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Invitation to Read. Review on "A Family for Europe, A Europe of Families?"

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Abstract: *The title of the volume is suggestive: "A family for Europe, a Europe of families?". There is no doubt that the concept and contours of family relationships have changed a great deal in recent times. The case law of the ECHR and of the Court of Justice in Luxembourg (CJEU) has contributed greatly to these changes. But despite these changes, tradition has managed to maintain itself, trying to survive and live in harmony with the new. Has it succeeded? The work contains a total of 43 articles in which the authors deal with different topics dedicated to family relationships and topics that are closely related to family relationships.*
We dedicate this tribute volume to our colleague, PhD Univ. Prof. Emese Florian, as a sign of recognition and appreciation for his entire teaching and scientific activity at the Law School of "Babeş-Bolyai" University, for more than thirty years.
The Laudatio presented in this issue of the magazine can be found in the first 5 pages of the Romanian version of the book.

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The Laudatio presented in this issue of the magazine can be found in the first 5 pages of the Romanian version of the book A FAMILY FOR EUROPE, A EUROPE OF FAMILIES? STUDIA EMESE FLORIAN,(2022) Publishing House Hamangiu, Bucharest.

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Laudatio

We dedicate this tribute volume to our colleague, PhD Univ. Prof. Emese Florian, as a sign of recognition and appreciation for his entire teaching and scientific activity at the Law School of "Babeş-Bolyai" University, for more than thirty years.

The title of the volume is suggestive: **"*A family for Europe, a Europe of families*?".** There is no doubt that the concept and contours of family relationships have changed a great deal in recent times. The case law of the ECHR and of the Court of Justice in Luxembourg (CJEU) has contributed greatly to these changes. But despite these changes, tradition has managed to maintain itself, trying to survive and live in harmony with the new. Has it succeeded?

Tradition certainly exists, even if it is sometimes difficult to create a logical and coherent historical thread of what has remained after centuries. Tradition is not only a matter of crossing the axis of time, but, in order to be present, there must also be a second element, a qualitative one - 'cultural memorisation', as Professor *Jan Assmann*[1] (1992, p. 11) used to say. He regards

[1] 'Social memory' cannot be separated from 'individual' memory. Individual memory always has a strong social valence, like language as a means of communication or consciousness. An individual memory, in the strictest sense - the author believes - would be like a "private language" belonging to a single person, understood only by that person. This is why Professor *Jan Assmann* proposes the concept of "communicative memory" ("*kommunikativen Gedächtnisses*") to describe the social aspect of individual memory, as an "intermediate domain" ("*Zwischenbereich")* between individuals. Communication belongs to 'communicative

the concept of cultural memory as "an external dimension of human memory". In his view, any tradition involves the coming together of two elements: cultural memory or memorization (Erinnerungs¬kultur) - i.e. the way in which a given community ensures its cultural continuity by preserving its collective knowledge through transmission from one generation to the next, thus enabling future generations to re-construct their cultural identity - and reference or reference to the past (Vergangenheitsbezug), which (re)assures the members of that community of their collective identity, providing them with an awareness of their unity and uniqueness in time and space.

Tradition dwells in the past, but it wants to be present, striving to survive, to breathe the air of the present. The present sometimes accepts it, especially when it is useful to it, when it can serve it, when, with its help, it can legitimise the actions of contemporaneity. But it often does not allow it to take over the discourse of modernity, keeping it somewhat in the shadows.

Saint *Thomas Aquinas* tells us that there is an intellectual path towards God, namely that of tradition. We can do nothing alone. We are formed in a certain tradition, which accompanies us, which we are called to cultivate and to which we are entitled to ask for help at any time. It is the so-called "sandal" of Thomas Aquinas. Saint Gregory the Great (Pope of Rome) tells in his dialogues (The Great, 2017, p. 41) about an Italian abbot who, returning to his monastery, meets a woman with a dead child in her arms. She approaches him, begging him to pray for the dead child, because, she believed that following her prayer, he will be resurrected. At first, the monk refuses, replying flatly, "I am not competent to do that. I cannot raise anyone from the dead!". But after much insistence, he relents and accepts, remembering that his predecessor, from whom he took over the Franciscan monastery, had raised someone from the dead with the help of the sandal of a monk who had founded the monastery, handed down from generation to generation. Now, however, he only had his ancestor's sandal. He takes this sandal, places it on the chest of the deceased child, prays and the child rises. On his way to the monastery, thinking about what had happened and deeply affected, he realizes that he is not the one to be praised for what happened. God performed this miracle because of the faith and devotion of the old abbot, now departed, who had formed him, who had passed on his tradition and teachings, and who had been present at the moment of his prayer. In other words, tradition "binds" all those past and present, keeping them in communion. We take our

memory', whereas tradition belongs to 'cultural memory', the latter to be understood 'as a special form of communication in which information is not transmitted reciprocally and horizontally, but vertically from generation to generation' (p. 19).

