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DOCTORAL THESIS

DIVORCE PROCEDURE IN THE REGULATION OF THE NEW CIVIL CODE AND THE NEW CIVIL PROCEDURE CODE

- SUMMARY -

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COMPENDIUM

The main research objective of this paper was to analyze the legal regulations, past and present, of the Romanian juridical system on the dissolution of marriage, as divorce, being one of the fundamental institutions in family law, has known throughout over time, an evolution as entertaining as possible, being closely linked to the social and cultural changes specific to each era.

The paper was structured following a meticulous and precise consultation with the doctoral supervisor, Mr. prof. Univ. dr. Teodor Bodoașcă, in 5 chapters, so that, finally, in a distinct chapter, to be formulated a series of conclusions and *de lege ferenda* proposals regarding the researched topic.

Concluding aspects, elements of jurisprudence, doctrinal claims, as well as components of comparative law were inserted throughout the paper, to clarify the issues raised.

In the first chapter, we addressed some aspects of the historical analysis of the institution of divorce, starting with the study of the first regulations in the field of divorce (Hammurabi Code of Mesopotamia, Manu's Laws of India, etc.) and continuing with the provisions of ancient Roman law.

In the second chapter, we analyzed some aspects regarding the evolution of the legal regulations concerning the dissolution of marriage in Romania, respectively the legislations from the old Romanian law, the regulations from the Civil Code from 1864, the Code of Civil Procedure from 1865, the Family Code and, finally, from the new Civil Code and the new Code of Civil Procedure.

The third chapter is dedicated to the divorce procedure by consent of the spouses, in all its forms, respectively divorce at the request of both spouses, by judicial, administrative and notarial procedure, divorce at the request of one of the spouses accepted by the other (which is an intermediate form of divorce, comprising both elements of culpable divorce and divorce by consent of the spouses - more precisely, it begins with a contentious nature, so that later the procedure becomes non-contentious) and divorce for health reasons (which may have a place at the request of the spouse whose state of health makes it impossible to continue the marriage - the dissolution of the marriage is pronounced without mentioning the fault of the spouses). In this chapter, I pointed out that, on July 16, 2020, the Constitutional Court unanimously admitted the

exception of unconstitutionality regarding the provisions of art. 164 par. (1) of the Civil Code, noting, inter alia, that *any protection measure must be proportionate to the degree of capacity, be adapted to the person's life, be applied for the shortest period, be reviewed periodically and takes into account the will and preferences of people with disabilities,* being necessary for the legislator, when regulating a protection measure, to take into account the fact that there *may be different degrees of disability, and mental deficiency may vary over time.* In other words, the Court has shown that *lack of mental capacity or discernment can take various forms, for example, total / partial or reversible/irreversible, a situation that requires the establishment of protection measures appropriate to reality and which, however, are not found in the regulation of the court interdiction.*

In the fourth chapter, we analyzed the procedure of culpable divorce, in its two forms, respectively divorce for good reasons and divorce for long de facto separation. Also in this chapter, we presented some aspects of mediation in the matter of misunderstandings between spouses, as well as the provisions of private international law on the dissolution of marriage, namely: the law applicable to divorce, the convention of choice of applicable law and the recognition of divorce by denunciation unilateral.

Finally, the fifth chapter of the paper deals with the effects of the dissolution of marriage on the non-patrimonial and patrimonial relations both between spouses and between parents and children.

As mentioned, both during the paper and in the chapter on conclusions, we formulated some proposals *de lege ferenda* and presented the most significant outcomes we reached after the research.

Thus, we could see that the legislator's perception of the social phenomenon of divorce has changed over time, being closely related to the social and cultural changes of each era.

Also, through the research in this paper we have been able to observe that, throughout history, the reasons for divorce have benefited from an increasingly broad and less restrictive regulation, now reaching the regulation of the situation in which some the spouses are no longer obliged to prove the existence of good reasons for the dissolution of the marriage, but may request the pronouncement or finding of divorce by their simple consent, even without making any mention of the reasons that led to such a decision. So, if in the old regulations, the fault of one of the spouses was a mandatory condition for the dissolution of the marriage, now seems to

be more important the will of the spouses to continue the marriage, their consent gaining ground in the face of guilt.

KEY WORDS: dissolution of marriage, divorce, divorce by agreement of spouses, divorce through fault, divorce by court, divorce by administrative procedure, divorce by notarial procedure, divorce on grounds of health, divorce on solid grounds, divorce for separation, the effects of the dissolution of the marriage**.**

PREWORD

The doctoral thesis offers a comprehensive picture of the theoretical and practical issues in the dissolution of marriage, being a possible working tool useful to all theorists and practitioners in the field of family law.

During the doctoral thesis we aimed, on the one hand, to identify the similarities and differences between historical and current conceptions, and on the other hand, to highlight the current data of knowledge in the chosen field and highlight both certainties and of the dilemmas and questions to which I considered it necessary to answer. In this regard, we have tried to identify any inaccuracies or regulatory gaps and to formulate relevant *de lege ferenda* proposals to remedy them.

Thus, following an extensive and rigorous documentation, under the competent guidance, control and guidance of the doctoral supervisor, we managed to gather a wealth of relevant information for the subject approached after researching local and foreign bibliographic sources.

