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Author:	Mihaela-Gabriela BERINDEI

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REFLECTIONS ON THE NOTION OF “FAMILY” IN THE CURRENT CONTEXT

Mihaela-Gabriela BERINDEI¹

ABSTRACT:

OVER TIME, THE FAMILY HAS BEEN VIEWED FROM A SOCIOLOGICAL, LEGAL AND MORAL-CHRISTIAN POINT OF VIEW WITH GREAT IMPORTANCE, BECAUSE FAMILY RELATIONSHIPS HAVE A COMPLEX CHARACTER, WHICH WE DO NOT FIND IN OTHER TYPES OF SOCIAL RELATIONSHIPS. IT IS REPRESENTED BY THE ENSEMBLE OF NATURAL-BIOLOGICAL AND SOCIAL RELATIONS, BY ITS FUNCTIONS OF PERPETUATING THE HUMAN SPECIES, ECONOMIC, PEDAGOGICAL-EDUCATIONAL AND OF FAMILY SOLIDARITY. FROM A LEGAL POINT OF VIEW, THE FAMILY DESIGNATES THE GROUP OF PERSONS BETWEEN WHOM THERE ARE RIGHTS AND OBLIGATIONS ARISING FROM MARRIAGE, KINSHIP, AS WELL AS OTHER RELATIONSHIPS ASSIMILATED TO FAMILY RELATIONSHIPS.

THE TRADITIONAL FAMILY, BASED ITS FOUNDATION AND EXISTENCE ON HIGH SPIRITUAL LANDMARKS, SEEMS TODAY OBSOLETE FOR THOSE WHO PREFER AN “OPEN” RELATIONSHIP, FREE FROM PREJUDICE AND CONSTRAINTS, MATERIAL RESPONSIBILITIES AND MORAL OBLIGATIONS. MARRIAGES SEEM TO BE ESTABLISHED MORE AND MORE OFTEN AND LATER. IN THE SPIRIT OF THE VALUES THAT TODAY SEEM TO BE LOST, WE HAVE CHOSEN THIS TOPIC REGARDING THE NOTION OF FAMILY, ANALYZED IN THE CURRENT CONTEXT.

KEY WORDS: FAMILY, MARRIAGE, CHILDREN, ROMANIAN CONSTITUTION, LEGISLATION

INTRODUCTION

The family, constituted on the “beautiful and noble institution of marriage”, as defined by Dimitrie Alexandresco², in his work, *Explicațiunea teoretică și practică a dreptului civil român... Persoanele și familia...*, today knows a different evolution internationally, the European Court of Human Rights expanding the notion of “family life” from marriage to the relationships that actually exist.

Over time, the family has been viewed from a sociological, legal and moral-Christian point of view with great importance, because family relationships have a complex character,

¹ 3rd Degree Scientific researcher, “Acad. Andrei Rădulescu” Legal Research Institute of Romanian Academy (Romania), e-mail: mihaela.berindei@yahoo.com;

² D. Alexandresco, *Explicațiunea teoretică și practică a dreptului civil român, Dreptul civil român în comparație cu legile vechi și cu principalele legislațiuni străine*, Tom I, *Titlul preliminar, Persoanele și familia* (I), exemplary 121, anastatic edition (Bucharest: Universul Juridic, 2017), 540;

which we do not find in other types of social relationships. J.J. Rousseau states that “the family is the oldest of all societies and the only natural one”.

Therefore, we must also recognize the family’s historical character – being a social phenomenon – it develops with the development of society and changes in relation to it. The family, as a social phenomenon, is a form of social relations between people linked by marriage or kinship, who live according to certain customs, traditions or rules.

The family, a historical form of human community, is a complex phenomenon whose content is given by the set of natural-biological and social relations, by its functions of perpetuating the human species, economic, pedagogical-educational and family solidarity. These functions are reflected in the care of the family and of society for man, for his fulfillment at the level of the ever more demanding requirements of the society³.

Viewed from a sociological point of view, the family can be defined as a specific form of human community, composed of a group of people united by marriage, parentage or kinship, which are characterized by living together, supporting and helping each other. Thus, from a sociological point of view, moral, physiological, psychological and economic aspects emerge – features distinct from other categories of human communities.

