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History

Matrimonium (Marriage) in Roman Law. The Impact of the Provisions of "Jus Romanum" on International and National Matrimonial Law

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From the pages of our paper, the reader will first of all get acquainted with the norms and doctrine of Roman law regarding the institution of marriage, the impact of which can be noticed even today in international and national matrimonial law. As for the marriage legislation of some States in the South-Eastern European area – including Romania – we have set out to demonstrate that the impact of Roman law on their marriage legislation was made especially through "Jus romanum novum", i.e. the Byzantine law, whose Collections of mixed legislations (state and ecclesiastical), which circulated in the form of Code of Laws (Nomocanons), are in fact part of the patrimony of the European judicial culture. Furthermore, from the pages of our paper, the reader will be able to see that these Collections of legislations, of Byzantine origin, actually form the substratum of modern legislation, hence the need to return "ad fontes" (back to the sources), because the jurist of today can no longer limit himself/herself to the knowledge or the hermeneutic analysis of the laws in force if he/she really wants a holistic approach and presentation of the institution of marriage. *© 2020 Bull. Georg. Natl. Acad. Sci.*

Roman law, Collections of legislations, European matrimonial law, Byzantine law

According to the justified statement of some prestigious lawyers, nowadays the "jurist" must not limit himself/herself to "knowing the laws in force", but to appropriate a "solid judicial culture" [1], which will help him/her get acquainted both with the text of the norms of Roman law and with the legal thinking of the famous Roman jurisconsults from the 2nd-6th centuries AD (Celsus, Gaius, Ulpian, Papinian, Modestine, Tribonian, Theophilus etc.), who are indeed the creators of that "juris-prudentiae", i.e. of those pronouncements or utterances about Law and its nature [2], about the norms of "Jus vetus" [3] and their application to the realities of social life over the centuries, etc., and whose "universal character" [1] – unanimously recognized by the leading jurists of the European judicial culture – in fact, forms the "substratum of modern legislation" [1] in the field of Private law, including, therefore, matrimonial law.

That both the Universal Orthodox Church (Catholic or Ecumenical) and the legislators of the Christian nations have followed "ab initio" the norms of Roman Law [4] and have even adopted some norms and provisions of principle of this Law

is a reality which the canonical legislation [5, 6] (IV-IX centuries) and the nomocanonical legislation [7, 8] (VI-XIV centuries) peremptorily attest to, by means of which the legislation of some European States – promulgated over the centuries up to the present day [9] – can also claim the paternity of "Jus romanum", i.e. both the "old" (vetus) and the "new" (novum).

Indeed, the legislation of some States of the European Union – including that of the "Romanian State" (cf. Art. 1 of the Romanian Constitution) – proves this reality, i.e. the impact of Roman law on its text, hence the obligation of the exponents of Law schools to go back "ad fontes", i.e. to the sources of "Jus Romanum", namely both the "Old" (Vetus) and the "New" (Novum).

The latest, that is "Jus romanum novum" (The new Roman law), begins with the reign of Emperor Justinian (527-565), who published his famous "Codex" [10] in two editions (529 and 533).

Moreover, if we want to have a somewhat holistic perception of one of the oldest judicial institutions, i.e. Marriage, and, ipso facto, of the impediments that stand in the way of its conclusion "secundum legem" (according to the law), it is indeed imperative to know the sources (fontes) of Roman matrimonial Law.

Norms of the Old Roman Law on Marriage, and Their Impact on the New Roman Law

In the Imperial Constitution promulgated by Emperors Honorius and Theodosius, on November 3, 422, the notion of "matrimonium" is synonymous with that of "nuptiae", which, in the case of a remarriage, "after the death" of one of the spouses, meant that the surviving spouse could conclude "alias nuptias" (Codex Justinianus, lb. V, 9, 6) [11: (II) 1148-1149], i.e. another legitimate marriage (matrimonium).