teaching, our love and devotion to a particular profession from our ancestors, from our teachers, from the masters who have stood by us and trained us through the ages, passing on to us their "sandal", through which their spirit comes to our aid when we are in difficulty. In this way, the tradition is always kept alive, being passed on to future generations, successively entrusting the 'sandal' trodden by the people of today to those who have the task of carrying it into the future, always reminding them of those already gone, who have not died, but continue to breathe the air of today through those who have taken it over. It remains to be discussed, however, which 'sandal' we, the people from nowadays, wear. Is it the one handed down from the past? Or, on the contrary, today's footwear is completely different, having nothing in common with what it used to be.

And how deeply rooted tradition is in family relationships. Family law, perhaps more than any other area of law, is a sensitive subject, reflecting at its deepest the identity of a nation. As has been pointed out, "family law is a particularly sensitive legal matter, which is characterised by a multitude of conceptions and values at the level of the Member States and the societies of which they are composed. Family law - whether based on traditional or more 'modern' values - is an expression of a state's self-image both politically and socially. It may be based on religious ideas or it may mark a state's renunciation of those ideas. From this perspective, however, it is in any case an expression of the national identity inherent of the fundamental political and constitutional structures" (Kokott, *Conclusions* in Case C-490/20, pp. 77)

Without doubt, tradition belongs to the legal national, European law recognising and respecting the plurality of traditions of European states. This conclusion is also clear from a recent judgment of the Court of Justice in Luxembourg in *Case* C-490/20 V.*M.A. v. Stolichna obshtina, rayon "Pancharevo*", in which the Court reaffirms that, "in the current state of European Union law[2], the civil status of persons, which includes rules

[2] And perhaps it is not by chance that the Court speaks in this judgment of what exists "at the present stage of Union law". As it is well known, European Union law is a law in motion. Although there are as yet no plans to harmonise or unify substantive law in the area of marriage or parentage, measures are nevertheless envisaged from the perspective of private international law, in particular facilitating cross-border recognition of parentage (maternal and paternal). In this regard, see the European Parliament resolution of September 14, 2021 on the rights of LGBTIQ persons in the EU, which, at paragraph 8, states: "calls on the Commission to propose legislation obliging all Member States to recognise, for the purposes of national law, adults named on a birth certificate issued in another Member State as legal parents of the child, regardless of the legal sex or marital status of the adults, as well as marriages or registered partnerships concluded in another Member State, in all cases where spouses or registered partners would be entitled to equal treatment under ECHR case law. Stresses the

relating to marriage and parentage, is a matter which falls within the competence of the Member States, and European Union law does not affect that competence. Member States are thus free to provide or not, in their national law, for same-sex marriage and parenthood of the latter"[3] (Stancheva-Mincheva & Zidarova, 2017, p. 1948).

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importance of recognising birth certificates in all Member States, irrespective of the sex of the parents, as this would ensure that children do not become stateless when they move to another Member State". For its part, the Commission is preparing a draft European regulation to facilitate cross-border recognition of parentage ("*Regulation on the recognition of parenthood between Member States*"). As it has been said, "*if you are a parent in one country, you are parent in every country*" (Stancheva-Mincheva, & Zidarova, 2017, 1948): "The principle of application of the most favourable law provides for a more adequate solution to the scenario where the *lex patriae* at the time of birth cannot be applied as the acquisition of nationality depends on the prior establishment of parenthood".