The Christian-Orthodox tradition, passed down from generation to generation, claims the family as the cradle of the evolution of civilization, the primary entity that gives content to the social configuration, no matter how evolved or complicated it may be. Any self-respecting society makes the family the defining element of its foundation and evolution. As the cradle of life and civilization, the most favorable and proper environment for personal and community human development, the family has undergone numerous transformations and alterations. The traditional family, base its foundation and existence of high spiritual landmarks, respect and appreciation, love and devotion, seems today obsolete for many young people who prefer an “open” relationship, free from prejudice and constraints, material responsibilities and moral obligations. Marriages seem to be established more and more often and later⁴.

In fact, we can say that there are two types of family: the legal family (based on marriage) and the *de facto* family, which is represented by people who live and manage together, without being married. Gerard Cornu⁵, in *Vocabulaire Juridique*, defines the family by addressing a broad classification, which includes, among others, the conjugal, nuclear family, which consists of parents and their minor children living with them, but also the *de facto* family, designated from a group consisting of an individual and his dependents, the biological family or the family of origin which, in opposition to the adoptive family, is the one formed by blood ties to which the child belonged before being adopted, as well as the legitimate family, which designates either the spouses, their parents and their children, or the set of legitimate relatives but also the natural family, which was not founded on marriage but is legally established by biological facts, such as procreation, or descent from a common author. Also, the natural family, according to G. Cornu, can be constituted either by the *de facto* household (concubines), or by natural parents and their natural child, or by all natural relatives. In his opinion, even single children, descended directly from a mother of a large family, represent a family.

³ I. Dogaru, *Întreținerea. Drept și obligație legală* (Craiova: Scrisul Românesc, 1978);

⁴ I.C. Teșu, *Familia contemporană, între ideal și criză* (Iași: Doxologia, 2011);

⁵ G. Cornu, *Vocabulaire Juridique*, Association Henri Capitant, (QUADRIGE/PUF, Paris, 2008), 401;

LEGAL NOTIONS OF THE CONCEPT OF FAMILY

From a legal point of view, the family designates the group of persons between whom there are rights and obligations arising from marriage, kinship (including adoption), as well as other relationships assimilated to family relationships⁶. In a narrow sense, the family includes spouses and their unmarried offspring. In a broad sense, the family includes the spouses and their children, the spouses' parents, as well as other people with whom they are related. These provisions are derived from the ensemble of the applicable family regulations.

The first normative act adopted after the Great Union was the Constitution of Romania promulgated by King Ferdinand I on March 28, 1923. It was also called the Constitution of Unification, based on the Constitution of 1866, enshrined the achievement of Great Romania and contributed to the consolidation of the Great Union, creating the democratic framework of political life in Romania, until the adoption of the 1938 Constitution.

Although in the content of the text of that time we do not find express regulations regarding the notion of "family", nevertheless the principle of equality between women and men was guaranteed by the Constitution of 1923, which in Art 6 Para 2 provided that: "... Women's civil rights shall be established on the basis of full equality of the two sexes". At the same time, at Art 7 Para 4 were references to the family members of foreign nationals, in terms of their naturalization, as follows: "...Wife and minor children benefit from the naturalization of the spouse or father...".

Following the 1923 Constitution, there were some special laws regarding family relations. Thus, Law no 319/1944 on the right of inheritance of the surviving spouse, currently repealed, established a wide range of legal heirs, which included descendants, ascendants, collateral relatives up to and including the fourth degree, as well as the surviving spouse.

The Civil Code of 1864 has regulated from the adoption the essential aspects of family life, including provisions relating to marriage, personal and property effects of marriage between spouses, as well as those between parents and their children. In the Civil Code of 1864, marriage changes from a religious contract to a purely civil⁷, solemn contract, which can be concluded only with the consent of the future spouses and with the fulfillment of certain conditions of form and substance. The contractual nature of marriage is enshrined in the doctrine⁸, simultaneously with the legislative regulation, by definitions such as: "Marriage is a contract between two persons of the opposite sex, concluded indissolubly, in the solemn form required by law, in order to create a legitimate family status".

The adoption of the Family Code, by Law no 4/1953, which came into force in 1954, regulated the family as the one that designates either the spouses, or them and their children, or all those who are in family relationships arising from marriage, kinship, adoption and assimilated relationships, in some respects, with family relationships. According to the doctrine of the time⁹, the contractual nature of the marriage was waived, considering that it was a "legal act condition", because the parties could only decide whether the legal provisions establishing the legal status of the marriage should apply to them or not, without the ability to modify them.

