

## FAMILY - SOCIAL PHENOMENON

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*Meaning of the concept of family relationships account for those who are born between individuals as a result of marriage and relatives. The family was defined differently by lawyers and sociologists. In contemporary society there are certain phenomena that affect the family as the core of society. Mainly, the family has three functions, seen through the prism of legal relations.*

*Key words: family, cohabiting, single-sex marriage, marriage rate, birth rate, divorce rate.*

### **Section 1 Explanations prior**

#### **1.1. Sociological and legal notion of family**

Universal Declaration of Human Rights, art. 16, defines family as "the natural and fundamental group unit of society" (the Universal Declaration of Human Rights was adopted and proclaimed in the UN General Assembly by resolution. 217 (III) of December 10, 1948), while recognizing its right to protection by society and state, and the right to marry any human being "nubile age, with no restrictions on race, nationality or religion" based on free consent and respecting the principle of equality between men and women to the marriage enclosure, during it and at its dissolution<sup>1</sup>.

Approached in sociological terms, the family was defined as have emphasized different aspects of its structure or functions and features as a mark<sup>2</sup>. Most sociologists consider the family as a social group made by marriage, comprises persons living together, common household, are linked by certain relations biological, psychological, moral and legal, and responsible for each other in the society.

Approached in legally, the family consists of a group of people among whom were born and there are rights and obligations following the enclosure of a marriage, the existence of family relationship (natural or civil) and even because of other legal relationships treated the law of family relations. Therefore, although the ideal situation would be that the family based on marriage union, we can talk about family and where the union is formed only one parent and child - parent families, either because of affiliation or the adoption of a child by a single person, unmarried<sup>3</sup>.

In an overview that can support both views are identical, but a scientific study noted some differences.

We illustrate the situation of two brothers who founded their different families by marriage. If the legally they are still bound by legal relations of the family, the sociological

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<sup>1</sup> Romania has ratified this Declaration on October 7, 1982, is also party to the Convention on consent to marriage, minimum age for marriage and registration of marriages and other international instruments on protection of motherhood, of women, children;

<sup>2</sup> I.P. Filipescu, "Treaty of family law", House of Princting All, Bucharest, 1993, pg. 1;

<sup>3</sup> Law adoptions, no. 273/2004 allows adoption made by a single person, married or unmarried;

point of view they are in totally different families. The examples could go in matters of divorce, non-property relationships, the partnerships, etc. In conclusion, the existence of legal relations does not always mean the existence of sociological relationships.

Family legal relations are governed by family law (Civil Code and special laws in this area)<sup>4</sup>, which, however, make regulations and other branches of public law or private law.

#### 1.1. The emergence of family in society. Family in Roman law and Romanian law

Feature from Romanian family is paternal power, which combined both the office of priest and judge. The operation of this system, marriage occupies a secondary place, in effect, the union of two persons did not disappear paternal power, but on the contrary, allowed to expand<sup>5</sup>.

Geto-Dacian tradition Romanian family sent some democratic traits assessed as compared with considered aristocratic Roman family; while it is dominated by the country's *potestas pater familias*, the absolute right of the child, a Romanian customary law and a certain equality between spouses, springing and living conditions of village communities. For example, both spouses exercising parental power over children and surviving spouses may have one power over minor children without family care council or court supervision.

Also, parents had an absolute right nor the children were able to sell. The focus is instead on maintenance and protection. Orthodox Christianity, unlike Catholicism, allowed divorce on equal grounds invoked by each spouse.

Between 1691-1848 the family structure has remained largely as it was set by the old statutes and legal traditions. A new element was introduced by the reform of Joseph II abolishing personal dependence that allows marriage without consent even noble peasants on whose estate is located.

The creation of border regiments, with a special legal status have introduced new rules on family organization and relationships of its members. They relate to marriage because marriage authorization territory border regiment was conditional on obtaining an authorization, acts of civil status, dote rights because the military establish their residence in the house his wife lost the right of possession and inheritance of its dote.

