The Traditionalism of the Modern Family – Social and Legal Direction and Contradiction

Iulian Apostu a*

* University of Bucharest, Faculty of Sociology and Social Work, Str. Schitu Magureanu 9, sector 5, Bucharest, 33 010183 Romania

Abstract

The current conjugal mentality in Romania reflects a kind of atypical modernity – a modernity of declarations regarding the status, marital roles and functions of the family, but, at the same time, there is a kind of traditionalism regarding concrete facts. According to the latest social studies, about 40% of Romanians declare themselves to be traditional, in some way or another. Although the majority of couples talk in egalitarian terms about sharing conjugal roles and gender equality (in phrases that are most often stereotypical), the actual situations reveal a distribution of roles based on gender as well as social inequality.

Another dimension that shows the same contradiction in terms of values is represented by the problem of conjugal independence expressed through the need for an alternative emotional association to the institution of marriage (i.e. consensual union) and through the need for more relaxed divorce legislation to make separation easier. Thus, divorce by agreement was introduced in Romania in 1993, Art. 305 of the Penal Code (on penal sanctions for proven infidelity) was revoked in 2006, and divorce before a notary public or a civil status registrar was legalized and introduced in 2010. As a consequence, we would have expected an increase in the divorce rate in Romania. However, the rate of marital dissolution remained low (between 1.5‰ – 1.7‰), Romania being among the countries with the lowest divorce rates in Europe.

On the same note, statistical data shows that 5.7% of people are in favour of cohabitation; the social legitimacy of this phenomenon seems even stronger, although proposed drafts for a national law legalising cohabitation stirred strong reactions which paradoxically contest precisely this previously affirmed legitimacy.

The study aims to explain these cultural and legal problems in terms of common direction and contradiction. From the methodological point of view, the study relies on analysis of official documents from divorce files, secondary analysis of national social studies, comparative analysis of the proposed national draft legislation for the legalization of cohabitation and equivalent international legislation.

Keywords: traditionalism, modernity, contradiction in terms of values, cohabitation, cultural contradiction;

* Corresponding author. Tel.: +40-074-449-4681
E-mail address: apostuiulian@yahoo.com
Introduction

Although most of today’s social studies debate the issue of conjugal modernity in terms of landmarks and functional justifications, the claim of modern identity is present in stereotyped phrases rather than in the actual actions of family life.

There is a gradual trend towards modernity and differential fluctuations have been stimulated by the sensitivities of individuals as well as by community groups. Today, the status and role ‘update’ has become a significant male challenge because adaptation to modern structures only produces gradual settlement of a set of essentially male values to achieve fairness in functional and marital roles. The male superiority argument is difficult to justify in terms of contemporary reasoning, and there is therefore a tendency towards social argumentation based on social stereotypes as a strategy; with their perceived social legitimacy, deriving from the fact that they are widely known and very little challenged, social stereotypes are often used for justification: "Who must cook in the family? A: Women!; Who is the best cook? A: The man!" Thus, adaptation to the marital role parity is atypical – men assume status values, but not the related roles. (Iulian Apostu, 2012)

In reply, although women seem to react with a counter demand for the promotion of values of marital equality, feminine attitudes face the same fluctuations, but the ‘atypical modernity’ optics are reversed. If men feed their status image with traditional patterns that they claim through stereotype legitimacy, women talk about equality and conjugal modernity, yet reality presents them as still traditional in the manifestation of their role. Consequently, the difference between role perception and the actual role played by them shows a cultural overlap of traditionalism, modernity and, to a lesser extent, some modern functional behaviour. However, new statuses are originating within these cultural sensitivity markers, aligning trends and conjugal roles towards increasingly egalitarian landmarks. Moreover, if new social guidelines are aimed at egalitarian gender attitudes, balanced roles, equality and so on, the legislation of the last half century has further stimulated traditionalism (e.g. Decree 770, which promoted reproduction, not eroticism, i.e. the extended family, the classic type of familial organization, obedience, etc.) and has been one of the main reasons why modern Romanian family attitudes have evolved with difficulty and sometimes atypically.

Socio-legal sense and counter sense

The post-revolution image of freedom redefined marital attitudes: abortion was no longer banned and divorce terms were simplified to ‘reasonable grounds’. This is when the gap between social attitudes and legislation became obvious. New legislation on family life influenced by the international legal system has been in stark contrast with the background social needs of the Romanian family.

In 1993, Law 59/1993 provided families with the possibility of divorce by agreement, the provision being a reaction against the previous legal system under which access to divorce was difficult. However, the new legislation was not designed to limit a certain class of social needs but rather to bring a new international legislative influence to bear. Specifically, the simplification of divorce proceedings in 1993 should have led to an increase in the divorce rate, since it effectively extended a law with a high degree of permissiveness for marriage dissolution. But if the divorce rate in Romania was 1.37‰ in 1993, the following years saw the divorce rate stable at around 1.5‰, keeping Romania among the top 5 European countries for low divorce rates.

In a similar situation, in 2004, France established a new possibility for divorce by mutual consent, in which the dissolution time was reduced to within 3 months of filing for divorce. Accordingly, in the first year after legalization, the number of divorces increased by about 13% (Prioux France & Magali Mazuy, 2009, p. 463)

And although the legal trend seems to have been oriented towards modernity, which is in contrast to traditional marital attitudes, the old legislation has not fully disappeared.

