

AFFECTIVE TIES AND LEGAL BOUNDARIES: FAMILIES AND THE FAMILY BETWEEN LAW AND TRADITION IN ITALY AND ROMANIA

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***Abstract:** The fundamental pillar of any society is the family. The family provides its members with security, stability and excitement. The family is the environment in which we form our personality, acquire values and skills. In the family we learn about love, responsibility, communication and respect, how to develop our emotional and social skills and how to form a balanced identity. Most individuals believe that family is the value that gives meaning to life. From a legal point of view, the family is that group of people between whom there are rights and obligations that arise from marriage, kinship but also from other relationships that the law assimilates to family relationships. Thus, as Prof. Dr. Ion Filipescu said, the family is a legal reality because it is regulated by legal norms. Considering the fact that legal rules are closely related to the history, culture, economy and social evolution specific to each state, the legal rules governing the family vary from one state to another.*

***Keywords:** family, Italy, Romania, legislation, change, marriage, concept, women, husband, child, protection, divorce.*

Introduction

While the Italian state is looking for ways to increase legal and social support for non-traditional families, singles, unmarried couples and LGBTQ+ families to ensure that all family configurations enjoy the same protection, to reduce prejudice and help society understand and accept all forms of family, in Romania, the state is struggling to develop legislative and social programs to help traditional families and families belonging to vulnerable groups or minorities that need support.

The concept of family in Italy and its evolution from the Pisanelli code (1865) to the law of civil unions (2016) and the Cartabia reform (2022)

The family, defined in the Italian Constitution as "natural society", is a rather changing concept that travels in parallel with the development of a society, reflecting its trends in certain historical periods. It could be argued that its "natural" characteristic defines its pre-existing condition for any state, which implies the need for the latter to adapt to its changing characteristics (Savoretto, 2021).

From the adoption of the Pisanelli code in 1865 to the law of civil unions in 2016 and the most recent Cartabia reform in 2022, the concept of family in Italy has undergone variations in response to changes in society. Savoretto (2021) claims that the strong interest of anthropologists, historians and jurists in this theme is given by the fact that Italian society is currently characterized by a phenomenon of pluralization of families. That is, in recent decades, Italy has been hit by a large demographic increase; This figure, however, was not accompanied by the growth of so-called "nuclear families", which instead fell sharply due to the decline in marriages and births. Italian legislation therefore had to deal with the "new families" resulting from the development of new social consciences and values: single-person families, mixed families and unmarried couples. Precisely in this context, Italian legislation had to move in the direction of recognizing the protections and rights of *de facto* couples, homosexual and heterosexual couples, cohabitants and civilly united couples (Savoretto, 2021; Guidi, Palmieri and Miraglia, 2013).

Another determining factor in the structural change of the Italian family is the role of the woman, subordinate to her husband until 1975, the year of the reform of family law. In fact, the formulas that were read at the time of marriage, which represented the founding act of the family, were article 144 of the Civil Code which said that "the husband is the head of the family, the wife follows his marital status and is obliged to accompany him wherever he sees fit to establish his residence", and Article 145, which stated the husband's duty 'to protect his wife, to keep her with him and to provide her with everything necessary for the necessities of life'. These articles translated into the subordination of the woman to the husband as well as the conjugal authorization, necessary for any administrative act of material goods even belonging to the woman. However, in the late 19th century, the landscape of women's work in Italy changed considerably; many emigrated with their families to northern Italian cities and were hired to work in factories. During the First World War, many women replaced men in the workplace and this drastically changed the perception of women employed in industries, in society and consequently in the family (Vellati, 2017). This led to changes in the legislative field in particular, as the first civil code of a united Italy, the Pisanelli code had to reflect all the ideals of freedom, secularism and equality from which it claimed to be inspired, especially with regard to the disadvantaged situation of women who had characterized the legislative norm until that moment. However, the code continued to exclude women from the active and passive electorate, as did the illiterate. In 1891 the magazine "Divorç. Critical Review of the Italian Family" in which Zanardelli and Turati discussed the modernization of the family with themes that addressed the inferior condition of women. Already in 1867 Salvatore Morelli had presented a bill for the legal reintegration of women by claiming their civil and political rights, and in 1878 he had formulated the first bill regarding divorce admitted in particular cases such as adultery (Vellati, 2017).

