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Marital and filial relations in private comparative law

-Phd Thesis Summary-

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Content

CONTENT OF THE PHD THESIS

INTRODUCTION

Law, as a science that studies legal norms, is based on the field of morality. Therefore, the attribution of the family institution to this field is a natural move, which does not exclude the possibility of issuing specific legislation. Professor Jean Carbonnier stated in his papers that the legislation characteristic of family law corresponds to an overview, on which the legislator formed his own idea, about the ideal family. As such, the legislator's approach gives us the right to discuss about the family policy[1]. Paradoxically, the family legislator will face the general function of law, because he will have to prescribe a model, establish a certain conduct and comply with distinct situations. At the same time, he must limit to the confirmation of all situations and their transposition into rules, so as not to infringe on the fundamental rights of individuals[2].

From a legal or sociological point of view, the current era we are going through is subject to uncertainties and the questioning of human values. Thus, the institution of marriage is presented to us in an innovative perspective, which must tolerate fierce competition from new forms of coexistence. Despite all these changes, we can still say that, of all the legal acts concluded with the aim of giving rise to family ties, the institution of marriage is the one that will generate the most pecuniary and personal effects between the parties. Therefore, the status of married person will lead to the birth of an entire suite of personal or pecuniary obligations and rights between spouses, or between parents and children, these being circumscribed to the concept of family life. Also, in the marriage, the emotional relations between the spouses will prevail, most of the times, in front of the individualism, or of their selfish interests. If, before concluding the marriage, we are accustomed only to ask for what is due to us, after acquiring the status of husband or wife, we must also learn what it means to offer. Moreover, in the legal relations between a married person and a third party, we risk finding several strangers because the husband cannot be assimilated to an ordinary co-contractor. The key to deciphering the equations of a patrimonial nature is represented by the identification of the matrimonial regime, chosen by the spouses, this one containing real rules, in order to organize the resources and the expenses. Thus, marriage or conjugal union of persons will contain, in addition to the range of personal rights and obligations, a pecuniary side, which is universal, eternal and privileged.

1 Jean Carbonnier, *Flexible droit, Textes pour une sociologie du droit sans rigueur*, Librairie Générale du Droit et Jurisprudénce, Paris, 1976, p. 170.
2 Emese Florian, *Dreptul familiei. Căsătoria. Regimuri matrimoniale. Filiația*, Editura C.H. Beck, București, 2018, p. 2.

Throughout history, many personalities of literature, art, or science have relied on this bipolarity of marital relations, especially on the financial side[3].

Currently, the institution of marriage, along with that of parentage enjoys a new physiognomy, which is why we consider that the new legal rules are a challenge for specialists, but also for its recipients, as ordinary citizens of the country. In the case of Romania, first of all, we are no longer talking about a special code, dedicated to the family, but the norms have returned to the womb, in the current *Romanian Civil Code*, the legislator promoting today a "monistic"[4] conception about family relationships. The legal norms that treat the family institution, unlike the other branches afferent to the civil law, have in view the organization of an institution with guard role, on the well-being of the persons. The aim of the legislator is to ensure the balance between family-specific solidarity and individual independence. A true example, in this sense, is highlighted by the emancipation of women, who in the past were under the „relentless" tutelage of men. With regard to French law, we note that, in recent years, the French legislature has considerably changed the law applicable to couples and children. Analyzing the current French norms, we consider that he gave in to the satisfaction of *ad hoc* needs and lost sight of the meaning and functions of the family. Strongly attached to pluralism, the French regulatory authorities currently offer three ways of living together: cohabitation, the civil solidarity pact and marriage. As such, there is no longer a problem for the French legislature to impose a single model, to fulfill the function of law. He has long since ceased to believe that there is no salvation except marriage. In the matter of relations between parents and children, equality will have an overwhelming influence. In French law, the principle of equality will take two forms: the elimination of the distinction between children and the identical prerogatives of spouses.

Similar to French law, in Germany there have been changes in the legislation which, for a period of time, have manifested themselves differently, depending on the geographical position. As for marriage, it has long been described by theorists in a negative way. The

3 In the case of literature, I consider the novel entitled The Marriage Contract of Honoré de Balzac, an eloquent example of how the institution of marriage has managed to inspire the personalities of the world. In this work, the plot is represented by the clauses of the marriage contract, concluded between Paul de Manerville and his fiancée Nathalie Evangélista. The young man wants to preserve his patrimony, while the woman, together with her mother, seeks to seize the fortune. In fact, through an epistle, Balzac addresses his sister, using the following reply: „Ce qui je voulais faire a été glorieusement accompli. J'ai représenté tout un avenir de deux époux par la scène seule du contrat de mariage". Details of this letter can be found in Rémi Cabrillac, *Droit civil. Les régimes matrimoniaux*, 6e édition, Editura Montchrestien, Paris, 2007, p. 1.

4 Mircea Florian, *Recesivitatea ca structură a lumii*, vol. I, Editura Eminescu, București, 1983, p. 52. In his opinion, monism represents „a hotbed of sophistry whose source lies in the belief that the world is a kind of infinite Individual who remains the same, immutable, in the midst of transformations".

negative speeches culminated in a new definition of the institution, which presupposed the following considerations: „the family is where the children live”[5]. In the last decade, in German legal doctrine, the term family has been replaced by *Lebensformen*. This change came at the recommendation of older British sociologists, who advocated the replacement of the phrase „family” with „family practices”[6]. The transition to *Lebensformen* illustrates the mentality of the German people and, of course, the possibility of revising some older court decisions. In this new context, marriage has become one of the *Lebensformen*, along with same-sex relationships, or cohabitation.