SUMMARRY

The main research objective of this paper was to analyze the legal regulations in force on the dissolution of marriage, mainly from the Romanian legal system. At the same time, we set out to present some aspects of the historical evolution of this institution, and for this purpose, for a better understanding of divorce in ancient times, we analyzed its regulation in some of the early civilizations.

Hence, to achieve the proposed objective, we started with the study of the first regulations in the field of divorce, we continued with the old Romanian law, then with the legislations of the old Romanian law, the Romanian Civil Code of 1864, the Family Code and, finally, the new Civil Code.

Through the historical analysis, we found that the legislator's perception of the social phenomenon of divorce has changed over time, being closely linked to the social and cultural changes specific to each era.

We also noticed that the legislator's view has changed even in terms of terminology. Hence, if the dissolution of marriage, during the Roman domination was expressed by the term "divortium", in the old Romanian legislation it became "separation", and now the Romanian legislator uses the notion of "divorce", which, as we have shown, can be interpreted as synonymous with the phrase "dissolution of marriage".

However, during the paper, I showed that the two notions are not synonymous, given that the dissolution of marriage can occur not only through a divorce, but the marriage is dissolved and by concluding a new marriage if the other spouse was declared dead by a court decision, under art. 49 et seq. C. civ., And subsequently this marriage was annulled, with the application of the provisions of art. 293 par. (2) C. civ.

At the same time, through the research in this paper, we could observe that, throughout history, the reasons for divorce have benefited from an increasingly broad and less restrictive regulation, reaching now to regulate the situation in which spouses do not they still have the obligation to prove the existence of good reasons for the dissolution of the marriage, but they can request the pronouncement or finding of the divorce by their simple mutual agreement, even without making any mention of the reasons that led to such a decision.

Therefore, I found an evolution of the regulations on the reasons for divorce, in the sense that, if until the nineteenth century, the dissolution of marriage could be pronounced for

ridiculous reasons, such as the situation in which the woman, without the consent of the man, washes in the bathroom with foreign men or sitting with them with drinks; she slept in a house other than her husband's unless it was a relative's house; went to the neighbor's house, about which her husband had any suspicion, although the husband expressly forbade it or, if without the man's will, the woman went to watch games or horse racing, only with the entry into force of the Civil Code since 1864, the reasons for divorce have been limited in number and outlined in Romanian law.

As I have shown, changes have taken place over time for people who could file for divorce. So, if today it seems inadmissible and absurd for the parents of the spouses to intervene in the family relations of the latter, art. 259 of the Civil Code of 1864 regulated the right and even the obligation of these ascendants to approve the divorce of their children.

In any case, one of the most important conclusions of the study undertaken is that the institution of dissolution has evolved from the exceptional nature, which it had under the provisions of the Family Code, to a simple procedure, often encountered in practice, which can it takes several forms: the dissolution of the marriage by the agreement of the spouses, by judicial, administrative or notarial means or the dissolution of the marriage due to the fault of one of the spouses, by judicial means, even for a de facto separation, which lasted more than 2 years.

Hence, if the spouses agree to the dissolution of the marriage, they have the opportunity to opt for any of the divorce proceedings regulated by law. In the current regulation, the freely expressed and unadulterated consent of the spouses to the dissolution of the marriage has acquired a special importance, the legislator applying the principle of symmetry, in the sense that if after the marriage the consent of the spouses is necessary and sufficient, why not the hypothesis of dissolution of marriage? Therefore, only if one of the spouses does not agree with the dissolution of the marriage, it is necessary to follow the legal procedure for pronouncing the divorce.

In this regard, we consider that the current regulation of the institution of marriage dissolution is in full accordance with the company's view on the continuation of a marriage affected by irreconcilable issues. Thus, although the family has the same importance that it has always had, the continuation of a marriage at any cost is no longer welcome, considering that it is natural for spouses to have the prerogative to continue a marriage or, conversely, to dissolve it. So, although sometimes the reasons why spouses resort to divorce would not be considered valid

under past regulations, such reasons may arise from issues considered by one or even both to be impossible to overcome. Therefore, we consider that the regulation of the dissolution of the marriage from the current Romanian legislation is not likely to encourage the dissolution of the marriage for any insignificant reason, but it was wanted that the will of the spouses be paramount in the decision to continue or not the marriage, especially when cohabitation becomes difficult. , for subjective reasons.

During the present paper, we showed that Law no. 202/2010 on some measures to accelerate the settlement of lawsuits, was the normative act that brought important changes to the provisions of the Family Code, before the entry into force of the Civil Code. Thus, divorce was regulated by the consent of the spouses in court, which is possible regardless of the duration of the marriage or the existence of minor children, as well as the possibility of dissolving the marriage administratively or notarized, provided there are no minor children.

Subsequently, the Civil Code kept the provisions introduced by Law no. 202/2010, but the condition of no minor children resulting from marriage was eliminated, when the dissolution of the marriage takes place by the notary, this requirement being maintained only in case of dissolution of the marriage by administrative means.