[3] Item 52 of the Judgment of December 14, 2021. In her Opinion in this case, Advocate General Juliane Kokott acknowledges that, at present, "there is no consensus within the Union on the preconditions for access to the fundamental institutions of family law. It is the national rules governing marriage (or divorce) and filiation (even reproduction) which define the family ties which are the very subject of this matter. In the case of divorce, for example, there were insurmountable conceptual differences when a regulation on the law applicable to this institution was being drafted, which led to the failure of the Commission's legislative initiative and the implementation of a form of enhanced cooperation in its place. As far as marriage is concerned, only 13 of the 27 EU Member States have currently opened up this institution to same-sex couples. Moreover, of these 13 Member States, only one provides for the 'automatic' parenthood of the wife of the biological mother of a child' (item 75). However, it is true that, from the point of view of European law, the birth certificate of a child issued by the competent authorities of a Member State (in this case, the Spanish authorities) designating two married persons of the same sex (two women) as the child's parents, one of whom is a European citizen, cannot be ignored. More specifically, the life partner of the biological mother and the daughter "*must be regarded by all Member States as the wife and direct descendants within the meaning of S. 2(2)(a) and (c) of Directive 2004/38 and, consequently, as family members*" of the biological mother (item 67 of the judgment; see also, to that effect, Case C-673/16 *Coman and Others*, judgment of June 5, 2018, EU:C:2018:385, items 36 and 51). The Court ordered Bulgaria to recognise the Spanish birth certificate belonging to this child, having mentioned in this civil status document two married mothers, but left it to Bulgarian law to regulate the "other" effects of filiation. But Bulgarian law does not recognise 'dual maternity', filiation with the mother being established exclusively by the fact of birth, the mother of the child being 'the woman who gave birth to the child, including in the case of medically assisted reproduction' (S. 60 of the Bulgarian Family Code of June 12, 2009). As a general observation, we can say that, despite the momentary entropy it produces in conservative legal systems, the judgment represents, in our opinion, an indisputable step forward on the path to recognition of the effects of filiation established in a Member State. These effects, as has been correctly noted, are increasingly beginning to permeate and influence national law in the future. In other words, by seeking cross-border recognition of filiation ties, the Court is subtly integrating the right to 'normal family life' into the concept of mobility of persons and freedom of

Dear Emese,

We met just after 1990, as colleagues, assistant professors in the Private Law department of our Faculty. And from the very beginning I admired you, as a teacher and as a person, not only for the rigour and depth of your writing, for your willingness to guide and help, but also for your openness, your calmness and balance.

I have looked to you as a landmark and you are a landmark: as a teacher and researcher of law, as a man who has always served knowledge, understanding and peace. Often, with few words, you managed to convey much. You have carried on the *tradition* and the words of those you succeeded in the subject of "Family Law" - Professors loan Albu and Ionel Reghini from Cluj. You have created a work in which their efforts can certainly be found. You have succeeded in doing what only a few can do, putting the stamp of your originality and specificity, but without striking at the past of this science, at the work and effort of those who preceded you. You have made the most of this work, respecting it and carrying forward research in this subject that is both beautiful and sensitive.

In the end, the result is a unique work in which the *semper* of tradition is logically and harmoniously articulated with the *novum* of the present. You have had the intuition to perfectly interweave the certainty of tradition+n with the fresh air of today's world, without allowing the former to suffocate the air of the present, nor the latter to overwhelm the "datum" already gained.

You have gathered together all that was fair and just from the past, which you have reconciled with that "*novum*" of the lived present. Only a spirit of genius can bring such beauty and harmony to a new work, built solidly on the dialogue between "*prior*" and "*novum"*, between past and present. In this way, you have given us an example of respect and originality, allowing tradition to survive, but at the same time helping the creation of the new, legitimising it through the power of the tradition already outlined. You have reconciled and put into harmony what is often difficult or impossible to reconcile. You have reconciled *Baudelaire's* (Philippide, 1968, p. 423).

establishment, disregarding the content of the host State's national conflict rule. See also the Resolution of the Institute of International Law of September 4, 2021, Article 10, which states: "Respect for the rights to family and private life requires the recognition of personal status established in a foreign State, provided that the person concerned has had a sufficient connection with the State of origin, in accordance with Article 3, paragraph 1, as well as with the State whose law has been applied, and that there is no manifest violation of the international public policy of the requested State, in accordance with Article 8".

Gnosticism and fiery modernism with *T.S. Eliot's*[4] traditionalist and conservative spirit. And this delicate balance can only be achieved by a brilliant mind (1922).

