

Cogita

MULTIDISCIPLINARY RESEARCH JOURNAL

Vol. XII, no. 2/June, 2020

Bucharest, 2020
ISSN 2068-6706

**Cogito Journal is published under the aegis of
“Dimitrie Cantemir” Christian University**

Address: 176 Splaiul Unirii, Bucharest
Phone: 021.330.79.00, 021.330.79.11,
021.330.79.14
Fax: 021.330.87.74
E-mail: cogito.ucdc@yahoo.com

*Cogito Journal is included in IDB ,
SCOPUS, EBSCO, PROQUEST,
CEEOL, INDEX COPERNICUS,
HEINONLINE, DOAJ, ULRICH'S
PERIODICALS DIRECTORY, CNCS
recognized*

CONTENTS

IN MEMORIAM ACAD. ALEXANDRU BOBOC

PHILOSOPHY AND HISTORY

HORIA STAMATU – PERSONALITY AND CREATION 7
Ion Dur

**INSTITUTIONAL ECO-PRAGMATICS VS. ANTHROPO-
PRAGMATICS: PROBLEMS, CHALLENGES, RESEARCH
PERSPECTIVES 24**
Nataliia Kravchenko,
Tetiana Pasternak

**SYSTEM AND SYSTEMATIC STINKERS AND THE QUESTION OF
THE TWO DOGMAS OF EMPIRICISM BY QUINE 40**
Kemi A. Emina,
Nelson Udoka Ukwamedua

**GAVRIIL BĂNULESCU–BODONI AND THE ORGANIZATION OF
MONACHAL LIFE IN BESSARABIA DURING THE RUSSIAN –
TURKISH WAR (1806 – 1812)..... 55**
Marin Şalari

SOCIOLOGY AND POLITICAL SCIENCES

**ON THE DEVELOPMENT OF CHINA’S DRAMA PERFORMANCE
FROM THE PERSPECTIVE OF THE “NATIONAL” DRAMA
INDUSTRY. TAKING BEIJING PEOPLE’S ART THEATRE AND
MAHUA FUNAGE AS EXAMPLES 64**
Dong Jian

MARRIAGE: RELIGIOUS AND LEGAL ASPECTS77
Berveno Serhiy Mykolayovych,
Lazur Yaroslav Volodymyrovych,
Mendzhul Marija Vasylivna

EGYPT’S SHIFTING FOREIGN POLICY PRIORITIES (2013-2018) 86
Dana Gabriela Pleşa

MARRIAGE: RELIGIOUS AND LEGAL ASPECTS

Berveno Serhiy Mykolayovych*,

sbn.sbn@yahoo.com

Lazur Yaroslav Volodymyrovych**,

lazurs80@gmail.com

Mendzhul Marija Vasylivna***

marija_mendzhul@ukr.net

Abstract: *The article analyzes marriage and its nature on the basis of a multidisciplinary approach, taking into account religious and legal aspects. The study conducted its own survey in different cities and villages of Ukraine, which covered 2083 respondents. As a result of an all-Ukrainian poll, it was found that 1/3 of those involved in the survey support the state's recognition of church marriage, i.e. giving it the same legal status as secular marriage.*

The legislation of the EU member states on the regulation and recognition of church marriages was analyzed. It was established that in a number of European countries (in the Great Britain, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Sweden, Czech Republic, Finland and others) the legal effect of the church marriage is the same as ordinary secular marriage.

Authors have concluded that it seemed unfair from the standpoint of the principle of equality in Ukraine and some other European countries not to recognize the church marriage.

Keywords: *marriage, religious rite, spouse, state, European Union, Ukraine.*

Introduction

The COVID-19 pandemic has become a trigger to highlight many of the problems of today's globalized society and the need to ensure personal safety. At the same time, Ukrainian society has once again pointed its

* **Doctor of Law, Associate Professor, Honored Lawyer of Ukraine, Professor of the Department of Civil Law, V.N. Karazin Kharkiv National University, Kharkiv.**

** **Doctor of Law, Professor, Dean of the Faculty of Law, Uzhhorod National University, Uzhhorod.**

*** **Candidate of Law, Associate Professor, Associate Professor of Civil Law and Procedure, Uzhhorod National University, Uzhhorod.**

attention to the importance of traditional values, including family, marriage, human freedom and even personal communication. If a year ago, for the most people, work and career were a priority in life, now health and family are valuable again. In European countries, the main reason for starting a family has historically been marriage, which has undoubtedly undergone significant transformations in most EU Member States, including the legalization of same-sex partnerships and marriages. The first country to allow same-sex partnerships was Denmark (in 1989), and later on either same-sex marriages or partnerships are allowed in most EU Member States. In Ukraine, as well as in such European countries as Bulgaria, Latvia, Lithuania, Poland, Romania, Slovakia, the state does not recognize both same-sex marriages and same-sex partnerships. At the same time, the question arises, if states have legalized same-sex unions, then why all European states still do not recognize the religious marriages? In this study, we will consider a marriage from a religious and legal perspective, as well as try to answer the question.