However, we also identify such a provision in the texts of the Roman jurisconsults from the 2nd-3rd centuries AD, such as, for example, in the Institutions of Gaius (2nd century AD), where – among others – it was stated that "… it has become ... customary that, through Imperial Constitutions, some veterans be granted the right to conclude legitimate marriages (iustae nuptiae) with ... Latins or pilgrims with whom they were united immediately after liberation; and those who would be born of such marriages to become both Roman citizens and, at the same time, to fall under the power of the ascendants" (Institutiones, lb. I, 57) [12: 80-81], i.e. to enter under the "patria potestas" (paternal power), from which the children came out only "by a solemn act (actu solemni) or a natural event, such as the death of pater familias …" (Codex Justinianus, lb. VIII, 48, 3) [11: (III) 2202-2203].

For Romans, the "religious rituals" (in sacris) performed on behalf of a family were designated by the phrase "patria potestas", which confirms the fact that a legitimate marriage involved its administration through a sacred ritual, which had in fact a solemn religious character.

In other words, according to the norms of "Jus Romanum antiquum" (ancient Roman law), a union between a man and a woman acquired the character of a "iustae nuptiae" (legitimate marriage) only by its conclusion in the Temple, i.e. by a religious marriage.

Some of the provisions of principle of Roman matrimonial law are stated not only in the text of some norms of the canonical legislation of the ecumenical Church of the first millennium [13: 287-382, 14], or in the writings of some Holy Fathers of this Church [15], with a solid theological, philosophical and judicial background (Tertullian, St. Cyprian, Lactantius, St. Dionysius of Alexandria, St. Basil the Great, St. Dionysius Exiguus etc.), but also in the Roman-Byzantine and Byzantine legislation, from where they were taken over both in the texts of some Constitutions of European States, and in their Civil Codes, which also provided norms and regulations regarding the legal institution of Marriage.

In Romania, it is well known that the direct or indirect references both to the norms of Roman law and to its judicial doctrine on the institution of marriage are first of all mentioned and stated in the "Law of the Country" [16], whose origin goes to the Thracian-Geto-Dacian [17: 138-164] and Daco-Roman [18, 19] eras, and then in those sources of the "Jus scriptum" of Byzantine origin, i.e. in the Country's Code of Laws [20], which created that (nomocanonical) code of law in force until the time of Cuza Vodă (1862-1866) – when the first Civil Code was published, having as its source and model the Napoleonic Code, which was also in fact a tribute to that famous "Codex Juris Civilis" of Emperor Justinian, – but even until 1923, when the Constitution of the Kingdom of Romania was published.

As for the Country's Code of Laws, it can be said that, in their text, the institution of marriage occupied a special place. For example, in the "Pravila ritorului şi scolasticului Lucaci [Rhetoric teacher and scholastic Lucaci's Code of Laws]", written in 1581, also known as the "Nomocanon or Code of Laws of Putna", and which is one of the "oldest Romanian judicial manuscripts" [21: 5], explicit reference is made to "Relationships of kinds and marriage as a law and those who marry without a law..." [21: 173-183]. However, this text from the jurist Lucaci's Code of Laws also abundantly proves the fact that he did nothing but make an express reference to "ad fontes", i.e. to the sources of Roman law.

The same express reference to the institution of marriage is found with repeated obstinacy in the Code of Laws printed in Romanian in the seventeenth century [22], namely in the Code of Laws of Govora 1640, the Code of Laws of Iaşi 1646 and the Code of Laws of Targoviste 1652, whose rules would be in force after the Civil Code published in 1865, namely after the "Great Union" [23] of the three Romanian Principalities (Wallachia, Moldavia and Transylvania) in the year 1918, i.e. more specifically, at the promulgation of the Constitution of 1923.

It should also be mentioned that the institution of marriage received special attention from the legislators of the Phanariot era (1711/1716-1821), when the process of modernization of the Romanian law took place.