In the English legal system, the culmination of developments in family law is represented by the adoption of the law entitled *Children Act, 1991*. Thanks to this law, the best interests of the child have become an essential criterion in all court decisions. Unlike the Romanian or French legislator, who prefers to use the notion of parental authority, in English law it is considered appropriate to use the phrase „parental responsibility”. In general, the English legislature supports the conclusion of agreements between parents, provided that they respect the best interests of the child. However, unlike the French, German, or Romanian legislator, the English legislator distinguishes between children born during the marriage and children born out of it. The inequality provided by the English legislator will produce effects depending on the status of the father. Therefore, if the birth takes place outside the marriage, the parental responsibility cannot be automatically assigned to the natural father, but it will be established in the exclusive responsibility of the mother. In other words, the legal establishment of the paternal parentage relationship, outside of marriage, will not automatically imply the joint attribution of parental responsibility. Although theorists and practitioners have long called for changes in English law, so far no reform has been adopted.

Analyzing the legislative syntheses of the states concerned, we find that the reshaping, from a legal point of view, of conjugal and filial ties is an effect of merging the principle of equality with that which implies freedom of will, but also with the principle of solidarity. These will apply equally in the legal relations between the spouses and in the situation of filial legal relations.

Since the topic we set out to approach cannot be included in a single discipline, but it is at the crossroads of several socio-human sciences, in this thesis we will focus, for the

5 Ilona Ostner, „Cohabitation in Germany - Rules, Reality and Public Discourses”, în *International Journal of Law, Policy and the Family*, nr. 15, 2001, pp. 88–101.
6 Lewis H. Morgan, *Systems of Consanguinity and Affinity*, Editura Smithsonian Institution, Washington D.C., 1871.

beginning, on the historiographical analysis, absolutely necessary for legal sciences. Secondly, we will analyze the topic from a sociological, anthropological, psychological and, of course, theological point of view. All these aspects will facilitate the examination of the cultural mutations, occurred in the last period of time, which have resonantly marked the universe of marital and filial relations. We decided to analyze the legal effects of marriage, starting with the first signs of civilization and continuing to the present day, because the institution of the family, as presented to us today, has not always presupposed the same legal relations.

The present research aims at a unique structure, so that the whole area of the prerequisites indispensable for the comparative analysis can be exposed, which aims at the marital and filial relations. In this sense, for each perspective and historical period, there is a separate section. The thesis includes four chapters divided into sections, all preceded by generous prologues. For a start, the essential definitions of the institutions concerned will be found inside the paper, in order to illustrate the contextual or strict meaning of some phrases, such as marriage, filiation or family. Subsequently, we will turn our attention to diachronic prospecting, analyzing the concern of various specialists for the institution of marriage and the effects it produces. We will initiate the present analysis with the researches of the specialists, on the family life in prehistory, identifying the impact that the archeological discoveries had on the marital and filial relations. Later, we will stop in the ancient period and we will systematically expose the way in which illustrious authors, such as Plato, Aristotle and other philosophers of ancient Greece, present, in their works, family ties. Of course, because Roman law represents the inexhaustible source of legal norms, for the continental-European law system, we will expose here the way in which the Roman lawyers organized the marital and filial relations. Advancing with the diachronic prospecting, we will identify the main key moments, which contributed to the modification of the marital and filial relations, from the medieval and modern period. We will refer here to the influence of Christianity on marriage and kinship, to the applicable regional customs, to the effects of industrialization, but also to the importance of *Napoleon's Civil Code*. The following chapters of the thesis are dedicated to the marital and filial ties, in comparative private law, of contemporaneity. Here we will use the comparison method, in order to analyze four different legal systems. As such, the Romanian, the French, the German legal system and, last but not least, the English legal system will be the object of our research. In these chapters, general considerations on family and marriage will be set out in turn. Here, we will highlight the strengths, but also the shortcomings contained in the laws of the states concerned. At the same time, we will analyze the existing criticizable rules, considering that they are part of a

„legislative operational risk”[7]. As Pierre Legrand states, „the comparatist acts as an interpreter, who tries to make intelligible, in their chain with his own legal universe, another right and another way of living in law, which he observed at another person”[8].

In the first of the chapters dedicated to legal research, we will extrapolate the imposed topic, in the sense that we will present here the general principles of family law, but also the primary regime of marriage. Subsequently, in a separate chapter, we will analyze the pecuniary and personal effects that the conclusion of a civil marriage produces, on the territory of the four states concerned. We will consider the mutual debts and rights of the spouses, but also the preservation of individuality, despite the existence of a living community. In the last chapter, we brought to attention the evolution and regulation of legal relations between parents and children, by illustrating the main rules in the field, but also by explaining the types of parentage and the effects generated by them. We also discussed here the rights and obligations that parents have towards their children, starting with the right to have a child and ending with the maintenance obligation.

The theoretical approach to the proposed topic will merge with the pragmatic perspective, so as to respect the reply of the great law professor Jean Carbonnier, who states that, in general, people behave as if family law did not exist. As such, the author argues that family relationships subscribe to non-law, and the emergence of legal norms, which concern the ties between its members, is a simple accident[9]. In order for the solutions set out by the European legislator to be faithfully perceived by the population, they will need to be properly disseminated. In the present research, we will not limit ourselves to explaining the basic concepts, but we will highlight the advantages and disadvantages of each institution, so that the public is informed, before manifesting its option. In fact, this is one of the objectives we have set ourselves, since the beginning of the research. In order for the effort to be successful, we will frequently use examples from European case law, especially from the legal systems in question.