From the provisions of art. 373 lit. a) The Civil Code shows that divorce by consent of the spouses has two forms, depending on when the consensus on the dissolution of the marriage occurs. So, we distinguish, on the one hand, between divorce at the request of both spouses (when the agreement exists on the same date of the divorce application), as is usually the case in the case of dissolution of marriage by consent of the spouses in court, but which is specific to the procedure. carried out before the registrar or notary public and, on the other hand, divorce at the request of one of the spouses, accepted by the other spouse, which begins as a divorce due to the fault of one of the spouses, subsequently intervening in the dissolution of the marriage; which can only be found in the case of divorce by the court.

Therefore, as already mentioned, divorce by consent of the spouses is admissible regardless of the duration of the marriage and whether or not minor children are resulting from marriage, out of wedlock, or adopted, provided that both spouses have full capacity to exercise. In this sense, art. 374 par. (2) and art. 375 par. (3) The Civil Code provides that divorce by consent of the spouses cannot be admitted if one of the spouses is placed under interdiction, a condition as natural as possible, given that the main condition for the dissolution of the marriage by consent

of the spouses is, under art. 374 par. (3) of the Civil Code, the existence of the free and untainted consent of each spouse, which presupposes the capacity of each to express himself in full knowledge of the facts, which is impossible if one of the spouses were placed under interdiction.

Therefore, the existence of minor children resulting from marriage, out of wedlock or adopted is not such as to prevent divorce by agreement of the spouses, in any of its forms, either at the request of both spouses or the request of one of the spouses, accepted by the other, however, the existence or non-existence of minor children is important in choosing the procedural path that the spouses can choose to obtain the dissolution of the marriage by agreement.

Hence, on the one hand, the way of dissolving the marriage judicially is regulated, which, by interpreting *per a contrario* the provisions of art. 375 par. (2) of the Civil Code, will be followed by the spouses who have minor children and who, although they agree on the dissolution of the marriage, fail to reach a consensus regarding the name they will bear after the marriage, the exercise of parental authority, the contribution of each of the spouses to the expenses of raising, educating, educating, and vocational training of the minors, establishing the dwelling of the minor children, etc.

On the other hand, according to art. 375 par. (1) of the Civil Code, divorce by the consent of the spouses by administrative means is reserved for spouses without minor children, but they can obtain the dissolution of the marriage at any time and by notarial procedure or by judicial means.

Finally, according to art. 375 par. (1) and par. (2) of the Civil Code, the dissolution of marriage by the notarial procedure is intended both for spouses without minor children and for spouses with minor children, who have agreed both on the dissolution of the marriage and on all aspects related to the surname they will after the divorce, the exercise of parental authority by both parents, the establishment of the children's home after the divorce, the manner of maintaining personal ties between the parent separately and each of the children, and the establishment of the parents' contribution to the expenses of raising, educating, teaching and training the children.

As we showed during the paper, we also consider that divorce by consent of the spouses is subject to a non-contentious procedure, being a type of divorce graceful, as the divorce application falls into the category of applications provided by art. 527 C. pr. civ., "for the

solution of which the intervention of the court is needed, without pursuing the establishment of a right contrary to another person". Therefore, given the fact that the rules on non-contentious proceedings are applicable, the spouses do not have the quality of the plaintiff or defendant, thus becoming difficult to understand the reason why art. 930 par. (1) thesis I C. pr. refers to the agreement of the "parties". Therefore, following the doctrinal opinion evoked above, we consider opportune the proposal *de lege ferenda* according to which the replacement is required, in the content of art. 930 par. (1) thesis I C. pr. civ., of the term "parties" with that of "spouses", for the observance, from a terminological aspect, of the non-contentious character of the divorce applications by the consent of the spouses.

According to art. 374 par. (1) of the Civil Code, divorce by the consent of the spouses in court may be pronounced regardless of whether or not minor children are resulting from marriage. In this sense, I pointed out that, according to the doctrine, the provisions of this text of law would be useless, given the fact that art. 373 lit. a) The Civil Code expressly provides for the possibility of divorce by the consent of the spouses, so that the non-existence of the requirements provided by art. 374 par. (1) The Civil Code would have been deduced from their invocation of the law. As far as we are concerned, although the requirements stipulated by art. 374 par. (1) The Civil Code can be considered to be redundant, we consider that the legislator intended to highlight as clearly as possible the distinction between the provisions of previous regulations and those provided by the current Civil Code, since, as we have shown on other occasions, divorce by agreement of the parties by the court has gradually evolved from a cumbersome and lengthy procedure to the possibility of obtaining it, subject to the fulfillment of a single condition, namely that neither spouse be prohibited, according to art. 374 par. (2) C. civ.

According to art. 374 par. (2) of the Civil Code, divorce by the consent of the spouses in court cannot be admitted if one of the spouses is placed under interdiction, this being, moreover, the only condition imposed by the legislator for the divorce application to be admissible, of course, in addition to the existence of the agreement of the spouses regarding the dissolution of the marriage. We appreciate that this requirement is a very natural one because the agreement of the spouses is an agreement of wills, which presupposes the existence of the discernment of each of them, both the intellectual and the volitional capacity. For the sake of identity, we mention that divorce by the consent of the spouses in court cannot be admitted even in the situation in par.which both spouses are placed under judicial interdiction. In this context, we mention the fact

that, under art. 164 par. (1) of the Civil Code, the person who does not have the necessary discernment to take care of his interests, due to alienation or mental weakness, will be placed under judicial interdiction.