Among the collections of legislation that appeared in the Phanariot era – in the text of which the institution of marriage had a special place – we mention:

a) Pravilniceasca Condică [24] [Code of Laws Register], whose provisions were applied in Wallachia until 1818, when they were abrogated by the Caragea Code or the Caragea Legislation, which remained in force until 1865. The sources of this Collection of legislations, entitled "Pravilniceasca Condică" [Code of Laws Register] were the "The Basilics", i.e. the Collection of Roman-Byzantine Laws published in Constantinople in the years 910/911, and the "custom of the land" [25: 149], i.e. the "Law of the Land".

b) The Caragea Legislation (1818) [26], which also had the following sources: "The Basilics", the custom of the land and the Code of Laws Register of Ypsilantis [25: 149]. In fact, according to some documentary testimonies, until the publication of this Collection of legislations from 1818, and which was in force until 1865, "... in Wallachia three types of legislations were applied: the canons, the customs (unwritten and indistinguishable), the Imperial Code of Laws (jus greco-romanum) and Condica lui Ipsilani [Ypsilantis Register]" [25: 149].

c) Calimachi Code [27] or Civil and Political Register of the Principality of Moldavia. This Code, which was in force from September 1, 1817 to 1865, had three main sources: "the Byzantine law, the Napoleonic Code and the Austrian Code (published in 1811 and translated into Romanian in 1812)" [25: 149].

However, knowledgeable researchers of Roman law have also found that, "in the modern era", in Cuza-Voda's "Civil Code" "… Roman law has left its mark on the evolution of Romanian law, as the codification work has been – the respective Romanists attest to us, – under the influence of the Digests of Emperor Justinian, i.e. of the postclassical Roman law …" [1], and "in the contemporary era, the adoption of the New Civil Code was also made under the influence of the Roman law. However, this time the Romanian contemporary legislator, unlike the modern one, addressed directly the classical Roman law, so that the solutions of judicial regulation in the matter of private law faithfully follow the pattern of Roman private law…" [1].

Indeed, both the Civil Code of 1865 and the current one, published in 2011, abundantly confirm to us the fact that the Roman marriage law had a real impact on their text.

However, we find this impact of the Roman private law especially stated regarding marriage, which – for the Romans – was a "*iustas nuptias*" (lawful marriage) if the Roman citizens (cives Romani) marry in accordance with the provisions of the law (secundum praecepta legum coeunt), …" (*Justiniani Institutiones*, lb. I, X), as provided by the two Romanian Civil Codes.

The Doctrine of Roman Law, about Kinship, Impediments to Marriage, Adoption and "Repudium". Its Impact on International and National Law

That the institution of Marriage [28: 117-135] remained dependent on Roman Law both in terms of establishing the degrees of Kinship and of the impediments to its conclusion and its dissolution is abundantly confirmed by the jurisprudence created by the famous Roman jurisconsults.

About Kinship

Regarding kinship, a first testimony on the "birth of a science of Kinship in Rome", and, ipso facto, of its degrees, was left to us in the texts from "Glosses" (Commentaries) "of Sextus and Paul" [29], two famous Roman jurisconsults. The former, Sextus Pomponius, – who lived in the second century AD, and was characterized by an encyclopedic erudition – left to us numerous commentaries (glosses) on the text of the works of his predecessors. The latter, Julius Paulus Prudentissimus (second-third century AD), whom Herennius Modestinus considered to be one of the "last great jurists", and Emperors Theodosius II and Valentinian II mentioned in the year 426 on the list of the five jurists whose "opinions were acknowledged as constitutional authority" [30] is nominated in the Digests of Emperor Justinian.

The first manifestations of this "science in judicial and lexicographical literature" appear "à la fin de la République" [29: 69] (at the end of the Republic), i.e. before Christ, if we take into account the fact that, for the Romans, the republican form of government lasted between the years 510-27 BC.

Even during this time, the kinship between people was agnatic, as they were under the same paternal power, i.e. "pater familias" (head of the family), who was male, and whose kinship (agnatio) went up and down until "their first common male ancestor" [11 (III): 3053].