But, any successful scientific approach also requires unique methods. Therefore, although this paper is intended to be included among those of legal specialty, we chose the use of methods, less used by Romanian lawyers. First of all, I chose to use the historical method because, in general, the presentation of a legal institution must be preceded by a historiographical radiography of the topic. This radiography aims to highlight the background and examine the developments that have successively contributed to the current image of the

[7] Marieta Avram, Cristina Nicolescu, *Regimuri matrimoniale*, Editura Hamangiu, București, 2010, p. VII.
[8] Pierre Legrand, *Dreptul comparat*, trad. Raluca Bercea, Editura Lumina Lex, București, 2001, p. 17.
[9] Jean Carbonnier, *op. cit.,* p. 28.

institution concerned. The next method used is the comparative one, without which I would not have been able to make a complex analysis of the topic. As such, the purpose of providing information, even minimal information, in order to understand marital and filial relations, would not have been achieved if I had used a fragmentary view, limited by the solutions contained in our law. On the contrary, we considered it necessary to illustrate some regulations, which represented a legislative matrix for the Romanian legislator. This approach involved the discovery and thorough study of foreign norms, along with the doctrine and related jurisprudence, and the results materialized in a synthetic exposition, integrated in the overall vision on marital and filial relations. Finally, another method that we considered useful in this research is to study and apply logical reasoning. Practically, without their introduction, this paper would have lost its scientific character. Thus, in order to clarify the meaning of some hidden legal norms, we will resort to their logical interpretation, using the laws of formal logic, but also various types of reasoning, be they deductive or inductive.

BRIEF PRESENTATION OF THE CHAPTERS

Prolegomena

Naturally, the present research was preceded by prolegomena, in order to analyze the imposed theme, from an interdisciplinary point of view. Thus, we have introduced here some preliminary notions, regarding the family and the concept of kinship. Thanks to the interdisciplinary analysis, we noticed that it is almost impossible for us to identify or conceptualize the functional landmarks of the family because, on the content of the definition, we find the imprint left by the specifics of each science and therefore meet different meanings of the same notion. Corroborating the definition of family with that of kinship, we notice that the emphasis falls more on the specifics of activities, cohabitation or change of structure, within the family group, than on kinship, the family institution thus acquiring a double hypostasis.

In the next division of prolegomena we dealt with marital and filial relations, through myths and symbols related to the family, in the Greco-Roman civilization. We initiated the mythological analysis, referring to the family, with the most emblematic figures of the legends, such as *Gaia, Jupiter, Eros, Metis, Junona* and other such deities. In this way, I concluded that the legends are not simple stories, but contain a treasure, in which there are certain cosmological representations, linguistic forms, thoughts and moral perceptions. s far as we are concerned, the connection with family law is an obvious one because, studying the emblematic

figures of mythology, but also their deeds, we can discover new interpretations regarding marriage, filiation, adoption or parental authority.

Also in the prolegomena, I approached various scientific theories, regarding the evolution and the role of the family. We refer here to the theory of human evolution, to the implications of ethnology in the preliminary study of the family, but also to the sociological perspective on marital and filial relations. Last but not least, we considered it necessary to include a section dedicated to relevant psychological studies, related to the family.

In the penultimate section of the prolegomena we discussed about forms of the family and about their essential role. Although, when we pronounce the word family, we have in mind the typical image of two parents, along with their children, it seems that this form does not describe the multitude of family constellations, existing in today's society. Regarding this aspect, in French doctrine it was used the phrase *la famille introuvable* [10], namely the family cannot be found because the forms of family life have diversified, an aspect that determines us not to know very well what this concept covers. In this section we analyzed the patriarchal family, characteristic of Roman law, but also the nuclear family, characterized by the accentuated role of the husband and which, in recent decades, has entered a process of decline, due to the increasingly obvious presence of women on the labour market. All these changes led to tensions within the family which, corroborated with the legislative novelties, made possible the transition to a new stage represented by the single-parent family.

Another type of family is that of spouses without descendants, a model that today's young people are adopting more and more often and which is due to the change in the list of priorities. According to the conception of young people, the central axis of family life is no longer represented by the child, but the center of gravity moves on the husband-wife relationship. The European legislator took note of this desire of the people and put at their disposal the possibility to have the children they want, by legalizing contraceptive methods, to eliminate unwanted children, by legalizing abortion and to abandon them, once they were born.

In the last section of the prolegomena we analyzed the common features of family life. In this sense, we noticed that the family is a polymorphic phenomenon. If this institution encounters difficulties in the definition process, it is due to the fact that it covers extremely diverse realities. Because each discipline presents a partial vision of the family, it was necessary the intervention of interdisciplinarity, so that the information could be collected

[10] Denis Lensel, Jacques Lafond, *La famille a venir. Une réalité menacée mais nécessaire*, Editura Economica, Paris, 2000, p. 60.

together, in order to elucidate the institution of the family. We mention here the fable presented by Professor Raluca Bercea, about the six blind people, who were asked to touch an elephant and describe how they feel. Because the opinions were subjective, they failed to identify the final result[11]. The first common element is represented by the nuclear or elementary family, which has always been in the attention of society, being treated as a residential group. The next common feature of family life is monogamy, which, despite legislative differences, enjoys a majority presence in practice, with a relatively small breeding unit. Then, when we talk about groups of descent, such as the patrilineal ones in Roman law, it does not mean that we do not recognize the consanguineous connections with both parents or with the parent whose parentage is not recognized. In this sense, we can remember the importance of the mother's brother, in patrilineal societies, without referring to any previous matrilineal organization. Regarding the links between parents and children, we note that, in general, none of the societies treat them as totally devoid of legal or sentimental significance, although, as we have noted, in some contexts this has happened.