However, the *per a contrario* interpretation of art. 374 par. (2) The Civil Code could lead to the erroneous conclusion that divorce by the consent of the spouses would be admissible if one or both of them, although suffering from alienation or mental weakness, are not placed under judicial interdiction. Moreover, we have shown that such an interpretation is also supported by the provisions of art. 374 par. (3), which stipulates that the court is obliged to verify only if there is the free and untainted consent of each of the spouses, and not if this consent is expressed knowingly, respectively if it comes from a person with discernment. However, paradoxically, according to the rules common to all agreements of will, regarding the validity of the consent, art. 1,204 of the Civil Code stipulates that he must be serious, free, and knowledgeable. Then, pursuant to art. 1,205 par. (1) "the contract concluded by a person who, at the time of its conclusion, was, even if only temporarily, in a state that made it impossible for him to realize the consequences of his actions" may be annulled ", and according to par. (2) of the same text of the law, "the contract concluded by a person subsequently placed under interdiction may be annulled if, at the time the act was made, the causes of the prohibition existed and were generally known". Given that the conclusion of a contract presupposes an agreement of will, like the agreement that must exist between the spouses when submitting the divorce application, we consider that the same rules must be observed as regards the validity of the consent.

Moreover, according to art. 276 of the Civil Code in conjunction with art. 293 of the Civil Code, it is forbidden, under the sanction of absolute nullity, to marry the mentally insane and the mentally debilitated. So, naturally, the law forbids the marriage of people who suffer from alienation or mental weakness, even without being banned. Therefore, we can observe, thus, the discrepancy between the provisions of art. 276 of the Civil Code and those of art. 374 par. (2) C. civ.

However, regarding art. 374 par. (2) of the Civil Code, like the opinions expressed in the specialized literature, we also consider that the legislator had, in reality, the intention to prohibit divorce by consent of the spouses in all cases where one or both of them are indiscriminate. due to mental insanity or weakness, however, he mistakenly lost sight of the fact that not all people in such a situation are also placed under judicial interdiction. According to art. 169 par. (1) of the

Civil Code, "the interdiction takes effect from the date when the court decision (to place the interdiction) remained final". Therefore, in practice, there is a period between the time when the alienation or mental weakness began and the time when the judgment becomes final, although the person in question has no discernment, he is not yet banned.

Therefore, under all the above, I suggested *de lege ferenda*, like other authors who have expressed themselves in this regard, the reformulation of the provisions of art. 374 par. (2) of the Civil Code in the sense of prohibiting divorce by the consent of the spouses when, due to alienation or mental weakness, at least one of them is indiscriminate, even without being placed under interdiction. In this way, the hypothesis in which one of the spouses suffers from alienation or mental weakness would be excluded, and the healthy spouse omits the request to be placed under judicial interdiction, to evade the provisions of art. 374 par. (2) of the Civil Code and of obtaining the divorce by the consent of the spouses, although the discernment of one of them was missing.

Also, the obligation of the court to verify the existence of the free and unadulterated consent of each spouse results from the provisions of art. 374 par. (3) of the Civil Code, however, regarding the use by the legislator of the phrase “free and untainted consent”, we agreed with the opinion expressed in the literature, according to which this wording is a pleonastic one. Art. 1,204 of the Civil Code stipulates the requirements for the validity of the consent, stipulating that it must be serious, free, and expressed in full knowledge of the facts. In this regard, the doctrine has shown that the requirement of free consent is met only if it is not affected by any vice of consent, namely error, malice, violence, or injury. Therefore, we consider that the phrase “free and unadulterated consent” that we find in the content of art. 374 par. (3) of the Civil Code, and, as a consequence, I proposed *de lege ferenda*, together with other authors, the amendment of this text, in the sense of providing the obligation of the court to verify the existence of the *untainted* consent of each spouse.

Divorce at the request of one of the spouses accepted by the other is a variety of remedial divorce and, at the same time, one of the innovations of the “new” Civil Code, the provisions of material law provided by art. 379 par. (2) of the Civil Code and those of procedural law contained in art. 932 (1) C. pr. In this regard, I have noticed that some authors have rightly noted that the corroboration of the above provisions results in a non-unitary and unclear vision of what is intended to be an accepted divorce. So, on the one hand, according to art. 379 par. (2) of the

Civil Code, which we find in the section dedicated to culpable divorce, in the hypothesis indicated by art. 373 lit. c) of the Civil Code, respectively if the dissolution of the marriage is requested by one of the spouses, for a de facto separation that lasted at least two years, the divorce is pronounced through the sole fault of the plaintiff spouse, unless the spouse the defendant agrees to the divorce, when it is pronounced without mentioning the fault of the spouses. On the other hand, in procedural matters, according to art. 932 par. (1) C. pr. civ., from the section dedicated to divorce by consent of the spouses, when the divorce application is based on the fault of the defendant spouse, and he recognizes the facts that led to the dissolution of conjugal life, the court, if the plaintiff agrees, will pronounce the divorce without investigating the merits reasons for divorce and without mentioning the guilt for the dissolution of the marriage.