⁶ G. Cornu, *Vocabulaire Juridique*, (Paris: Association Henri Capitant, QUADRIGE/PUF, 2008), 401;

⁷ D. Alexandresco, *Explicațiunea teoretică și practică a dreptului civil român*, 536;

⁸ M.B. Cantacuzino, *Elementele dreptului civil* (Bucharest: All, 1998), 657;

⁹ I.P. Filipescu, A.P. Filipescu, *Tratat de dreptul familiei*, 8th Edition (Bucharest: Universul Juridic, 2006), 24;

The family code increased the woman's marriage age from 15 to 16, and the age of majority fell from 21 to 18 for both men and women. Also, a series of impediments to marriage that were provided for in the Civil Code of 1864 were abolished, namely: the existence of a previously pronounced divorce for the same persons, kinship by baptism and the term of widowhood.

By Decree no 212/1974, Romania ratified the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which recognizes, in Art 10, that: "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses".

In this sense, the provisions of our fundamental law express precisely this reality, ensuring the protection of the analyzed legal institution, respectively the family. Thus, the Romanian Constitution¹⁰ provides in Art 48, that: "The family is based on the freely consented marriage between the spouses, on their equality and on the right and duty of the parents to ensure the upbringing, education and training of the children".

Also, the Civil Code, taking over almost entirely the regulation from the text of the Constitution, provides in Art 258 Para 1 that: "The family is based on the freely consented marriage between the spouses, on their equality, as well as on the right and duty of the parents to ensure the upbringing and education of their children", and in Para 2, that: "A man and a woman have the right to marry in order to start a family" (emphasis added). Next, Para 4 of the same article provides that: "For the purposes of this Code, spouses shall mean a man and a woman united by marriage".

From another perspective, the notion of family is viewed in the context of the provisions of the Criminal Code, being included in it all persons between whom there is a legal obligation of maintenance. Thus, the legislator took into account in a broad sense the family in the provisions of Art 177 Para 1 of the Criminal Code, which provides that: "Family member means: a) ascendants and descendants, brothers and sisters, their children, as well as persons who have become by adoption, according to the law, such relatives; b) the spouse; c) persons who have established relations similar to those between spouses or between parents and children, in case they live together".

Also in order to protect family relations, the legislator comprehensively defined the family, viewed in a broad sense, through the provisions contained in the Law on Combating Domestic Violence no 217/2003 which in Art 5 stipulates that: "Family member means: a) ascendants and descendants, brothers and sisters, their children, as well as persons who have become by adoption, according to the law, such relatives; b) spouse and/or ex-spouse; c) persons who have established relationships similar to those between spouses or between parents and children regardless of whether they live together or not".

This addition appears as a result of the Constitutional Court Decision no 264/27 April 2017, regarding the exception of unconstitutionality of the phrase "in case they live together".

Internationally, the family, and especially marriage, is evolving differently. The European Court of Human Rights has extended the notion of family life to existing relationships. In fact, we can say that there are two types of family: the legal family (based on marriage) and the *de facto* family, which is represented by people who live and manage

¹⁰ The Romanian Constitution of 1991 has been modified and amended by the Law for reviewing the Constitution no 429/2003 which entered into force on 29 October 2003.

together, without being married. Gerard Cornu¹¹, in *Vocabulaire Juridique*, defines the family by addressing a broad classification, which includes, among others, the conjugal, nuclear family, which consists of parents and their minor children living with them, but also the *de facto* family, designated from a group consisting of an individual and his dependents, the biological family or the family of origin which, in opposition to the adoptive family, is the one formed by blood ties to which the child belonged before being adopted, as well as the legitimate family, which designates either the spouses, their parents and their children, or the set of legitimate relatives but also the natural family, which was not founded on marriage but is legally established by biological facts, such as procreation, or descent from a common author. Also, the natural family, according to G. Cornu, can be constituted either by the *de facto* household (concubines), or by natural parents and their natural child, or by all natural relatives. In his opinion, even single children, descended directly from a mother of a large family, represent a family.

CONCLUSION(S)

Although, mainly, the family is constituted on the “beautiful and noble institution of marriage”, as Dimitrie Alexandresco calls it, we observe, from the sequence of these legal texts, how the legislator regulates several types of families, some of them not originating from marriage: the family itself, the extended family, the single-parent family, the adoptive family, the separated family, the surrogate family. Within the meaning of certain laws, there are family members and ex-spouses, concubines, minors placed in foster care or in the custody of a stranger, the stranger caring for a sick person, those who only manage together, or even a single person – the adult living alone.

¹¹ G. Cornu, *Vocabulaire Juridique*, 401

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