Chapter I. Diachronic analysis of marital and filial relationships

The first chapter of the thesis was dedicated to diachronic prospecting. In the first section, we analyzed family life in prehistory, because this period has a number of features compared to other eras, included in universal history, having an interdisciplinary character and, therefore, close links with anthropology, entology or sociology. According to a general conception, prehistoric man was dominated by the environment. In support of this statement is the argument that the human species has managed to evolve by obeying nature. Thus, by discovering various materials, by perfecting tools, but also by domesticating animals, man has managed to gain greater freedom of movement and to develop intelligence. However, due to the absence or rarity of written sources, we were not able to reconstruct an authentic history of the prehistoric family, but we relied on studies conducted in other fields. One of these fields is archeology, which, through excavations carried out over time, has established certain landmarks, regarding the types of human settlements, the rites practiced by humans, the tools used by them to survive, but also the burial structure. Taking as a reference the archeological studies carried out over time, we noticed that, as we advance in time, the role of the man increases, an aspect rendered through plastic representations and more. Thus, although initially the female statuettes that symbolized fertility predominated, with the domination of the patriarchal family, they become

[11] Raluca Bercea, Alexandra Mercescu, *O scurtă introducere în drept*, Editura Humanitas, București, 2019, p. 62.

less common, while in the meantime the male ones prevailed. Thus, we are talking about a social restructuring, an aspect that also emerges from the analysis of the discovered tools, but also from that of the tombs.

Section II is dedicated to the connection between spouses and the relations between parents and children in Antiquity. The first, but also the most important writings on the family, implicitly on marital and filial relations are those of divine inspiration, among them being the *Seven Commandments of Noah*, the *Code of Hammurabi*, the *Decalogue* or the *Laws of Manu*. Here we highlighted the fact that the legal norm has an obvious connection with the moral law, although there are notable differences between the two. For example, when it is desired to save the dignity of the law, by the method of punishing the one who disregards it, the legal norm uses the repressive power, exercised in the name of its objectives. This imposition, through the force of coercion, can take place at any time, but if it is not animated by a moral feeling, the legal duty remains imperfect. According to the analyzed laws, the man will acquire full fulfillment, once the family is founded. At the same time, within the same section, we kept the imposed chronological order and we studied the marital and filial relations, present in the most important works of Antiquity. Thus, we analyzed the writings of Plato, Aristotle or other philosophers, regarding family and kinship. For example, Plato believes that in order to be ideal, a community must be guided by certain landmarks. One of these landmarks is the raising of children together, from birth[12]. The philosopher says that in this way people will form a large family, the parents being represented by the whole older generation[13]. The result will be the abolition of family selfishness and the promotion of devotion to the good of that community[14]. In Aristotle's view, the family is an association of persons, established through nature, with the aim of procuring daily necessities[15]. We also learn from the tragedy of Euripides that the woman of ancient Greece was subject to the man, whom she must respect and follow everywhere. The main role of women was the birth, raising and education of children. Analyzing the conceptions of the great philosophers, on the family, I discovered that they considered educated and freely developed femininity as the foundation of marital and filial relations.

[12] Platon, *Republica*, vol. I, Cartea a V-a, trad. Vasile Bichigean, Tipografia profesională Dim. C. Ionescu, București, 1923, cap. IX, (...), p. 221: „Spune-ne părerea ta despre modul, cum se va stabili comunitatea de femei și copii între păzitorii statului și despre modul cum vor fi crescuți copiii în timpul care desparte nașterea de educația propriu-zisă".

[13] *Ibidem*, p. 32: „Statul va fi cu adevărat unul, deoarece fiecare om din el va numi al meu exact ceea ce oricare alt cetățean va numi al meu".

[14] Andrew Louth, *Originile tradiției mistice creștine. De la Platon la Dionisie Areopagitul*, trad. Elisabeta Voichița Sita, Editura Deisis 2002, p. 34.

[15] Vasile Muscă, Alexander Baumgarten, *op. cit.*, p. 38.

Because Roman law is an infinite source of legal inspiration, I chose to research the way in which marital and filial relations were organized in Roman norms. Thus, we discovered the most beautiful definitions of the family, at Modestin and Justinian. Analyzing the two definitions, we found that the Romans meant by marriage a union, not a contract, as lawyers tend to interpret today. However, we must not mean by this that the rules regarding the contract did not apply to marriage, because we would be wrong. Developing over several centuries, Roman law offers us the richest legal literature on the relationship between spouses or between parents and children. Also, through this legal system, we can undertake a thorough research, which would restore the image of formation, flourishing, but also the decay of the family institution. If we had chosen to deal with marital and filial relations, only through the examination of older laws, such as the Assyrian-Babylonian or biblical texts, we would certainly haven't achieved the same result. This is due, in principle, to the complexity but also to the diversity of legal issues regarding the family, debated by Romanian lawyers, thanks to their practical spirit. The study of the Romanian norms offered us the opportunity to remind us of the lively source of continental-European law.

Following the historical line, we included in the same first chapter a section dedicated to the family, from the Middle Ages. If the Greeks were unmatched in speeches, and the Romans insurmountable in terms of territorial organization, the elite specific to the Middle Ages became a model for everything that means the quintessence of love. Until that period, no civilization had succeeded in entering, so deeply, into the mysteries of the heart in love. In this sense, the Middle Ages is a period in which the disorder of living conditions, along with the cruelty of wars are intertwined with an intense aspiration for happiness. In medieval Europe, the institution of marriage is the way in which unions become legitimate. Being a public ceremony, accompanied by certain rituals and sacred formulas, this institution is placed on the border between material and spiritual. Therefore, the specific codifications of this institution are both profane and religious. Regarding the relations between spouses, historians have found that in the Middle Ages those matrimonial strategies were perpetuated, which were considered to represent „the union of two families and then the union of two people”[16]. We thus concluded that the kinship revolved around a patrimony, regardless of its material representation. Whether we discussed matrimonial strategies or succession rules, we noticed that the role of heritage was to control pre-existing kinship relationships, or to favor new ones.

[16] Jean Verdon, *Dragostea în Evul mediu,* trad. de Dana-Ligia Ilin, Editura Humanitas, București, 2009, p. 202.