Therefore, it is more than obvious that we are in the presence of an intermediate form of divorce, which includes both elements of culpable divorce and divorce by consent of the spouses, being a mixed procedure, which begins with a contentious character, following that then become contentious. Moreover, according to art. 932 par. (3) C. pr. civ., if the plaintiff does not agree with the pronouncement of the divorce under the conditions of par. (1) of the same article, the divorce application will be resolved according to the provisions of art. 934 C. pr. civ., respectively after the divorce procedure due to the fault of one of the spouses.

As far as we are concerned, we consider that the topography of the texts of the Code of Civil Procedure is the correct one, as it justifiably places the divorce at the request of one of the spouses accepted by the other in the section dedicated to divorce by consent of the spouses. Therefore, our opinion is following the relevant doctrine, in the sense that the divorce accepted by the guilty spouse is a variety of remedial divorce, justified primarily by the fact that the decision rendered after settling this type of divorce is one that does not mention the fault for the dissolution of the marriage, is based, in the end, on the agreement of the spouses.

In our opinion, the procedure is provided by art. 932 par. (1) is justified and (or even, even more so) in the case provided by art. 373 alit. b) of the Civil Code, respectively when, due to justified reasons, the relations between the spouses are seriously damaged and the continuation of the marriage is no longer possible, and not only in the situation provided by art. 373 lit. c) Civil Code, ie at the request of one of the spouses, after a de facto separation that lasted at least two years. Consequently, I have indicated that we agree with the doctrinal view that limiting

consensual divorce in the form of divorce to the application of one of the spouses accepted by the other, to the hypothesis of the initial application for a de facto separation lasting at least two years, it is a guarantee of its practical near-uselessness, since when the applicant's divorce application is so reasoned, the defendant has no interest in acquiring it; through its exclusive fault, according to art. 379 par. (2) thesis I of the Civil Code and art. 935 par. (1) C. pr. In this regard, we mention the fact that the benefits that the innocent defendant spouse could enjoy, under the conditions provided by law, are not negligible at all, these being: the right to compensation and, cumulatively, the right to a compensatory benefit; the right to maintenance; the award of the lease on the marital home or, as the case may be, the temporary award of the use of the home jointly owned by the two spouses. Or, all these benefits can be claimed by the defendant spouse only if the dissolution of the marriage occurred through the sole fault of the plaintiff spouse.

Therefore, by virtue of the above considerations, I considered *de lege ferenda* that it is necessary to amend art. 379 par. (2) of the Civil Code, in the sense of admitting the acceptance of the divorce requested by one of the spouses in all cases of divorce due to fault, respectively both in the case provided by art. 373 lit. b) Civil Code, as well as in the situation provided by art. 373 lit. c) Civil Code.

Concerning the legislator's option to regulate divorce by notarial procedure and by administrative means, we consider that this is precisely the proof that the institution of marriage has evolved from the exceptional character, which it had under the provisions of the Family Code, to a simple procedure. , often encountered in practice, which can take many forms.

Thus, we consider it appropriate to regulate extrajudicial procedures for the dissolution of marriage. Moreover, in our opinion, unlike divorce by the court, both the procedure of dissolution of marriage by administrative and notarial means offers many advantages to the spouses, such as both ensure the confidentiality of the entire procedure; they are simple procedures, which require nothing from the spouses other than appearing before the registrar or notary public and expressing consent to the dissolution of the marriage; both have relatively low costs; the duration of both procedures is also reduced.

Without being partisans of any of the extrajudicial ways of dissolving the marriage analyzed in the present paper, we consider, however, that the procedure of dissolving the marriage by notary offers certain indisputable advantages. Thus, the advantage of the superior

training of the notary public over that of the civil status officer should not be neglected, which offers an additional guarantee regarding the correct settlement of a divorce, especially when minor children are involved. At the risk of repetition, we consider that it was this superior legal training of the notary public that led the legislator to confer only on the notary public competence in the matter of amicable dissolution of the marriage if the spouses have minor children born out of wedlock, or adopted, not to the registrar. Regarding this aspect, from the provisions of art. 3 par. (2) of Law no. 119/1996, it results that the position of the civil status officer can be held by persons without legal education, which, in our opinion, justifies the option of the legislator to give only the notary public the power to ascertain the dissolution of the marriage between spouses who have minor children, given that a person without legal education may have difficulty understanding the effects that divorce has on the patrimonial and non-patrimonial relations between spouses and between parents and their minor children and in applying the relevant legal provisions.

Moreover, the notary public makes all the necessary documentation for the procedure and, perhaps most importantly, ensures compliance with the obligations assumed regarding minor children, because, as we have shown, the parental agreement enjoys the character of enforceability.

In conclusion, especially for spouses who have minor children born during the marriage, out of wedlock or adopted, the notarial divorce procedure seems to be the most advantageous and elegant option that the law provides, to obtain the dissolution of the marriage. , but only if they have agreed, as we have shown, on all matters relating to minor children, on the name that each spouse will bear after the divorce, and if there is their free and unadulterated consent to the dissolution of the marriage.

