

Introspections Regarding Matrimonial Courtage within the Framework of Romanian Law

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ABSTRACT: The phrase "courtage" assumes the role of an infrequent term as regards common and specialized language within legal, linguistic or historic domains as well as other various areas. The conception of "courtage" encompasses the acceptance of "mediation", whereas the syntagm of "matrimonial courtage", a collocation or expression that characterizes the argot of the field of family law, is a reference to the mediation being realized via escort services/matrimonial agencies. The string of words at issue does not avail a regulation in point of Romanian legislation, still, if the term is perceived with the meaning of convention/contract, case in which is allowed to the Romanian legislator. The current paper is intended as an analysis with respect to matrimonial courtage in relation with the conduct/behavior of individuals that decide to choose this type of mediation, taking into consideration the integral and comprehensive execution/accomplishment of contractual obligations that are assumed on the part of contractual partners along with the possible corresponding deviations from the rule that might occur.

KEYWORDS: agreement, contract, mediation, courtage, marital/matrimonial courtage, credence

1. Prefectorial facets

The conception "courtage" is perceived as not a familiar or popular term to the general public in point of the corresponding meaning or acceptance. The vocabulary of the Romanian language encompasses the word "courtly" or "courter" that might be considered as being related to the above-mentioned term with the nuance/sense of a polite, amiable person, still there could not be taken into account a sense of resemblance between them.

The connotation and the main significance of the locution, namely a convention by means of which an activity of mediation is permitted, establish the meaning within the "matrimonial courtage" or "marital courtage" syntagm. The concept is applied to the field of law, representing the basis or core of a contract and might be approached via the principle of veracity with regard to the contracting parties.

2. A brief analysis on the notion of "courtage"

The term "courtage" has a consistent history that has been dated back in time, hence to have knowledge of the origin and evolution the submission in terms of the word denotation along with particular synonyms that have marked various historical epochs represent an important aspect.

There are historical sources that have demonstrate the existence of the so-called marriage agencies since the period of the XVIII – XIX, in England.

In respect of the phrase "courtage" the linguistic origin has been established to be a French one (*courtage*, respectively, *curtaj* or mediation with regard to a public auction–*courtage aux enchères*). The significance and the corresponding synonyms that have been recorded along the time entail a wide range of terms, among which are to be analyzed within the text of the current material a number of two entities, namely „misit-intermediary” of Greek origin (*mesitis*): (unlike the Romanian language that includes the nuance of envoy/emissary, the English language identifies a different connotation, that of a mediator...), negotiator; the variance "misitie-intercession", thus representing the task of the intermediary/negotiator along

with the payment for the services. (DEX, 728). The interpretation of the word appears to be the closest in point of the issue/topic under consideration (Erimia 2021a, 43-49). Further on, another locution is “intermediate” (Erimia 2021b, 89-92), the person (either individual or legal entity) who ensures an intercession agreement between the parts of a transaction or opposite parties (DEX, 564). The comprehension/sense of the word is similar to „mediator”, an approach that cannot be associated with the subject of the paper. The explication of “courtage” refers to the activity of the intermediate – “the courtier” along with the compensation to be received in the instant that a transaction is concluded (DEX, 287).

3. The contract of matrimonial courtage

The “contract” or “convention”, the matrimonial or marital courtage constitutes the accord by means of which a person – the “courtier” (a matrimonial agency, for example) assumes the obligation of a possible “client” to succeed in finding them a partner (potential future spouse) (Botină and Marin 2012, 48-52). Matrimonial agencies display the activity or are concerned with the so-called “solitary group of people” via employees whereas the object of activity is expressed by marital courtage.

The analysis of a contract takes into consideration the legal characteristics, including the components accordingly: contracting parties, the subject matter, corresponding legal effects, the conclusion and cessation of the contract.

3.1. Specific legal aspects with regard to the contract of matrimonial courtage

The judicial matrimonial courtage might be referred to as an innominate one (non-typical), bilateral (synallagmatic), commutative and for pecuniary interest, aspects that are to be presented in order to emphasize the corresponding importance in accordance with *the scope of the contract*.

The legal character of the “innominate contract” or „unconventional/non-typical contract” is the result of the fact according to which the Romanian legislation does not either regulate or define this category or sort of contract. Nevertheless, the Romanian legislator permits, via the enacting norm, the operation and execution of the matrimonial courtage contract. The Romanian legislation regulates the general mediation whereas the matrimonial courtage is to be assessed as a variation/variant type of contract.

“The bilateral legal character” or “synallagmatic” implies the assumption of particular obligations and acknowledgement of certain rights in point of each contractual part, namely courtier and client. The judicial relationship between the two counterparties or contractual partners is to entail a legal constraint/obligation rapport that assesses a correlative imposition as regards each civil subjective right.