About the Impediments to Marriage

Regarding the impediments to marriage, the famous Roman jurisconsult Gaius stated that "… it is not allowed to marry any woman; …" [12: 81], because "between those persons who have, in relation to each other, the quality of ascendant or descendant, marriages cannot be concluded; as there is no conubium between them, such as between father and daughter, mother and son, grandfather and granddaughter. And if, still, there are sexual relations between such people, it is said that they made illegitimate and incestuous marriages. And these rules go so far that, even if the degrees of kinship, ascending or descending, began to be established by adoption, still these people

cannot unite with each other through marriage, and the rule remains the same even after the bonds of adoption have been; so that I – Gaius said – will not be able to marry the one who started to become, by adoption, my daughter or niece, even if I emancipated her" (Gaius, Institutiones, I, 58-59) [12: 81].

Regarding the collateral kinship as an impediment to Marriage [31, 32], and which is established between the consanguineous of the two spouses, Gaius wrote that "… also between those persons who are related by a degree of collateral kinship there is some similar restriction, in any case not so severe" [12: 81] (Gaius, Institutiones, I, 60), because Roman law did, indeed, allow "to marry your brother's daughter, …, but it did not allow to marry your sister's daughter" (Gaius, Institutiones, I, 62) [12: 81].

This prohibition was also reactivated in the "New Roman Law" (Jus Romanum novum), i.e. by the Christian Roman Law, according to which "Marriage to the daughter of the brother or sister is not allowed, nor that with the niece of the brother or sister, although (they) are (relatives) of the fourth degree, because in case it is not allowed to marry someone's daughter – stated the jurists of emperor Justinian – it is also not allowed to marry their niece" (Justiniani Institutiones, lb. I, X, 3) [3: 28].

The same jurisconsults of the last Roman emperor and, in the same time, the first Byzantine emperor, namely Justinian Basil [33], stated that "there is no impediment to marrying the daughter of the woman your father adopted, as there is no connection between you and her, neither according to natural law (neque naturale iure), (and) nor according to civil law (neque civili iure)" (Justiniani Institutiones, lb. I, X, 3) [3: 28].

The same "Jus romanum novum" forbade "marriage to the grandfather's sister or grandmother's sister," as those persons were "considered relatives among themselves", i.e. "parentum loco habentur" (Justiniani Institutiones, lb. I, X, 5) [3: 29].

The judicial connection between a spouse and the relatives of the other spouse, which created the Kinship of Affinity, was an impediment to marriage also for the Romans. However, in this regard, too, the "New Roman Law" also reiterated the interdiction of a marriage "to the stepdaughter or daughter-in-law, because both have the legal position of daughter (filiae loco sunt)" (Justiniani Institutiones, lb. I, X, 6) [3: 29]. It was also forbidden to "marry the mother-in-law (socrum) or the stepmother (novercam) ..., as they take the place of the mother (matris loco sunt)" (Justiniani Institutiones, lb. I, X, 7) [3: 29].

According to the Old Roman Law, marriage "with the aunt after the father and ... with the one after the mother" [12: 82] was also forbidden, or "... with someone who was once my mother-in-law or daughter-in-law, stepdaughter or stepmother …" (Gaius, Institutiones, I, 63) [12: 82], as such marriages were annulled because of the impediments provided by law.

On the same occasion, Gaius reaffirmed the old judicial principle of Roman law, according to which "… a woman cannot be married to two men, and a man cannot be married to two women" (Gaius, Institutiones, I, 63) [12: 82], hence the apodictic conclusion of the famous Roman jurisconsult that, "… if someone has concluded an unauthorized and especially incestuous marriage, it is considered that he has neither wife nor children; … " (Gaius, Institutiones, I, 64) [12: 82].

This judicial principle was also expressly reaffirmed by the jurists of Emperor Justinian (cf. Justiniani Institutiones, X, 7) [3: 29], who also stated that in a marriage concluded against the impediments provided by law, "there is neither husband (vir), nor wife (uxor), neither wedding (nuptiae) nor marriage (matrimonium) or dowry (dos)" (Justiniani Institutiones, lb. I, X, 12) [3: 30], and that "those who conclude a forbidden marriage (prohibitas nuptias) bear other sanctions, too (alias poenas patiuntur), which are contained in the Imperial Constitutions (quae sacris Consti-

tutionibus continentur)" (Justiniani Institutiones, lb. I, X, 12) [3: 31].

