

The Conditions for the Validity of Marriage in Romanian Civil Law. Legal Requirements, Doctrinal Interpretations, and Practical Implications

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Abstract

*The paper analyzes the conditions for the validity of marriage in Romanian civil law through a doctrinal and normative approach, with an emphasis on the clear distinction between substantive and formal requirements, as well as the legal implications arising from their non-compliance. In the Romanian legal system, marriage is regulated as a solemn, bilateral, and personal act subject to public order requirements, and its validity requires the cumulative fulfillment of conditions expressly provided by law. The study examines matrimonial capacity, the free and unvitiated consent of the future spouses, the absence of legal impediments, and compliance with the form required *ad validitatem*.*

Attention is given to defects of consent that are admissible in matters of marriage and to doctrinal interpretations regarding the distinction between such defects and other causes of ineffectiveness. The relationship between the expression of matrimonial intent and the conclusion of a matrimonial agreement is also analyzed, with emphasis on situations in which the latter may influence the validity of the marriage. The paper examines the implications of the recent Law No. 140/2022 on the capacity of protected persons to validly consent to marriage, highlighting the impact of the reform on the applicable legal regime.

The analysis is based exclusively on established legal literature published after the entry into force of the 2009 Civil Code and aims for a technical and systematic treatment of the topic. The effects of absolute or relative nullity in cases of non-compliance with validity conditions are highlighted, and a coherent interpretation of the relevant

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legal provisions is proposed, in correlation with the social and legal purpose of the institution of marriage.

Keywords: *Civil marriage; Conditions of validity; Consent; Matrimonial capacity; Nulitas matrimonii.*

Introduction

Marriage is one of the oldest legal institutions, playing an essential role within civil law relations by regulating both the personal and patrimonial relationships between spouses. This legal institution remains relevant and complex in a normative and social context marked by profound dynamics, being subject to ongoing interpretation in both legal doctrine and case law. The analysis of the conditions for the validity of marriage in Romanian civil law requires a systematic approach to the applicable legal provisions, as well as a critical examination of relevant legal doctrines and the practical implications arising from their application.

The Romanian Civil Code, through Articles 271–338, establishes the legal regime of marriage, setting out the substantive and formal conditions required for its valid conclusion. From a substantive standpoint, the validity of a marriage presupposes the existence of free and unvitiated consent by the future spouses, matrimonial capacity, the absence of legal impediments, as well as compliance with the principles of monogamy and difference of sex, in accordance with Article 277 paragraph (1) of the Civil Code (Civil Code, 2009). From the perspective of formal requirements, the law mandates the solemn officiation of the marriage before the civil status officer, with strict adherence to the formalities prescribed by law, the absence of which results in absolute nullity of the marriage.

The specialized literature consistently emphasizes the complex nature of the legal act of marriage, which cannot be treated identically to other contracts governed by civil law. Accordingly, legal doctrine has pointed out that the will of the parties, although essential, is subject to limitations of public order, since marriage serves not only the private interests of the spouses but also a general social interest (Avram, 2016; Florian, 2016). In this context, the consent expressed by the parties must be free, serious, and given under conditions of full legal capacity. Vitiated consent, through error, fraud or duress, results in the relative nullity of the marriage, under Article 293 of the Civil Code, and

recent doctrinal interpretations examine in detail the nature of these vices and their applicability in the field of marriage (Ghiță, 2023).

Moreover, the legal regime of matrimonial capacity has been partially redefined through the adoption of Law no. 140/2022, which introduces new regulations regarding protective measures for persons with intellectual and psychosocial disabilities, with direct implications for their ability to validly consent to the conclusion of marriage. Another relevant aspect concerns the relationship between marriage and the matrimonial agreement, particularly with regard to its nature, namely whether it constitutes an accessory act or an autonomous one, and the influence it exerts on the validity of matrimonial intent (Crețu, 2022).

Recent doctrine has placed particular emphasis on the clear distinction between the substantive and formal conditions of marriage, on the legal effects of their non-compliance, and on the criteria governing the applicability of the sanction of absolute or relative nullity (Bodoașcă, 2015; Lupașcu & Crăciunescu, 2012). In this respect, the validity of marriage must be assessed not only in terms of compliance with the letter of the law, but also in light of its social function and the protection it provides to the person within family relationships.

