EDITURA LUMEN în elita editurilor românești

Available online http://lumenpublishing.com/journals/index.php/jls

e-ISSN: 2067-8509; ISSN-L: 1841-6195

Jurnalul de Studii Juridice

Year XIV, No. 3-4, December, 2019, pp. 77-83

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DOI: https://doi.org/10.18662/jls/52

Covered in:
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How to cite: Apostu, I. (2019). A New Logic of Mariage. *Jurnalul de Studii Juridice, XIV* (3-4), 77-83. https://doi.org/10.18662/jls/52

A NEW LOGIC OF MARRIAGE?

Iulian APOSTU[1]

Abstract

The analysis of social discourses on the necessity of contemporary marriage, as a form of legal coexistence, most often reproduces the same sets of answers - stereotype about the uselessness of the "paper", about the difficulties of legal separation or about the imposition of rights and obligations, defined in the Civil Code. Thus, the orientation of the discourses seems to target the fear of failure rather than solidarity or internal fusion within the family micro-group. Against this background, the discussions about a legal alternative to marriage - the consensual union - seem to build the premise of a new conjugal relationship, cleared of any set of rules, predefined to be compulsory for the two partners.

The idea of "purity" of the marital relationship is discovered in the scientific literature starting with Giddens (1992), where it is described as cohabiting. In his vision, Giddens believes that a pure relationship exists only as long as the mutual feelings between the two partners are present, the unhappiness of one becoming the sure premise of separation (Giddens, 1992). This is because, in the case of marriage, the sum of social and legal contexts requires the couple to make a series of compromises that often maintain the state of marriage artificially. Moreover, the latent failures of marital relationships require tolerance, acceptance and compromise rather than separation, and, as an additional source of pressure, the dissolution procedure seems cumbersome and with little social acceptance.

Thus, in light of the two great dilemmas regarding the reduced impact of marriage in terms of marital vitality, but also from the perspective of the fluctuations of value with which the marriage is described, the socio-legal reconstruction of the marital law can become an alternative transit between the classical marriage and the European laws on consensual union.

The study aims to analyze the social discourse on the views of manifesting autonomy in conjugal environments from the perspective of the existing marital legislation and the new legal resources described in the public discourse.

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Keywords

Marriage; divorce; functionality; dysfunctionality; cohabitation.

The dilemma of a new context of conjugality

There are many social stereotypes that say that marriage increases the level of happiness and relational security between partners or, on the contrary, it destroys the autonomy that previously guaranteed the free and unconditional expression of feelings. However, the degree of involvement in a relationship (cohabitation or marriage) depends on the quality of the relationship itself or the need for autonomy. In all the frameworks of manifesting conjugality, autonomy, fulfilling one's own or others' needs, affective participation and co-participation can be fulfilled with the same success. The differences of orientation relate to the fear of certain legal frameworks or the insecurity of the lack of legal frameworks, they pertain to the socialization specific to the cultural environments, the ability to accept the new etc.

In fact, if we make an approach to the rights and obligations of marriage in the New Civil Code, equality (arts. 258-259, 308), equitable contribution and rights to common goods (art. 329, 345), living together, mutual help (art. 325), obligations and equal rights over children (art. 260 - 265), the right to live together (art. 321), the obligation of fidelity (art. 311), etc. are general conditions that the partners ask from each other, even outside the marriage. Therefore, the stereotype of some pressures that the institution of marriage would place on the partners by establishing the conjugal rules of the Civil Code cannot be sustained. Moreover, the deviation from any of the rules set out above does not imply legal sanctions per se, but only when one spouse requests separation.

A special situation was defined before 2006 when, according to the Penal Code (art. 304), proven infidelity was sanctioned with imprisonment from 1 to 6 months or with a criminal fine. Today, however, the sum of rights and obligations no longer demands greater legal responsibility than the legal dissolution, an issue with the same consequences for the cohabiting partners.

However, the desire to leave the classic trend of marriage is visible in public discourse and, at the same time, more and more driven in young conjugal environments. In the evolution of conjugality we can

speak of a double shift: a *privatization*, in the sense of a greater attention paid to the quality of the interpersonal relations and a *socialization* of this group due to a greater state intervention. The contemporary family shows that it is an institution characterized by: greater dependence on the state, greater independence from the extended family, and greater independence of men and women from this family (by Singly, 2003). For them, marriage is not attractive as it is perceived as a possible closure in previously determined roles. At the other extreme, cohabitation is otherwise appreciated because it is understood as a less rigid form, likely to be accepted according to individual demands. In particular, while partners are less happy together, they do not feel that they should remain together in the name of an external principle, on behalf of an institution or a moral or societal principle (Singly, 2003, p. 86).