It was, of course, both the Constitutions of the Roman emperors and the new Imperial Constitutions, generically called "Novellae", which appeared from the time of Emperor Justinian, and, among which, we find express constitutional provisions on Marriage [34, 35] and its impediments.

About Adoption

As for "Adoption" (Adoptio/nis), it was done in two ways, namely "with the consent of the people" or through the "imperium" of a magistrate, for example the "praetor" (Gaius, Institutiones, I, 98) [12: 90].

Regarding the "Adoption" that took place in front of the people, Gaius stated that this "... is not practiced anywhere, except in Rome, instead, in the provinces, it takes place regularly, in front of their governors" (Gaius, Institutiones, I, 100) [12: 91].

The same Roman jurisconsult specified that the first mode of Adoption was also called adrogation (adrogatio / nis), because the one who adopts is adrogatus, i.e. asked if he wants the one he intends to adopt to be his legitimate son, and the adopted one is also questioned, if he agrees to become such a thing, after which the people are asked whether or not they approve of this happening" (Gaius, Institutiones, I, 99) [12: 90].

Those who were adopted by the "imperium" of a "magistrate", because they were under the "potestatis parentum" (parental power) [12: 90], acquired – in the "family" of the adopter – "the first degree (our note: of kinship) among the descendants, as son and daughter, or one below, as nephew or niece, great-grandson or great-granddaughter" (Gaius, Institutiones, I, 99) [12: 90].

It should be noted, however, that the Adoption of a son older than his future "pater familias" was not possible even in the time of Gaius, much less during the reign of Emperor Justinian, as stipulated in the famous collection "Digestae" (Digests) published on the initiative of this Roman Basileus in 533, and in the text of which we find exposed - in a systematic way – everything that was elaborated and expressed by the Roman judicial thinking both through principles and norms of law, and through definitions and statements about law and its nature [36, 37].

Among other things, in "Justiniani Digestae" (Digests of Emperor Justinian) a provision of principle which was once stated by the famous Roman jurisconsult, Modestinus, (second century) is reaffirmed, according to which the one who adopts must be older than the person he adopts by "adrogatio" or by "adoptio". In fact, according to Modestinus, the adopter had to be "at full puberty, that is, he must be eighteen years older than the adopted person" (Justiniani Digestae, lb. I, 7, 40, 1).

This provision of Roman law – which prohibited the adoption of a son/daughter older than his or her future "pater familias" – is still in force today in international and national adoption, including the Romanian one. However, this reality also peremptorily proves to us the fact that the Roman matrimonial law had a decisive and lasting impact, on the international and the national law.

For example, according to Article 460 of the New Romanian Civil Code, "the adopter must be at least 18 years older than the adoptee", but, "for good reasons, the guardianship court may approve the adoption even if the age difference between the adoptee and the adopter is under 18 years of age, but no less than 16 years of age" (Art. 460) [38: 681].

Furthermore, this provision of the Romanian Civil Code also amply confirms the impact that the private Roman law still has on the national law of some States, hence the obligation of any jurist, these days, to know both the legislation and the doctrine of the Roman law, because otherwise we ignore or hide not only the genesis of such judicial institutions (marriage, kinship, adoption, divorce, family etc.), but also their evolutionary, institutional process, including the one that is in force today internationally and nationally.

This reality is confirmed even by the definition that the New Romanian Civil Code gave to Adoption, which was indeed perceived and defined "grosso-modo" in terms of Roman jurisprudence (doctrine), namely: "Adoption is the legal operation through which the filiation link between the adopter and the adoptee is created, as well as kinship links between the adoptee and the relatives of the adopter" (Art. 451) [38: 631].

