HOW TO WRITE A PRENUPTIAL AGREEMENT IN THE ALBANIAN REPUBLIC

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Abstract

The importance of each law institute is in the possibility of its application and the ability that law has on the individual serving and helping him to get into relationships with others feeling protected by law. The legal principles are distributed among a proportionally way, for the implementation of the juridical norms, by having the subject of the right in relation to himself and in relation to others. It is the law’s duty to find the legal tool to assist the subject of the right and here we remind that in the prenuptial agreement its intentions are in the service of the subject of the right. The parties to the prenuptial agreement should know what they want and what they require, to be enabled by law and may be offered the legal opportunity to sanction the contract conditions. It is necessary for future spouses firstly spend enough time in getting basic information on what happens to the marriage bond and what responsibilities they get as a result of the marriage bond, the law institute that arises by combining the elements of the obligation relationship between those of the family relationship to accomplish a prenuptial agreement. The prenuptial agreement pairs maybe do not have the necessary legal formation to know how the right to their service may be. So it is necessary to go through some determined steps to realize what they want.

Keywords: Marriage, Contract, Prenuptial Agreement, Spouses, Property.

I. INFORMATION PHASE

Knowledge is a superficial intellectual process, as it is realized through the senses without going into a greater intellectual commitment, as it is only needed for an initial recording of the facts. When the future spouses decide to marry, they consider mainly the good process of their purpose and lecturing the spiritual report with the continuing of a family creation, bypassing what we call even more important to the study, legal consequences. They further reach the perception of the legal changes that they undertake and that law speaks in a special space for the rights and obligations deriving from marriage, which mainly are related to the loyalty obligation, surname right, residence, children’s obligation, etc. Most of the future spouses do not receive information about the details of these changes they get, thinking only for the of the marriage bond and attached to this they
get also the obligations package. Among other things, special importance in the marriage takes the change of their property status. In the case that the future spouses do not express the willpower for any specific formula for their property regime, it is entirely possible to enter in the regime of the legal union unwillingly and without truly realizing the consequences it can bring to them, both in terms of benefits as well as the commitments and obligations that they have towards marriage.

Into today, the prenuptial agreement is considered as a legal tool that belongs to the rich and that limits the possibility of editing it if they do not have property. Meanwhile is the opposite because today there is a tendency to increase the number of couples applying the prenuptial agreement and addressing into this institute since the genesis of their report, without being conditioned by the current property. A healthy action is the last trend as the marriage contract itself does not deal specifically with the present assets, mainly deals with the way of regulating legal assets and obligations from the moment of the marriage bond and the following.

The recognition phase is a considered important because based on this process the prenuptial agreement can be misinterpreted and the access to this institute will remain the same forever and the spouses will give up immediately without knowing its values. The right explanation of the prenuptial agreement means the opportunity to choose the alternative that law has given to spouses in determining the destination of their properties.

While future spouses have decided to get married, until the marriage, it may be a considerable time that can serve not only in the ceremony planning but also on the legal side of the marriage institution and the contract, especially if they have decided to bind it (if they have made such a decision). Regarding the case that spouses will get married in the Republic of Albania, it is necessary to read our country's legislation on this law institute and to know which is its position in law as a spouse and a member of a new family. The Family Code (Law No. 9062, dated 08.05.2003) and Law No. 10129, dated 11.05.2009 "On the Civil Status" (amended) are the first legal packages that spouses have to keep in hand in the priors months before the marriage. Every individual of the right, according to himself has a duty to recognize his coordinates in the system of law so that he can seek from the law and to apply it right. With law recognition, future spouses will also demolish unjust myths of some institutes and the real possibility that the law offers you to protect in his name.
There are subjects that fear marriage precisely from the obligations that derive from it and prefer coexistence to get no more commitments and also give up some of the rights that may get from the marriage bond.

It is necessary for spouses to know that by getting married they are included in some new legal provisions regarding family life and are at the same time free to be well protected from the obligations that have been perceived as a priori as a result of marriage and the marriage flaw. As explained, it is important to underline the fact that information is needed to be accurate and complete as we well know an important principle that “Unknowing does not exclude from responsibilities” and the act signature for which you are not familiar to can lead to mistakes for the pairs. It seems almost obligatory the help of a law specialist committed to give information and legal assistance in resolving the situation.

If future spouses decide with their willpower getting directed by a lawyer to obtain the proper information about the marriage and the consequences that come from it, this information that the subject need would be correct and more accurate.

The spouses for this information can decide to get in a lawyer's office or notary's office. In every information source, it is necessary for spouses to know the fact that with the marriage bond there are legal consequences for them and both have the opportunity to choose how these consequences will be and to what point they can eliminate some of the consequences.