This paper aims to systematically and critically analyse the conditions for the validity of marriage under Romanian civil law, starting from the current legal framework, continuing with the examination of relevant doctrinal positions, and concluding with a discussion of the practical implications arising from the application or violation of these fundamental legal requirements.

Examination of the Essential Substantive Conditions of Marriage under Romanian Civil Law

Marriage is a solemn legal act, regulated by the Civil Code in Articles 271–277, and its validity is conditional upon the cumulative fulfillment of certain substantive requirements, which reflect both the autonomous will of the future spouses and the public interest protected through the institution of the family.

A first essential element is the free and personal consent of those intending to marry. According to Article 271 of the Civil Code, marriage is concluded “through the personal and free consent of the future spouses,” expressed directly before the civil status officer. Consent must be unimpaired, and Article 293 provides that it may be affected by error, fraud (*dol*), or duress, situations examined separately within the legal framework governing defects of consent (Florian, 2016; Ghiță, 2023).

A second fundamental condition concerns matrimonial capacity. Article 272(1) states that the minimum legal age for entering into marriage is 18 years. However, paragraph (2) establishes an exceptional regime that allows a minor who has reached the age of 16 to marry, but only on the basis of well-grounded reasons and subject to the cumulative fulfillment of four conditions: the existence of a favorable medical opinion, the consent of the parents or guardian, and the authorization of the guardianship court. This derogation is justified by circumstances such as an existing pregnancy or other well-founded familial or cultural reasons (Avram, 2016; Anitei, 2021). For instance, in the case of a 16-year-old adolescent who is pregnant and already cohabiting with the father of the child, the guardianship court may consider that well-grounded reasons are met for authorizing the marriage, provided that all other legal requirements are fulfilled.

Correlatively, individuals who lack discernment due to a mental disorder (such as insanity or mental deficiency) may not validly enter into marriage. Article 276 of the Civil Code explicitly establishes this prohibition, placing the protection of mental health above the formal autonomy of will. Thus, even if a person appears to be capable, but is undergoing psychiatric treatment for a serious and chronic condition, the civil status officer is obliged to reject the request for marriage in the absence of a clear medical opinion attesting to legal capacity.

Another category of essential conditions is represented by legal impediments to marriage, that is, those circumstances which prevent the valid conclusion of a matrimonial union. First and foremost, bigamy is prohibited. Article 273 of the Civil Code stipulates that a person may not enter into a new marriage while already legally married to another. This rule enshrines the principle of monogamy and ensures the coherence of both the patrimonial and personal legal regime of the family (Avram & Banciu, 2012).

Secondly, Article 274 of the Civil Code prohibits marriage between relatives in the direct line – such as parents and children or grandparents and grandchildren – as well as between collateral relatives up to and including the fourth degree, such as first cousins. However, in the case of fourth-degree collateral relatives, the law allows an express derogation, subject to two cumulative conditions: the existence of a favorable medical opinion excluding significant genetic risks for potential offspring, and express authorization by the guardianship court. For instance, if two fourth-degree cousins request to marry and submit a genetic opinion confirming the absence of any risk of transmitting hereditary conditions, the court may approve the request, provided that their relationship does not infringe upon other

imperative public order norms – such as, for example, a prior relationship of authority between them or any context that would raise doubts as to the genuine nature of their matrimonial intent.

Legal prohibitions also apply in the case of kinship through adoption, by virtue of the legal equivalence established with natural kinship under Article 274(3). Thus, even if the biological connection has been extinguished, the legal kinship relationship remains an absolute impediment to marriage, reflecting the best interest of the adopted child.

Another absolute impediment is provided by Article 275 of the Civil Code: marriage between a guardian and the minor under their guardianship is prohibited, in order to prevent abuse of authority and conflicts of interest. Even if the young person reaches the age of majority during the guardianship, any intention to marry must be examined with caution, and in cases where the guardianship has influenced the will, the marriage shall be absolutely null.