The concept, religious and legal nature of marriage

Until the 1920s, only church marriages took place on the European continent. Scholars note that the state recognized marriages entered into according to the church rules in the presence of two witnesses, and in exceptional cases - outside the church. The main proof of the marriage was a record in the metrimonial book¹.

The question arises as to the understanding of the concept of "marriage" from a religious point of view. The Orthodox religion under marriage considers the sacrament of love, the eternal union of man and woman with each other in Christ². Eleanora Marakhovska cites the following notion of marriage according to the official teachings of Catholicism, as well as the provisions of the Code of Canon Law: "this covenant, if it is concluded between the baptized, has been exalted by the Lord Christ to the degree of the sacrament". The scientist also notes that marriage is recognized exclusively as a union between a man and a woman, which has a natural (divine) origin and that love between a man and a woman is a fundamental and innate vocation of every man, and such love is an image of God's absolute love for man, it is destined to give birth to offspring and thus be embodied in the common cause of preservation of

¹ Slyusar, Lyudmila, "The evolution of marriage in Ukraine: XVII - early XX century", *Demography and social economy*, (in Ukrainian), 2, 2011, p. 64–65.

² Tsebenko, Solomiya, "Modern Orthodox ideas about the human right to marriage and the family in the light of international standards", Lviv Polytechnic Publishing House, Lviv (Ukraine), (in Ukrainian), 2014, p. 149-150.

creation"³. Oksana Mullokandova believes that the classical canonical concept of "marriage" means "the fullest (physical, moral, economic, legal, religious) communication between husband and wife"⁴. Thus, Christian marriage is a sacrament, and from the standpoint that it was created by God, it is considered inviolable.

In the scientific legal literature on views on the legal nature of marriage, along with the traditional position that marriage is a "sacrament", the concepts of the contractual nature of marriage and the "marriage-partnership" are well-founded. M. Antokolska substantiates that the very concept of "marriage-sacrament" led to the proclamation of the indissolubility of marriages and, accordingly, the prohibition of divorce. Liberalization of family law took place only in the late XIX and early XX centuries⁵. We can agree with the position of Svitlana Shimon that in Ukraine family law regulates marital relations on the basis of the concept of "marriage status"⁶. The only thing, in our opinion, the elements of the contractual concept are also present.

The analysis of official statistics shows that in Ukraine there is a tendency to reduce the number of marriages. If we compare the number of marriages per 1,000 population, as of 2011 Ukraine was the leader in Europe with a rate of 7.8. The highest rate among European countries was in Cyprus (7.3), Lithuania (6.3), and the lowest in Bulgaria (2.9). However, as of 2017, our state already had a rate of 6.5, in 2018 - 6.0. In 2017, the indicators in Lithuania - 7.5, Romania - 7.3, Cyprus and Latvia - 6.8⁷.

At the same time, the number of religious marriages is declining both in Ukraine and in the EU member states, which is due to the transformation of values, the prevalence of actual marital relations without giving them formalization. As for Ukraine, the reduction in the number of religious marriages was also influenced by Soviet policy, which eradicated the church from all spheres of human activity and publicly condemned a

³ Marakhovskaya, Eleanora, "Modern interpretations of the Catholic Church's teaching on marriage and the family". *Visnyk KHNU im. V.N. Karazina. Series "Theory of Culture and Philosophy of Science"*, (in Ukrainian), 58, 2018, p. 55.

⁴ Mullokandova, Oksana, "Interreligious and interfaith family-marriage relations in Abrahamic religions (religious-legal aspects): dissertation for the degree of Candidate of Philosophical Sciences". Zhytomyr (Ukraine), (in Ukrainian), 2016, p. 46-47.

⁵ Masha V. Antokolskaia, "The Process of Modernisation of Family Law in Eastern and Western Europe: Difference in Timing, Resemblance in Substance", *Electronic Journal of Comparative Law*, Vol. 4.2, 2000. <https://www.ejcl.org/42/art42-1.doc>

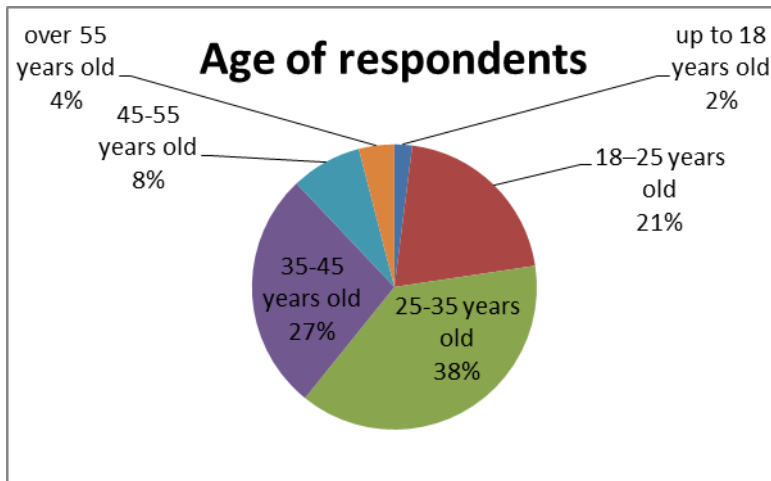
⁶ Shimon, Svitlana. "Legal nature of marriage according to the Family Code of Ukraine". *Scientific journal of the National Pedagogical University named after M.P. Drahomanov. Series 18: Economics and Law*, (in Ukrainian), 28, 2015, p. 157.

