

# CONSENSUAL UNION IN ROMANIA LEGALIZATION, VALUE, CONFLICT AND CONSEQUENCES

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(Received 8 May 2012)

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## **Abstract**

The overall objective of the study aims at analyzing the degree of consistency/inconsistency between the Romanian mentalities about life partnership and the international ones. Scientific data obtained from research show that Romanians confuse premarital status with consensual union (which is an alternative to marriage and not a mere cohabitation), and that is why the claim for legalization as being a national reality supported by values of up to 5.7 % is based on a statistical error.

*Keywords:* marriage, consensual union, premarital status, modernism, postmodernism

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## **1. Introduction**

The constant changes faced by society in all its forms, whether as an expression of increasing remoteness of traditionalism, increasing social tolerance, or due to the impact of modernity, which requires a continuous adaptation to new or Western influences, also express a relative social stability, felt as a lower or higher voltage in each institutional category.

In terms of conjugal space, the evolution of relations from traditional to modern, from modernism to post modernism is gradual and differentiated at individual or community level, depending on the adaptation and resistance to the new. The evolution of family patterns from one form to another, from classical to alternative marriage, where the personal rule prevails over the generally accepted or socially 'accredited' rule, necessarily requires a careful analysis of the basic elements that define these conjugal types.

The evolution of family patterns surprises the functional orientation from a changing pattern that structurally frames the individual in the community patterns towards those in which freedom, independence and social tolerance gives the partner the opportunity to develop relationships beyond the general will, which ultimately creates the proper frame to the variety of family forms and its alternatives.

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## **2. Experimental**

This study is based on the secondary data analysis of existing research in Romania on the couple's life. It also makes a statistical analysis of national data on life partnership and marriage, by using and analysing statistical benchmarks of population census of the year 2002 and national statistics provided by the National Institute of Statistics.

Moreover, the study analyses official documents, approaching the two proposals to legalize consensual union in Romania legally and sociologically.

The present study also makes research on the international legal system, such as Iceland, the Netherlands and especially the legal and social realities in France, whose legal provisions of the 'Pacte civil de solidarité' are also discussed. The national statistics made by the 'Institut National d'Études démographique' in France are analysed as well.

## **3. Results**

The contemporary couple tends to emphasize more and more these differentiated functions and the cancellation of some of them or overrating others often shows mentality in choosing marital cohabitation. Or, in this context, life partnership seemed an option that is expected to rebuild emotional identity and 'the lost freedom' of some marital structures framed in traditional institutional patterns.

The same evidence, the high rate of couples who were said to be in a consensual union in Romania may be the ultimate argument for the legalization of consensual unions. Thus, as declared by Romanian Nicolae Păun the first proposal of legalization, life partnership is intended "to provide an alternative heterosexual married couples with fewer constraints or obligations, but with some rights – that are not identical to those of the legitimate institution of marriage" [N. Păun, *Lege pentru recunoașterea concubinajului ca formă de conviețuire. Expunere de motive* (Law to recognize cohabitation as a form of cohabitation. Motivation), Romanian Parliament, 2002, 2].

National figures tend to support his initiative, showing that the percentage of those who declared being in a consensual union was 3.9% (338,136 couples), with a higher percentage in rural areas (4.6%) than in urban (3.2%) [National Institute of Statistics, *Census of population and dwellings, 2002*]. Recent research shows an increase in the phenomenon of consensual union to around 5.7% [SOROS, *Viața de cuplu* (Life couples), 2007].

And yet, in the same social Romanian space in which we identified modern and postmodern guidelines, analyzing the statistical evidence, we find that marital role attitudes are still showing signs of traditional expression, rather than values of postmodernism in a direct competition with marriage. According to the aforementioned study on gender attitudes in marital space, 33.7% of women consider men as leaders of the household, while the man claims this quality with a percentage of 49.7%, and the task analysis specific to the domestic

group, still show spousal role ranked attitudes. And if the mentality plan seems increasingly adapted to modernity, however, modernization of marital relations, as can be seen in social studies is performed in two stages: the mentality of thinking, first and later in behaviours. The adjustment of status values and roles related to gender equality should surprise an egalitarian mentality regarding role equity but actually played roles analysis in the domestic group still betrays some traditional patterns. The reluctance to new, primarily specific to the man due to the loss of certain status values, tends to slow down once more the role behaviour modernization. In the current social space, debating with current reasoning the status of male superiority is difficult; therefore, the social reasoning tendency based on social stereotypes becomes a strategy. With his alleged social 'legitimacy' generated by the fact that they are widely known and poorly questioned, social stereotypes are often used for justification: 'Who needs to cook in the family? A: Women!; Who is the best cook? A: Man'. Thus, adaptation to spousal role equality is atypical – men assume the status values, but not the related roles.

