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The Law of Marriage in Romania, 1890–2010

The Romanian Civil Code of 1865 has been the centerpiece of Romanian private law for the last 150 years.

Particular Features of the Former Romanian Principalities before 1918

LIKE ANY act regulating an individual's life, the act of marriage was always subjected to oversight by the authorities, be these ecclesiastical or civil. The purpose of this study is to present the laws concerning marriage which were enforced in Romania in the 20th century. Prior to 1918, in the principalities that later formed Greater Romania, different regulations were in use and only after 1943 the civil law became one and the same for the whole country. In the Romanian Principalities, family life was regulated by the Civil Code drawn up by the administration of Alexandru Ioan Cuza in 1865. Cuza's Civil Code replaced the Calimah Code, in force in Moldavia since 1817, and the Caragea Law, effective in Wallachia since

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1818. At the same time, in Transylvania, the situation was affected by the more complex aspects of the state-church dualism in what concerned the regulation of private life. Moreover, given the political and juridical situation, the state-church dualism was accompanied both by the civil-military dualism and by the complexity of the ethnic configuration. Until the civil legislation was introduced in 1894, family life had been regulated both by civil and military laws. It was only in 1894 that civil laws made the civil matrimony compulsory, transferring all the authority concerning family life to the lay authorities.[1]

Until the making of the modern national unitary state following World War I, the legal systems had been different in the areas inside and outside the Carpathians. Even after this moment, despite the institutional and legal unification of the 1920s, civil life remained governed by different laws. In Transylvania, for instance, the Civil Laws of 1894 remained into force until 1943, only the articles regarding the civil status documents being repealed.

Therefore, before 1918, family life on the two sides of the Carpathians was under the incidence of civil laws (although issued by different institutions, in equally different political and social contexts). The Romanian Civil Code of 1865 has been the centerpiece of Romanian private law for the last 150 years. It was inspired and adapted from the French Civil Code of 1804 and would undergo a series of modifications over the years—including serious attempts at replacing it completely—but it has virtually remained the same until nowadays. Successive Constitutions, from the 1923 one to that of 2003, left the task of regulating matrimonial and family life to the Civil Code. The 1954 Family Code, the law that was going to regulate the family life of Romanians for the following 60 years, only replaced the first part of the Civil Code, On Persons, placing at the foundation of the socialist family the principles the communists believed in. It was only in October 2011 that the new Civil Code of Romania entered into force. Once the civil law was enforced, the marriage to persons of a different religion, ethnicity or nationality was no longer under the control of the law, apart from the necessary papers and formalities and the issuing of the marriage certificate.

Marriage in Civil Law

The Civil Code of 1865

ISSUED IN 1864 and in force since 1865, the Romanian Civil Code remains the most important law regarding civil life in Romania. Carol I kept it unaltered, as did Ferdinand. In 1943, in the context of World War II, the Civil Code was eventually enforced in Transylvania as well. This is why we would

start the legislative contextualization with the act that stood at the basis of national unitary life since 1918, rather than insist on the Transylvanian civil and ecclesiastical laws. The Civil Code adopted under the Cuza regime would undergo a series of modifications and updates requested by the spirit of the time, but would still remain the centerpiece of Romanian civil law.[2]

Like the society that produced it, the Civil Code was essentially paternalistic, proclaiming the power of the father over wife and family, the power of men over women. We believe that the most important aspect derived from the Civil Code that fits the aim of the present study comes from the importance given to the families the spouses came from at the time of marriage. When we talk about the traditional way a couple was formed, we talk about how parents did not just approve of but also often chose the partner of their child, following economic, social or personal reasons. The Civil Code states that young people of legal marriageable age—18 years for men and 15 years for women—should present to the authorities the *respectful and formal* document of agreement act signed by their parents.[3] That consent was requested of the parents through the agency of the mayor (local authority); the parents' answer was expected within one month; the procedure was to be repeated two more times in the space of three months if the parents failed to reply. In the absence of a positive answer, equivalent to an approval of marriage, the young people could marry without the abovementioned document, but only if they were over the age of 25 (men) and 21 (women) and presented proof that the document had been forwarded. Therefore, young people under this age could not marry without the consent of their parents (this article would be modified at the 1906 revision, giving those who turned 21 the right to get married without their parents' permission).[4]

Actually, the consent of the family did not concern just the marriage, but also the divorce. In the event of a mutual divorce—accepted as a solution for marriage dissolution in special circumstances—the spouses had to bring to the court the original document in which the parents, knowing the reasons why their son/daughter had requested a divorce, authorized them to proceed. Article 257 stated that under no circumstances the mutual agreement of spouses would be sufficient without the approval of the father, mother, or other living ascendants. We also note that article 129 did not acknowledge a marriage concluded without the mutual agreement of the spouses. In short, at the time of marriage, apart from the will of the two young people to get married, the written consent of the parents was absolutely necessary for those under 25/21 and remained just an occasional document for those above the said age. Given the involvement of the authorities in presenting and forwarding this official document to the parents, we consider that the private aspect of marriage was largely overshadowed by its public, official one.