Hence, the completion of the courtage matrimonial contract determines that the courtier to be compelled/obliged to identify a partner in respect of the client along with a right to receive consideration that represent the remuneration for which the parts agreed. In turn, the client has the payment obligation in point of the courtage by the courtier with the right to benefit of a companion/partner that the intermediary has committed to find/select via the contract.

A peculiarity of the contract under consideration in relation to liabilities is represented by the obligation of the client that is impacted in terms of a condition precedent, namely the payment obligation with regard to the remuneration of the client is to be accomplished only in the case of being provided a partner on the part of the courtier. In the opposite case, the client is not obliged to reimburse the pay/compensation to the contractual courtier-partner.

“The commutative legislature” of the marital courtage contract stipulates the fact according to which each contracting party to be acquainted with the rights and obligations onwards the completion of the contract. Therefore, every contractual part is to be informed and assume the contract terms in accordance with “pacta sunt servanda” principle, implying that each part ought to manifest credence or good faith and comply with the clauses of the signed agreement/contract.

As regards the “onerous judicial nature” or “with onerous denomination” in point of the matrimonial courtage contract there is an aspect to be emphasized, specifically the payment of the remuneration (considering to be termed as also “consideration”) by the client to the courtier on the basis of the referred marital courtage contract.

3.2. Assets regarding the matrimonial courtage contract

In relation to the parts, as having been mentioned previously, the courtier (the legal entity/person to be assigned to the mediation activity) and the client (individual that accomplishes the conditions/terms provided by the law in order to enter into the agreement of a civil legal act with the commitment of relations specific to the family law domain and resort to the services of the courtier – conditions that are to be cumulatively fulfilled) (Niță 2021, 86-95).

The principle of credence on the basis of the Latin adage “pacta sunt servanda” refers to the execution of contractual obligations in terms of good faith by the contractual parts.

The fact according to which the credence of the contractual parts is essential not to be confused with the good faith of the partner that has been identified by the courtier as regards the matrimonial courtage contract. Accordingly, the selected partner has to manifest credibility or veracity (Mitra 2008a, 15-22) as well taking into account the relation that has been established via the contract with the courtier. Still, unlike the former legal rapport, the elected partner entails the status of a third party and not contractual partner whereas the material under discussion tackles the contracting parts.

In point of the subject matter of the matrimonial courtage contract is important to assess the mediation activity the courtier-marriage agency if offered to the client. Furthermore, object of the agreement into discussion is related to the corresponding effects/impact, thus implying the rights and obligations of both contracting parts (Rotaru 2010, 3). In addition, the right of one of the parts represents the obligation of the other contracting part, hence the obligations with respect to the parts of the matrimonial courtage contract are to be referred to within the analysis.

Consequently, the obligations of the courtier include the following, namely the identification of a partner in point of the client in accordance with the conditions that the client has imposed at the moment of the signing the marital courtage contract, the collateralization of the the identity of parts according to the declaration of clients. In relation to the clauses of the marital courtage contract and taking into account that the contract is a non-typical one (innominate) the parts might establish particular terms that the legislator does not interdict, thus particularizing the agreement with the courtier.

Additionally, there is the obligation of the courtier to limit to the corresponding attributions that has been invested by the client, in particular not to divulge certain items of information as regards the client with whom the matrimonial courtage contract has been signed (Mitra 2008b, 218-240). The mentioned obligation is supported, onwards the year 2018, by the enactment of Romanian legislation in respect of the privacy policy/data protection by means of which the European regulation on 2016 has been adopted as regards the protection of individuals with reference to processing of personal information and free flow of data.

The courtier ought to act objectively/impartial towards each partner, not to conceal data and information that are likely to impede the signing of the matrimonial courtage contract or determine both the insertion/inclusion and foreclosure of particular

In terms of the client of the marital courtage contract there is a series of obligations, including the payment responsibility that has been established via the contract (hereinafter referred to as “courtage”, exact as the contract), following the commitment on the part of the courtier to select or identify a partner for the corresponding client, the constraint to refund to the courtier the sum that has been invested in the favor of the client on the condition that the obligation under discussion to be included within the marital courtage contract between the

parts. In the case that the later obligation has not been introduced in the contract is to be alleged/presumed (supposedly) that amount have to be incurred by the courtier.

A particular reference has to be staffed, namely that considering the innominate contract the contractual parts are likely to establish additional clauses/stipulations as regards the payment of the remuneration, yet not being in the position of exemption or circumvention/omission the rules of the courtage contract. As an example, it is worth mentioning that the parts cannot agree on the payment of remuneration to be realized regardless the accomplishment or non-compliance with the obligation of the courtier to identify/select a companion/partner in point of the client as the nature of the matrimonial courtage contract would be affected. The aim in the matter of the conclusion of a matrimonial courtage, and, actually, of any agreement, is the action of mediation, the identification or selection of a partner for the client of the courtier, still if the possible future companion cannot be found is to be deducted that the obligation of the courtier has not been accomplished, therefore the remuneration/payment (the courtage) represents a unattainable or not worth considering point as lacking justification.