The evolution of the marital mentalities in Romania often occurs overrated, and the option of consensual union encounters first of all, a conceptual problem since young attitudes on cohabitation are understood even in countersense.

Recent research shows an increasing number of people living together in cohabitation, however, in concept the idea of cohabitation or consensual union has multiple values in the minds of many people. According to the survey 'Family Life', 2008, in the top of motivations for choosing consensual union we find 'financial difficulties', first with a share of 58.4%, then 'we are not ready/not time for' accounting for 30% and 22.5% 'we want to get to know each other better'. However, as it can be seen, the reasons identified with the highest rate in itself does not show an aversion or reluctance to legitimate marriage in itself, the given reasons do not place the consensual union as an alternative to marriage.

Another study made in high schools in 2011 shows the same type of social mentality on life concerning partnership. Young people's motivations with highest frequency were embodied in various forms, the idea of 'cohabitation before marriage' (47% of respondents).

Similarly, 'cohabitation before marriage' does not show an alternative union in the family, but a state of orientation in which the partners mutually assess each other, build a functional structure, a role structure (according to cultural features, adaptability, according to individual or common values, etc.) and grow from a relational, social and functional point of view until marriage. Life partnership or cohabitation is considered by the young a period of mutual understanding of partners, a 'trial marriage' that will turn later in marriage itself. Against this background, the conceptualization of cohabitation dilemma faces today a series of difficulties, either because of conflicting attitudes about the expression of conjugal life, either because of differences in perception of consensual union, and these value fluctuations make all the Romanian social

data on marital consensus to lose much of the precision degree, because it can no longer be accurately evaluated.

In Romania, the 2002 Census showed that 86.2% of couples are married and 13.8% are cohabiting. However, here we derive a technical problem on the national level, because the questionnaire in 2002 was not explaining conceptual differences between marriage and consensual union (alternative to marriage or premarital status). For this reason, questions about consensual union makes no perception warranties of alternative forms of living together with the alternative of the institution of marriage from which can be later derived the need of legalizing the cohabitation.

Recent research shows that 69% of respondents considered that “it is good that a couple intending to get married should to live together before” [SOROS, Family Life, 2008], which shows, in fact, the need of a premarital state (many times confused with consensual union), during which the partners know, interact, build solidarity elements etc.

Also, the study parallel conducted with the SOROS study on conflict reasons also highlights a negative social perception regarding the stability degree in consensual union. The main reasons for instability reasons occur with a higher frequency in the case of concubine relationships than in marriage: for concubines jealousy represent a problem for 45% among the subject interviewed, infidelity in proportion of 15%, whereas for married couples jealousy is a problem for 27% and infidelity for 5% among the interviewed subjects.

The difference between the two forms of living shows the fact that a greater functionality of married couples, but also with a higher degree of knowledge and trust makes the level of jealousy to be more reduced compared with consensual unions relationships. The rate of infidelity is three times higher than in the case of marriages expresses a freedom with sufficient resources of relational risk compared with the institution of marriage.

Need for independence, the fear that something might not work, the need for freedom, shows a lower level of confidence in partner and, by extension, in a consensual union. It is unnatural for a couple to live permanently at this level uncertainty so as to ensure the possibility of leaving the other partner. It is important to note that in all cases, the persons who provided this type of motivation confessed that they had many other previous disappointments. Related to current social thinking, such a relationship has little chances of success. Centred on sexual satisfaction of needs, on a greater amount of free time and less common time resource allocation, these models have a relatively fragile structure, a provisional state of cohesion and stability [1].