In 1919 the marriage license was abolished. However, the Divorce Act of 1970 and the Family Law Reform of 1975 sanctioned an equal turning point by specifying that upon marriage both men and women acquired the same rights and assumed the same duties. Equality also extended to the filiation relationship, ensuring equal treatment for children born out of wedlock or during wedlock. Spousal equality helped to dilute the image of the "traditional family", reflecting the social change of those years and giving it legal value.

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The filiation reform (Law 219/2012 and Legislative Decree 154/2013) then guaranteed the right to a family of the natural child born out of wedlock, including by inclusion in the family formed by the parent following the marriage with "another person (art. 252 CC) (Savoretto, 2021).

It is important to state that the minor's right to a family is also understood as the right to live in an adoptive family when the biological family is unable to support the minor. In other words, entrusting the minor to family-type communities must represent the extreme solution to which insertion in an adoptive family is always preferred (Miraglia, 2022; Palmieri and Miraglia, 2021, Manicardi, 2011). The current legislation is based on the "not arbitrary or irrational" idea according to which a family consisting of two parents of different sex and of potentially fertile age represents, in principle, the most suitable context for receiving and raising a minor (Constitutional Court decision 230/2020). Therefore, the minor must be guaranteed as a matter of priority the right to a family modeled according to the scheme of the natural family based on marriage (Mazzitelli, 2024). However, as Mazzitelli (2024) states, it happens more and more often that the minor lives in the family formed by his biological parent with another person and establishes an emotional connection with the latter. In these cases, as in all other circumstances where there is a gap between the factual reality (in which extended or rainbow families are present) and the legal reality (which would support the natural family model based on the marriage between two people of the opposite sex, the realization of the interest superior of the minor imposes the need to recognize the factual situations and the emotional ties that have been created over time so that the full identity of the minor can be protected as a fundamental right of the person (Mazzitelli, 2024).

The art. 2 of the Italian Constitution defines the family as the main social formation in which man develops his personality, and in art. 29 is limited to defining it as "natural society based on marriage", leaving out all families other than the nuclear one.

As previously mentioned, in the last ten years the so-called nuclear families in Italy have decreased drastically due to the decrease in marriages and births. However, new types of families have emerged, such as single-person families, blended families, and families made up of unmarried couples. Consequently, legislation has had to adapt to social, economic and political changes to recognize protections and rights for de facto couples, same-sex couples, cohabitants and civilly united couples as well (Savoretto, 2021). In this context, the Law establishing civil unions and de facto cohabitations is placed: law no. 76 of 20 May 2016, which entered into force on 5 June 2016, establishes civil unions between persons of the same sex and regulates cohabitation between heterosexuals and homosexuals by establishing cohabitation contracts. According to law 76/2016, de facto cohabitation means two adults stably united by emotional ties as a couple and mutual moral and material assistance, not linked by kinship, affinity or adoption, by marriage or by civil union. As Dosi (2023) states, "de facto cohabitation has been at the center of the last decades of a progressive attribution of legal relevance as a social formation (art. 2 of the Constitution) within which the duties of family solidarity and the fundamental rights of the person". Moreover, it specifies that "art. 2 of the Constitution and art. 8 of the European Convention on Human Rights protects the right to family life, it is not limited to relationships based on marriage" (Dosi, 2023).

The importance of defining the concept of "family" and protecting it is not only a legal necessity at the national level, but also responds to the need to comply with European legislation regarding the right of European Union citizens and their family members to move and reside freely in the states members and family reunification. In fact, European legislation establishes the conditions under which the state must legislate, although it always has competence in matters of immigration, but protects the vulnerable situation of other categories that it defines as "other family members", obliging member states to facilitate entry and stay them. family members who depend on the EU citizen and inviting them to delve into specific personal situations to assess the application for entry and stay (Savoretto, 2021).

To summarize, the seventies signaled the beginning of a season of reforms that drastically changed Italian patterns and culture. From marriage it moved to divorce and then to summary divorce, introduced in 2015. Meanwhile, marriages have fallen and cohabitation has risen, as have other aspects highlighted by the 'Modern Family' research commissioned by BNP Paribas Cardiff into the occasion the 30 years of activity. Specifically, the study was carried out by the research institute Eumetra MR which monitored the changes in the Italian family from 1989 to 2019. The research highlighted the transformations of the Italian family which seems happier than in the past, traditional on the one hand but also modern and modern. open, attentive to the environment and with stronger ties to the family of origin.