Chapter VI of the Civil Code refers to the rights and duties of husbands and proclaims the authority of the man in the family. Article 195 states that the woman should obey her husband, while article 196 obliges her to follow her husband wherever he considered appropriate. Also, the woman could not sue anyone without the consent of her husband, unless the court listened to why the husband did not agree and decided accordingly.

By marrying, the spouses incurred the obligation to feed, support and educate their children.[5] At the same time, they had to offer one another trust, support and help.[6]

Although the authority of the man in the family was explicitly stated in the legal text, women had the right to file for divorce, legally called "separation." In the event of adultery, the woman, as well as the man, could petition the court for separation. Other divorce reasons accepted by the legislator (cruelty, abuse, severe insults) were also accepted when coming from the wife. Reasons like attempts on the other's life or "enmity" were readily accepted as sufficient.

We notice the high importance of the fact that the legislator granted the couple the possibility of mutually deciding on the dissolution of marriage; following the legal steps, the spouses could file a mutual consent "that should serve as proof that their life together is unbearable and, according to them, this is a strong reason for separation" (art. 214). The legislator stated that, regardless of the age, the child had to honor and respect his/her parents, under whose authority he/she remained until emancipation or coming of age. Emancipation usually occurred at the age of 18 or at the time of marriage, while coming of age happened at 21. Until then, the father even had the right to request the arrest of his child in case of disobedience. According to the law, the parent could request the arrest and imprisonment of the child for up to one month if he/she was under 16; after this age, the period of imprisonment could be extended up to six months (art. 330, 331). It is worth mentioning that the explicit request of the parent was sufficient cause for arrest, without a prior investigation of the causes that had led to that request, while the parent had the obligation to pay for the food and "accommodation" of the disobedient child!

If the couples who wanted a divorce had children, the law stated that they should remain in the custody of the father throughout the trial unless the court, considering various reasons regarding the well-being of the children, decided differently (art. 249). If during the marriage the wife had to follow her husband wherever he wanted to settle, once the divorce was filed by any of the parties, the woman had the right to leave the man's house and to claim an alimony that was proportional to the revenues of the man.

Adapted over the years to fit the spirit of the time, the Civil Code transferred the marriage to the secular authorities, the only ones entitled to conclude a mar-

riage and to give it public recognition. The 1923 Constitution, in its article 22, stipulated that the civil marriage was valid in regard to the laws of the state, the state ignoring all protests of the Church in this matter. This Code entered into force in Transylvania only on 15 September 1943, as stated by Law no. 389 of 22 June of the same year.

The Communist Period (1945–1989). The Family Code (1954)

The Constitution of 1948 enacted the principles of equality between genders—a real reversal of the values of the past society. Article 16 stated that "all citizens of the Popular Republic of Romania, regardless of gender, nationality, race, religion or cultural level, are equal in the eyes of the law."[7] Following the same logic, article 21 granted women the same rights as men, reinforcing article 16: "Women have rights equal to those of men in all fields of state, economic, social, cultural-political and private life. For the same work, women are entitled to the same wages as men." After proclaiming the protection that the state offered to marriage and family (art. 26), the legislator reinforced the protection granted to mothers and to children under the age of 18, who benefited from "special protection, as stated by the law" (art. 26). The duties of the parents were equal, for children born both inside and outside the marriage (art. 26).

The 1952 Constitution reinforced the principle of equality between genders, article 83 referring to the same rights proclaimed by the legislator in 1948, but expanding the fields in which this equality manifests itself: "Women have the same rights as men in terms of employment, remuneration, rest, social security and education."

The principles of equality between men and women in the public sphere, stipulated in the first two communist Constitutions, were to be extended to the field of private life—the equality between woman and man in the family—since they were legalized through the Family Code, the law that regulated marriage and family relations, effective starting with 1 February 1954.