The last section of the chapter is reserved for the modern period. Here we demonstrated that the establishment of the new prerogatives of the people led to the privatization of the marriage contract, more precisely to the beginning of the „family crisis". In this section, we analyzed the changes suffered by the family institution, immediately after the Reformation, but also the way in which Napoleon reconsidered marital and filial relations. Thus, after the emergence of Protestantism, a process of secularization began, which is why it was possible to choose the future partner. This practice produced negative effects in rural areas because the free choice of the partner would affect the transfer of ownership. However, the most important changes in the modern period were due to the industrial revolution. As such, the distribution of family responsibilities has changed, as has the power ratio. I insisted in this section, dedicated to the modern period, that, although sociologists or historians use the modern-traditional dichotomy, when referring to the family, this phrase is not a concrete point of reference, but a simple analytical tool.

Chapter II. The regulation specific to marital relations in Romanian, French, German and English law

The second chapter of the thesis was dedicated to the legislative analysis, regarding the filial and marital relations. The first section contains details on the notion of family, according to the regulations from France, Romania, Germany and England. We initiated the analysis of the imposed theme with the notion of „family life". European jurisprudence, which takes into account this notion, as it is regulated by art. 8 of the *European Convention on Human Rights*, highlights the task of states to ensure the compliance of such a life, without discrimination. We note, therefore, that the protection offered by the Convention does not presuppose the existence of a legal element or even a biological one, but rather the existence of a binding element of a social nature. In order to highlight the way in which the family is viewed by the legislator, first of all, it was necessary to review the main European normative acts, which deal with the relations within a family. Nowadays, generally speaking, the regulation of marital and filial relations is more and more consistent because the legislator does not impose a certain status on people, but leaves them free to choose through the convention, according to the „carbonnierist" formula *á chacun sa famille, á chacun son droit*[17]. Indeed, the reason why Carbonnier says this is because France is a country divided by religions and encompasses various cultures,

[17] Jean Carbonnier, *Essais sur les lois*, Editura Defrénois, Paris, 1979, p. 167.

ideologies and traditions. In the current context of migration, the same can be said of Germany or England. Therefore, a standard cohabitation model cannot be imposed on people.

Given the fact that, in the analyzed legal systems, the legislator avoided the elaboration of a universal definition of the family institution, it results that, most of the times, the lawyers but also the interested persons had to resort to the contributions brought by sociologist's field. Because we are talking about two different areas, it follows that, after consulting the opinions of sociologists regarding the family, we will find two meanings of this notion, namely the legal meaning and the sociological meaning. According to researchers in the field, the two meanings do not overlap because we can talk about family relationships, in the absence of their regulation by the legislator. An example in this sense is the cohabitation which, at present, is not regulated by the Romanian legislator. This existing comparison, between the legal meaning and the sociological meaning of the term „family", can also lead us to the reciprocal of the situation already analyzed, for example to the existence of regulation for certain family relationships, although they are not the subject of sociological research. The best example, in this respect, is represented by the maintenance obligation, existing between the former spouses, although the institution of marriage no longer subsists. In conclusion, the term „family" is characterized by a rich polysemy, and the two meanings, social and legal, perfectly demonstrate the fact that, in practice, new situations may arise, requiring the application of general principles in family law.

In the same chapter we also analyzed the general principles related to the civil law of the family, starting with the explanation of the notion of „civil law of the family". From the category of general principles existing in civil law, in this section, I referred to the principle that proclaims the equality of spouses. According to the legal doctrine, it represents a modeling of the equality of the man with the woman, being specific to the institution of marriage. We continued the analysis of the main trajectories of the civil law of the family, with another well-known principle, both in jurisprudence and in legal doctrine, entitled equality of children in rights. According to the general rule, children are equal to each other, whether they come from a marriage, from a registered civil pact, from a *de facto* union, or from adoption. This rule is based on the principle of equal rights of persons, contained in the constitutions of states, which is why it is very similar to the equality of spouses. Another principle analyzed was that of the best interests of the child. Given the importance of complying with such a principle, we note that it has been included in both national and international provisions. Next, we discussed the principle of monogamy, the one regarding the free consent of people, the one aimed at protecting the family and marriage, but also the principle of family solidarity.

Section II, related to this chapter, was dedicated to the general legal regime of marriage. The universality of marriage, like that of the family, attests to its natural character and, at the same time, allows us to explore certain common and invariable characteristics, at least within community systems. The institution of marriage, as we find it today, is the result of multiple and frequent changes, due to different conceptions of legislators. Inspired by the famous line *a chacun sa famille, à chacun son droit,* I decided to formulate a section dedicated to *à la carte marriage*, discussing here the diversity of marriages, but also about the legal effects they can produce. We continued the discussion dedicated to marriage, respecting the marital freedom of people. The first component of the principle of freedom of marriage is the right of the person to marry. This right, as well as the right to establish a family, is a matter of public policy, which is why the intervention of any administrative or judicial authority is excluded, unless the overriding public interest is infringed. The second component of the principle of marital freedom is represented by the right that a person has, in order to freely choose the future spouse. Finally, the same freedom refers to the denial of the exercise of the action. Therefore, the principle of freedom of marriage may also refer to a person's right not to marry and not to start a family. Because it was natural, I decided to include in this section the main European rules on the institution of engagement. Thus, I noticed the current tendency to reconsider the engagement institution and to place it among the contracts, as it is able to generate legal effects. Finally, we discussed here and the formalities preliminary, ongoing and subsequent marriage. These formalities will be necessary to cover all the deficiencies, to offer guarantees, but also to meet the substantive and formal conditions of the marriage.

Chapter III. The personal and pecuniary effects of civil marriage, in comparative private law

The first section of this chapter is devoted to the individual status of spouses. Here we have included all the changes that occur, in terms of personal status, after the celebration of civil marriage. Thus, we discussed the change of the person's name, capacity or nationality, the attributes related to his integrity, but also those that refer to his behavior. All these changes have always been in the attention of the Romanian or foreign legislator, which is why we chose to present them, in a comparative manner, which will bring with it scientific improvements.