It is said that the *jurist* is not a man of genius. He is not generally regarded as a creative person, being more concerned with the application of the law than with its philosophy, with the transcendent search for origin, symbolism and equity in the positivism of the world that gave birth to it. As *Christoph Bergfeld* put it,

> "It rarely happens that a jurist is considered 'brilliant'. He is expected to explain and apply existing laws. Consequently, his thinking is perceived as subject to the requirements of established rules. The jurist is not considered to be a creative person. However, when he has ingenious traits, as we have seen since the beginning of the 19th century, he is characterised by his independence from the given rules. He finds the law in itself, does not follow any rule, but rather establishes one for himself and others through his work. His concern

[4] „Nici în piatra uscată nu clipoceşte apa. / E doar umbră sub piatra aceasta roşiatică, / (Vino sub umbra acestei pietre roşiatice), / Şi am să-ţi arăt ceva mai diferit decât / Umbra ta păşind după tine dimineaţa, / Ori umbra ta înălţându-se seara să te întâmpine; / Îmi voi arăta frica într-un căuş de ţărână. / Curat adie vântul / Copila mea din Irlanda, / Unde m-aştepţi?" -T.S. ELIOT, Tărâmul pustiit, translated by M. MIHALACHE. This poem ("*The Waste Land*") was published by Eliot in 1922, exactly 100 years ago. A jubilee, a "happening" or rather an opportunity to look back at ourselves from the past, to reflect more deeply on the past and to remember or somehow recover it for the present, in order to get to know ourselves better. And also 'incidentally', the sovereign of the United Kingdom, Queen Elizabeth II, has just 'closed the umbrella'. A sober, conservative personality who has shown that digital technology (*lex digitalis*) can find its place on the insurmountable platform of tradition inherited from the past as she is not allowed to change it. Or can she? Are we rather moving towards a "law of platforms" with its own rules, which make them exist "*in sich selbst*"? It is, however, a good food for thought. On another note, it seems as if we have unwittingly been presented with two very different and contrasting images. Two images belonging to the same picture of Europe at the beginning of this millennium: on the one hand, we can see a world of war and abominable crimes, a world built exclusively on fear, and on the other, by contrast, a world of democracy, imperfect though it may be, a world that has come to the fore even more clearly with the British sovereign's funeral. Some have heralded the end of an era, the 'Elizabethan' era. But no matter how we look at this reign, the fact that it brought out a different kind of power, or rather true power remains. And true power is that which rises above pride, that which imposes without constraining, that which unites the past, present and future of a nation through its symbolism and splendour. It is calm, it is restrained, it is majestic, it is that which truly reaches the hearts of the people. It is, as the poet laureate of Great Britain, *Simon Armitage*, wrote in his verses, a lily, a lily that lights up the dark, "that thrives between spire and tree, whose brightness Holds and glows beyond the life and border of its bloom - S. ARMITAGE (Poet Laureate, Floral Tribute).

> for existing laws, which are the creation of the near or more distant past, encumbers him, leaving him tributary to a certain kind of "backwardness". This typical 'backwardness' of the jurist can also be seen in the fact that he reluctantly accepts to take up the ideas that shape his time, only cautiously approaching changes in the circumstances of life that he should actually feel called upon to shape"[5] (Bergfeld, 1982, pp. 1).

But you have shown your spirit of genius, not by a selfish attitude, not by "independence from created rules" or by throwing them away, but by understanding the perfect harmony between the traditional and the new, the past and the present. You have guided and written into the souls of students, discovering their love of science and truth. This is how the sacredness of a vocation can be measured, which is not to show another what you know, but to help the one entrusted to you to discover what, in fact, he seeks to learn, what he wishes to know or what, deep down, he may already have without knowing.

I looked at you, successively, with wonder, passionately, admiringly, but with much respect. You remained the same: mature but innocent, scholarly but without distance, wise but without vanity. An adult, but childlike being, who knows how to smile "even if crying".

The words of the poet *Jozsef Attila* in the poem *Nyolcesztendos lânyok*, written on February 8, 1924, come to mind now, about those girls "like warm bread", who "laugh even if they cry" ("*Ha sirnak is: csak nevetnek"*), because they live in Heaven living on earth (Attila, 1961, p. 34.)

What did *Jozsef Attila* have in mind when he composed this poem? And, more importantly, what did he have in mind when he wrote this line in the first stanza: *'Homlokuk friss, meleg kenyer*'?