Unlike the 1865 law, the Family Code the communists adopted proclaimed the full equality between men and women in everything pertaining to marriage. The Family Code was based on three main principles: the free consent of the future spouses regarding the marriage, the principle of full equality of spouses in the rights and obligations pertaining to personal and patrimonial relations, and the principle of the care of the state for marriage and family.[8]

According to the family code, the legal age for marriage was 18 for men and 16 (15 in exceptional cases) for women (art. 4). An element of novelty in the Romanian matrimonial law was the obligation to mutually declare any medical condition, those suffering from certain ailments being forbidden to marry

(art. 10). The marriage could only be concluded in front of the representative of the civil service of the locality in which at least one of the spouses resided (art. 11). Article 16—considered to represent the main innovation in matrimonial law—stipulated the mutual consent of the future spouses as an essential premise of the marriage and obliged them to be personally present at the civil state service to express their consent personally and in public (art. 16). Potential objections to the marriage were also considered; where applicable, they had to be written, presenting the evidence that supported them (art. 14), while the civil state representative had to check them and deny the marriage if the legal criteria were not met (art. 15). The paper attesting the marriage was the marriage certificate, issued on the basis of the documents filed with the civil state register (art. 18).

Just as revolutionary as article 16—which removed the need for parental consent—was article 25 which, taking up the stipulations of the then Constitution, introduced the equality between spouses: "The man and the woman have equal rights and obligations in the marriage"[9] and they have to mutually decide in everything concerning the marriage. All the patrimonial rights and obligations of the spouses (detailed in articles 29–36), among which the mutual contribution to household expenses (art. 29) and the status of joint assets given to the goods acquired during the marriage (art. 30) derived from these two articles.

Title II of the Family Code is dedicated to family relations, the legislator stipulating the following about descendants: relations with the mother (coming from birth—art. 47), with the father—settling the rule that children born during the marriage had the husband of the mother as their father (art. 53), but bringing into discussion the possibility that the husband may challenge the paternity in the first six months after the child was born; the paternity of children born outside the marriage, acquired through the father's recognition, materialized in a declaration given at the civil state service (art. 57). If the father's recognition was challenged by others (including the mother) the child—on whose behalf the mother acted—had the right to request the clarification of paternity in the first year after birth (art. 60). Some provisions also refer to situations when the paternity clarification process could be started under different circumstances than those stated in art. 60. We find a particular interest in art. 63 from the section that regulates the legal status of the child, this article stipulating that "a child born outside the marriage but whose descent has been established by recognition or by a court decision has, in regard to the parent and his relatives, the same legal status as a child born inside the marriage." In the 19th century and at the beginning of the 20th century, a child born outside the marriage had to bear the burden of being a bastard for all of his life.

Chapter IV of the Family Code concerns the break of the matrimonial link. Article 37 stipulates the three situations that can lead to the end of a marriage: the death of one of the spouses, the legally declared death of one of the spouses, and divorce. We are interested here in divorce, since the subsequent evolution of the laws was going to introduce a real break with the past in this respect.[10] If we take the law literally, it seems permissive when it stipulates that any of the spouses can file for divorce when, for justified reasons, the marriage can not continue (there are no investigations, however, on the divorce cases of the period; as we already know, the law and real practices are not always the same). Unlike the 1865 Code but consistent with Law 18/1948, the legislator does not specify the reasons that can lead to divorce, leaving the decision to the court. But, unlike the same Code, the new law puts the interests of children in the first place when the reasons that motivate the divorce request are considered (art. 38).

Just a few days after the interdiction of abortions was published, Ceauşescu issued Decree 779 which stipulated the exceptional character of divorce, which was considered to be too permissive in the form stipulated in the Family Code. According to the reformulations of article 37 "marriage ends with the death of one of the spouses or with the legally declared death of one of the spouses." Only in exceptional cases the marriage could be ended through divorce: "When, for justified reasons, the relations between spouses are so severely and irreversibly damaged that the continuation of the marriage is impossible for the party requesting its termination." At the same time, a waiting period was introduced, allowing for an attempt at reconciliation, as well as a substantial fee—between 3,000 and 6,000 lei—with the obvious intent of discouraging divorces. Actually, as written in the reasons for the modifications of this Decree in 1969, "through Decree 779 we achieved a substantial improvement in the family care and consolidation system." The marked decrease in the number of divorces in 1967, to only 48,[11] showed that, at least for the moment, the law had reached its target. Facing the problems created by the application of the articles from the Family Code modified through Decree 779, the state authority issued Law 59/1969 which eliminated the waiting periods in certain cases and reduced the fee to 200 lei. The situations excepted from the waiting period were: mental disease, the spouse legally declared as missing, the spouse had left the country for more than two years—a case considered as abandonment of the family, had been convicted for the attempted murder of the complaining spouse, had instigated to murder or concealed the truth, had committed incest or had had sexual relations with people of the same sex, had been convicted to at least 3 years in prison for infringements of state security, murder, infanticide, prostitution, theft, robbery, fraud, embezzelment, forgery. In 1977