Finally, Article 277 stipulates that marriages between persons of the same sex are not permitted in Romania, and those concluded abroad produce no legal effects under domestic law. However, by Decision No. 534/2018, the Constitutional Court established that, although the marriage itself is not recognized, Romanian authorities are obligated to allow the exercise of the right of residence on the basis of a legally concluded marriage in another Member State of the European Union, pursuant to the right to free movement (CCR, 2018).

The substantive conditions of marriage in Romanian civil law are deeply rooted in a legal vision that combines individual autonomy, considerations of public order, and the protection of vulnerable persons. Violation of any of these conditions results in either relative or absolute nullity, depending on the nature of the breached norm and the interest protected.

The Form of Marriage and Procedural Validity Requirements

The legal regime of form in matters of marriage reflects the legislator's requirement that this juridical act be concluded in accordance with a solemn and predetermined framework, whereby the expression of will by the future spouses must not only be stated, but also verifiable and enforceable against third parties. The form of marriage does not have a merely formalistic or decorative character; rather, it fulfills a function of ensuring the seriousness and deliberate nature of the consent, as well as protecting public order. Therefore, we are dealing with a *conditio ad validitatem*, whose imperative nature

stems not only from the legal text but also from the legal nature of the institution itself.

According to the provisions of the Civil Code, marriage is concluded by officiation before the civil status officer, in the personal and simultaneous presence of the future spouses. The law explicitly excludes any form of substitution, representation, or manifestation of will in absentia, thereby placing this act outside the scope of ordinary civil contracts. The requirement of the personal presence of the parties derives from Article 271 of the Civil Code, which requires the “personal and free” consent of the spouses. Legal doctrine consistently emphasizes that the absence of this formal element entails the absolute nullity of the marriage, as it affects the very existence of the act (Florian, 2016; Bodoașcă, 2015).

Before the celebration of marriage, the law provides for a series of preliminary formalities whose role is to ensure informed consent and the verification of the fulfilment of substantive conditions. These include the marriage declaration submitted by the future spouses to the competent civil status officer, accompanied by identity documents, medical certificates concerning their health status, and, where applicable, documents proving the termination of any prior marriage. The law establishes a waiting period (usually ten days) between the date of the declaration and the date of the ceremony, during which time any objections to the marriage may be raised by interested third parties or the public prosecutor.

The solemn conclusion of marriage takes place in the presence of the civil status officer – in a venue expressly designated for this purpose by the local public administration authority – and in the presence of at least two adult witnesses. The procedure is conducted in the Romanian language, even if the future spouses do not understand it, without this affecting the validity of the expressed consent. Subsequently, the civil status document – namely, the marriage certificate – is issued, constituting the legal proof of the marriage and enjoying absolute evidentiary force, until a possible finding of falsity through the procedural means provided by law. Non-compliance with these formal requirements – relating to the solemnity, publicity, and authentication of the act – results in absolute nullity, except in the limited cases where the law expressly provides for a derogation.

A clear distinction must be made between substantive and formal requirements: the former concern the legal capacity of the parties to marry and the quality of their consent, while the latter concern the manner in which that consent is expressed and legally formalized.

However, in matrimonial matters, both categories of conditions are of an imperative nature, and the sanctions for their violation are of similar gravity, depending on the nature of the breached rule. Doctrine emphasizes that, in the field of marriage, the solemn nature of the act is inseparable from its validity – unlike other contracts where form is a *conditio ad validitatem* only exceptionally (Avram, 2016; Lupașcu & Crăciunescu, 2012).

Thus, the form of marriage in Romanian civil law is not merely a procedural formality but a genuine safeguard of legality, authenticity, and public order. Any deviation from this form – unless expressly allowed by law as an exception – leads to the ineffectiveness of the act as a whole and, implicitly, to the inexistence of the matrimonial legal relationship.

Vitiating Factors of Consent and the Validity of Marriage

The free and conscious consent of the spouses constitutes a fundamental substantive requirement for the validity of marriage, as expressly provided by Article 271 of the Civil Code, which stipulates that marriage is concluded through the personal, free, and unvitiated will of each spouse (Civil Code, 2009). Any deviation from this requirement may lead to the relative nullity of the marriage, in accordance with Article 293, if consent was obtained through illicit means: error, fraud, or coercion.