The construction of the new orientations of conjugality tends to develop behaviors independent of the classical imperatives of marital cohabitation (Huidu, 2019) received through the process of family socialization. Young people are increasingly securing their relationship, the environment influences their behavior less and less, and the marriage seems to have no power to justify and legitimize intimate relationships between partners, child births and long-term marital commitments. Specifically, in Romania about 3500 children are born every year outside the marriage (Source: Eurostat, 2019), which shows that for a certain category of couples, marriage is no longer a condition that legitimizes later births.

At the same time, the marriage rate in Romania has increased in recent years: in 2010 there was a value of 5.1 ‰, in 2015, of 5.6 ‰ and in 2018 of 6.5 ‰. So, contrary to all stereotypes about the sunset or legal rigidity, young people's choices are still anchored in this logic, with desires to upgrade to another level of individual autonomy.

The dilemma of concubinage versus marriage in the Romanian context

The issue of consensual unions in Romania has been emerging lately, rather as a public declaration of the officialities meant to obtain the sympathy of the younger generations and of those considered to be tolerant with an alternative to the marital alternatives. Since the 2000s, discussions about cohabitation as a marital alternative have become

more and more viral and the level of acceptance of such a marital status has increased considerably. The traditional influences of the community were still felt, the moral condition of virginity at marriage was still visible and in the natural search for the optimal partner, the diversity of partners was rather seen through the perspective of a weakened morality, than through the desire to seek the stable and compatible partner.

The beginning of the millennium seemed the beginning of a new level of tolerance and acceptability. The year 2000 was the year in which Article 200 of the Penal Code was abolished, which criminalized sexual minorities and which reconstructed the idea of conjugality without these barriers. However, the consequence of the increased acceptability of the cohabitation also assimilated the reluctance of the general legalization of cohabitation, even for the same-sex partners. Thus, the first proposal to legalize the consensual union in Romania (initiator Nicolae Păun, Pl. Nr. 158/2002, abrogated on the basis of article 63, paragraph 5 of the Romanian Constitution) tried to find a legislative framework as an alternative to marriage only for heterosexual couples. However, the paradigm of the consensual union at that moment is that it seems to have been challenged by its own supporters. The general acceptance of the consensual union came amid a conceptual confusion - what does cohabitation mean? The general social orientation concerned, in fact, its simple condition of cohabitation, premarital status, and not its legal status as a legal alternative to marriage.

In the spirit of the same idea, the 2002 Census counted 6002916 couples, of whom 86.2% were married (5174794) and 13.8% (838122) declared themselves to be in cohabitation. However, the questionnaire in 2002 was not only applied by specialists in the field explaining the differences between marriage and marital alternatives and, therefore, applying questions about consensual unions does not guarantee the perception of a form of coexistence with the institution of marriage, but rather of a period of anti-marital coexistence. Moreover, research from 2008 shows that 69% of those surveyed believe that "it is good for a couple who intends to marry, to previously live together" (Soros, 2008).

The social evolution of the last decade shows an increase in the level of intimacy but also of personal autonomy. Influenced by the cultural systems in which the individuals were socialized, the construction of intimacy depends on the individual norms of each individual, on the past experiences, on the importance of loyalty due to

the family of origin, on the degree of adherence to the transmitted social norms, on the power of the loving connection.

It tends to become more and more a form of amoral negotiation over what will be shared physically and psychologically, and the new relationship builds in a common way the couple's private space (Neuburger, 2007, p. 399).

These effects on privacy were felt in Europe only in the twentieth century. In France, the differences of manifestation regarding the intimacy system were noticed from the 1940s to 1950s when the first declining tendencies of the marital institution were felt, with the increase of births outside the marriage, the increase of the divorce rate, often ending scandalously and by increasing women's economic independence. The new forms of conjugality created a new image of conjugal relations, forming particular and autonomous domains of the rule of society - intimacy (Paris, Blais, 2006, pp. 127 - 128). And so, if in Christian societies, marriage is founded on a right that regulates sexuality, the legal history of marriage shows that this institution has gradually changed from a form of sacredness to a form of contract (Segalen, 2002, p. 115). Modernity gradually settles from the set of imperatives and rules outside the couple in favor of their own norms of conjugal manifestation.