the possibility to pronounce the divorce at the first hearing for the cases stipulated by article 113 was introduced.[12]

The Transition Period, 1990–2010

A NEW CONSTITUTION was adopted in December 1990, restoring the fundamental rights, freedoms and obligations of citizens originally found in the democratic constitutions from before 1945, in its Chapter II, right after the general principles regarding the rule of law and the national symbols.

After 1990, the former Civil Code issued in 1954 was the only law not to be amended. Yet, some changes occurred in the Civil Code regarding marriages. Some articles were eliminated (from Chapter I, conditions for marriage; Chapter II—formalities; Chapters III and VIII). Also in the Title VI—on the dissolution of marriage: causes, mutual consent, the effects of the break. The Law 116/1992[13] states in the Preamble that "starting with the nubile age, both men and women, without any restriction related to race, nationality or religion, have the right to marry and start a family. They have equal rights in all matters concerning their marriage, during the marriage and when the marriage is broken." The law states (art. 1) that the mutual and free consent of the future spouses is mandatory for a marriage and this agreement has to be personally expressed in front of the authorities by those who are willing to marry.

Paradoxically, the return to a more permissive legislation regarding divorces did not lead to a spectacular increase in their number, this indicator having the lowest increase among all demographic indicators after 1990.[14] However, if we refer strictly to the legal text, the changes are substantial: a return to the divorce by mutual consent (in 1993) provided that the marriage is at least one year old and there are no children. Any of the spouses can file for divorce without the need of bringing any evidence. The reconciliation period was maintained in 1993, but it was reduced to only two months.[15] Although the principle of caring for the family as the main form of living together was maintained, the marriage rate decreased after 1990, at the same time with the advance of other forms of living together.[16] The mutually agreed union or the common law partnership was recorded as a separate item during the 2002 census and recent studies show that it has seen a substantial increase, especially among young people. Although the minimum legal age for marriage has remained unchanged, a tendency of delaying the marriage and the moment of having children can be seen.

Since 1 October 2011[17] the private life of Romanians has been regulated by the new Civil Code, issued in 2009. This brought major changes in what concerns the institution of the family—marriage, divorce, family and the spuses' assets. It is not our purpose to analyze these changes but it has to be said that a new era has started in the history of the Romanian family.

Transylvania—A Suitable Place for Intermarriages

After 1918 Transylvania became part of Romania and the new administration in Bucharest was confronted with the complex ethnic and religious realities of this province. Romanians represented 60% of the total population and the newly formed state had serious problems with the integration of various minorities, Hungarians, Germans, Jews and others. The union between Transylvania and Romania changed the meaning of terms like majority and minority. Just like prior to 1918, the Romanians were the most numerous inhabitants of Transylvania. The difference is that the Romanians became involved in the Romanian administration whereas the Hungarian minority lost its political and administrative monopoly in the province and also its privileged status.

World War II brought new traumas for all the inhabitants as a result of the Vienna Diktat which divided the Transylvanian territory between Romania and Hungary. After 1945 the communist regime tried to eliminate all social and ethnic asperities, but succeeded only partially due to the exacerbation of nationalism, especially during Nicolae Ceauşescu's regime. This had long-term consequences for ethnic relations, especially those between the Romanians and the Hungarians. This situation repeatedly generated, even until contemporary times, tensions and conflicts among the various ethnic and religious groups that live in Transylvania, often accompanied by violent manifestations, destruction of property, and loss of human lives for both parties in conflict.