Finally, we also mention the fact that, for the Romans, "women" could not "... adopt by any means on the grounds that they do not even have potestas on their natural children" (Gaius, Institutiones, I, 104) [12: 91]. However, as it is known, this discriminatory regime was perpetuated until the modern era [39], when, finally, the woman acquired equal rights with the man, including the one to adopt.

Regarding the Kinship resulting from Adoption, the Roman jurists specified that, in accordance with the provisions of the law (secundum praecepta legum), i.e. the norms of "Civil and natural law" (Juris civilis et naturalis), "… you will not be able to marry your adopted daughter (filia) or niece (neptis), even after you have emancipated them" (Justiniani Institutiones, lb. I, X, 1) [3: 28].

The Contractual Nature of the Marriage and Its Annulment by "Repudium" (Divorce)

According to the Roman jurisconsults, a "iustum matrimonium (iuris civilis)", i.e. a "valid marriage" or a "marriage ... concluded according to the law" (Gaius, Institutiones, I, 80) [12: 86], was only the marriage resulting from such a "contractum" (Gaius, Institutiones, I, 75), hence the public procedure which, for the Romans, imposed the obligation to notify the other party - verbally or in writing – when he/she withdrew from the commitment made at the time of marriage, which, by definition, had an eminently contractual nature.

However, the jurisconsults of Emperor Justinian also confirmed that "... those who conclude a forbidden marriage (prohibitas nuptias) also bear other sanctions (alias poenas), contained in the imperial constitutions (sacris constitutionibus)" (Justiniani Institutiones, lb. I, 12) [3: 31].

The act – announcing the termination or annulment of the marriage – bore the title of "Repudium", meaning the dissolution of the marriage by the will of one of the parties. And, according to the norms of the Old Roman Law, only the husband could repudiate, and, consequently, the power of "manus" also ceased, and women married by "coemptio" ceased to be "in manus" "by a single mancipation, and once released ..., they become sui iuris" (Gaius, Institutiones, I, 137) [12: 104].

With regard to the forms of annulment or dissolution of marriage, it must be emphasized and noted that the norms of Roman law have undergone a profound evolutionary process, both in their content and in their legal consequences, due primarily to the assertion of the principle of the monogamy of the marriage, and then the provision of the equal right of the two contracting parties by the "Jus romanum novum", whose reader was the last Roman emperor and the first Byzantine emperor, alias Emperor Justinian.

As for the principle of monogamy, which set a real barrier against the Roman practice of repudiating women, it must be affirmed that it was – in principle – stated by some Roman jurisconsults, such as Modestinus, who stated "expressis verbis" that "marriage (matrimonium) or the wedding (nuptia) is the connection of the man (viris) with the woman (mulieris) which consists of a community of life, inseparable (individuam)" (Justiniani Institutiones, lb. I, IX, 1) [3: 26].

As regards the woman and her legal status with the Romans, it should also be mentioned that it was Emperor Justinian who found that, over time until "in nostris temporibus" (in our time), Roman law had deprived the woman of "libertate sua" (her freedom), hence the conclusion that "… it is utterly unworthy (impium) for some women (quasdam mulieres) to be deprived of their liberty, and that a

practice introduced by the ferocity of some enemies (ab hostium ferocitate), which is contrary to natural liberty (contra naturalem libertatem)" [11: (II) 1856-1857], i.e. to the natural Law of liberty, "to be in fact the result of the whim of good-for-nothing people (a libidine nequissimorum hominum)" [11: (II) 1856-1857].

In fact, Emperor Justinian was also the one who ordered the abrogation of a Decree of the Roman Senate from 52 AD, namely the Decree enacted by Senatus Consultum Claudius [12: 86], from 52, i.e. from the first years of the Principality, which allowed the master of slaves to enslave any free woman who persisted in having sexual relations with her slave, even though she had been asked three times to give them up (cf. Codex Justinianus, lb. VII, 24).