Regarding the divorce for health reasons, we showed that the difference between the wording used in the current regulation and that of the Family Code which, before the amendment by Law no. 202/2010, provided in art. 38 par. (3) that "any spouse may file for divorce if his or her state of health makes it impossible to continue the marriage" is a matter of form, not content. Thus, although the wording is different, in both regulations divorce on this basis could be requested by the spouse whose health condition makes it impossible to continue the marriage.

From the interpretation of art. 373 lit. c) it follows that the divorce application is admissible only if certain conditions are met, namely: the poor health of one of the spouses, the

impossibility of continuing the marriage for this reason and the existence of a causal relationship between the applicant's health and the impossibility of continuing the marriage.

Regarding the active procedural quality in the case of divorce for health reasons, we recall the fact that two opinions have been highlighted in the doctrine.

Thus, on the one hand, it was shown that, since art. 933 C. pr. does not make any distinction, the divorce application can be filed by any of the spouses, respectively both by the one in a state of health that makes it impossible to continue the marriage and by the one who invokes the state of health of the other spouse.

On the other hand, it was shown that divorce for health reasons can be requested only by the sick husband, not by the other spouse, pursuant to art. 373 lit. d), which povides *expressis verbis* that divorce may take place *at the request of one of the spouses whose state of health makes it impossible to continue the marriage.*

As far as we are concerned, we share the second opinion and we believe that, according to the current regulations on the subject, only the sick husband can have an active procedural capacity in the case of divorce for health reasons.

However, given the fact that there may be situations in which the illness of one of the spouses has manifestations that make it impossible to continue the marriage, the healthy spouse has at hand, at any time, the possibility of formulating a divorce action based on art. 373 lit. b) Civil Code, the solid reason being the state of health of the defendant spouse. However, in such a situation, we recall the fact that the literature has highlighted the existence of a certain difficulty in establishing the guilt for the dissolution of the marriage, since, according to art. 379 par. (1) of the Civil Code, in the case of divorce for good reasons, the court must rule on the dissolution of the marriage either through the fault of one of the spouses or through their common fault. Or, if the solid reason is the disease of the defendant's husband, his guilt could not be retained, since the state of illness excludes any form of guilt. In this sense, I proposed, *de lege ferenda*, the completion of art. 373 of the Civil Code in the sense of admitting another form of culpable divorce, at the request of the healthy spouse, when the health condition of the other spouse makes it impossible to continue the marriage and, consequently, to complete art. 379 of the Civil Code, with a provision according to which, in case of such a divorce, the dissolution of the marriage should be pronounced by the court either through the sole fault of the plaintiff spouse

or, if the defendant agrees with divorce, without mentioning the fault of the spouses, as in the case of divorce for separation in fact that lasted at least two years.

Divorce through the fault of the spouses is regulated by the provisions of art. 373 lit. b) and letter c), art. 379 and art. 380 of the Civil Code, which provides the reasons for divorce, the conditions of the divorce, and the continuation of the divorce action in case of death of the plaintiff husband. I found that, from a procedural point of view, the Code of Civil Procedure dedicates only two articles to culpable divorce, respectively art. 934 C. pr. civ., which stipulates the conditions under which the court pronounces the divorce through the fault of one of the spouses or both spouses and art. 935 C. pr. civ., which regulates the divorce procedure for the separation in fact long, this being a distinct legal hypothesis in which the divorce is pronounced through fault, the solid reason being, in this case, one expressly provided by law.

According to art. 918 par. (1) C. pr. civ., the dissolution of the marriage through divorce can be requested only by the spouses. Therefore, as I have shown, in principle, the divorce action is strictly personal in nature, so that no one can bring it in place of the plaintiff spouse, just as no one other than the other spouse can be sued. Therefore, any action of a third party, initiated in its own name, to dissolve the marriage, such as the divorce requested by the parents of one of the spouses, by the descendants of the spouses or by one of them or by other such persons, will be rejected as inadmissible.

From the rule provided by art. 918 par. (1) C. pr. there is, however, one exception. Thus, I showed that, according to art. 918 par. (2) C. pr. civ., the spouse placed under judicial interdiction may request the divorce through a legal or personal representative if he proves that he has the unaffected capacity of discernment.

Practically, based on the derogating norms provided by par. (2) in art. 918 C. pr. civ., the person placed under judicial interdiction may also request the divorce through a legal representative. Therefore, although the procedural legitimacy does not change, as it belongs only to the spouses, the institution of representation intervenes, so establishing the possibility that the dissolution of the marriage be requested not only personally, by the spouses who have the procedural capacity, but also by the legal representative of the spouse. placed under interdiction.

Thus, if the person placed under interdiction personally formulates the divorce application, according to art. 918 par. (2) C. pr. civ., he must prove that he has the capacity of discernment unaffected, respectively, -we assume, as we have previously shown- that he acts in a moment of

lucidity. If, on the contrary, the person placed under the interdiction cannot make the proof imposed by the legal provision, the divorce application will not be able to be formulated personally by it but will be introduced by the guardian. In this regard, *de lege ferenda,* I considered that it is necessary to amend art. 918 par. (2) C. pr. civ., in the sense that "the spouse placed under judicial interdiction may request divorce through legal or personal representative if he proves that he acts in a moment of lucidity". Thus, any interpretation generated by the condition currently imposed, respectively, for the spouse placed under judicial interdiction to prove that he has an unaffected capacity for discernment would be avoided.

