



IAFL Introduction to European Family Law Conference, Thessaloniki, Greece

**Thursday 18 April
11:00 - 12:15**

**Session 3: Pre and post-nuptial
agreements**



**IAFL INTRODUCTION TO EUROPEAN FAMILY LAW CONFERENCE IN COLLABORATION WITH
THE LAW SCHOOL OF ARISTOTLE UNIVERSITY, THESSALONIKI
EDUCATION PROGRAM**

Thursday 18 April

11:00-12:15 Session 3: Pre and post-nuptial agreements

Speakers:

1. [Eniko Fulop](#), Romania
2. [Johan Sarvik](#), Sweden
3. Aleksandar Pavleski, Serbia
4. Alexander Breedon, UK

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A short CV:

Eniko Fulop earned her Master's degree in European Law and Regulations from Babes-Bolyai University, Faculty of Law. Prior to that she completed her Bachelor of Laws at Babes – Bolyai University in 2005. She is admitted to the Bar of Bucharest since March 2009, being a legal counsel priorly between 2005-2009. Currently, she is managing partner at Fuloplawyers, her own legal company based in Bucharest, Romania. After 18 years of experience in the field of commercial-, labour-, civil-, pharma-, and business law, she decided to reverse the priority of her practice after winning a complicated child abduction case in 2015 in Bucharest. In the last 8 years she has dealt with more than 40 international family law cases, which proved her that family law is her mission and her contribution to the world. She has also handled cases in front of the European Court of Human Rights (Fulop vs Romania, Cocarlea Vs Romania, Iridex vs Romania- legal consultancy). She is fluent in English, Romanian & Hungarian, has a good level of Spanish and Italian and she is currently learning French.

CV – Aleksandar Pavleski



Any contact details that they wish to share:

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Aleksandar is the founder of the Pavleski Law – a boutique law firm located in Belgrade, Serbia. In his practice, he exclusively deals with family law. Although he has extensive experience in all areas of family law, he is mainly involved in family cases with an international element.

Dual-qualified in Serbia and Montenegro, Aleksandar is a recognized authority in complex high net worth cases, having acted in many high-profile divorces and complex child disputes.

He speaks Serbian and English.

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Thessaloniki, 17-18 April 2024

Pre and post-nuptial agreements

Johan Sarvik – Sweden
Eniko Fulop – Romania
Aleksandar Pavleski – Serbia
Alex Breedon – England & Wales



Pre and post-nuptial agreements
SWEDEN

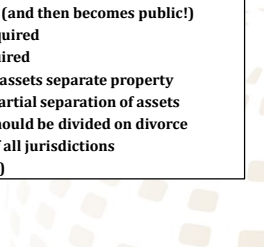

Johan Sarvik
Attorney-at-law in Malmö, Sweden
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Thessaloniki, 17-18 April 2024



PRE AND POST-NUPTIAL AGREEMENTS IN SWEDEN

- Can be entered into before or during the marriage
- Requires registration to be valid (and then becomes public!)
- Independent legal advice not required
- Full disclosure of assets not required
- Is one of three methods to make assets separate property
- Can stipulate total or specified partial separation of assets
- Cannot regulate how property should be divided on divorce
- Probably shortest agreements of all jurisdictions
- Actually works (most of the time)



Matrimonial regimes in Romania

Eniko Fulop
Managing partner
Fuloplawyers.com, Bucharest

Thessaloniki, 17-18 April 2024



Matrimonial regime and its types

- What is a matrimonial regime? A matrimonial regime represents assets management during the marriage.

Are there several types of regimes? Yes.

- The Civil Code Articles 307-327 of the Romanian Civil Code prescribe the options for matrimonial property regime settlement. Accordingly, the spouses can choose to adopt the
- communion of the assets, which is the general rule when parties do not exercise the option to conclude a matrimonial agreement
- the separation of the assets or
- conventional communion.

Legal community of marriages as a rule

What is the legal community?

This is applicable whenever the spouses do not express, through the conclusion of a marital agreement, their option for the adoption of a conventional matrimonial regime.

Communion of assets consists primarily of the goods acquired during the marriage. Assets not included in the communion are:

- goods acquired as gift,
- goods for personal usage and professional purposes,
- rights derived from intellectual property
- goods that a spouse receives as a prize or reward, or due to scientific or literary publications, projects, designs,
- insurance benefits and the restoration deriving from a patrimonial damage suffered by one of the spouses;
- profits deriving from the property owned by one of the spouses.

Exception is made in respect of the profits derived from intellectual property, where such profits belong to the spouses are considered common goods.

Legal community of marriages as a general rule

- Common assets are used and administered by both of the spouses, without the consent of the other spouse.
- However, legal transactions related to the sale or imposition of weights and burdens on common assets can be concluded only with the consent of both.
- Legal transactions related to the family home are governed by a special regime. A spouse cannot independently dispose of the rights to the family home or conclude actions that affect its usage, even if he is the sole owner.

However, if the consent of the other spouse is refused in an unjustified manner, the family Court may authorize the conclusion of the act. The non-consenting spouse can request the cancellation of the deed if the dwelling is registered in the property registers as a family home.

Matrimonial agreements-in general

- The matrimonial agreement is concluded through an instrument authenticated by a notary public and is a solemn legal document. At the conclusion of the marriage agreement, according to Article 330 of the Civil Code, the consent of both spouses must be given before a notary public, either personally or by an authentic, special proxy having a predetermined content.
- The breach of the provisions is sanctionable by the absolute nullity of the act.
- The date of concluding the marriage agreement - according to the provisions of Article 330 paragraph 2 of the Civil Code, the date of concluding the marriage agreement may be either before or during the marriage, but it will produce effects only during the marriage.