The substantive validity/conditions that are considered necessary with reference to the establishment of the nature of a contract, as being identified under the designation of a matrimonial courtage contract, are to be accompanied by a formal condition, respectively the written form.

The written form constitutes an imperative to be imposed by the fact that at the conclusion of a matrimonial courtage contract is targeted the intention/need to produce legal effects in the sense of determining, amendment or put an end to a civil legal act. If the fact according to which the topic under discussion is represented by a legal act and not a judicial action the signing of a courtage matrimonial agreement can be demonstrated only via a document, a civil legal act in terms of a means of proof (*instrumentum* or *instrumentum probationis*).

The matrimonial courtage contract is to be referred to as a legal action (*negotium* or *negotium iuris*), considering the negotiated terms by the contracting parties.

The termination of a matrimonial courtage contract is realized on the following terms, in particular the purpose of the respective contract. Still, the matrimonial courtage contract might terminate in the case of the disappearance of the courtier or the death of the client. The transfer of the obligations assumed via the matrimonial courtage contract shall be attained according to the contractual terms/clauses or, if not present, by law (the Romanian jurists generic denominate as “common law as regards the respective subject”) (Botină and Pangrate 2013, 83-87).

Conclusions

The analysis in terms to a contract with direct implications in the domain of family law and other areas has been intended to draw the attention, raise the profile in point of the categories/individuals that are interested as a legal instrument not consistently tackled by the doctrine and jurisprudence. The assessment of the mediation agreement/contract, in general, represents the subject-matter of jurists and, yet, the marital/matrimonial courtage contract lacks a consistent approach.

Accordingly, the analysis of the present contract is to constitute a source of interest henceforth along with intention with reference to lead the way to in-depth research, thus resulting in a concrete legal reglementation along with the limitation in point of the pejorative, derisory or exaggerate rendition/interpretation of the courtage matrimonial contract.

References

- Botină, Mădălina and Marin, Marilena. 2012. “The Dissolution of a Marriage on the Territory of an EU State, Between a Romanian Citizen and the Citizen of That State. Territorial Competence”. In *Proceedings of the 2nd International Conference on Law and Social Order*, Constanta, March 2-3, Contemporary Readings in Law and Social Justice, pp. 48-52, vol. I, New York: Adleton Academic Publishers.

- Botină, Mădălina and Pangrate, Alina Georgiana. 2013. “Some Problems of Jurisprudence concerning the difference between dialectical liability and contractual liability”. In *Ovidius University Annals (Analele Universității Ovidius, Seria Științe Economice)*, Volume XII, Issue 2, Constantza: Ovidius University Press, pp. 83-87.
- Erimia, Cristina-Luiza. 2021a. “Legislative Considerations on Respecting Patient’s Rights in the Global Context Generated by the SARS COV-2 Pandemic”. In *ConScienS Conference Proceedings*, January 17-18, 2021, Princeton, NJ, USA, pp. 43-49, DOI: 10.5281/zenodo.4542169.
- Erimia, Cristina-Luiza. 2021b. “Legislative and Jurisprudential Considerations Regarding the Restriction of the Free Movement of Goods on the EU Internal Market from the Viewpoint of Public Health Protection.” In *Scientia Moralitas Conference Proceedings*, April 18-19, 2021, Washington, DC, USA, pp. 89-92, DOI: 10.5281/zenodo.4762530.
- Mitra, Mariana. 2008a. “Legal and penal aspects as regards domestic violence.” *The Magazine of the National Symposium on the theme „The children and violence – methods of prevention*, Bucharest, pp. 15-22.
- Mitra, Mariana. 2008b. “The right to life and social-juridical protection”, volume of the Session of Scientific Presentations on the subject-matter „Academic research at the beginning of the XXI century”, Constanta, Spiru Haret University, 10 of May 2008, the XV edition, Constanta: Europolis Publishing House, pp. 218-240.
- Niță, Anca Jeanina, 2021, “The right to vote at the age of 16 – between rules and irregularities.” In *The Juridical Universe Magazine* 12: 86-95.
- Romanian Civil Code enacted by Law no. 287/2009, published in the Official Gazette, Part I, no. 511/24 July 2009, as further amended and supplemented by Law no. 71/2011 on the application rules for the Civil Code, published in the Official Gazette of Romania, Part I, no. 409/10 June 2011, as amended from time to time.
- Rotaru, Ioan-Gheorghe. 2010. “Descoperă obiceiuri care schimbă viața (Discover life-changing habits) (I)”. In *Argeșul ortodox*, IX, no. 469, p. 3.
- The Explanatory Dictionary of the Romanian Language. 2016. Bucharest: Univers Enciclopedic Publishing House.