Error, as a defect of consent in matrimonial matters, is regulated more restrictively than in contract law: only an error concerning the physical identity of the other spouse may result in annulment. It is not sufficient for a person to have been misled about the exact age, political orientation, or medical history of the partner, provided that the physical person was correctly identified (Avram, 2016). This legislative approach, inspired by traditional legal doctrine, aims to limit annulment actions based on subjective or fluctuating motives and to promote legal certainty and stability (Florian, 2016).

Fraud occurs when consent is obtained through intentional deception. This may include active conduct – such as providing false information about one's civil status – or essential omissions, such as concealing a pregnancy from another relationship, a serious contagious disease, or a recent criminal conviction. For example, if a person claims to be unmarried while being legally married in another jurisdiction and not yet divorced, this constitutes a misrepresentation likely to justify the annulment of marriage (Bodoașcă & Dumitrache, 2012). Legal literature draws a distinction between culpable silence (which may constitute fraud) and simple reticence, which is not

sanctionable unless it was decisive in determining consent (Ghiță, 2023).

Coercion, as defined by the Civil Code, may take the form of physical or moral pressure of such intensity that it eliminates the freedom of decision. It is irrelevant whether the pressure originates from the other spouse or from third parties – what is decisive is the impairment of the voluntary nature of the act. Thus, a marriage accepted under threats of disinheritance, social exclusion, or physical aggression may be annulled on the grounds of vitiated consent (Avram & Banciu, 2012). In such cases, family, social, or religious pressures must be assessed according to their impact on the person's actual capacity for free decision-making.

An example of indirect moral coercion may be illustrated by the situation of a young woman from a conservative community who is subjected to rituals and collective pressures to accept a marriage "chosen" by her family. Although no explicit threat is present, the context becomes coercive due to its social force, particularly in the absence of a real alternative. In other cases, economic pressure may be relevant: a man in extreme poverty, without housing or income, is persuaded by a wealthier person to enter into marriage in exchange for material benefits, thus exploiting his vulnerability. If it is later established that the entire relationship was based on an imbalance of power intentionally exploited, the court may find the existence of a vitiated consent.

Article 301 of the Civil Code regulates the legal regime of the limitation period for the annulment action. The general term is six months, but the moment from which it begins to run varies: in cases of error or fraud, from the date the defect was discovered; in cases of coercion, from the cessation of the constraint. Furthermore, when the coercion persists, the limitation period is suspended, reflecting special protection for victims of ongoing abuse (Civil Code, 2009).

Procedurally, the burden of proof for vitiated consent must be convincing, as courts are generally reluctant to intervene in a sensitive domain that lies at the intersection of emotional and legal matters. Various types of evidence are admissible: witness statements, electronic correspondence, psychological expert reports, documents, or prior reports to authorities. In practice, courts have admitted the annulment of marriage when the victim proved that she was forced by her parents to accept marriage under the threat of eviction and loss of livelihood (Florian, 2016).

Overall, the legal regime governing defects of consent reflects a balance between the protection of individual freedom and the stability

of the institution of marriage. Although the application of these rules involves complex contextual assessments, they remain essential for sanctioning those cases in which the legal form of marriage has been diverted from its legitimate purpose through coercion or deceit.

Doctrinal Interpretations and Divergent Jurisprudential Solutions

In the analysis of marriage validity from the perspective of Romanian civil law, doctrinal nuances and jurisprudential developments that shape the practical application of legal norms cannot be disregarded. Although the Civil Code provides a relatively clear legal framework regarding the substantive and formal conditions for entering into marriage, the legal reality reveals a series of divergent interpretations, both in scholarly literature and in judicial practice. These differing approaches reflect the tension between the letter and the spirit of the law, between legal tradition and modern social imperatives, as well as between domestic law and the evolving European legal order. The following section examines several of the most relevant issues subject to doctrinal and jurisprudential dispute, with an emphasis on their implications for the stability of the legal regime governing marriage.

Free Consent – Between Will and Emotional or Economic Constraint

Under Romanian civil law, the personal and free consent of the future spouses constitutes an essential substantive condition for the valid conclusion of marriage. Article 271 of the Civil Code unequivocally stipulates that “marriage is concluded between a man and a woman through their personal and free consent.” Consequently, any deviation from the free and conscious nature of consent may lead to the absolute nullity of the marriage, pursuant to Article 293(1) of the Civil Code, which includes among the cases of absolute nullity the violation of the provisions of Article 271.