Matrimonial agreements-in general

- Amendments to the matrimonial agreement –
Before the marriage, the agreement may be amended at any time, in whole or in part, under the conditions stipulated by the law regarding its form and publicity.
After the conclusion of the marriage, the spouses may modify the matrimonial regime applicable to them only after at least one year after the marriage date, by concluding a matrimonial agreement (Article 369 of the Civil Code.)

Separation of assets

- This is a typical separatist regime, offering the spouses a wide patrimonial independence, limited only to the application of the provisions of the primary regime
- This regime means an **exclusive** property of each spouse regarding the assets acquired before and after the marriage, remain in their own property.
- This choice is made by **signing a matrimonial convention** (a notarized deed with the consent of both spouses given personally or by proxy). In this case the notary will prepare an inventory for movable and imovable goods at the request of the parties.
- **Spousal debts** - In this system there is only the personal debt of each of the spouses, except for the debts incurred by the household expenses

Separation Of assets

- The termination of the separation of property matrimonial regime takes place:
 - at its conventional change;
 - at the termination of the marriage through the death of a spouse;
 - on ascertaining the nullity or annulment of the marriage;
 - on the dissolution of the marriage.

The liquidation of the separation of property matrimonial regime involves mainly the following operations:

- the identification of each spouse's own assets;
- the division of the property acquired in co-ownership, or the transformation thereof into a full and exclusive ownership right for each of the spouses;
- the mutual payment of any possible claims arising between the spouses during the marriage;
- the payment of the spouses' common creditors.

Conventional communion

- This regime is a derogation from the legal community. When you sign a matrimonial agreement, you have the freedom to derogate from different rules that govern the legal community.
- In case of conventional community, the spouses or future spouses can determine in advance, when concluding a matrimonial convention, the share devolving upon them of the property jointly acquired during marriage, share which is mandatory for all purchases during marriage, any amendment to this clause following to be preceded by the liquidation of the matrimonial regime and the conclusion of another matrimonial convention.

Change of the matrimonial regime

- **The conventional change**
- The matrimonial regime may be amended under the agreement of the spouses, whenever they want, under the following conditions:
 - at least one year since the conclusion of the marriage must have passed;
 - the legal requirements for concluding marriage agreements are complied with.
- Changing a matrimonial regime will be achieved by concluding a new marriage agreement in the form of an authentic instrument, before a notary public. - the fulfilment of all the forms of publicity provided by law for the enforceability of the marital agreement.
- **The judicial modification**

Changing the matrimonial regime applicable to a family may also be achieved in court, at the request of one of the spouses, where:

- the matrimonial regime applicable to the spouses is that of the legal or conventional community;
- the other spouse concludes acts that endanger the property interests of the family

Interesting fact regarding Romanian matrimonial regime

- We do not have regulated the post – marital convention
- Lawyers or third party experts rarely intervene in matrimonial conventions, as the procedure is done by public notaries
- Conventional communion is very rarely used in practice, only 3% of the matrimonial are based on conventional communities
- 90% of the population do not use matrimonial conventions, they apply automatically the legal community

Interesting fact regarding Romanian matrimonial regime

- After one year of marriage matrimonial contracts can be changed anytime or many times until the dissolution of the marriage.
- The law provides a right of retention for each of the spouses, at the termination of the regime of separation of property, for the property of the other spouse, up to the full coverage of debt they owe each other
- Marriage is confined only to opposite-sex couples. People of same sex still do not have any options to formalize their communion or contract a matrimonial agreement.

Thanks everyone for being present!!

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Pre and post-nuptial agreements
SERBIA

Aleksandar Pavleski
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Thessaloniki, 17-18 April 2024

PRE AND POST-NUPTIAL AGREEMENTS IN SERBIA

- Same rules for marriage and civil union
- Prenups can be signed before or during the marriage/civil union
- Postnups can be signed before, during or after the marriage
- Postnup is a mandatory step for uncontested divorce
- Independent legal advice not required
- Full disclosure of assets not required
- Prenups can regulate how assets should be divided on divorce
- It is not allowed to arrange parental rights in prenups

Pre and post-nuptial agreements
ENGLAND & WALES

Alex Breedon
Withers LLP, London

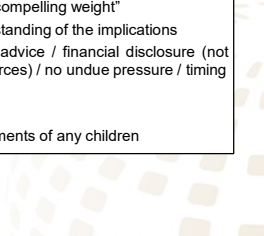

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PRE AND POST-NUPTIAL AGREEMENTS IN ENGLAND & WALES (1)

Do they work?

- "Magnetic importance" / "decisive or compelling weight"
- If freely entered into with a full understanding of the implications
- Procedurally fair: independent legal advice / financial disclosure (not just assets/income but of wider resources) / no undue pressure / timing
- Substantively fair: are "needs" met?
- Projecting forward
- Cannot prejudice reasonable requirements of any children



PRE AND POST-NUPTIAL AGREEMENTS IN ENGLAND & WALES (2)

What might they look like?

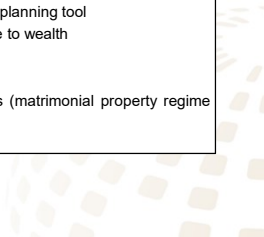

- Move away from starting point of equal division
- Fixed outcome or principles approach
- Can mimic a separate property regime
- Cross check against "needs"
- Completely bespoke
- Values-driven



PRE AND POST-NUPTIAL AGREEMENTS IN ENGLAND & WALES (3)

Trends

- Post-nups as a wealth/succession planning tool
- New generation with a new attitude to wealth
- Modern/blended families
- Litigation arising from agreements
- Interplay with civil-law jurisdictions (matrimonial property regime elections, applicable law etc)
- (Pets)



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QUESTIONS & DISCUSSION

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