The face of a good and honest man is like fresh, warm bread. Bread has always been primordial, the source of life. When fresh, bread is springy

[5]„Es geschieht selten, daß ein Jurist als «genial» bezeichnet wird. Man erwartet von ihm die Erklärung und Anwendung bestehender Gesetze. Dementschprechend wird auch sein Denken als unter dem Gebot hergebrachter Regeln stehend empfungen. Der Jurist ist nicht der Typus des schöpferischen Menschen. Dieser zeichnet sich, vor allem wenn er geniale Züge aufweist, so wie wir seit dem Anfang des 19. Jahrhundertssehen, gerade durch seine Unabhängigkeit von vorgegebenen Regeln aus. Er findet das Gesetz in sich selbst. Er folgt nicht einer Regel, sondern er begründet durch sein Werk eine solche für sich und andere. Die Beschäftigung mit bereits vorhandenen, im näherer oder fernerer Vergangenheit geschaffenen Gesetzen belastet den Juristen zu dem noch mit dem Odium der Rückständigkeit. Eine für ihn typische «Verspätung» wird auch darin gesehen, daß er nur zögernd die seine Zeit prägenden Ideen aufnimmt und daß er nur vorsichtig auf Veränderungen jener Lebensverhältnisse eingeht, die mit zu gestalten er sich eigentlich berufen fühlen sollte". The above translation belongs to us, DAP.

and warm, offering itself to the hungry. Just like the teacher who makes himself available to those he instructs. It is a sacrifice out of love, out of the desire to fulfil a vocation, just as the Saviour offered Himself to those around Him: "*et gratias agens fregit, et dixit: accipite, et manducate: hoc est corpus meum, quod pro vobis tradetur*" (I Corinthians 11:24). Or: "*ego sum panis vitae*" (Joan 6:48), "*ego sum panis vivus qui de caelo descendi*" (Joan 6:51).

The symbolism of warm bread, seen from the biological perspective of being, has in view the "healthy heat", the life-giving heat that has no fever. If we look at it from a pedagogical perspective, warm bread evokes malleable thinking, which can be easily formulated, and from an anthropological perspective, it reflects human behaviour, customs and culture, i.e. bread as a 'finished product', as the fruit of human experience and knowledge. Bread that has to be 'discovered' and accepted, being the fruit of work handed down, bread that can only be kept alive if it is not 'covered', i.e. if it is accepted and embraced.

What a joy it is when we meet a person with a bright face, radiating a desire for life, light and hope! The good man's face inspires warmth, the desire to help in a selflessness manner, understanding and compassion. It is the face of a man who is always available to others. It is the warmth of warm, steaming bread that you want to hug in your arms with joy ("*puszilni valo*"). It is the respect, warmth and friendship that you have always shown us, coming down from Heaven to help us learn and live beautifully by being there for us!

But what would *Jozsef Attila* have written on this occasion, *hic et nunc*? I think he would have written, in our opinion, like this:

"Vin in siruri lungi si pleaca,
Studenti ambitiosi si nepasatori.
Profesoara, insa neclintita
Zeita si regina, vesela si trista"

Our colleague *Emese Florian* has managed to gather on her life stafe a whole series of fundamental works, among which the Lecture on Family Law, published in several editions by C.H. Beck Publishing House, *Regimurile matrimoniale/Matrimonial Regimes*, by the same publishing house, along with a significant number of studies and articles, which will endure and which all beat like a single heart, inspiring the mind and spirit of those who read them.

Without any doubt, *you can be considered a true gentleman*, not only of writing, but also of character. *Of writing*, by the spirit of detail, the accuracy and depth of the text, by the richness of the references, but also by the elegance of the opinions expressed - all this discreetly bringing out the author's personality, without destroying, trivialising or demeaning the opinions of others; you have convinced and imposed by the strength of the

arguments, by rigour and by elegance. *Of character*, by the love with which you surrounded and guided your students and collaborators, all those who needed your advice, support and encouragement over the years.

It is the image you have constantly created for yourself over the years, which we all remember and respect. It is that 'stubborn image' (*'una obstinada imagen'*) that endures despite the relentless flow of time, even if, in the words of the Spanish poet *Francisco Brines*, life is nothing but 'the wreckage of a stubborn image that we will never know if it really existed'.

But it is the image I feel and live. The image that I carry within me and that I elevate!

"La vida es el naufragio de una obstinada imagen
Que ya nunca sabremos si existió,
Pues sólo pertenece a un lugar extinguido'. (F. BRINES, *La piedad del tiempo*, stanza III)

Last but not least, I would like to thank Hamangiu Publishing House for the effort made for the publication of this homage volume, for the outstanding graphic hold and conditions. And how could I thank you more kindly than by recalling Sebastian's words to Antonio from *Shakespeare's* play Twelfth Night, Act III, Scene 3:

"I can no other answer make but thanks, and thanks; and ever thanks"!

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