Valid consent requires that each of the future spouses must express their will to enter into marriage:

- **personally** (without an intermediary),
- **consciously**, having discernment at the time of concluding the marriage,
- **freely**, meaning without any defect of will (error, deceit, or duress),

- and **unvitiated**, in the sense that it is not affected by external pressure or manipulation.

Emotional coercion can take subtle forms but may have a significant impact on the freedom of will. A relevant example is the situation in which a person consents to marriage under emotional pressure exerted by parents or other close relatives, in the context of rigid family traditions or threats to sever family ties. In such cases, there is no physical violence or actual deceit, but rather persistent psychological pressure that impairs decision-making capacity. Coercion becomes legally relevant when it is capable of nullifying the freedom of consent, according to the interpretation of Article 271 of the Civil Code, in conjunction with Article 293 and Article 301(3), which govern relative nullity due to defects of consent and the applicable prescription period.

In evidentiary terms, emotional coercion may be proven through:

- statements from close witnesses (family members, friends);
- electronic correspondence or relevant messages explicitly showing the pressure exerted;
- psychological expert reports, especially when the victim reports trauma, anxiety, or emotional disorders that can be linked to the time of the marriage;
- circumstances prior to and following the marriage indicating the absence of a real and reasonable alternative.

With regard to economic coercion, this arises in cases where one of the future spouses agrees to the marriage under the threat of losing essential means of subsistence or due to extreme material dependency. For example, if a person with no personal income, dependent on the future spouse or their family, consents to marriage in exchange for the guarantee of continued financial support, the court may find that their will was fundamentally vitiated.

An illustrative body of case law can be found in decisions of French and German courts, where marriages have been annulled in cases where consent was given in the context of financial pressure or critical dependency. In Romanian law, although jurisprudence is more reserved, the majority view in legal doctrine accepts that economic pressure may constitute a defect of consent when it is sufficiently intense to suppress the freedom of decision (cf. Avram & Banciu, 2012; Bodoaşcă, 2015).

Moreover, Article 301(3) of the Civil Code stipulates that in the case of nullity due to defects of consent, the limitation period begins from the moment the violence ceases or from the moment the party became aware of the fraud or error. This requires a contextual and

psychological assessment of the will. The court is thus obliged to analyze not only the external manifestation of consent, but also the conditions under which it was formed.

Therefore, consent cannot be considered valid if it is formally expressed but determined by psychological, emotional, or economic domination mechanisms incompatible with the concept of autonomous will. The recognition of these forms of coercion reflects an evolution in case law and modern contract theory, which place greater emphasis on the balance between parties and the protection of the vulnerable (cf. Florian, 2016; Ghiță, 2023).

The Notion of Legal Impediment - Between the Letter and the Spirit of the Law

In family law, consent constitutes the essential foundation for the valid conclusion of marriage. According to Article 271 of the Romanian Civil Code, marriage is concluded between a man and a woman through their personal and free consent (Civil Code, 2009). This provision reflects the principle of autonomy of will in private law and excludes the possibility of concluding a marriage in the absence of genuine will or under coercion.

The validity of consent requires both the presence of discernment at the time of expression and the absence of any defects of will: mistake, fraud, or violence (Avram, 2016). In this sense, a defect in consent entails the relative nullity of the marriage, and the general time limit for bringing an action is six months from the cessation of the violence or from the moment the defect was discovered (Civil Code, 2009, art. 301 paras. 1 and 3).

Emotional coercion represents a form of moral violence when a person is subjected to intense psychological pressure that suppresses their autonomous will. Such situations may arise, for example, in traditionalist communities where a young woman is forced by her family to accept an arranged marriage under threat of ostracism or social shame (Bodoaşcă, 2015). Although the Civil Code does not provide an explicit definition of psychological violence in the context of marriage, it is recognized in case law through the interpretation of Article 1206 concerning defects of consent (Civil Code, 2009).