The average number of members of the contemporary Italian family is about three people. According to the research, four out of ten families have no children, and 26% have only one. The number of singles increased (8.4 million, +110%), marriages collapsed by -40.5% in favor of cohabitation, and divorces increased considerably (+230%). Despite these data, the research shows that the contemporary family defines itself as traditional (37%), a safe haven (31%) and modern and open (26%). However, the most significant data is that 71% of families feel happier and more peaceful than thirty years ago, thanks to greater economic stability. The relationship between parents and children has also changed; in particular, many parents perceive "external" risks outside their own family unit and tend to provide more certainty and security to their children (57%), have respect for them (48%), the desire for affection is also increasing (42%) and the desire to be friends (27%). However, the figure of the parent as a teacher is clearly decreasing (11%).

The research also highlighted the new relationship with the family of origin and the elderly. 25% of the elderly, for example, give help to the new family, while 45% receive assistance from younger family members.

Regarding the sphere of female work, women are increasingly involved in entrepreneurial and managerial functions, even if equality is still far away. 34% of the women are housewives, while a large proportion of the remaining workers benefited from the company's work-life balance policies, such as part-time or remote work. In this sense, technology has also adapted to the concept of the modern family. 95% of families with access use the internet every day and 74% use social media daily.

Regarding environmental and sustainability issues, families have become more attentive to the separate collection of waste (69%), adopt actions to reduce waste (67%), pay attention to products that respect the environment (43%) or those from km 0 (40%).

In terms of economic sustainability, although 42% of families say their economic situation has improved compared to thirty years ago, only a third believe they feel secure about

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their current financial situation and only 28% hope to improve their economic situation in the next ten years. This means that many families give up, at least once, fulfilling their desires such as going on vacation and purchasing wellness or leisure products.

Finally, compared to thirty years ago, 62% of families have the perception that the risks have increased; these include job loss, technology theft, robbery, violence and health, which seem to worry women the most. Almost eight in ten families own at least one policy and 36% of those surveyed have taken out a policy through digital channels at least once; among these are car insurance (8%), home insurance (37%), life insurance (25%) and health insurance (14%) (ANSA, 2019).

The analyzed data demonstrate how the Italian family has changed over time from a social, economic and cultural point of view and how it shapes and is shaped by a constantly evolving reality with which the law must keep pace. In this context, the Cartabia reform regarding family law is an important step and a link between the past and the future.

As specified in art. 1 of the enabling law of November 26, 2021, n.206, the purpose of the reform, to implement the obligations assumed by Italy towards the European Union, is to simplify, accelerate and rationalize the civil process (De Filippis, 2023). In particular, the Cartabia reform intends to intervene on some aspects of the procedural process by increasing digitization and revising alternative dispute resolution tools. The process should allow for faster development of cases and shorter times to define them.

As De Filippis (2023) states, the intervention of the Reform in matters of family law is of particular importance because, first of all, it determines the replacement of the Juvenile Court with the Court for Persons, for Minors and for Families, completing the 2012-2013 Reform of which objectives were never achieved. Compared to 1934, the year in which the Juvenile Court was established, the general context has changed. Currently, the predominant needs are to ensure the judge's impartiality by avoiding assigning him different tasks than those he performs in ordinary justice, unifying the rite and excluding the possibility that different rules apply to children born out of wedlock. In this sense, replacing the Juvenile Court with the Family Court is the most logical solution because it recognizes the unity of family and personal problems. Another novelty of the Reform consists in the simplification and unification of the rite. The distances between separation and divorce are also shortened, which should lead to the elimination of separation and the creation of a single path to divorce.

The reform also provided for the appointment of a guardian of the minor, following the principle that the minor is a person and has the right to participate in all proceedings concerning him. The reform also provided greater protection for women and minors who suffer violence, favoring the principle of specialization of judges and all other figures involved in the process; in particular, specific training courses are offered for judges (De Filippis, 2023).