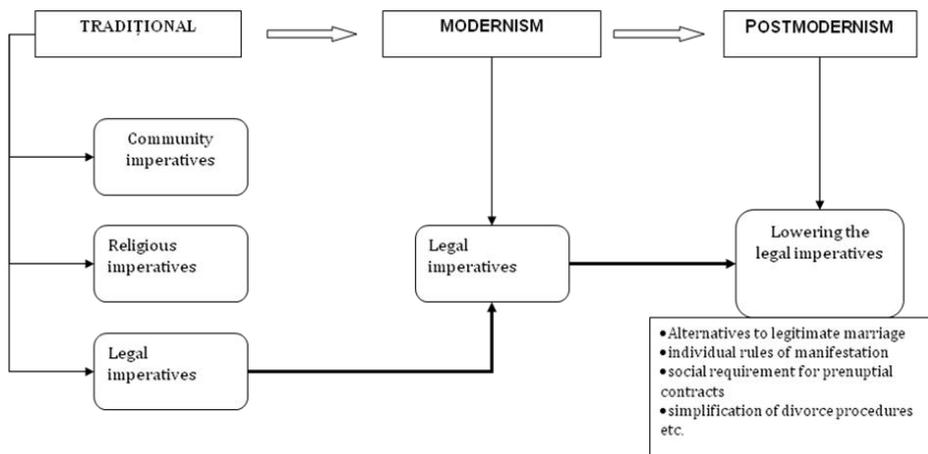
The analysis of the 2002 census shows this phenomenon of cohabitation with a substantial increase immediately after the high school education around the age of 20 (from 7040 to 51,407 persons) and a decrease in the frequency starting with the period of average age at marriage (from 74,407 persons to 67,586 persons in consensual unions).

The ‘late’ consensual unions, the relationships that are over the average age have a decrease from the statistic point of view with 43.39% in a period of just 5 years.

In the means that the statistics are presented we can debate over the consensual cohabitation, especially at a young age, as an attitude but not opposed marriage but rather a previous manifestation of reasons aforementioned. The marriage still represents the marital pattern with the highest rate of stability despite the alleged pressure that the legal imperatives might cause.

Changing the marital behaviour from the traditional marriage and up to the postmodernism marks was done gradually by reducing social imperatives specific to each type of community. Family identity, present in many collectivized cultures, emphasizes the importance of emotional factors and interdependence with others [2].

The tradition subordinated the individuals by three types of binding: secular customs and traditions, religious and legal prescriptions. Modernity reduced its binding to legal imperatives and postmodernism gradually invests in individual comfort by dropping the legal imperative (1993, art. 38, para. 2 – relaxation towards marital dissolution proceedings to divorce by agreement, law 202/2010 – the possibility to pronounce divorce outside trial courts, be it from the notary, or by the legal officer; recognizing the legal form of engagement starting with 2011 with the purpose to a better patrimonial protection and a wide range of new legal projects such as prenuptial contracts; two projects of making the consensual union legal in 2002 and 2011, etc.).



**Figure 1.** The decrease of social imperatives from traditionalism to postmodernism.

Thus, he individual always reconstructs the type of solidarity, starting with ‘mechanic solidarity’ where the individual was absorbed by the society and had no access to individual will, up to the type of ‘organic solidarity’ which is specific to modern times where individuals earn the right to express themselves according to their own will without being conditioned the rigid laws of the

community. And if the path from traditionalism towards modernism is made by solidarity reconstruction, then the new approaches towards cohabitation have the trajectory of solidarity principle relaxation, the individualistic attitudes prevailing the common interests.

Individualism highlights the crisis of the social bond crisis which may arise from the refusal to submit law provided life and social control [3]. For Romania, the moment that marks the path to postmodernity is the gradual decrease of legal imperatives premises that opened discussions for legalizing consensual union in Romania (Figure 1).

Over a simple regard we notice that the cohabitation copies the classical family in its structure and functionality, though if evaluated in depth we notice certain individualistic features of structural and functional state. The general regard argues that each individual has the responsibility to support oneself individually; therefore the financial responsibility for the other partner is reduced. Each person can develop activities/ interests that are independent from the partner, therefore assuming a high level of independence and action in order to satisfy individual needs and to achieve a high level of comfort and satisfaction [4].