The second section was dedicated to personal ties between spouses, in comparative private law. The personal ties, to which we referred, represent a hinge that binds the spouses together. Thanks to this metaphor, we can deduce that their purpose is to keep spouses attached to each other and to provide functionality to the principle of codecision. In all four legal systems

that we analyzed, we discussed concepts such as respect, fidelity, cohabitation, or moral support. Along with the obligations exemplified above, the relationship between the spouses will also be characterized by a life together. Through the personal qualifier, the legislator transforms the personal ties of the spouses into a way of life. Basically, fidelity, mutual support and respect regulate the common life between spouses. In support of this statement we say that the union of people is based on a community of life, while household unity will be possible thanks to fidelity and material or moral support. By the reciprocal qualifier, the Romanian, German, English or French legislator wants to show that the duties are assigned, equally, to both spouses. They will engage each other so that we could say that everyone is, at the same time, a creditor and a debtor of personal obligations.

What does it mean to live a life together? I believe that a community of life does not refer only to the obligation of cohabitation, but the latter is only a constituent element of living together. We refer here to three components of the obligation to live together: roof community, bed community and table community. In their absence, the marriage would remain a simple contract, concluded between two people.

The duty of mutual respect between spouses is a synthesis of fidelity and moral or material support between spouses. In fact, we can say that this phrase was used to cover all other situations, which do not fall into the category of debts of fidelity and mutual support. This obligation takes into account both the person and the personality of the spouses because it brings into question the concept of privacy.

Fidelity is certainly the emblematic duty of the institution of marriage because the legislator imposes it only on spouses, not on concubines or persons who have entered into a civil partnership. Although this notion does not benefit from an express definition in European civil codes, we can deduce, with the help of doctrine and jurisprudence, that it is closely linked to morality and the intimate sphere of married life. In short, we can consider this obligation as the corollary of all the duties specific to common life.

In addition to personal obligations of fidelity and respect, the legislator also provides the duty of moral support. Therefore, spouses have an obligation to support each other so that the difficulties of married life are alleviated. It refers, in a broad sense, to an obligation to cooperate within the household. Common to spouses, even those who have chosen the regime of separation of assets, this basic duty of household cooperation should not be confused with the specific duty of cooperation inherent in the communitary regime.

Section III of this chapter is entitled „Establishing the patrimonial ties between spouses, in comparative private law". When I analyzed the individual status of spouses, I noticed that,

before marriage, everyone benefits from a certain patrimonial status. But what will happen to the person's patrimony, after he/she acquires the status of husband / wife? Is the existence of a common mass of goods natural? What will be the obligations and rights of the spouses, regarding the goods acquired after the moment of marriage? How will third parties act in relation to the spouses' assets? These are just some of the questions we set out to answer in this section. Therefore, we discussed the main trajectories, considered by European legislators, in order to establish rules on matrimonial property regimes.

With the spectacular apprehension of the contractual autonomy of the spouses and the disappearance of the prohibitions or incompatibilities of the contract with the conjugal status, the spouses are, more and more, treated like the bachelors. Each spouse has an autonomous financial existence, in relations with the other, but also with third parties. However, most European legislators expressly impose two pecuniary imperatives on married people. For example, each spouse is obliged by the legislator to contribute to the tasks of common life. The spouses also have the obligation to come to the aid of the partner, in case of need. Although these two tasks are similar, they differ in content. The binding element between the two pecuniary tasks is represented by the undoubted obligation.

In this section we have also analyzed the European rules, which concern the common law regime, existing in all four states. As such, together with the imperative regime, the matrimonial regime governs the pecuniary ties between the spouses, in the sense of establishing the specific rights and obligations, in order to reconcile the conjugal unity and the specific autonomy of the persons. The intersection of spouses with the legal matrimonial regime will take place, when they refuse or do not know that they can conclude a matrimonial agreement before marriage. Also, the legal matrimonial regime will be applied, in case the spouses' agreement is null or annulled. In Romania, the community of property represents the presumed choice of spouses, the legal matrimonial regime, provided by the legislator. In France, the legislator opted for the community regime reduced to acquisitions, which represents a community-type regime, and in the German legal system, the legislator chose participation in acquisitions as a regime, being included in the category of separatist regimes. Under English law, marriage will not produce property effects between spouses. As such, the English legislature does not provide for the establishment of a matrimonial regime of common law, applicable in the absence of a matrimonial agreement.

Finally, the last part of this section is devoted to pecuniary ties, proposed to spouses by the European legislator. Currently, we identify multiple forms of matrimonial regime, which will be divided into two broad categories: separatist regimes and community regimes. The

legislator decided to adopt such a solution because, most of the time, the rules related to the common law regime did not suit the spouses, reason for which they refused to conclude the marriage. Today, thanks to these conventional matrimonial regimes, people can decide, by mutual agreement, the way in which their own pecuniary interests will be reconciled with the imperative norms.

Following the entire analysis on the pecuniary relations between the spouses, we concluded that the matrimonial regime represents the set of rules, which govern the property of the spouses, during the marriage, organizing them in a coherent way. This body of rules is based on European civil codification and is characterized by three types of management: exclusive, parallel and common. Being specific only to married couples, the proposed rules, within the matrimonial regime, join those imposed by the legislator, through the effect of marriage, the latter illustrating public debts and rights of spouses. Finally, we remind you that in all the four countries we analyzed, the matrimonial regime had, at the beginning, an immutable character. However, the evolution of mentalities, the prolongation of marriages, the mobility of couples and the mismatch between marital status and changes in the lives of spouses, led these states to establish the principle of mutability of marital status.