In one of his Edicts – of Constitutional value – Emperor Justinian stipulated that "… a woman who has been emancipated (has become free) (libera constituta est) cannot become a slave, contrary to law… Such a right to freedom must be applied to all women who, under such conditions, were declared slaves, because the spirit of the Religion of our time (religio temporum meorum) does not allow a woman who once became free to be returned to the slave status (in servitutem)" (*Codex Justinianus*, lb. VII, 24, 1) [11: (II) 1856-1857].

As a result, a woman emancipated from slavery became "libertina" (free), and thus enjoyed the same right to freedom as a woman who was "born" (ingenua) free (Codex Justinianus, lb. VIII, 58, 2) [11: (III) 2254-2255], hence the fact that she became "sui iuris", meaning she was no longer under the power of her husband's "manus".

Undoubtedly, as even the Emperor Justinian remarhed, a decisive role for the emancipation of the womens had indeed “the spirit of the Religion”, that is of the Christian Religion, established by our Lord Jesus Christ, in the name to “Whom” the emperor “Flavius Justinianus” published his Collections of laws for the “cupidae legum iuventuti” [3: 7] (for the young people eager to study the laws), among which the laws of marriage had a primary place.

Instead of a Conclusion

The brief examination of the text of Roman law showed that, with regard to marriage, the norms of Roman law had and still have a real impact on civil legislation (international and national). Hence the obligation of jurists – regardless of ethnicity, faith or disbelief – to know the sources of Roman private law, without which a jurist cannot know the genesis and evolutionary process of one of the oldest judicial institutions of mankind, i.e. marriage, or the laws in force of international and European matrimonial law, as evidenced by the references to the Byzantine law, whose Collections of laws remain also in this regard an indisputable testimony of the impact they had and they still have on the law of some States in South-Eastern Europe, including Romania.

ისტორია

,,მატრიმონიუმი“ (ქორწინება) რომის სამართალში. ,,რომის სამართლის“ (,,Jus Romanum”) დებულებების გავლენა საერთაშორისო და ეროვნულ საქორწინო-საოჯახო სამართალზე

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ოვიდიუსის უნივერსიტეტი, კონსტანცა, რუმინეთი

(წარმოდგენილია აკადემიის წევრის რ. მეტრეველის მიერ)

წინამდებარე ნაშრომში მკითხველი, პირველ რიგში, გაეცნობა ქორწინების ინსტიტუტთან დაკავშირებულ რომის სამართლის ნორმებსა და დოქტრინას, რომელთა გავლენა დღესაც შეინიშნება საერთაშორისო და ეროვნულ საქორწინო სამართალში. რაც შეეხება ზოგიერთი სახელმწიფოს საქორწინო-საოჯახო კანონმდებლობას სამხრეთ-აღმოსავლეთ ევროპის რეგიონში (რუმინეთის ჩათვლით), უნდა აღინიშნოს, რომ რომის სამართალმა მათ საქორწინო კანონმდებლობაზე გავლენა მოახდინა განსაკუთრებით ,,Jus romanium novum”, ანუ ბიზანტიური სამართლის საშუალებით; მისი შერეულ კანონთა კრებული (სახელმწიფო და სასულიერო), რომელიც გავრცელებული იყო კანონთა კოდექსის (ნომოკანონების) სახით, მართლაც წარმოადგენს ევროპული სამართლებრივი კულტურის მემკვიდრეობის ნაწილს. გარდა ამისა, ჩვენი სტატიის საშუალებით, მკითხველს შეუძლია გაიგოს, რომ ბიზანტიურ კანონთა ეს კრებული ფაქტიურად თანამედროვე კანონმდებლობის საფუძველს წარმოადგენს, შესაბამისი (,,ad fontes”) წყაროების გამოყენებით, რადგან ახლანდელი იურისტი ვერ შემოიფარგლება მოქმედი კანონების ცოდნითა თუ ჰერმენევტიკული ანალიზით, იმ შემთხვევაში, თუ მას რეალურად სურს ქორწინების ინსტიტუტის კომპლექსური ანალიზი და აღწერა.

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