Therefore, from the adoption of the Pisanelli code to the more recent Cartabia reform, the traditional Italian family has undergone changes of a different nature, which in turn are the result of changes in the national economic, political and social panorama. As analyzed so far, the breakdown of family patterns was not immediate and total: internal migration, the role of women in the Italian economy, the introduction of divorce and a more liberal approach to sexuality represent the driving forces of a change in the behavioral codes of families and new generations.

A final analysis of the evolution of family law in Italy can be divided into three distinct but interconnected levels: scientific conclusions, proposals for the future and reflections on the emotional implications of these transformations. This multidimensional approach will allow us to comprehensively explore the impact of laws on Italian society.

From a scientific point of view, the evolution of family law in Italy shows a clear trajectory towards greater inclusion and adaptability, with an increasing emphasis on the protection of individual rights, regardless of family form. The introduction of laws such as those on civil unions and the Cartabia reform highlight a progressive adaptation of the legal system to contemporary social realities and a response to changing cultural dynamics. The reforms reflect not only a legislative change, but also a change in the mindsets and expectations of Italian society towards greater recognition of diversity and gender equity. To ensure that Italian laws remain aligned with European standards, a continued commitment to the adoption and integration of EU directives and regulations on family and individual rights is necessary. In addition, there is a need to increase legal and social support for non-traditional families, including singles, unmarried couples and LGBTQ+ families, to ensure that all family configurations enjoy the same protections and rights, and to promote education and awareness-raising to reduce prejudice and increase understanding of different family forms. This could include school programs that address family diversity and civil rights. Transformations in family law not only shape the legal structure, but profoundly influence personal and collective experiences. Expanding definitions of family bring with it a renewed sense of belonging and acceptance for those who previously felt excluded. However, these changes can also cause uncertainty or resistance among those who see the new norms as a departure from tradition.

Legal reforms that recognize and protect non-traditional families bring dignity and security to many people, helping to build a more inclusive society that respects the rights of all. At the same time, recognizing different family configurations can help reduce emotional stress and increase the psychological well-being of the individuals involved.

Therefore, the evolution of family law in Italy reflects a growing commitment to equity and inclusion, aspects that are essential in a democratic and modern society. As laws continue to change to reflect social realities, it is critical that these changes be accompanied by a shared commitment to education and awareness, as well as an open dialogue about family diversity. These collective efforts will not only strengthen the legal and social fabric of the country, but also the cohesion and harmony among its citizens, promoting a future where every individual can find respect and support within the community.

The family in Romania

As far as Romanian law is concerned, the legal dictionary defines the family as that group of people related to each other by marriage or kinship.

The UNESCO dictionary gives the following definition of family: the form of human community established by marriage, which unites spouses and their descendants through close biological, economic, psychological and spiritual relationships.

The family has been analyzed, over time, from several points of view: sociological, legal, historical, but also religious, given the complex nature of family relationships. The family developed and continues to develop today along with the development of society, changing in relation to it.

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The definitions that are given to the family are countless, because it is the research object of many sciences. Not only law defines and explains the term family, but also psychology, sociology, history, medicine, etc.

Researchers have defined the term family according to how human beings have organized and evolved in society since the beginning of human history.

In Roman law, the *pater familias* was the owner of the entire family which consisted of the wife, children and slaves and all the goods they owned. The *pater familias* was not only the master of all the members who made up his household, he was also the owner of the product of their labor. He had the right of life and death over all persons subject to his authority and over the common patrimony.

In Moldova in the 17th century and until the beginning of the 19th century, the basis of the conjugal family was marriage. Marriage was of particular importance in the link of the matrimonial alliance because it involved, in addition to the status and honor of the families, the material advantages obtained as a result of the conclusion of the marriage. The girl who was getting married and her family had an important role because she came to the marriage with a dowry.

In order to be able to conclude a valid marriage, certain conditions had to be met, among which we mention: the voluntary agreement of the future spouses, the agreement of the parents (Felea, 2022, pp. 66-70) or of the young people's relatives, the age allowed to conclude marriage, etc. (From the research carried out, it appears that those who married without the consent of their parents could be disinherited. (the case mentioned on March 6, 1629, when the case was examined and judged between Luchian, deacon and his brothers against their sister Irina, who did not obtain the blessing her father, Gligorie, disowned his daughter in front of the villagers and disinherited her. observed, in the sense that written legislation was applied, the same traditions were observed regarding courtship, betrothal and wedding ceremonies. For example, the procedure of examining young people to determine whether all the required conditions were met and to determine that they were not impediments to marriage, was carried out in all three Romanian states. The parish priest from the locality where the future spouses were from was the one who carried out the research procedure.