With the marriage bond, as we have explained above, spouses enter into a wealth regime which, according to our legislation, is divided into two large groups and there are details that can be talked about after they have chosen. The regime is legal and contractual, where the first is a ready-made formula which the legislation has taken care of by specifying a list of the type assets that are common and a list of assets that are, in any circumstance, individual. The principle that accompanies this kind of regime is that of the presumption of joint ownership between.

While in contractual arrangements, spouses are still able to choose other regimes such as those shared assets and the regime of the universal community. This version is basically the expression of the will of the spouses with agreements between them to arrange the assets between them how they will be added and how they will be adjusted in the future.

Initial information is provided by law in the Family Code and if the spouses will address an advocacy office then this provides them with more detailed and accurate information so they can choose the best they want.
Taking information about the law that will be subject to future spouses should know well the consequences of the type of regime they choose to provide for the solution of problems related to property, administration and the consequences of solving the problem of the marriage.

The case that matters to study is the contracted regime, if the spouses have agreed to choose the contracted regime, then they should be fully acquainted with what the contract brings to them and what they regulate with this regime. It is very important for spouses to know what they can do with the contract and what they can not do with it. Concretely in our legislation with the marriage contract, you can decide to separate everything from the separate property regime\(^1\) or to merge everything\(^2\) and according to the principle of contract freedom can make other content according to the provisions of the law.

If a marriage agreement fails in the absence of an agreement will apply the formula of the legal community should know that the contract of marriage is their will and what they sign within the boundaries that the law allows you to write about how they want them to become a marriage contract. While browsing the Family Code, we also find other opportunities that we can anticipate in the marriage contract, regarding the obligations arising from marriage and the consequences of the marriage settlement. Both of these rights-bound groups can be defined by spouses in the contract by predicting how they want to regulate their relationship with each element arising from the marriage bond and then by the marriage settlement. Among other things, at this stage, future spouses are acquainted with the content that a marriage contract may have, with its legal power over time and its application, the obligations arising from the contract, and what benefit from the regime of the legal community.

At this stage, future spouses give up the theories that everything about marriage should be romantic as well as the fact that marriage contract strips marriage out of feelings. On the contrary, the bond of marriage without conditioning the common benefit or liberated from the idea that the contract materializes would be more appropriate for the spouses and would increase the value of the marriage institute. Future spouses at this stage are also faced with the pros and cons of the marriage contract by making their decision rolling, but also advancing in the study of this institute of the law and purpose the legislator had in its billing in law. It is important to clarify any questions that will pass on each spouse's mind so that they can clarify the unknown and may choose to be relieved of suspicion of the opportunity of the marriage contract.
II. PLANNING STAGE

This phase is more concrete with regard to spouses and care should be shown against any element they want to foresee in the contract, as the ability to formulate a fair contract (Savvy, 2005) has to do with the fact that it should contain those conditions provide the parties with the purpose of reaching the agreement as a priority for the validity of a contract without overrunning the importance of the best choice in the service of the parties (Fairbairn, 2014). Knowing that the marriage contract can regulate property relations, administration and obligation not only after its affiliation but also before its affiliation it is worth mentioning the fact that in the idea of any subject that has no specific knowledge about this institute lies the concept of application her future. Therefore, at this stage, future or current spouses can sign a marriage contract that is needed by them for relationships created before the marriage bonds, when spouses agree to choose the universal community, also need relationships when connecting marriage, since both of these in the incorporation of the alienation of assets or ordinary administration activities will be presented with the marriage contract before the public authorities to represent the unwanted will and after the end of the marriage in terms of the consequences of the settlement of marriage and the case of termination of marriage by the juridical fact of death (Family Code, Article 123).

Under these circumstances, the ability to provide for the protection of the rights of the parties belongs to entities presumed to know something about the law and therefore our legislation has given this authority to the notary so that it can edit a clear, fair and in service of the parties (Family Code, Article 69).

So it is required that future spouses before marriage bond should anticipate what the consequences will come to them from the marriage bond by looking at their current economic potential to the development of the possibility of new alternatives. On the other hand, this enterprise seems to be quite engaging, as it brings them with a responsibility which in other circumstances would be engaging the law with the formula of the legal community in regulating their relationships.

It is, therefore, necessary to be informed and organized on this journey to conclude with a contract at the time of the marriage bond. Mostly in American culture are keen to make the preparatory part quite good, with steps one after the other, placing each spouse for himself and ending together (Stoner & Irving, 2012).

