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DIVORCE THROUGH ADMINISTRATIVE PROCEDURE - SOCIAL ARGUMENTS

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Abstract

Although in Romania the number of divorces is considered to be in a continuous increase, in reality, the data of the National Institute of Statistics show that in Romania, the divorce rate remains constant and in small shares. In 1990, the Romanian divorce rate was 1.42 ‰ and the latest national INS data show a general indicator of 1.39 ‰.

The low divorce rate in Romania does not imply, at the same time, a high rate of marital happiness in the Romanian family. With many cultural influences, the condition of being divorced does not enjoy much tolerance, so some of the potential legal separation decisions are obscured by traditional imperatives that block or delay the divorce.

However, the new legal proceedings after 2010 regarding the option of legal separation at a notary or before the registrar have created the premise of a simplified divorce that avoids the courts, long and frequent appearances, as well as greater exposure.

The study aims to analyze the motivations of individuals for divorce at the notary or the registrar, starting from the dilemma of arguing a simplified legal procedure or a decision related to a better protection of privacy.

The paper is based on a qualitative research, the method used being the sociological survey, and the research tool - the semi-structured interview. For the data collection, the technique of non-probabilistic qualitative sampling of convenience was used.

Keywords:

divorce, conflict, family, divorce, privacy.

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1. Introduction

The idea of divorce (Anitei NC, (2012):98-108) on the basis of "solid or well-founded reasons" had in itself many forms of vulnerability. Former wording on "character mismatch" did not even define the relative thoroughness stipulated by law for granting divorce, so the level of motivation for legal separation was measured rather than the sum of the reasons that made it difficult for the two spouses to live together. By the same token, legal strategies, false witnesses, the strategic construction of motives, the tonicity and influences of the families of origin or the support group also created sufficient distortions in identifying the solid reasons for divorce. Even today, the divorce procedure in court is a double source of stress: one of the dissolution itself, and the other of the social costs that the divorcee sometimes has to bear due to public exposure.

Also, when the partners and the children are in different countries, social costs can be even higher because the reference community critically analyzes the dissolution in the light of the accusations of the partner in the community (Anitei NC, (2012):98-99, Florea, D., Galeş, N., Terec-Vlad, L., (2019):67, Huidu, A., (2019): 63).

Contemporary society shows the evolution of gender relations in different stages of development, highlighting at the same time old imperatives of traditional conjugal manifestation, which we still cannot consider to be totally gone.

One of the greatest contemporary challenges is related to the emancipation of women, but also to their access to the labor market, the increase of employment and her autonomy (Terec-Vlad, L, Terec-Vlad, D., (2014) : 73; Terec-Vlad, L., (2016) :67-80). This emancipation also becomes the most important resource for modernizing marital relations in the spirit of a better relationship of equity between men and women. However, the transition from one stage to another often gives rise to marital conflicts. As female status evolves, men are called to a different level of adaptation. Tradition no longer justifies their marital priority and, in the natural impulse of resistance to change, they tend to use any social resource to reconstruct their classic homeostatic landmarks. Therefore, says Petru Iluț, one of the great causes of conjugal separation in the contemporary space is the economic emancipation of women (Iluț, P., (2005) : 175).

In the case of divorce (Anitei NC, (2012):99-102), capturing the social in an issue that is intended to be private makes it construct even more the option to the dissolution strategy in order to maintain the privacy of the process.

2. Marriage and its challenges

Analyzing the lawsuits from courts, it can be seen that many times the problems raised by the parties involved in the divorce process have existed since the beginning of the marriage (Anitei NC, (2012):98-108). Thus, forms of regret that show "a posteriori" mistakes made in the hope that marital problems will be resolved by the very condition of marriage (Anitei NC) highlights that the very moment of the decision to marry was inappropriate.

Perhaps the biggest difference between cohabitation and marriage derives precisely from the level of involvement and assumption (assumption of all legal landmarks that required stability, "standardized" access to dissolution, therefore, longer and more expensive material and psychological procedures). For some couples, the framework of marriage stimulated more solidarity, the desire to negotiate conflict states rather than to give in to the momentary impulse - separation. However, for enough other couples, marriage was more of an inertia of time, rather than the effect of a successful psycho-affective relationship. Thus, the mechanisms of psycho-relational development and conjugal functionality are mixed with anxieties, frustrations, self-censorship, etc., sources of conjugal problems that were mutually thought to be left to time for self-dissolution.

In this context, we can talk about a series of mutations of the family described under its various forms of functional manifestation in specialized studies, both from a socio-legal, psychological or philosophical perspective (Anitei, NC, (2012) :101-104; Terec-Vlad, (2017) :67-80).

The haste to marry attracts, even in the medium term, a mutual fear of the unknown in the other, and the effect is precisely the self-imposition of a distance of interaction that ensures each individual the environment of own security. The development of relationships with such boundaries gradually transforms marriage into a set of rigid interaction processes, of conjugal attitudes rather focused on fulfilling domestic tasks. Thus, the low rate of Romanian divorce shows the statistical situation of legal dissolution, but it does not measure separations in fact, generalized dysfunctions, etc. In this sense, Leight Thomson presented a model of conflict according to the subjectivity and objectivity of each individual, so the conflict can be real when the individuals involved notice it, latent - when individuals do not notice the conflict despite the fact that it exists, false - people perceive a conflict that does not exist, and non-existent - the conflict is not notified by individuals nor is it found in reality (Thomson apud Străinescu, Ardelean, (2009) : 6).