Until 2006, the proven infidelity of one spouse was punishable by law (Art. 305 of the Penal Code) This provision was built upon a series of legal practices promoted by lawyers to protect their clients strategically. Although it was difficult to prove the accusation of infidelity, it weighed heavily in the set of divorce arguments and therefore, balancing charges became a strategy. In such a case, the accusation of infidelity was countered, by
the adverse lawyer, with accusations of jealousy, and the claim that the alleged guilt of their client was merely a perception of infidelity projected by the other party's jealousy, regardless of the reality of the situation. The repealing in 2006 of Article 304 of the Penal Code placed Romania among the last European countries to have dropped the criminal status of the unfaithful party.

According to a study conducted in 2009, strategic accusations of jealousy to counter the claim of infidelity decreased by 36.97% from 2005 to 2007. Thus, 2006 once again marked the common points of a traditional legal form and a modern strategy for divorce management. (Iulian Apostu, 2012)

Concerning simplification of the divorce procedure in Romania, although the Law 59/2003 hadn’t proved useful, the provisions of Article 202/2010 offered the possibility of divorce at a notary or registrar, although the divorce rate was stable at a low level. According to the National Institute of Statistics, the divorce rate was 1.66‰ in 2008 and decreased to 1.51‰ in 2009 and 2010. Thus, classic guidelines on marital stability did not offer the necessary framework for other legislative strategies regarding divorce.

In another cultural contradiction concerning marital attitudes, a new aspect of life as a couple seems to be taking shape. Thus, since 2000, social debates about consensual union have seemed to impose new postmodern standards upon coexistence and conjugal harmony. In 2002, Romania organized the first Census to include questions about consensual union, the conclusion of which was that 3.9% of couples (338,136) lived in consensual union. This resulted in a first attempt to legalize consensual union for heterosexual couples in Romania.

Six years later, national studies conducted by SOROS showed a 5.7% consensual cohabitation rate (Raluca Popescu, 2008), which is why in 2010 the government tried to introduce a second form of legalization for consensual union, this time without reference to the partners’ sexual orientation.

On the other hand, analysis of social attitudes in the two periods in which the law drafts were proposed shows an obvious level of traditionalism in Romania, i.e. a social setting not conducive to legal alternatives to marriage. To draw an international comparison, for example, cohabitation outside marriage was prohibited by law until 1972 in Norway, and the transition from illegality to legality demonstrates obvious changes in conceptual and social perceptions (Anne Skevik, 2004).

The image of consensual union oscillates in Romanians’ mentalities between premarital status, trial marriage, legal or non-legal alternative to marriage and so on, which makes statistical data very relative.

According to a national survey conducted in 2000, 63% of respondents believed that women should take responsibility for household tasks, 70% that it was the man’s responsibility to earn money for the household, 78% said that women should obey men, and 83% considered the man to be the head of the family (Miroiu Mihaela, Stănculescu Manuela, Berevoiescu Ionica, Weber Renate, 2000). In the spirit of the same ideas, studies in 2008 still revealed a high degree of traditionalism in Romanian marital attitudes. Thus, 41.7% of respondents considered the man to be the head of the family and most women still take responsibility for domestic duties (Raluca Popescu, 2008).

This conservatism may derive from division in many social structures. A pietistic attitude dominated in many regions of the country, while liberal attitudes prevailed elsewhere. (Natalie Rogoff Ramsøy, 1994)

The visible technical problem in these social studies is that, since the value contradiction may be due to the fact that social attitudes do not distinguish between consensual union as a legitimate alternative to marriage and its image as a premarital status, the existing statistics only have some relative value. Moreover, my research conducted in 2012 revealed that 25.6% of respondents identified the legal status of consensual union as an alternative to marriage. However, since terms such as ‘consensual cohabitation’ or ‘premarital status’ are seldom used in the common language, the concepts of ‘cohabitation’ and ‘consensual union’ were being used with a double value – premarital status or legal alternative to marriage.
Conclusions

The challenge of modern versus traditional places the Romanian couple in an unmanageable cultural situation. According to existing national studies, by ‘modernity’ women understand not a detachment from traditional roles but rather an overlay of new roles: traditional roles plus specific modern roles; an overflow of roles which still allows men to preserve a minimum level of traditional comfort. And if, in the latter part of the last century when one spoke stereotypically about modernity, certain legislative landmarks gently promoted traditionalism, relative marital traditionalism is still thriving at the beginning of the twenty-first century, despite the fact that modern legal guidelines tend to compete with it.

The low divorce rate in Romania indicates long-term stability, where traditional marital values still resist legal dissolution. Looking at the issue from the other perspective, the mentalities of marital failure reconstructed by lawyers in strategies oriented individualistically are in even more contrast with the general mentalities of the Romanian family. Today, most legal resources are built to modern and postmodern landmarks, not as an extension of social needs but through anticipation. Therefore, society is required to adapt accordingly against this background, and legal and social stereotypes concerning new forms of marital expression are gradually gaining some ground and legitimacy.

References: