principle of equality between spouses underlying all property relations between spouses, who are only able to choose the matrimonial regime applicable to the three allowed by the current legislation.

The new Civil Code is the most powerful Romanian judicial system reform suffered the last century, came as a response to various issues extensively discussed in the literature and jurisprudence, but we can say that in matters of family relations experienced a real revival, so necessary , reported the daily realities and developments in society, giving them rightful place back where now gone more than half a century, within the civil law, without this specific individualiatea to diminish in family law because family is even mirror transformation of society, requesting these changes.

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Relatively short period after the entry into force does not allow us to review the effects of long-term application, but unquestionably a step forward in ensuring individual freedom and equality, while maintaining family unity in diversity relations in the society.

Characterized by flexibility and freedom of choice by giving notice that matrimonial not yet in conscious Romanians, they remained faithful to the traditional version of Community origin both to blame, but that seems harder to get rid or the attachment to the family spirit of communion, which I believe marriage attached either from ignorance, which is visible aspect given the extremely low number of people who chose to enter into a matrimonial agreement, where the draw conculzia despite the desire of doctrinal level introducing a flexible, perhaps Romanian society is not yet ready for such liberalization manifestation of will, the family relationships.

In the final chapter, "Marital forms of cohabitation outside marriage traditionally - loopholes injustice and solutions", we used comparative methods of analysis by studying several systems of law, considered more advanced and more open, more flexible in terms of view of monetary regulations that arise between spouses or partners as appropriate. This research we consider to be beneficial and may develop fresh perspectives that can help in addition to a better knowledge and understanding of the phenomenon may be a source of information to find solutions to improve the way it is perceived in the Romanian society cohabitation , and more than that, another taboo of our legal system, same-sex marriages.

In the research developed we wanted to get inside a field less approached the legal status of the search for consensual unions, trying to find some solutions for the communities living outside traditional marriage, which is becoming more prominent in society.

Cohabitation is characterized by a relatively stable character, reputation and standing. On the other hand, the state of affairs between a man and a woman called cohabitation is common union life, the appearance of a household life; legal freedom to marry because there is no adultery or incest, no other legal impediment, which gives rise to the family-like relationships. Such unions do not give rise to legal consequences by their existence itself, but only marginally and adjacent. Rivalry with marriage, free union aims to remove the rigid first institution, by creating the illusion that the partners are less constrained than if it were bound by marriage.

It is impossible to approach the subject of cohabitation without quoting famous phrases belonging to Napoleon Bonaparte, given in one of the meetings that prepared elaboration of the French Civil Code "if the concubines are escaping the law, the law is missing them also" statement which at the time was noised in Europe. The basis of this

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attitude is based on the opposition to cohabitation, in that period towards the morals and public order. However, the Civil Code silent on this issue, can not rely on the same motivation today, reporting on our social evolution.

Based on both elements of doctrine and case law presented, we can consider cohabitation a legal fact, not only a social fact because it attaching to a number of specific legal consequences.

The provisions of the new Code does not grant legal status cohabitants, consensual unions are still left outside the law, despite the fact that they exist, are growing steadily, is a social reality, producing specific legal effects, a "clandestine marriage" .

The essential problem of concubinage may be summarized as follows: in the absence of matrimonial consent, the couple relationship is only really a relationship, which in general is not likely to result in legal effect, therefore let us see to what extent reality the factual and legal correspond to this postulate.

One of the expectations legislative authorities, reviewing family law rules is to reduce the number of concubinages by emphasizing the principle of equality between spouses in the institution of marriage, seeking its modernization in line with current society changes.

It is impossible to speak of cohabitation without emphasizing the rejection and consider this phenomenon as immoral, but assessing and establishing the notion of act contrary to morality is doable. This negative assessment plays an important role in social and legal perception of that concept.

The contradiction between cohabitation and morals was from the beginning an obstacle to recognizing the legal effects of concubinage. This was certainly an attractive factor for a category of concubines interested to build a form of counterculture: courage, audacity and willingness to invent a culture of opposition faded as it was accepted.

Lifting heights of morality, to deprive cohabitation effects must disappear for the name of respect for individual liberty and moral development. The best tool in this regard remains recognizing directly concubinage by law, on behalf of its regular operation.

This raises the question of whether to grant legal status currently concubinage would mean more followers, but in any case the legislature inactivity in this Directive prevents concubinajelor increase. If the goal is suppression phenomenon ignorance, the middle is as inadequate as its purpose is easily criticized.

Therefore, concluding, we ask whether the granting of a legal marital status, I opened Pandora's box, leading then to legalize same-sex marriage. It is a question that remains open because our legal system, newly renovated, conclusively rule out any attempt to formalize

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such ties. Consequently, Romanian society must also consider whether or not accept these "new things" and also so old and can not borrow from other systems as new institutions netrecându filter them through their own history and its own traditions, without remains a secluded into traditionalism, but try not to fall into the error of adoption "forms without substance".

"The researcher is the practical man, the adventurer, who believes in research, who ask questions, who refuses to believe that perfection is reached." - Henry R. Harrover, based on this dictum, we believe that research is not is never ending, always appearing in a society constantly evolving and that will bring forth the new controversy being we continually looking for answers and solutions.