The proof of coercion is difficult, but not impossible. Courts rely on the totality of the available evidence: witness statements, recorded conversations, written messages, psychological or social expert opinions, as well as the objective circumstances of the marriage conclusion (Florian, 2016; Avram & Banciu, 2012). Furthermore, the

existence of prior complaints, protection orders, or reports from social services may support the involuntary nature of the consent.

Cases of marriages concluded for the purpose of obtaining citizenship or other legal advantages, but which actually involve coercion against one of the spouses, may raise complex legal issues. Such situations cannot be sanctioned solely by administrative assessment but must be subject to a judicial ruling, pursuant to Articles 293 and 296 of the Civil Code (Civil Code, 2009).

Free consent is more than a formal act: it must reflect a genuine, deliberate decision, unaltered by internal or external pressures. Any form of coercion - whether physical, moral, economic, or symbolic - must be assessed in its context, with the aim of protecting the individual's autonomy and the integrity of the institution of marriage.

Same-Sex Marriages – Between Domestic Law and International Obligations

Although Article 277 of the Romanian Civil Code expressly prohibits the recognition, in Romania, of same-sex marriages concluded abroad, recent case law has led to a more nuanced interpretation of this provision. A landmark case is that of the *Coman-Hamilton* couple, in which a Romanian citizen and his husband, an American citizen legally married in Belgium, requested the right of residence in Romania for the foreign spouse. Initially, the Romanian authorities denied the request, invoking Article 277 of the Civil Code. The matter was referred to the Court of Justice of the European Union (CJEU), which, in its judgment of 5 June 2018 (C-673/16, *Coman and Others*), held that, for the purposes of free movement, the term "spouse" also includes same-sex partners, thus requiring Romania to recognise the marriage for this specific purpose.

In parallel, the Constitutional Court of Romania, by Decision no. 534/2018, held that Article 277 of the Civil Code is constitutional only insofar as it does not hinder the exercise of fundamental rights – such as the right to private and family life – in accordance with the requirements of European law. Moreover, the case law of the European Court of Human Rights (ECtHR) has increasingly established a clear standard requiring states to provide legal recognition and protection for same-sex partnerships, as illustrated in *Fedotova and Others v. Russia* (ECtHR, 2021), where the Court held that states must ensure a legal framework for such recognition.

These examples demonstrate that, despite the provisions of domestic law, Romania is under growing pressure to harmonise its legislation with international standards, amid an increasingly divided

doctrinal landscape oscillating between normative conservatism and the imperative of effective protection of fundamental rights.

Legal and Social Implications of the Failure to Meet the Conditions of Validity

The failure to meet the validity conditions of marriage - whether substantive or formal - generates major legal consequences, as it affects the very act of establishment of a fundamental institution of family law. An invalid marriage does not produce legal effects, or produces them only in part, depending on the nature of the established nullity, and the consequences affect not only the spouses, but also third parties - especially the children born from that union, heirs, creditors or state institutions.

According to the Romanian Civil Code, the nullity of marriage may be absolute or relative. Cases of absolute nullity are expressly provided under Article 293 paragraph (1), referring to violations of imperative provisions concerning consent, capacity, legal impediments, difference in sex or the solemn form of conclusion (Avram, 2016). In such cases, the marriage is subject to nullity *ex tunc*, being regarded as non-existent *ab initio*, which results in the ineffectiveness of all legal effects that would have otherwise derived from it (Bodoaşcă, 2015).

Relative nullity, provided under Articles 294–296 of the Civil Code, applies to the breach of conditions meant to protect private interests - such as vitiated consent (error, fraud, duress), lack of discernment or the absence of the required authorisation for minors with restricted legal capacity. This type of nullity may be cured by confirmation or by the expiry of the 6-month period laid down by Article 301 of the Civil Code for initiating the action (Florian, 2016).

In cases of void or annulled marriages, the spouse who acted in good faith benefits, until the final judgment annulling the marriage, from the effects of a valid marriage, pursuant to Article 304 of the Civil Code, which regulates the institution of putative marriage. During this period, the patrimonial relations between spouses are governed, *mutatis mutandis*, by the provisions regarding divorce. However, the matrimonial regime is not opposable to third parties, since the lack of validity of the marriage act prevents the production of its external legal effects. Thus, legal protection is confined to the internal sphere of the relationship between the former spouses and seeks to avoid inequities resulting from the conclusion of a marriage under the appearance of legality (cf. Avram, 2016; Florian, 2016).