Initially, future spouses are advised to make a list of the assets they have and plan how these assets can be added and if they are able to make a prediction about the potential for asset
growth. At the time of listing these assets, they may consult with lawyers to be familiar with the law because they need to know what the types of assets can be involved in common shares and which are not united. Here you need to know in detail what we call personal wealth and what we can include in the marriage contract to the joint. Acquaintance with Article 77 of Property Law and Articles 109 and 115 with regard to the type of contractual regime for the assets of the universal community in the case of regimes with a contract for these types of regimes is indispensable for future spouses to be able to identify they work the way the law works in this area and can reach the most appropriate formula. In the spatial listing, spouses have to emphasize every fortune, being transparent at this stage is not a violation of their private life, but it has to do with the ability to protect them and to know that there is a kind of their own, even if they did not sign a marriage contract.

While this phase, the future spouses, have the possibility to find out the legal terminology of the community property state, the universal community property, the separation of property or with the basic concepts of the objects law administration, contemplating the movable and immovable items, divisible and indivisible object, etc.

This initial training is also required in the defense of their rights given that they are parties to this contract and should know that even when you need this contract.

They are introduced to the fact that the assets acquired through donation are personal property, as well as assets acquired by inheritance, their work implements, etc.

So for them, the process of editing the draft contract of a prenuptial agreement, commence and becomes easier and clearer by removing them the burden of how to deal with the individual assets and with the community assets.

The choice of a representative should not only be seen in the strict sense of the inability of each of the future spouses to be present in the editing of the prenuptial agreement act in the presence of the notary, but should also be seen with the possibility of obtaining as much information as possible more accurate to editing a fair and accurate act.

Each of the future spouses can hire a lawyer in case they seek individual counseling or may choose to have the same consultant who orients the next couple in pooling or sharing assets between them (Stoner & Irving, 2012).

At this point we must keep in mind the fact that it is not possible to be the same representative as regards the signing of the marriage contract for both spouses, as here we are conditioned by the general principles regarding the act of representation as well as with the performance of legal actions that must have the essential condition of the willful will. Given
that in a contrary voluntary act, calling up here bilateral legal actions, can’t be represented by
the same subject, and therefore can’t be represented by the same lawyer.
And the second law impermissible, according to the representation, relates to the fact that the
represented person, can’t carry out legal actions with himself and this willful clash has been
taken into account by the lawmakers by sanctioning in advance the fact that the spouses can
sign the prenuptial agreement with the presence of their representatives.

*Article 69*

*The marriage contract is done by a notary act, in the presence and with the simultaneous
consent of the future spouses or their representatives.*

After they have resolved the planning part of how the relationship between them will be
regulated, based on the type of property regime contracted by the spouses, they individually
prepare the list of assets each has.

This list is in the service of the marriage contract formulation and bringing the right results to
the future spouses should be transparent and should contain in logical assignment the assets
according to the two groups we have explained above, those that may be included in the
community and those that couldn’t be mixed between them without expressing the will of the
spouses, as well as in the third group the assets that under any circumstances can’t be made
common under the law.

Specifically, we refer to the Family Code where it clearly states that based on the type of
property regime that spouses have chosen, they can also decide on the group of assets that
will be included in the contract.

All the treatment regarding this planning relates to the assets that are currently in existence
and that future spouses need to be informed but also to provide them with the mix they can
get in normal condition from the legal community regime.

In the presence of a lawyer, this list becomes easier and clearer for future spouses and
notaries that will give effect to the legal action, according to the law.

The asset list can include actual assets, but also the fact that the marriage contract should
adjust the assets that will be added in the future and since these assets can be added or
reduced it is necessary to make the listing even in the possibility of adding assets.

After having individually defined, any of the assets that must be in one of the above asset
groups, future spouses by agreement between them decide which of the contracted regimes is
more appropriate for them.
Information on contracted regimes should be professional and accurate, as this will more specifically determine the implementation formula for these assets and in these conditions, they can seriously decide which of the regimes the spouses need.

We contemplate here the types of contract regimes by providing the spouses with brief information on what they can do, with a marriage contract.

In a lawyer's office in Belgium, Brussels is located in the guest reception hall, one a shorter leaflet telling spouses what they can do with a marriage contract,

"Each of you can marry after signing a contract or doing so even though it did not sign a contract on marriage but after it settled. Next spouses make the decision, the lawyer advises you and the notary confirms the will in the right legal form. Through the marriage contract, you can choose to merge everything or share everything. Decide how the assets will be added, no one better than the owner of a property can’t determine the destination and the alienation of this property. This right can’t be violated by marriage bonds for all those who love marriage and love the family. Choose to keep any property during marriage separately from your spouse or choose to merge what you have decided before, whatever you choose to do with your marriage contract, engaging yourself in the formulation of your marriage contract. You decide, we make your will lawful." (Grégoire, 1995).