In the middle of the 17th century, in 1652, in the princely printing house in Târgoviște, the oldest *Pravila* in Wallachia saw the light of day, the direction of the law, the first code of laws written in Romanian (Cronț, 1960, p. 64). This Code of Laws was the fruit of a remarkable collaboration between the state and the church and represents a perfect combination between the appearance of written law in Romanian and the official reception of Byzantine norms and canons as legal norms in Wallachia. It is the most comprehensive codification printed in Romanian throughout the Middle Ages).

The rule includes provisions of civil law and criminal law. As far as civil law provisions are concerned, property, legal capacity, marriage and its effects, separation, engagement, property, succession, etc. are regulated. The regulation in family matters has a pronounced educational character which had as its objective the strengthening of the institution of marriage based on the union and the increase of the moral level of family life.

During this period, the Church considered that sexuality was the grave source of sin and men, if they could not live in chastity, could choose marriage, because it was the only situation

in which passionate and bad love was accepted. Marriage represented the necessary sin and the Church established the rules by which it could function, combining religion with law, stressing, as expected, the spiritual component (Mazilu, 2006, p. 358).

In the content of the Rule, the degrees of kinship (clerical - through baptism - or blood) are presented in detail (Șerban, 2007)

Marriage between blood relatives was forbidden until the seventh spoke. Also, the conditions that had to be fulfilled by the people who wanted to get married are regulated. One of the conditions was that the future spouses should be of similar age. Under no circumstances was marriage allowed between people with a large age difference. However, if the man was older, the marriage was allowed, conversely not, the woman could never marry a younger man. The rule forbade more than three marriages in order to avoid immorality, corruption and promiscuity and the man was the head of the family, he had the role of leader within the family. Marriages between Christians and non-Christians, between free persons and slaves, were forbidden. Slaves could only marry each other with the consent of their masters and a child born of the union of a free person and a slave was always free.

Sanctions for those who had forbidden sexual relations are regulated in the Rule. The punishment for intimate relationships between relatives was death. (chapter 211 shows that: mixed blood is a sin and mistake even worse and more terrible than fornication). Adultery was punished, but also the intention to indulge (preacurvia). The cheating husband had the right to kill his adulterous wife and his rival if he caught them in the act.

In the Direction of the law, as in other earlier and later codifications and regulations, women were considered inferior to men, given their impotence and weakness of nature. Moreover, the Rule shows that the woman is worse than the man, which is why the man has multiple rights, including the one to beat his wife but with gentleness and not with hostility. A slap or a fist, no matter how much or how often, was not considered a hostile fight.

As for the most important reasons for breaking up the marriage, they were: adultery or fornication, as it was called at the time, repeated adultery, i.e. fornication, enmity, the husband's nocturnal erotic fantasies, misunderstandings of a material nature, etc. Crimes against conjugal life, such as incest and sodomy, were punishable by death.

Between the 17th and 19th centuries, the term family was found only in a theological context. In the context of Orthodox Christianity, the term family was found only in relation to marriages solemnized and blessed by the church. Thus, for the period we are talking about, we find the term family only when it was about legitimate couples accepted by the church and, implicitly, by society.

Simion Florea Marian, historian, teacher and Romanian Orthodox priest, born in the middle of the 19th century, described in a historical-comparative ethnographic study from the year 1890, the main purposes when concluding a marriage, as follows: to have a consort to help and party, to be consolation and alleviation of pain in cases of unhappiness and suffering (the sharing of good and bad, of joy and sorrow in the course of life); the birth of legitimate offspring, to carry on the family name, not to squander the parental wealth, to take care of the parents when they reached old age, and after their death to mourn and bury them in a Christian way and to pray for They; that they may not be reproached for having lived in this world in vain, etc.

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From the text above but also from the analysis of the speech promoted by the Orthodox Church regarding the importance of the family in order to preserve good morals, it follows that the family satisfies the existential needs of people, namely: sexuality, procreation and economic survival. The laws of the time strengthened over time, the discourse promoted by the Orthodox Church, supporting marriage and the foundation of the family as a means by which certain misfortunes are avoided, from polygamy to seduction, etc.