Arguments disputing over marriage does not involve problems of functionalistic structure or antithesis between values of the past and modern mentalities of cohabitation in couple but a wide range of stereotypes themselves in contradiction: 'it is not the piece of paper that's holding us together', 'why should the state impose the rules over myself?', 'if we won't get along, then it will be easier to break up' or 'why should I spend a lot of time in trial courts when we will break up?' etc. Moreover, in the first proposal of legalization it is stated the difference between marriage and cohabitation, stating that this new way of living in a couple is '*a conjugal alternative with fewer constraints and obligations*'.

The evolution of conjugal forms and of specific forms of socialization capture double movement: *a privatization* – meaning a greater focus to the quality of interpersonal relations and *a socialization* of this type of group due to the great intervention from the state. The marriage is no longer regarded attractive, as it is perceived as being an enclosure in predetermined roles. Consequently, cohabitation appears as a less ridged form, likely to be accepted based on individual requests. Particularly, while partners are less happy together they do not take into consideration that they need to remain together in the name of an exterior principle, on behalf of a certain institution or moral or societal principle [5].

The legal analysis of texts from the Family Code emphasizes the fact that the amount of obligations within marriage is concretized into four main duties: loyalty, equality, un-restriction from the common resources and mutual aid; therefore, these are claims that the marital partners require from each other regardless of the couple's legal status.

Paradoxically, the couple's reluctance to accede to marriage due to its restrictive nature and due to the fact that the state interferes too much by the laws it provides that define the legal functionality is contested by the very traditional mentality related to consensual union that requires the 'legal expert' more than the marriage in itself.

The greater amount of rules that define consensual union, as noticed in the legal proposal, but also in the international laws, require the state intervention in marital life even more than in the legitimate marriage (for the property guarantee, personal budgets, careful supervision of personalized stipulations established by the contract, custom shared property, in supervisions and guaranteeing the lack of patrimonial succession etc.)

Particularly, for the people that are near the average age when married the consensual cohabitation is supported from the perspective of the personal need as well, such as those of intimate nature, domestic service, professional support and economical reasons. Thus, the choice for cohabitation tries to harmonize the need of dependency and identification with that of autonomy by engaging affective involvement but, in the same time, denying the contractual aspects maintaining its stability as long as mutual satisfactions and authentic needs stay together [6]. These psychosocial attitudes help individuals to 'recondition' the values of solidarity towards other more favourable to consensual union and personal liberties.

As stated above, the level of modern Romanian family is relative. Distribution of marital role, women and men image and status still bear the veiled imprint of traditional patterns. Small evolutionary trends regarding the married couple developed within the family, of the married couple and still there can be noticed reluctance for a legal alternative to marriage.

From a demographic point of view Romania can be characterized by a weak form of stability, however, the stability of the Romanian married couple can be justified due to a lowest divorce rate in Europe. According to EUROSTAT, Romania ranks 4<sup>th</sup> with 1.5 ‰ divorce rate among European countries having the lowest divorce after Macedonia (0.8 ‰), Montenegro (0.8 ‰) and Croatia (1.1 ‰). Regarding birth rate from the National Institute of Statistics we can notice small oscillation stability located around 10 ‰ while experiencing a rate in decrease since 2008 up to the value of 5.4 ‰.

Amid a social mentality with traditional trends and amid a long-term marital stability, the cohabitation image does not seem an alternative but based majority Romanian population thinking it looks like a premarital state between people of different sexes.

International experiences on legalizing consensual union appear on the background of certain long-term demographic imbalances. Moreover, at least for countries that have legalized the model of alternative marriage, social and legal controversy have developed over a period of 20 years, while the constant debates have led to a greater degree of social acceptability so that, when facing legalization the social debate has not focused on fornication itself but rather on the possibility to legalize marital relationship of the same sex. The debate on

cohabitation legalization began in Denmark in 1968 and after 12 years a special commission was set up that after another nine years has led to the legalization of registered partnership [7].