From this seemingly commercial paragraph, we come to understand the fact that husbands should know what they want to do with their possessions and after they know how to decide and create with their contract what they want.

From this paragraph which is apparently commercial, we come to understand the fact that husbands should know what they want to do with their possessions and after they know how to decide and create with their contract what they want.

With the regime of the universal community, future spouses have the opportunity to unite the personal wealth that was defined in Article 77 except for subject ç, d, dh where in any situation they will continue to remain private and can’t be joined.

Article 77, ç, d, dh

Personal property of the spouse who is not part of the community is:

ç) the necessary work equipment for practicing the profession of one of the spouses, other than those are assigned for the administration of a commercial activity;
d) property gained from personal injury compensation, with the exception of income derived from the pension earned due to partial or complete loss of job ability;
dh) assets gained from the disposal of the above personal wealth;

The particularity of this regime is related to the fact that they can join what has been built before marriage is sufficient not being one of those assets that we have finally called individual and which under no circumstances can be joined.

On the other hand, with the separate property regime or the division of the properties is related to the fact that spouses are more independent and have their normal conviction that the right of ownership can’t be merged only as a result of the marriage bond.

Those who decided for this regime are mostly the oldest couples because they have some consolidated wealth and do not have any complexity to the ability of anyone to afford economic independence while following to protect this possibility.

Often at this stage spouses encounter a kind of silent or apparent conflict because it creates a sort of individualization of the spouses' wealth and wealth. Unable to accept this kind of regime, they dispute to each other, because they don’t understand the free will of each, as they call in many cases the intent for this kind of regime, as a lack of love for each other.

The unification of economic and emotional investment comes out, in the Eastern cultures where, in the absence of gender equality, it is conceived that the husband, will be the one who keeps the wife, and it is his job to generate income and to retain the family.

In the context of gender equality, the spousal relationship is accompanied by a spirit of cooperation for which both together invest, but each takes care of his wealth.

We realize that everyone’s feeling is entirely separated with monetary investment and individual contribution to the family.

The prenuptial agreement, in the regime of the separate property, according to the contract object, will be translated into individual freedom in investments, in savings money, special contributions, not co-ownership and taking into account also the establishment of the family by marriage bond, often the future spouses have a sort of doubt for this regime.

On the other hand, in European countries that have applied more in the marriage contract, mostly husbands choose the separate property regime, according to which spouses are more free from the obligation of community and joint ownership.
13. EDITING PHASE

At this stage, the protagonists grow in number because the professionals involving in the whole procedure and this phase takes more legal and bureaucratic coloring, by placing the spouses ahead of the fact of the main election and it remains only the moment of any minor interference.

According to our legislation, as we have mention, the authority to confirm the will and the editing of the contract is the notary who is entrusted not only with the maintenance of a voluntary will but also the possibility of editing this act as an essential task in the completion of its function.

Future spouses can submit to the notary's office by themselves or with their solicitors or just their representatives to edit the marriage contract.

The entire preparatory phase described above is helpful and precedes the formulation of the contract in front of the notary, orienting the notary but not only so, but also facilitating the contract editing in front of the notary.

Once they have submitted, the list of assets and the type of regime that husbands have chosen of their own volition, the notary must be provided for other legal elements that are very important.

Case-by-case, proper vigilance in preparing the documentation will depend on the type of regimes they have chosen.

Since in the case of the regime of the universal community, when the spouses seek to unite the property they have owned before the marriage is concluded, then the notary must be provided for the origin of the property of that property and reflect that property in the act as a form of the transfer of ownership due to this contract.

The transfer of ownership through the prenuptial contract, is a form of a donation, contract, as the legislature has allowed the extension of the other husband, before the marriage bond, for transfer of the movable estate.

The legislation doesn't explain directly, the way of this transition, with the prenuptial agreement or with a donation, contract, but apparently, no such clarification has been necessary since the legislature has sufficiently explained the fact that the contract of marriage also involves the transfer of ownership of these assets that decide to be in common.

In the logical sense, we know that a legitimate way of gaining ownership is that of a contract, the contract of marriage in its object has property and non-property rights,
regarding the first group of properties it must be admitted that it is a legal remedy that helps in the profit of ownership.

To bring the proper legal consequences, this contract must be registered to the respective institution to make the transfer of ownership even for the other spouse.