In order to conclude a valid marriage, certain conditions had to be met, as follows: the existence of the consent of the families of the two (of the parents or the master), the socio-economic status of the future spouses to be similar and the man not to be in his fourth marriage. The studies undertaken by the researchers show that in order to get married, the man had to be over 14 years old and the girl over 12 years old.

Also, the widow was obliged to mourn her husband for a year. Only after that year could he remarry.

Other impediments to marriage were: the state of blood relationship but also the spiritual one, people who were of different faiths could not marry, and monkhood and kidnapping fell into the category of impediments to marriage.

The couple lived for quite a long time in the house of the groom's parents, until they were able to build a house of their own. We still encounter this situation today, at least in our country, because the economic situation of many couples does not allow them to purchase or build their own home.

In the period we are discussing, the inheritance of the parental home belonged to the eldest of the family, who also had the duty to take care of the parents when they grew old.

It should be noted, however, that the fate of the peasants was extremely harsh. The young couple's home, whether they received it from their parents or built it themselves, was actually a one-room hut in which they would raise their children and where, often during the winters, frosty, they had to receive their animals as well (Vintilă Ghițulescu, 2011, pp. 270-273).

The families of the wealthy benefited from durable houses built of stone, which had several rooms and in the courtyard they had specially arranged places for the homes of those who served them.

In rural areas, things were even worse because, being poor, some couples agreed to live more than one in one room.

As for the relationship between the spouses, they had very well defined roles. The man maintained the house and supported the whole family financially, while the woman took care of the household and the education of the children. All this time, the woman was obliged to be obedient, to submit to her man in gratitude for the security he offered her. The man was allowed to argue with and even punish his wife by beating her if she showed the slightest sign of disobedience.

Another obligation women had was to follow their husband wherever he thought he wanted to establish the family home. Otherwise, the woman was brought by force and, of course, punished.

Research shows that women gave birth to many children, sometimes to the point where this was no longer biologically possible, only because the infant mortality rate was so high that

few of them survived. (for example in a family where 20 children were born, only between 2 and 4 children managed to reach adulthood).

As for the high death rate among the children, this is due to the indifference with which they were treated. In Europe, between the 17th and 18th centuries, for every 5 or 6 births, one died from various causes: contagious diseases such as measles, scarlet fever, diseases of the respiratory system, epidemics of typhoid fever, cholera, malaria, etc.

Cases in which couples could not have offspring were considered a failure. In this situation, couples had only one solution, adoption, but this solution was rarely chosen in the 17th century. In the centuries that followed, more and more couples who could not have children resorted to adoption.

The woman who could not give birth was in an extremely difficult situation because she risked being rejected by her husband. This is also one of the reasons why remarriages were practiced quite often in the 17th century.

As for the divorce, the procedure was complex and went through several stages. The husband or wife, as the case may be, appeared at the Ecclesiastical Court where he filed a complaint. There was also the situation in which the parish priest granted a sentence of separation.

The main reason why women resorted to divorce was that they were leading a difficult life from which they wanted to escape. The Church does not accept separation for any reason. Some of the reasons for which the Church accepted the separation of spouses were: debauchery, abandonment of the family, adultery, monasticism, bad living or bad life. The strife of life refers to cases of extreme domestic violence. However, for a woman to be able to divorce a violent husband, she had to bring witnesses to confirm that the beating was repeated and of maximum violence or that the husband used a staff that he broke during the beating. Otherwise, in case of moderate violence, the wife could not divorce, because the judges considered that moderate violence is not a reason for separation of husbands. We must not forget that hitting or beating the woman was allowed, being considered a means of correcting the inappropriate behavior of the woman.

In case of illness, only if one of the spouses fell ill with leprosy, divorce was allowed. In the case of epilepsy, divorce was allowed only if the sick spouse suffered from it before marriage, not if he became ill during the marriage. Epilepsy was also called the beating disease, because it usually appeared after violent and repeated beatings to which the wives were subjected. Impotence and sometimes insanity are added to the diseases that could be invoked as grounds for divorce.