The nullity of marriage does not automatically produce negative effects on the filiation of children resulting from it. Pursuant to Article 411 of the Civil Code, filiation with respect to the mother (and, under certain conditions, to the father) is presumed valid if there exists a possession of status consistent with the birth certificate. This legal protection aims to ensure the stability of the child's personal status, regardless of the validity of the marital relationship between the parents. Therefore, a child born within a void marriage may benefit from all natural rights arising from filiation, including inheritance rights, provided that the legal conditions are met (cf. Florian, 2016; Avram & Banciu, 2012).

In matters of succession, if the spouses were not in a valid marriage at the time of one spouse's death, the surviving partner cannot claim the status of legal heir. Nevertheless, national case law has provided for solutions in which courts have recognised a right to compensation for the good-faith partner, on the basis of unjust enrichment or management of another's affairs (Lupașcu & Crăciunescu, 2012).

The social dimension of these consequences is illustrated by the loss of certain rights linked to spousal status, such as the right to a survivor's pension, fiscal benefits, the right to occupy social housing allocated as a spouse, or access to public health insurance systems. Moreover, in the case of international marriages, annulment may lead to the loss of residence permits or of citizenship acquired through marriage, particularly when state authorities determine that the union was fictitious (Crețu, 2022).

An example previously mentioned, concerning international recognition, is the Coman and Hamilton case (CJEU, C-673/16), in which the Court of Justice of the European Union obliged Romania to recognise, for the purpose of residence rights, a same-sex marriage concluded in Belgium, even though such a marriage is not permitted under domestic law. This judgment generated tension between European Union law and national legislation, highlighting the difficulties of integrating European standards into a traditionalist national legal framework (Anitei, 2021).

The nullity of marriage is not a mere formal sanction, but an institution with profound legal, social, and even psychological reverberations. It affects patrimonial relations, personal status, filiation, and access to fundamental rights. Therefore, in judicial practice, the finding of nullity must be accompanied by a careful assessment of the legitimate interests of the parties and of the children, with the correct

application of the legal provisions and in light of the general principles of law.

Conclusions

The legal regime governing the substantive conditions for entering into marriage reveals a normative construction oriented towards balance and protection. Each requirement set out in the Civil Code reflects a deliberate choice by the legislator to weigh individual freedom against the public interest. It is not merely a formality, but a complex legal mechanism that ensures the integrity of the institution of marriage and prevents situations of fraud, abuse, or imbalance between the parties.

Consent, for instance, is not merely a manifestation of will, but a condition that presupposes discernment, freedom, and full knowledge of the act being undertaken. The regulation of nullity in cases of error, deceit, or coercion is not intended to encourage marital instability, but to remedy those situations in which a person's freedom was severely compromised. It acts as an essential safeguard for preserving the legal value of marriage as a voluntary and conscious act.

Legal capacity, in turn, reflects the recognition of the legal and psychological maturity necessary for making a choice with lasting social and patrimonial consequences. The provision of a minimum age, as well as the authorisation mechanisms for exceptional cases (such as marriages from the age of 16), demonstrate a constant concern for the protection of vulnerable persons, without completely denying access to a legitimate form of family life.

Legal prohibitions of a personal nature – bigamy, lack of discernment, close kinship – are not arbitrary barriers, but public order norms that protect the integrity of family relationships. These have been calibrated in such a way as to allow for reasonable exceptions only where there is no objective risk, as in the case of collateral relationships of the fourth degree, subject to medical expertise and judicial authorisation.

Last but not least, restrictions regarding same-sex marriages must be understood in the context of the particularities of the Romanian legal system, as well as the obligations assumed at the European level. The tension between domestic norms and Union law cannot be resolved by disregarding either, but through a normative dialogue that allows for the respect of fundamental rights within the existing constitutional framework.

This legal framework does not aim to standardise life experiences, but to ensure a legal space in which freedom does not become a cover for inequality, manipulation, or coercion. The validity of marriage, thus understood, becomes not merely a matter of will, but of a fair balance between freedom and protection.

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