Regarding the matrimonial regimes, we highlighted the usefulness of the matrimonial convention, which allows spouses to metamorphose the desired regime, so that it corresponds to the material situation, but also to the aspirations that the partners have. Although this convention may be concluded before marriage, we should not view it as a sign of skepticism, but rather as an assumption of material responsibilities, which may arise from the conclusion of the marriage. In the present research we also identified certain weaknesses of the Romanian legislation, compared to the European one, reason for which we consider the fact that the local legislator did not have enough trust, so as to regulate other possibilities of organizing pecuniary relations between spouses. An example of a matrimonial regime, which is missing from the local landscape, although it could have been the primary choice of some spouses, is the one entitled participation in acquisitions, specific to German or French law. In fact, I noticed that this matrimonial regime was a priority for the two foreign legal systems, in order to facilitate the organization of pecuniary relations between a French and a German citizen.

Chapter IV: Spouses' rights and duties as parents. Comparative perspectives

The last part of the paper is dedicated to the legal relations between parents and children. In recent years, the European legislature has significantly changed the law applicable to couples and children. Having become a real subject of fundamental rights today, the child is no longer

the „mechanism" for the transmission and preservation of family property, but one of the major concerns of law, embodied in the key formula, ubiquitous and intensely discussed, entitled the best interests of the child. The relationship between the child and his family reveals the cardinal notion of contemporary law, called parental authority. This can be defined as the exercise of all the prerogatives, which involve raising and protecting the child, in order to transform him into an adult.

The first section of the fourth chapter is entitled „General considerations concerning the institution of parentage". The notion of filiation expresses the connection of descent, existing between two persons, generically called parent and child. This institution, thanks to the legal attachment between an adult and a child, will generate multiple consequences, on the socio-legal level. One of these refers to the vocation of succession, another consequence concerns the maintenance obligation, and others are represented by the creation of an impediment to marriage, the transmission of the family name, or the attribution of parental authority, regarding the person and property of the minor.

According to the current legislative context, the new family no longer consists only of spouses and their children, but it can also consist of the group of unmarried parents, along with descendants. At the same time, it does not matter if a child comes from marriage or from outside it, because the legal status will be identical. Summarizing the discussions on filial relations, we can say that the principle of freedom is the one that orchestrates, at European level, the obligations and rights arising from parental authority. It coexists with the obligation of protection, but also with other attributes of parental authority. At the same time, the freedom of parents to decide on the future of their children is limited because this prerogative will take effect only if the parent takes into account the best interests of the child.

Finally, we discussed in this section the right to be a parent and the refusal to procreate. Representing an innovative phrase for the local legal system, the right to be a parent can be understood in both a positive and a negative way. When we say negative, we think of the person's right not to procreate, not to give birth to a child. Here we mentioned two important institutions of family law, namely adoption and the establishment of parentage, as a result of medically assisted human reproduction. As regards the field of the latter institution, French legislative policy is characterized by rigor. This is due to the fact that the French legislator promotes the principle of respect for human dignity and rights. Therefore, assisted human reproduction must be the only way in which a person can have a child, so the purpose of the medical act is to be therapeutic. With regard to French law, the establishment of parentage to a child, conceived artificially, will take place by the material fact of birth, by presumptions and

by state possession. If the parents are not married and the mother uses such a reproduction technique, her partner's consent will be vital for establishing legal ties with the child. In fact, the withdrawal of consent will not relieve the partner of his parental responsibility. In this sense, the legal fiction works, established by the French legislator, which allows the establishment of legal ties, to the person who gave his consent, and not to the donor. Compared to the French system, in German law the legislator considered the dignity of the person to be paramount, which is why the field of bioethics is very important. In this way, if the French system was a restrictive one, here we can say that the fencing reaches maximum levels. Following the analysis of German law, we found that research on embryos and genetic manipulation are prohibited. At the same time, it is forbidden to select the sex of the child, if the purpose of this procedure is not to avoid a hereditary problem, of a medical nature. Under current German law, only couples can use such techniques, whether they are spouses or concubines, provided that the relationship enjoys stability. Regarding the fertilization procedure, we note the similarity with French law in the sense that the consent of the persons will be required, so that the connection of filiation can be established. Actions will be admitted in denial of paternity or in contesting it, if the person has not given his consent for the medical technique. The only way to be relieved of parental duties is to withdraw your consent before performing the medical technique.

In contrast to French law, the third legal donor will not be protected in the German legal system, so it will be possible to disclose his identity in order to exercise the child's right to know his or her origins. Under English law, the rules on assisted human reproduction differ greatly from those in Germany or France. Here, the technique of human reproduction is flexible and constantly changing. The contrasting element, which distances English and French or German legislation, is that, in the English legal system, an embryo can be used for research purposes. In this way, embryos can be combined, even with an animal genetic material. The mother's husband will be called the child's father, except for his lack of consent, or his ignorance. If the woman is not married, then the child's father will be her partner, who consents to the medical technique. Although Romania does not benefit from a medically assisted human reproduction law, there were several interesting cases related to this aspect in the courts, which we analyzed in this thesis.