In France there are debates and social tensions that had begun in 1979 and the Civil Solidarity Pact legalization (PACS) was only made in 1999. The social effects of consensual union legalization are also noteworthy: the first 7 years after legalization the number of marriages decreased by 13%, the divorce rate rose from 54% in 2010, the birth rate of PACS couples is 38% and the dissolution rate is 13%. One year after the cohabitation in France was legalized the statistics show that approximately two million children lived in single parent families. At that time, 43% of children were born out of wedlock and from all unmarried couples 10% were couples that had children [8].

Adoption is another consequence resulting from the legalization of consensual union as it is observed in the European experience of countries that have accepted this form of conjugal cohabitation. Except the Netherlands (amendment no. 360 of June 2, 1999) and Iceland (art. 6, paragraph 1 of Law 87 of June 12, 1996), the European countries that have legalized consensual union do not allow adoption and artificial fertilization for unmarried couples.

However, all these states have legal strategies to bypass the adoption ban for such couples as the demand for adoption by one person is accepted in all states. Therefore, states have been forced to define such legal situations in order to maintain a minimum social control in order to protect the child.

In France, Article 343-1 of the Civil Code recognizes the possibility for a single person aged over 28 years to start a full adoption process and Article 345-1 of the French Civil Code states that the adoption of partner's child is permitted [9].

The trends that seem increasingly imperative regarding guaranteed legal conditions of living of same-sex couples are stimulated by the European Parliament since 1994 as it recommends the abolition of the ban gay marriages or to benefit from equivalent legislation requirements [Resolution A3-0028/94 European Parliament on equal rights of gays and lesbians from the 8<sup>th</sup> of February, 1994, European Community, JO, no. C 61/40 of 28<sup>th</sup> of February, 1994].

In 2003, EOS Gallup Europe conducted a survey in 30 European countries based on social agreement or disagreement regarding the legalization of gay marriage and the possibility of adoption for these couples. Countries with the highest degree of acceptability were Denmark - 82%, Luxembourg 71%, Netherlands - 80%, Sweden 70% Belgium 56% and among the countries with the lowest acceptability ranged Cyprus with 6% Turkey with 16% and Romania 17%. Referring to the degree of disagreement the country with the highest share for non-sex marriage was Turkey, with 79%, and Lithuania 75%, and Romania 70%.

42% of Europeans agree with the adoption of children for same-sex couples, as overall statistics show. The countries with the highest degree of disagreement are Malta 86% and Romania with 85%.

Romania's reluctance to legalize homosexual cohabitation was highlighted recently in response to the last bill that was proposed by Senator Viorel Arition in 2011 who did not specify the sex difference in his text.

In the earlier proposal of the initiator Nicolae Păun we gather the summary form of the Romanian mentality dilemma related to that state of affairs of cohabitation before marriage versus the need to adapt to international legal landmarks. In Article 16 of its legislative proposal states that "If the period of cohabitation is longer than 10 years, according to this law, cohabitants family code provisions are applied in assimilation with the institution of marriage", thus, cohabitation is not even mentioned as an alternative to marriage not even as a temporary alternative.

In the last part of the proposal in the 'consensual union contract' is clear stated that "if one party does not have, from objective reasons perspectives, the necessary funds to support the contracted part of the joint expenses, then other party may engage to cover the expenses if agreed by the contract for the amounts paid by the other partner to cover all common expenses which could be reimbursed with medium interest on the financial market for the sale of any property acquired during the relationship concubine."

#### **4. Conclusions**

The trends in traditional marital role structure in the Romanian mentality of living and understanding within the conjugal solidarity and functional proofs regarding budget management and shared resources make this legal proposal hardly desirable.

In conclusion, the legalization of cohabitation as a legal phenomenon, alignment to the international legal standards in order to be accepted and assimilated to the international law and taking responsibility over the social and legal consequences arising from this legalization betrays a weakened national adaptability degree for such challenges. For the social mentality and the law itself, the conceptual counter clockwise that defines the consensual union shows that Romania is not prepared to accept the legalization of cohabitation as an alternative to legitimate marriage.

#### **Acknowledgement**

This work was supported by the strategic grant POSDRU/89/1.5/S/62259, Project 'Applied social, human and political sciences. Postdoctoral training and postdoctoral fellowships in social, human and political sciences' cofinanced by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007 - 2013

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