We remind you that the divorce action is strictly personal, so it is not passed on to the heirs. Therefore, in principle, the divorce action filed by one of the spouses cannot be continued by his heirs, since, art. 926 par. (1) C. pr. civ., establishes the rule according to which, if during the divorce process one of the spouses dies, the court will take note of the termination of the marriage and will order, by a final decision, the closing of the case.

However, as an exception, the possibility of continuing the action by the heirs is regulated by both art. 380 of the Civil Code, as well as of art. 926 par. (2) C. pr. civ.

According to art. 380 par. (1) of the Civil Code, in the case of culpable divorce based on good reasons [art. 373 lit. b)], if the plaintiff spouse dies during the trial, his heirs may continue the divorce action, but, according to par. (2), the action continued by the heirs is allowed only if the court finds the exclusive fault of the defendant's spouse.

On the same exceptional situation, art. 926 par. (2) C. pr. civ., which provides that when the divorce application is based on the guilt of the defendant and the plaintiff dies during the trial, leaving heirs, they will be able to continue the action, which the court will admit only if it finds the sole fault of the defendant spouse. Otherwise, respectively if the exclusive fault of the plaintiff spouse or the concurrent fault of the spouses is found, the court will take note of the termination of the marriage and will order, by a final decision, the closure of the case, according to art. 926 par. (1) C. pr. civ.

Regarding the conditions of the transferability of the divorce action, compared to the provisions of the above texts, I considered that some clarifications are required.

Therefore, I note that the heirs of the plaintiff's husband may file a request for continuation of the divorce action only if the dissolution of the marriage has been requested in court, thus

being inadmissible such a request if the divorce follows the administrative or notarial procedure, in firstly, since in them we cannot speak of a "plaintiff" or a "defendant".

However, even in the case of divorce proceedings by a court, such a request is not admissible in all situations, but only if the dissolution of the marriage was requested for the reason provided by art. 373 lit. b) Civil Code, respectively for good reasons, due to which the relations between the spouses are seriously damaged and the continuation of the marriage, is no longer possible. Therefore, I consider that the claim of the heirs of the plaintiff spouse to continue the divorce action is inadmissible in the following cases: when the marriage was requested to be dissolved in court by the consent of the spouses; where the divorce application is based on the ground of separation in fact which lasted at least two years; in case of dissolution of the marriage at the request of the spouse whose state of health makes it impossible to continue the marriage or in case the divorce was requested through the common fault of the spouses. Regarding the interpretation of art. 926 par. (2) C. pr. civ., we consider that two working hypotheses must be considered, concerning the procedural quality of the parties in the divorce process, respectively if it is unique, if the defendant spouse did not file a counterclaim or, on the contrary, double, if there is also a counterclaim, in which case the parties become both plaintiff and defendant.

Hence, I pointed out that, in our opinion, if no counterclaim has been filed and the plaintiff's husband dies, the court will proceed, under art. 926 par. (3) C. pr. at the introduction in the question of his heirs, being suspended, in this sense, the trial of the case, according to art. 412 par. (1) pt. 1 C. pr. Therefore, by the mere fact of the death of the plaintiff spouse during the divorce proceedings, the court will not find the termination of the marriage but has the obligation to take steps to bring his heirs into question and to check their position on the possibility of continuing the action. of divorce.

Considering also the hypothesis in which the procedural quality of the parties is unique, we consider that, if during the divorce process, the one who dies is the defendant spouse, the solution that is required is the one provided by art. 926 par. (1) C. pr. civ., so that the court will take note of the termination of the marriage and will order the closure of the divorce file.

Regarding the second working hypothesis, respectively the one in which the defendant, under art. 917 par. (1) C. pr. civ. filed a counterclaim, I showed that the parties acquire a double procedural quality, being, at the same time, plaintiff, but also the defendant. In this situation, if

the plaintiff's husband dies in the main application and his heirs do not wish to continue the action of their predecessor, I considered that, by the plaintiff's dual procedural capacity, only his capacity as plaintiff ceases, in other words, he has placed “closing the main application” and not closing the divorce file. Therefore, we consider that the court will continue the trial of the counterclaim, in which the plaintiff, deceased, has the quality of counterclaim.

If, on the other hand, the deceased is the defendant in the main proceedings, we consider that his heirs have the right to pursue the counterclaim for divorce, since, in this case, the defendant is also a counterclaimant. Regarding the main request, we consider that the court may suspend its judgment according to art. 413 par. (1) pt. 1 C. pr. In any case, we consider that, if the defendant spouse dies, the court cannot take note of the termination of the marriage by his death, as he has a double procedural capacity. In this context, we mention that to introduce the heirs of the defendant-defendant counterclaimant, the court will analyze some aspects, such as: whether the heirs' request is motivated in law and in fact, if the counterclaim is aimed at dissolving the marriage plaintiff, if the heirs can prove the sole fault of the plaintiff, etc. Finally, we also point out that if the court admits the counterclaim, the main application will be rejected. In this sense, our opinion is justified by the fact that the counterclaim is a real lawsuit, which enjoys procedural independence, so it will be resolved even if the plaintiff has given up the trial, as provided by art. 924 C. pr. civ.