As for the Callimachus Code, the Civil Code of Moldavia, promulgated by the ruler Scarlat Callimachi in 1817, it includes regulations regarding the family, kinship and marriage relationships and is based on older provisions from Byzantine law. However, the regulation of marriage was based on principles that are still the basis of contemporary law today. The code forbids marriage between Christians and non-Christians or between free citizens and slaves. Divorce is also regulated in the Code.

At art. 63 of the Callimachus Code, the lawgiver states that: "Family bonds are formed through the marriage bargain, through which two people, the male part and the female part, show with a lawful face their will and decision to live in a lawful companionship, with love ,

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with the fear of God and with honor, in an inseparable companionship, to give birth to babies, to raise them and to help each other as much as possible in all events".

This regulation is much more moral, Dimitrie Alexandresco points out, than the regulation in Caragea's Code which, as it shows, is "brutal and wrong" because the legislator wrongly considers that the procreation of children is the only purpose of marriage.

In the century of the 19th century, the Caradja Legion was in force in Wallachia, the Calimach Code in Moldova and in Transylvania the Austro-Hungarian laws which were applied, with certain modifications, for a period even after the Union of 1918. In 1865 it entered a new Civil Code enters into force. The 1865 code was also applied in Bucovina from 1938 and in Transylvania from 1943, and in Northern Transylvania from 1945.

In the Civil Code of 1865, women had a status similar to minors and mentally incompetent persons. Women were politically, socially and economically incapacitated, they could only sign documents with the consent of their husbands or the judiciary, and they could not manage their own income. Women were practically deprived of civil and political rights.

In the interwar period, an improvement in the status of women can be seen through the adoption of the 1929 Law on employment contracts, the Law for lifting the civil incapacity of married women, promulgated by Decree no. 1412, Official Gazette no. 94 of April 20, 1932.

The demands of Romanian women at that time in matters of family and marriage were the following: equality between spouses through law and education, management of their own wealth, regardless of gender, women claimed part of their husband's income for household work, elimination of the double moral standard, etc.

In 1954, the Family Code entered into force on February 1, 1954. It underwent changes and additions by Law no. 4 of April 4, 1956, was amended during the communist era by Decree no. 779/1966, by Law no. 3/1970 and by Decree no. 174/1974.

In the first article of the Family Code from 1954, the legislator stated that: "In Romania, the state protects marriage and the family; he supports, through economic and social measures, the development and consolidation of the family". In the Family Code of 1954, the family was based on freely consented marriage between spouses and the legislator states that "in relations between spouses, as well as in the exercise of rights towards children, men and women have equal rights."

During the communist period, theories could not be developed that would promote the rights of women as individuals, theories that would contribute to the autonomy of women because the totalitarian regime did not accept other ideologies outside of the communist ideology. However, during this period, women actively participated in the modernization and industrialization of the state. At the same time, the image of the woman was promoted by communist propaganda.

Starting with 1966 when the implementation of pronatalist policies, regulated in Decree no. 770, which prohibited abortion and criminalized women who had abortions, expands the reproductive role of women. Although from a formal point of view, the state participated in raising children through various measures, among which we list: a large number of nurseries, maternity leaves, allowances for children, etc., in reality the measures did not respond to the real needs of women. Decree 770 made many victims among women.

In the current Constitution of Romania, art. 48 showed that: The family is based on freely consented marriage between spouses, on their equality and on the right and duty of parents to ensure the growth, education and training of children". The Civil Code of 2011 took over almost entirely the text from the Constitution and provides in art. 258 paragraph (1) that: The family is based on freely consented marriage between spouses, on their equality, as well as on the right and duty of parents to ensure the growth and education of their children.

In paragraph (2) of art. 258 of the Civil Code states that the man and the woman have the right to marry in order to found a family, and paragraph (4) provides that: For the purposes of this code, spouses mean the man and woman united by marriage".

As can be seen, the Romanian legislator also mentions the sexual difference through the regulation of art. 259 paragraph (1) which states: Marriage is the freely consented union between a man and a woman, concluded in accordance with the law. Moreover, the legislator provides in art. 277 paragraph (1): Marriage between persons of the same sex is prohibited and in paragraph (2), Marriages between persons of the same sex concluded or contracted abroad either by Romanian citizens or by foreign citizens are not recognized in Romania. In paragraph (3) of art. 277, the legislator provides that: Civil partnerships between persons of the opposite sex or of the same sex concluded or contracted abroad either by Romanian citizens or by foreign citizens are not recognized in Romania. In these cases, the public order exception in Romanian private international law is invoked.