Section II is dedicated to parental authority, exercised by spouses, in comparative private law. The current crisis facing the institution of marriage and the frequency of situations in which the child is raised by a single parent does not prevent most contemporary legal systems to build parental relationships, according to the model of the married couple, who share the

same home. Marriage ties, despite frequent divorces, together with the presence of the two parents in the marital home continue to offer the best guarantee of the proper upbringing of the child. In this respect, it is a priority that, according to European rules, the role of father and mother are considered equally. In fact, it is the principle of equality that largely explains the latest reforms in family law. Regarding the relativity of the concept of parental authority, we must mention that the best interests of the child are the first „obstacle" to the dishonest practices of parents. So that our research is not limited to the exposition of an abstract definition, of the relations between parents and children, we have chosen to study some of the concrete consequences, which derive from the exercise of parental authority. Thus, we noticed that, often, in situations of family crisis, it will be difficult to reconcile the prerogatives of each parent with the increasing autonomy of the child. We analyzed here the material consequences, which arise from parental tasks, guarding and responsibility over minors, maintenance but also medical care. We also focused on the rights and obligations that parents have regarding the person of the child. According to an old aphorism, when a child is born, parents will be born with it. After establishing the connection of parentage, the parents acquire a mission towards the child. When we evoke the parental mission, it can be difficult to draw the outline, related to the totality of parental rights and obligations, towards the person of the child. However, we can focus on the main issues, considered by the legislator, when it delimits parental tasks. We refer here to the protection of the child and his education, so that his best interests are taken into account. In the last section, we discussed the protection of a minor's health, safety and morals. Spouses, as parents, will have the right and obligation to lay the intellectual and emotional foundations in their children's lives and to help them develop harmoniously, according to their own system of values.

CONCLUSIONS

Nature has always been the primary source of inspiration for artists and writers. It is enough to think of Vivaldi's *Seasons*, Cézanne's paintings, Alecsandri's *Pastels* or Beethoven's *Symphonies*, in order to clear our thoughts and rediscover man's connection with the world around us. Inspired by nature, we say that family relationships are like the branches of a tree which, although oriented in different directions, are based on the same strong root. The same opinion has the master jurist Jean Carbonnier, who invites us to give up the law, when we discuss the family, arguing that marital and filial relations subscribe to non-law, and the emergence of legal rules, which concern the links between family members, represents a simple accident. Inspired by nature, man tries to imitate the behavior of all living organisms. As such, thanks to a desire to perpetuate his existence, man is looking for a partner, in order to give birth to a new being, similar to him. The union between the two persons, formalized or de facto, will generate a kinship system, and the feeling of love will be subject to a code of matrimonial rules.

Liviu Rebreanu, in his novel entitled *Jar*, said that „love which does not end in marital status has formal flaws". Therefore, the writer summed up, in a few words, the importance of the institution of marriage. We continue the idea expressed by him and say that formalized love will involve a whole armor of rights and obligations, both between spouses and between parents and children. At the same time, the matrimonial institution will include interdictions or rituals, which the spouses must respect, in order to benefit from the recognition of the union. We refer here to the public character of marriage, to the prohibitions concerning kinship between spouses, but also to the ritual of legalization. Also, in addition to the profane norms, marriage will introduce people to a sacred realm, which today can no longer cross, without the existence of the civil status act. Consequently, the institution of marriage is today at the crossroads between human and divine law. However, we consider that the law without morals is like a flower without pollen, and marriage without blessing is like a carcass without soul.

Over the last decades, family law, in general, along with the rules concerning couples or relations between parents and children, have undergone profound changes, sometimes inaugurated with pomp. We do not know, at present, whether these changes are intended to imitate nature, or represent only the pure will of the contemporary legislator. Due to the many changes that have taken place both at European and international level, we believe that the question that is on everyone's lips is related to the first words that a child pronounce. As such, what do the words mother and father represent today? For a person without legal knowledge, the answer to this question will be simple: the father is the person who conceived the child, and

the mother is the one who gave birth to him. But for an European lawyer, the answer will be complex. We say this because, at present, the biological father is not identical with the one to whom this law recognizes this status. We refer here to the presumption generated by the existence of marriage, according to which the mother's husband will be considered the father of the child. Also, due to the evolution of surrogacy, but also due to the procedures of adoption or assisted human reproduction, the biological mother differs from the legitimate one.

According to contemporary European norms, there is no longer an identity between legitimate and biological parents. Also, the legislator no longer channels his attention to the institution of marriage, but to couples made up of people of the same sex, or of the opposite sex. Therefore, the family changed and what seemed, at first, like a legislative journey, today has become a normative certainty.

In the present research, we considered the examination of the norms, which concern the marital and filial relations, included in the legislations of the four states enunciated: Romania, France, Germany and England. Thanks to this approach, we outlined a legislative portrait of the family, in order to highlight the contrast and similarities between the four legal systems. Therefore, I pointed out to the reader that, in three of the four legal systems, the origin of the rules is represented by civil codification. The legislator chose to organize family relations, within the Civil Code because it mirrors the social system and shapes people's behavior, so that their actions do not cross the line between legal and illegal. Instead, the English legislator chose to present the rules governing marital and filial relations, in special laws, suggestively entitled the Marriage Act, Family Law Act or Children Act. Regardless of the way the European legislator chooses, in order to present his point of view on the family, he must not lose sight of the legislative purpose. As such, if the law is a mere whim of the legislator, then the purpose of defending human rights disappears, and the norm will be respected only by people with cowardice. On the other hand, if the legislator aims at respecting human rights, then the law he issues will have authority from a moral point of view, ie people will respect it thanks to intuition.

In view of all the above, it follows that this thesis required pioneering work. In this sense, we identified foreign sources, which we analyzed in contrast to domestic ones, in order to provide solutions to theoretical and practical problems in Romania. The primary role of the thesis is an informative one, here being presented, in a unique way, the norms that regulate marital and filial relations. I consider that the theme of this thesis is topical because, nowadays, the number of international marriages is increasing, and the cases of establishing filiation with a foreign parent become more and more numerous. As such, knowledge of legal rules before

concluding an international marriage is vital to avoid further conflicts. In summary, we say that the most appropriate term to describe marital and filial relationships, personal or financial, is called „together". We base our statement on the balanced assignment, by the legislator, of the tasks, but also thanks to the principle of codecision, existing between the spouses. At the same time, the combination of parental authority with the best interests of the child will lead to a balance of tasks towards the latter, but also to the fairness of decisions. From this we deduce that the two spouses, together, will be the guardians of the moral and material interests of the family.

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