As long as the marriage contract is defined as a solemn legal action that should be valid, it should contain these elements and among them editing in front of the notary, and consequently, the procedures followed by the notary in the editing of an act must be respected for the enforcement prenuptial agreement.

In the prenuptial agreement is written the date contract singing, the attestation place, the notary who is holding the act, the notary's office and the fact that the notary formulates this contract at the request of the parties.

In the following stage, continues with the verifying the identity of the spouses, with specific data that the notary is charged, specifying the civil status as a basic condition, by the type of legal relationship, because they will marry each other, and should be unmarried.

After the notary is also insured on the status of future spouses, cause the validity of the prenuptial agreement, as long as the principle of a valid marriage is monogamy, the notary is interested in accomplishing his duties as well, in the context of maintaining a valid act, should be sure for any legal element that may cause problems in the act.

At the stage of the redaction of the contract content, prospective spouses may submit in the presence of the notary, their projects regarding how they want this contract to operate in the service of the property report.

In the event that the notary needs time to give an assessment on this list then he gets the time to get acquainted with the spouse's project and to reach the prenuptial agreement editing.

The assets list should be provided by the notary, for their current status and the origin of ownership.

Confirmation of the souses properties, according their declaration in the presence of the notary and each other, too, takes a particular importance in the case of choosing the regime of the universal community, since the future prospective consortium, in a way decides to include and make the owner a non-personal spouse due to the marriage bond.

These are the elements of the legal community in the presumption of joint ownership, in equal portions, matter who gave the contribution or whom property is, the other spouse for the purpose of marriage becomes the owner.
Therefore, the marriage contract should not be understood solely as a restriction of the property rights of one spouse to another, but also as an extension of these rights to one another.

Explaining that it is only about movable property, spouses have the obligation to prove that these items are in their possession and are not hostage to the execution of an obligation.

In addition, we return to the notary role and researches he has to do particularize, what spouses have expressed.

According to "On Notary" Law, Article 54, notaries can access real estate data systematization and may take all ownership originals according to the application they require, being informed from their official site and code of the status log of each property.

The necessity of this research is regarding the truthfully of their declaration, but it doesn’t violate the property rights of one or the other, since the effects of the marriage contract begin immediately with the marriage bond or two years after it and the assets that the co-habitants have in the moment of signing the contract is only for their economic status.

Also, the investigation is conditioned on movable items as they are acquired only if the item is not stolen even though the buyer has been in good faith.

In these conditions, the notary role, it can’t be extended beyond the fees that the public authority gives to it, as it can’t exceed the criminal investigations to obtain information on the lucrative property if it was the direct object of a criminal act or not.

About the commercial companies, and the membership that each of the spouses may have in the company as a partner, according to the decision taken by the spouse to include the other spouse or not, must also be done by the notary's action regarding the access to the QKB.

While in the case of companies, they can decide that profits from the company are part of the legal community and not modulated by a marriage contract.

In this case, it is necessary to specify the shares and the shareholdings in the partnership of the associate partner/shareholder.

As the contract for the sale or donation of quotas is registered with the QKB, it is necessary that the prenuptial agreement, which has the object of a company's business, must be registered with the QKB in respect of the part of the co-owners.

In the other case, the notary must verify whether the partner spouse can make such a donation and involvement of the other partner in a partnership or not after the other partners enjoy the right of pre-emption.
REGISTRATION’S PHASE

The marriage contract has two moments of its enforcement, the first time it relates to the pre-marital contract when the spouses edit it before the marriage is concluded and they write in the contract that its legal power begins with the marriage bond.

Whereas the second moment of prenuptial enforcement is according the change of property regime second the Article 72 of the Family Code, according to which the spouses decide to change the marital property regime and the legislation stipulates that they must do so under the contract form marriage. The notary is provided to register this contract in the register of marriages at the civil status office, as soon as possible, but from the moment of registration, the new regime should be in place for 3 months, as this is in defense for third parties.

Obviously, it is, therefore, that the duty of the notary is to guarantee registration and legally enforce the marriage contract, giving it the legal spirit in relation to the spouses and to the third parties.

The role of spouses at this stage is negligible, as the law has worn public notary authority and institution of public administration at the Civil Status Office in the registration of the marriage contract.

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3 Law no.9109, dated 17.7.2003, “Për Profesionin e Avokatit në Republikën e Shqipërisë”, article 2
4 Family Code, article 77/b
5 Law No.7829, dated 01.6.1994, “Për Noterinë”.
6 According to the French legislation, the Civil Code, Article 1081 “Donations made under the marriage contract to spouses and children in marriage”
7 Article 164 of Civil Code of the Republic of Albania