From the provisions relating to marriage, adoption and medically assisted reproduction with a third-party donor, it is clear without a trace that the Romanian legal system does not recognize marriages and partnerships between people of the same sex. (Homosexuality was gradually decriminalized in Romania. The last law criminalizing homosexual relations was repealed in 2001 by UUG 89, the repeal of art. 200 of the law being one of the preconditions for our accession to the European Union).

However, in the case filed by Buhuceanu, Ciobotaru and 20 other families against Romania, the European Court of Human Rights (ECtHR) decided, on May 23, 2023, that Romania does not comply with Article 8 of the Convention, article regulating the right to respect for private and family life in the case of same-sex couples. (Article 8 provides: "1. Every person has the right to respect for his private and family life, his home and his correspondence; 2. Public authorities may not intervene in the exercise of this right except to the extent that this is provided by law and is necessary, in a democratic society, in the interest of national security, public safety or economic well-being of the country, for the defense of order and crime prevention, for the protection of health or morals or for the protection of the rights and freedoms of others"). (The ACCEPT association believes that this is a historic decision and that Romania must recognize and protect same-sex families).

The ECHR clearly emphasized that same-sex partners/couples urgently need a form of recognition that would give them ... equal rights and create a legal framework that would protect their common life.

In Romania, civil partnerships between people of the opposite sex are not recognized either, although in recent years more and more young people have chosen to live together without appearing before the registrar to formalize their relationship. Moreover, it was found that many couples already have children and still do not choose to get married. The reasons are multiple and what years ago was considered unacceptable has become normality, even though,

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in Romania, you still feel that pressure to conclude a marriage. Many young people choose some form of personal independence or the establishment and development of a career, marriage not being considered a mandatory step for starting a family. Also, the financial aspect is an obstacle for some couples. Many young people say they are not financially ready to get married. There are also couples who claim that with the signing of the marriage certificate, the partner has changed, which causes them to live in cohabitation. The fear of getting divorced is also an obstacle, given that the divorce rate is on the rise.

Conclusions

Analyzing the legislation of the two countries and the evolution of the family in Italy and Romania, we find that the differences are major.

We can see that the family law regulation in Italy has a clear and unequivocal trajectory towards inclusion and adaptability where legislative reforms are adapted to contemporary social realities, while Romania remains conservative in the face of these realities, along with several other member states of the European Union.

Moreover, in Romania, studies have been carried out that show that two thirds of gay people do not disclose their sexual orientation because they fear discrimination and the hostile reaction of those who condemn such behavior.

The postponement of legislative reforms in Romania, the postponement of the adoption and integration of European Union directives and regulations regarding family rights into national legislation, actually reflects the impossibility of changing the mentality of Romanian society and its difficulty in recognizing and accepting diversity and gender equity.

In conclusion, we ask ourselves: if Italian society, Catholic and traditionalist, has sought and continues to seek solutions to accept all forms of family, why can't the Romanians?

REFERENCES

1. Cronț Gheorghe, Byzantine law in Romanian countries. The correction of the law of 1652, in *Studies*, year XIII, 1960, no.1
2. Felea Alina, *From the history of the institution of marriage in Moldova in the century. The 17th - the beginning of the century. 19th century: Conditions for concluding the marriage and the research procedure*, <https://typeset.io/pdf/from-the-history-of-the-institution-of-marriage-in-moldova-274wj90c.pdf>, https://biblioteca-digitala.ro/reviste/Argesis/Argesis-16-Studii-si-comunicari-Muzeul-Judetean-Arges-2007_134.pdf
3. Mazilu Dan Horia, *Law and lawlessness in the ancient Romanian world*, Ed. Polirom, Bucharest, 2006
4. Șerban Mihaela, *Marriage in the oldest rule in Wallachia - DIRECTION OF THE LAW*,
5. Vintilă Ghițulescu Constanța, *In trousers and with Ișlic, Church, sexuality, marriage and divorce in Wallachia in the 18th century*, Ed. Humanitas, Bucharest, 2011.