The determination of intimacy opens the orientation towards an individualization process that favors the multiplication of the relational, affective and sexual configurations according to the different needs of gratification and intimacy; these, without reference to the pre-existing or determined social order. Love appears as a pre-existing model in all concrete interactions and is independent of the content of the individual consciousness that influences intentions, motivations or feelings. Love is like a communication medium that solves the problems of double indeterminacy between two people with self-referential consciousness (Paris, & Blais, 2006, p. 130).

These new premises rebuild the relationships between men and women and the speed and nature of these social changes force individuals to self-reflexivity, to an increasingly controlled attitude in maintaining the feeling. Men and women need to think reflexively about their emotional needs and this increase in self-awareness further reinforces the need to assert oneself in relationships independently and in relation to one's own needs. In this type of relationship of love through self-revelation, Giddens considers, one can reach the "pure

relationship" - the relationship free of any external criteria (Giddens, 1991, p. 6 next to Jamieson, Wajcman, 2010, p. 109).

Conclusions

The logic of the new relationships is less and less related to the external conditioning, the young couples building their own mechanisms of regulation and functional self-regulation. In the tendency to no longer subject private life to public space and external evaluations, young people seem to no longer attach the same value to classical marriage. The logic of new relationships is that they are built for themselves, not to apply for marriage. The conjugal functionality no longer has, in itself, assimilated the condition of marriage and, at the same time, the new marriage no longer has the same optics of solidarity.

Facilitating access to divorce, patrimonial regimes, conditions for the recognition of the engagement are just a few of the new legislative tendencies that highlight an evolution of conjugal optics towards relational individualism. The optics of simplifying the divorce conditions, the new forms of protection of personal heritage open the premise to the same logic expressed by Giddens - "the pure relationship". It is meant to last as long as it has the vitality of the amorous feeling. In the face of potential failure, optics focus primarily on individual security rather than the strategy of rebuilding solidarity; the partners will be legally protected by securing their own assets but also by facilitating access to divorce.

Specific to the Romanian space, however, is an increased marital tolerance in conflict situations. This type of tolerance does not have in itself the logic of solidarity reconstruction but of a self-protection in relation to the other partner. The optics of the dissolution are still hampered by the "weight" of the divorce status, but also that the separation does not often solve the problem of the material autonomy of the divorced individual. Thus, the low divorce rate does not imply an increased rate of happy families. Today, there are spouses who have been together for more than a decade and have not passed the stages of intimacy more than the level of the first year of marital interaction, thus families who have not ten, but one or two years of relationship, reiterated for five or ten times ...

References

Apostu, I. (2015). *Căsătoria între stabilitate şi disoluţie,* Bucureşti: Tritonic

Giddens, A (1992). *Transformarea intimităţii. Sexualitatea, dragostea şi erotismul în societăţile moderne.* Bucureşti: Antet

Huidu, A. (2019). Parsson and Săvulescu's "Unfit for the future" or the starting point for the deconstruction of the concept of parentality, Postmodern Openings, 10(1), pp. 200-219.

Jamieson, L, & Wajcman, J. (2010). *Anthony Giddens et l'intimité: la structuration oubliée* in Danielle Chabaud-Rychter et al., Sous les sciences sociales, le genre, La Découverte | Hors collection Sciences Humaines, 1010, p. 107-120

Neuburger, R. (2007) *Propos sur l'intimite du couple. A qui appartiennent les organes sexuels?* in Burton-Jeangros Claudine, Widmer Eric et D'Epinay Christian Lalive. (2007). *Interactions familiale et constructions de l'intimité,* Paris: Edition Harmattan

Paris, V. & Blais, M. (2006) *Crises et transformations des liens intimes : réflexion sur le passage de la société traditionnelle à la société moderne*, *Dialogue*, 2 (3), 173, pp. 125-134

Segalen, M. (2002). *Sociologie de la famille*, Paris: Armand Colin

Singly F. (de) (2003). *"Intimité conjugale et intimité personnelle. À la recherche d'un équilibre entre deux exigences dans les sociétés modernes avancées".*Sociologie et sociétés, XXXV (2), pp. 79-96.