

The Evolution of the Institution of Divorce in Romania

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Abstract

Under civil law in Romania in force today, divorce is granted by the court only for good reasons, when relations between spouses are impossible and coexistence of them can no longer continue. The current Civil Code of Romania provides in addition to the dissolution of marriage by judicial and other forms of dissolution of marriage, administratively or by a notary (art. 375-378, CC), but only by agreement of spouses and if the marriage is not accompanied minors.

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1. Introduction

Located on the border between a person's freedom and liberties of others, a person's right to dispose of itself will always have a variable content, sensitive to any changes or trends in social general and permanent accommodation with the developments in terms of social morality, or group. Another fundamental reflection of liberalism is systematizing the community as a certain kind of equality: equal opportunities.

But this concept of identity decadent reminiscent of Marxist typologies – the justice is above good. „The regulatory system of liberal democracy makes possible this equality in several ways: discrimination in relation to certain criteria, equal conditions when their inequality is relevant for participation or access, eliminating arbitrariness of the authorities” (Danisor, 2014, p. 46).

For that we are a country with a strong Orthodox tradition, over the centuries can be no question of grounds for divorce related state legislation that have been rejected by the Church, but also for reasons allowed by Church law, but unsupported by State Law. The amount of these reasons and their importance, were always perceived separately by the two institutions, the State and the Church, the stage where the number of grounds for divorce was very high, which are also reflected in retail civil law. However, a precise list of grounds for divorce was never concretely established by the Church.

Now, in a secular framework, the concept of marriage as a community for life between a man and a woman appears increasingly distant from consciousness faithful Church. Taking into account the evolution of traditions, began to trivialize divorce, this state of affairs exists is supported by the vast majority of civil laws.

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Family Code of Romania Old and New Civil Code distinguish between termination and dissolution of marriage, noting that if the termination occurs as marriage, divorce can take place only by court (art.259, point 5 and 6 Civil Code).

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2. The Evolution of the Institution of Divorce

During the feudal period, our country, both in Romanian Country and Moldova, justice was done ruler or feudal, locally there is justice town and village, and the Church within his jurisdiction being cases concerning adultery, divorce, relationship, parentage, inheritance, until the 18th century and even 19th century.

In regions where patriarchal traditions were rooted in popular area of law, divorce was received as a state of exception, marriages were initiated by parents, and divorce was but a disregard of their will and bringing hatred and revenge. If tended to divorce, they will try for sure a reconciliation for the spouses.

The family is considered „the basic cell of society”, in communism „one of the fundamental principles of family law was family stability, which meant the stability of marriage” (Marcel Ioan Rusu, Divorce Procedure, page 28).

Thus, divorce was regarded as an exceptional case, the court will appreciate the merits of the grounds for divorce, the consensus husbands to divorce is not enough, as Professor Tudor Radu Popescu asserts that „the conception of our law on divorce is reflected both both its admissibility as a consequence of the principle of freedom of marriage in the sense that it has in family law and the socialist principle of family stability and marriage” (Radu Tudor Popescu, Family Law, p 240).

The communist system, based on Marxist-Leninist ideology about family and marriage, developed matrimonial legislation, leading to family law as a distinct branch of law, on February 1, 1954 with effect on Family Code to repeal the rules governing divorce in the Civil Code.

Today it re-enters in the system Civil Code concerning marriage and divorce, without mark and distinction regarding grounds for divorce, which are no longer exposed precisely, is reprehensible spouses can divorce by mutual consent especially when there are minor children.

3. Divorce by Mutual Consent of Spouses

Such a divorce is controversial and contested, being contrary to the mutual consent of the spouse’s marriage underpin manifested through love of the spouses, prerequisite for a marriage. So marriage cannot be dissolved by such a divorce by mutual consent is unacceptable and is inconsistent with the conditions necessary for a marriage. However, although it is recognized that fact, divorce by mutual consent of both spouses were covered in the old Civil Code (Article 214) and the Family Code and the current Civil Code, the latter facilitating even this type of divorce.

The administrative or notary procedures, divorce can occur only by agreement of spouses when they jointly decided to divorce all those related effects. Thus, „if the spouses agree to divorce and have no minor children born in wedlock, out of wedlock or adopted, justice of the peace or notary public at the place of marriage or the last family residence can find divorce by agreement spouses, freeing them certified divorce according to the law” (art. 374 CC).

So, looking at art. 374-378 NCC, it highlights the fact that consensual divorce itself is admissible irrespective of the duration of marriage and whether or not there are minor children, natural or adopted, with only explicit requirement that both spouses have full legal capacity. Spouses divorce by consent cannot be given if one of them is under judicial interdiction [art. 374 par. (2) art. 375 par. (2) NCC] plainly obvious reasons: divorce amicably indispensable requirement is the existence and free character of each spouse's consent, which means the ability of everyone to express an informed choice.

The existence of „common” children of spouses, born in wedlock, out of wedlock or adopted minors at the time of application does not prevent divorce by consent of the spouses in any of forms - consensual itself or consensual imperfect - and, coherently and consistently, nor might otherwise; conditioning any of the embodiments of divorce by consent spouses of lack of children would have been completely unnecessary, because earlier that the spouses have agreed to end the marriage would be spent anyway version of divorce consensual remaining open them - for example, promoting formal and constrained circumstances an application for divorce in fault as a pretext for „accession” to divorce the other spouse.

4. Conclusion

Freedom of starting a family also means that the individual must bear the consequences of his actions, he will be praised or blamed for them. Freedom and responsibility are inseparable. A society that does not recognize that every individual has their own values on which it is entitled to follow has no respect for the dignity of the individual and cannot know freedom. Equally true it is that in a free society, the individual will be respected depending on how they use their freedom.

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