In some districts frontier-guard system was introduced domestic community, which consists of creating a comprehensive family consisting of parents, children, son, grandchildren, who were under the authority of a *pater familias*, helped in terms of household management by *mater familias*.

The civil nature of marriage, clear that by the year 1864 in Romania, only religious marriages are officiated. Currently religious marriage can be achieved only after civilian, according to the provisions of the present Constitution of Romania.

#### 1.3. Trends in family phenomenon in contemporary society

Trends in Romania today family phenomenon can be summarized as:

1. A general and significant decrease in the rate of marriage and the birth rate, increase in parallel with unmarried people and people living in free union (cohabiting).
2. Increase couples without offspring or a single descendant.
3. Increasing number of divorces and children born outside marriage.
4. The pressure of couples in same-sex.

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<sup>4</sup> Michel Tetrault, „Droit de la famille”, 2<sup>e</sup> edition, *Edition Yvon Blais*, Quebec, 2003, pag. 9;

<sup>5</sup> E. Cernea, E. Molcuț, „The History of the romanian state and law”, the Publishing House and Press "Chance" - SRL, Bucharest, 1994, p. 114-117;

5. The implications of medically assisted procreation techniques.
6. An increase in single parent families.

## ***Section 2 Characters and functions of family***

### **2. 1. Family characters**

Consultation and understanding the texts of the Basic Law of our State Constitution of 1991, referring to family, gives us the opportunity to list what individualizes family are characters in our state, under the current rules others. We believe that these characters can be listed as follows:

- Marriage is an act of free consent between spouses;
- Spouses are equal in all rights of marriage;
- Both spouses have equal rights and duties as parents to ensure the upbringing, education and training of their children;
- Children, whether originating of marriage or outside it have an equal legal position to their parents;
- The State provides special protection to the rights of children and youth achievement.

### **2. 2. Family functions**

The family viewed broadly ensure the development of society as one characterized by three features, namely the function of perpetuating the human race, economic position and educational function. All these functions of the family depends largely on how the political forces leading company involved in family strengthening of economic and spiritual means.

As to teaching, specify that family functions are:

- Reproduction of the population, perpetuating the human species;
- economic function;
- educational function.

Reproduction is an important function of the family, as it allows the company to ensure continuity. The decision to have a baby or keep a child is more responsible and easy to take when the woman is married. State interference in consolidating this function and in maintaining control in developing family and thus society makes itself felt through the material and moral incentives to females (maternity allowance, maternity leave, childcare S.A ). Also consider that the state's role should be limited to stimulating the moral and democratic ways of this function, not by the "dictatorial", prohibitive, brutal, restriction of individual freedom of the personality and its own decision.

We believe that no problem so far this feature is not clarified in terms of measures by which we can discuss if we face a force of State requiring individual conduct which restricts the constitutional right to freedom of conscience (Article . 29 Constitution of Romania) and an intimate, family and private life (Article 26 Constitution of Romania), as compared with moral and religious rules are definitely limit individual freedom in these matters will be firmly against abortion Ruling.

It can cause problems on this basis when it comes to reproduction "in vitro" to the "surrogate mother" as long as we do not have a national or international legislation in this area. Regulations would be beneficial to have legislation to keep step with the existing reality.

Also, an important function of family is to ensure the education of children. According to French author Claire Marchand, cell family is a primary and enduring way of life in society, a means to transmit social values and collective behavior, a connection point

between the individual and the community. The family is the development environment, intervention and education for children and their parents, and beyond.

The third function of the family, in close correlation with the other two, is the economic function. Economic role of family is accepted by all doctrines. Even in some definitions of the family find the idea of being a vital economic unit. In remote times, the family's economic position made to coagulate the core office. The family represents a group of people who lived under the same roof and using the same resources, which means that it was an economic unit. This reality exists today, with community property of spouses, of their obligation to live together, maintenance between family members, etc.