

The interpretative decision of the Supreme Court of Cassation concerning the marital community property and some special cases of invalidity of transactions

On 29 January 2015, the General Assembly of the Civil and Commercial Colleges of the Supreme Court of Cassation (SCC) ruled in Interpretative Case No. 5 of 2013 with Interpretative Decision No. 5, resolving some issues related to the special cases of the invalidity of transactions which involve the disposition of marital community property.

The court holds in its Interpretative Decision that transactions which harm creditors to only one of the spouses may be declared relatively invalid only with regard to a half of the undivided assets the title to which has been transferred, i.e. only with regard to the share of the debtor spouse. The transaction remains valid for the other part of the asset. As to the transactions involving the family home owned by only one of the spouses, they are relatively invalid, where they have been concluded without the consent of the non-owner spouse but they may be restored with the subsequent consent of that spouse. The voluntary partition with marital community interest is not null and void on grounds of non-participation of a spouse. In such cases, the non-participating spouse may seek remedy only through petitioning against the disposition of community property which has taken place without his or her consent. Where the two spouses acquire property together during their marriage, there exist no obstacles to a partial or complete transformation of personal assets, i.e. the newly acquired property may be excluded from the marital community property wholly or in part.