Thus, for the above considerations, I proposed *de lege ferenda* the completion of art. 926 par. (2) C. pr. civ. accordingly : “However, when the divorce application is based on the guilt of the defendant and the plaintiff dies in the process, leaving heirs, they will be able to continue the action that the court will admit only if it finds the exclusive fault of the defendant spouse. *At the same time, if a counterclaim has been filed, if it is based on the guilt of the counterclaimant-defendant and the counterclaimant-defendant dies during the process, leaving heirs, they will be able to continue the action that the court will admit only if it finds the sole fault of the plaintiff-defendant counterclaimant*. Otherwise, the provisions of par. (1) remain applicable. ". This would eliminate the discriminatory solution highlighted in the doctrine, contained in the current text, which does not allow the heirs of the defendant in the main claim the legal possibility to continue his action to defend his right to inherit in competition with the surviving spouse, although their predecessor is not guilty of dissolving the marriage.

Also, as a consequence, I suggested *de lege ferenda* the completion of art. 926 par. (3) C. pr. civ. in the sense that "for the introduction in the case of the heirs of the plaintiff spouse or, *as the case may be, of the defendant-counter-plaintiff spouse,* the court will apply art. 412 par. (1) point 1, respectively of art. 413 par. (1) pt. 1 C. pr. civ. ".

At the same time, in the present paper, we analyzed the effects of non-patrimonial and patrimonial nature that the dissolution of marriage produces on the relations between ex-spouses, as well as the effects that divorce produces on the relations between parents and their minor children.

In this sense, we have shown that regardless of the procedural way that the spouses choose to obtain the dissolution of the marriage, respectively, judicially, administratively or by notarial procedure or even if the legal dissolution of the marriage occurs, under art. 293 par. (2) of the Civil Code, the effects of divorce regarding the relations between the spouses and between them and the children will always be the same, these being both non-patrimonial and patrimonial in nature.

Thus, from the perspective of non-patrimonial relations between spouses, we noticed that both the legislation in force and the literature indicate the main effects, these being: the name that the ex-spouses will bear, the loss of rights arising from the quality of spouse, the cessation of the quality of husband, the obligation of respect, fidelity, moral support and cohabitation, the full civil capacity to exercise the minor husband and the citizenship of the divorced husband.

Regarding the consequences that the dissolution of marriage has on the patrimonial relations between spouses, we have shown that, through a divorce, the matrimonial regime ends, the obligation of mutual material support, the obligation of maintenance between spouses, the protected status of the family home are extinguished. , as well as the mutual succession vocation. Also, in some cases, the dissolution of the marriage may involve certain reparative effects of a patrimonial nature between the former spouses, such as the right to compensation, the right to a compensatory benefit and, although the maintenance obligation between the spouses ceases, a new maintenance obligation may arise. ex-spouses, if the conditions required by law are met.

Regarding the effects of the dissolution of the marriage on the non-patrimonial relations between parents and children, the one that required a detailed analysis was the exercise of parental authority. Thus, given the fact that the dissolution of the marriage, if there are minors, can not take place administratively, we analyzed the issue of establishing the exercise of parental

authority both if the dissolution of the marriage is pronounced in court or notarized. In this context, regardless of the procedural path chosen for establishing the issues related to the exercise of parental authority, both material and moral issues must be taken into account, so that all issues related to minor children are resolved with respect for the best interests of the child. and for the harmonious development of minors. At the same time, the way of maintaining the personal ties between the separated parent and the children are included in the category of these effects.

Finally, we analyzed the effects that the dissolution of marriage produces on the patrimonial relations between parents and their minor children, effects that aim at the children's home after divorce; the parents' contribution to the child's upbringing, education, teaching and training expenses; the state allowance for children, as well as the exercise of the rights and fulfillment of parental obligations over the child's property.

Through the study, we found that the regulation of the effects of dissolution of marriage on non-patrimonial and patrimonial relations between spouses and between parents and children was rightly enjoyed special attention by the legislator. Thus, subject to the mentions and proposals I made in the paper, I found that the legal provisions governing the effects of divorce are comprehensive and, why not ?, Even timely, most likely since the dissolution of marriage is to cause, however, to ex-spouses and children, imbalances of a material, moral and even social nature.

Consequently, we appreciate that the clarification of all aspects that refer to the relations between spouses, as well as to those between parents and children, after the dissolution of the marriage, is essential. This opinion is all the more well-founded as, although the court rules on many of these effects only upon request, the importance of others, however, results even from the provisions of the law, which provide that, in certain respects, the court must pronounce ex officio.

In conclusion, our choice in the sense of choosing the institution of marriage dissolution as the subject of this scientific research is justified by the fact that this institution has undergone, over time, considerable legislative changes, meaning that we considered that a rigorous analysis is required. the purpose of correctly interpreting the legal regulations in force. Moreover, we appreciate that, at present, the institution of divorce is nearly as used as the institution of

marriage, so any legal practitioner must know at least some basic notions regarding the dissolution of marriage.

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