3. Divorce decision at the notary or the registrar - motivational issues

In this context of marital frustrations, we rhetorically ask ourselves whether these options of administrative dissolution are chances for partners, or quick divorce (Anitei NC (2012) :101-104) traps for couples who would need therapy rather than divorce? The analysis of strictly administrative elements for granting divorce loses the basic landmarks of dissolution - the real reasons that show that marital relations are irremediable. (Anitei NC (2012) :98-108)

Therefore, the thirty days of reflection that they are given in order to renounce the divorce, most of the times do not help the partners to overcome the problems accumulated in the marriage, the number of those who reconsider the decision remaining very small. Thus, the final decision of the divorce is taken before the legal procedure, the time of 30 days becoming rather the legal imperative of waiting than a space or environment of last attempt at mediation. Moreover, from the discussions with civil status officers, notaries or lawyers, we conclude that the action of trying to restore the conjugal structure in order to become functional again is, at most, an exception.

Also, some of the partners who want the separation appeal to the registrar or notary for the speed of the procedure (Anitei NC (2012) :102-104), this option being stimulated by marital tensions that no longer want to be extended with long terms in the courts, but conflicts of certain intensities, misunderstandings regarding the agreement of the parties for divorce make them incompatible with this type of procedure.

Also, from the perspective of the motivations of people who prefer legal separation outside the courts, the divorce decision is often aimed at subjective approaches, the partners coming with an emotional load that is difficult to manage, with negative feelings, prejudices, desires for revenge, these being the reasons why, even in simplified divorce proceedings, they choose to hire a lawyer to represent them before the other spouse. This, all the more, so as divorce is the main social phenomenon of a personal nature that contributes to changes in the lifestyle of partners and may be accompanied by certain repercussions. The consequences that the partners pursue after the dissolution of the marriage concern the personal relations between the partners, the house and the goods that they acquired during the marriage, the relations that are established between parents and children resulting from, or adopted during the marriage, the relations established between parents and the minors, to the needs they have and also the sanctions that come from society and which, in rural areas, are even more highlighted.

Partners who end up in such situations have a strong emotional charge, and out of the desire to take revenge, they end up resorting to the most difficult procedure - the court.

The presence of a lawyer with the individual when he is in front of the notary or the registrar officer, proves once again the state of insecurity felt by him in the process of legal separation, regardless of the type of legal procedure.

Conclusions

New forms of marital dissolution have greatly simplified the procedures for the legal separation of partners. Being comfortable and diverse, we would expect to identify a wide range of divorces in which the stress is minimized and the partners can get over the divorce more easily. However, the wide range of motives behind marital dissolution usually results in conflict, pride struggles, public exposure of family's intimacy, involvement of extended family members in the same conflict, and a host of subsequent patrimonial strategies.

Conflicting partners try to manage their own conflictual states, but most of the time they accumulate frustrations, unhappiness until the moment of maximum tolerance, when the decision to separate emerges. It is found that, in most cases, the people who turn to the notary are those from rural areas, the marital status as a "village court" being too high a risk of vulnerability and exposure at the level of the community group.

Administrative divorce gives people a different level of security in terms of the discretion of conflict and divorce motivation, but also a short time of dissolution.

The qualitative analysis carried out in this sense highlights the fact that no set of specific reasons were identified, assortable rather to the registrar or notary, and not to the courts. The partners prefer the dissolution by administrative means, both for simple reasons (mismatch of character, communication problems, etc.) and for harsher reasons (domestic violence, alcoholism, jealousy, etc.).

Obviously, the study showed that the rural environment is still subject to another form of control in terms of traditional classical values, so most of the time, the desire for intimacy of dissolution is betrayed by the registrar himself, a member of the same "social court".

For another category of people who have resorted to administrative divorce, personal intimacy and the desire to highlight the other's guilt and, consequently, the placement of the other partner as the culprit of the dissolution, prevail less. So, if some motivate their divorce decision in front

of the registrar by protecting privacy, others use the social court to punish the "dysfunction". The administrative framework of dissolution tends to become, at the same time, a social court of evaluation and moral sanction.

Also, other motivations that lead to divorce proceedings in court are those related to the lack of trust in new proceedings, but also the fact that they want not only the dissolution, but also the punishment of the other spouse. In the court versus the administrative procedure dilemma, there are enough partners who turn to lawyers. This shows either patrimonial interests that require the attention of specialists, or distrust in the new divorce proceedings, or the desire not to become vulnerable in favor of the other partner.

According to the lawyers' statements, most of the partners appear before the courts with their own subjectivities, and not in concert, with a common will to divorce. There were also identified cases in which the lawyers themselves did not want to minimize the drama of the partners through an amicable administrative dissolution procedure, the court fees being higher than those received in the administrative procedure.

Therefore, the motivation for the administrative divorce procedure shows both the discretion of the process and its antithesis - the partners choosing either to avoid exposure and community criticism, or to punish the partner, precisely through his community exposure. Traditional culture becomes an indicator of action, on the one hand, by avoiding situations that can be sanctioned through criticism and evaluation and, on the other hand, by using this social court as a form of public punishment of the other partner.

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