During communism the proportion of minorities in Romania, according to the censuses, varied between 12 and 14%. The main minority was the Hungarian one, followed by the German one. There are two periods that can be identified during communism: a time when the power attracted the Hungarian ethnics to its side and a time when nationalism prevailed—during the '80s. In order to attract the Hungarians to his side, Ceauşescu visited the Szekler region promising the inhabitants numerous advantages, such as periodicals and publishing houses in Hungarian. At the same time, the Romanian population fully benefited from this opening. As new jobs were created, other Romanians were stimulated to move into the region. The 1965–1975 period made it clear for many locals that economic development was the best way to reduce ethnic differences. Statistically that was the period with most mixed marriages.[18] Hungary was no longer an appealing destination; they only felt sentimentally related to it. In order to move into the region, Romanians were given dwellings and cash as a settling allowance (30,000 lei) while at the same time the locals had to wait for a long time in order to be allocated a dwelling, and those living in

the rural areas had to commute dozens of kilometers daily without any hope of receiving approval to settle in the nearby towns.

During the '80s nationalism exacerbated on both sides. The state would even encourage the emigration of Hungarians towards Hungary in order to lower their number, just like they sold the Saxons to Germany. Mixed marriages experienced a crisis because of the radical positions of the parents regarding the national issues. Only a higher level of education was able to save such marriages. The impact of the nationalist policy on mixed marriages was also confirmed by the declarations of a judge from the region: "It is true that during Ceauşescu's time there were few divorces in these couples, but at that time the state was discouraging divorce all over the country, not just here. After the regime fell, the first to divorce were those belonging to various ethnic groups, proving that something had been going wrong for a longer time."

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Notes

1. For the period prior to 1894 see the introductive study to Ioan Bolovan et al., *Legislaţia ecleziastică şi laică prvind familia românească din Transilvania în a doua jumătate a secolului al XIX-lea* (Romanian Academy: Centre for Transylvanian Studies, 2009), 19–139.
2. See all modifications to the Civil Code in Andreea Liliana Vasile, *Să nu audă lumea: Familia românească în Vechiul Regat* (Bucharest: Tritonic, 2009).
3. *Codicele Civile*, official edition (Bucharest: Imprimeria Statului, 1865), art. 134.
4. Vasile, 131.
5. *Codicele Civile*, art. 85.
6. Ibid., art. 194.
7. The Constitution of the Popular Republic of Romania, 1948, published in *Monitorul oficial* (Bucharest) 87 bis, 13 April 1948.
8. Ioan Albu, *Căsătoria în dreptul român* (Cluj-Napoca: Dacia, 1988), 6–7.
9. *Codul familiei*: *Legea nr. 4/1953*, *Buletinul oficial* 1 (4 January 1954), art. 25 and 26.
10. Decree 779/1966, in *Colecţie de legi, decrete, hotărâri şi dispoziţii, 1955–1985*.
11. Cornelia Mureşan, *Evoluţia demografică a României: Tendinţe vechi, schimbări recente, perspective (1870–2030)* (Cluj-Napoca: Presa Universitară Clujeană, 1999), 116.
12. *Colecţie de legi*, Decree 312, 1977.
13. Law 116/1992 concerning the ratification of the Convention on consent to marriage, minimum age for marriage and registration of marriage (New York, 10 December 1966).
14. Traian Rotariu, *Studii demografice* (Iaşi: Polirom, 2010).
15. Maria Voinea, *Psihosociologia familiei* (Bucharest: Ed. Universităţii, 1996), 67.

16. Anca Dohotariu, "Avec deux, ne faire qu'un: couple et cohabitation hors mariage dans le postcommunisme roumain," *Romanian Journal of Population Studies* 4, 1 (2010): 38–52.
17. The New Romanian Civil Code was adopted through Law 287/2009, *Monitorul oficial al României*, pt. 1, no. 511 (24 July 2009). Law no. 71/2011 for the implementation of Law 287/2009 (Civil Code) was published in *Monitorul oficial al României*, pt. 1, no. 409 (10 June 2011).
18. Bruno Ştefan, *Dimensiunile urii interetnice în secuime* (Bucharest: BCS, 2001).

Abstract

The Law of Marriage in Romania, 1890–2010

This study follows the evolution of the laws regarding marriage in Romania, between 1890—the moment secular law was introduced in Transylvania—and 2010, the last year before the entry into force of the New Civil Code. Considering the different institutional context of the former Principalities that united to form Romania in 1918, the study also reviews the Civil Code drawn up under the reign of A. I. Cuza in 1865 since it was going to remain, with only minor modifications, the centerpiece of Romanian matrimonial law for over one and a half centuries. The 1954 Family Code and the changes introduced in matrimonial law after 1990 are also discussed in the present study.

Keywords

marriage, Romania, Civil Code of 1865, the Family Code (1954), mixed marriage