⁷ Marriage indicators. EUROSTAT.

https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_nind&lang=en

person for participating in religious ceremonies. At the same time, our research showed that the long-term efforts of the Soviet authorities did not yield the desired results and the religious marriages are still important for Ukrainian society.

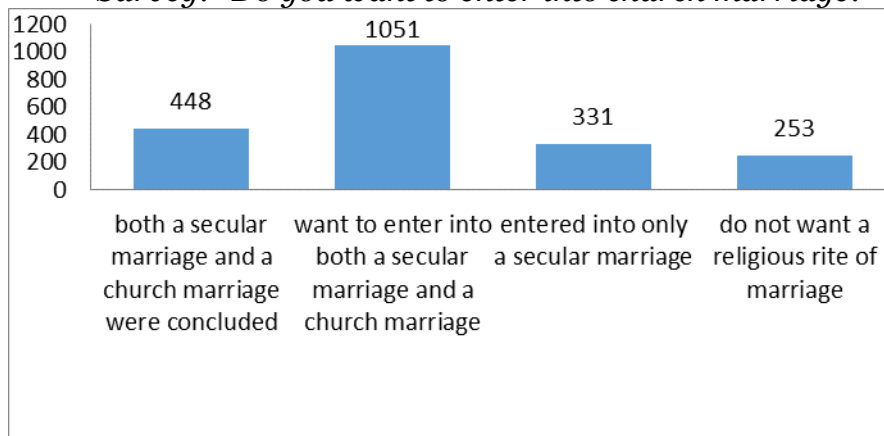
We conducted an all-Ukrainian survey and interviewed 2,083 respondents using the Google form⁸ from different cities (including such cities as Kyiv, Kharkiv, Lviv, Uzhhorod, Odessa, Rivne, Chernivtsi, Lutsk, Ternopil, Dnipro and others) and villages of Ukraine. The number of respondents living in cities was 78%, in villages - 22%.



By age, the surveyed respondents were distributed as follows: up to 18 years old - 2%; 18-25 years old - 21%; 25-35 years old - 38%; 35-45 years old - 27%; 45-55 years old - 8%; over 55 years old - 4%. Thus, the opinions of all-age groups were taken into account, and the largest % of respondents (up to 45 y.o.) are in the age when most marriages are registered according to Ukrainian official statistics.

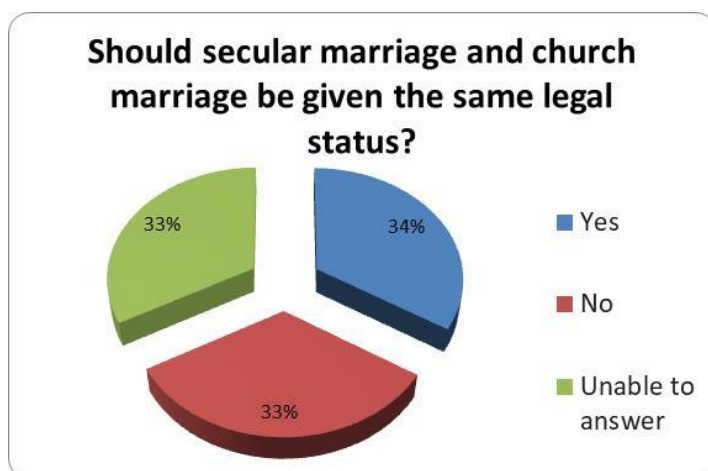
⁸ The form of the survey on the religious rite of marriage, (in Ukrainian). <https://docs.google.com/forms/d/e/1FAIpQLSc8VsABJHS7zwmZF7heuKO3BLIaLt1AH2YNNdeXh-6N-QvXUA/viewform>

Survey: "Do you want to enter into church marriage?"



The following results were obtained on the selected questions: 50.6% of respondents have already entered into a secular marriage and a church marriage; 21.4% - intend to perform a religious rite when concluding a secular marriage; 16% - have already entered into a secular marriage and there was no additional religious rite of marriage; 12.1% do not plan a religious marriage ceremony at all.

When respondents were asked if they support the idea to provide the same legal effect to church marriage as to secular marriage the results were the following: 705 respondents said "Yes", 691 respondents - "No" and 687 respondents were unable to answer.



Thus, more than a third of Ukrainian respondents who participated in the survey (34%) believe that the state should give equal legal status to

church marriage and secular marriage. This is quite a significant share, as well as almost a third were unable to answer this question.

Comparative analysis of the legislation of Ukraine and European countries on the recognition of church marriages.

According to the Constitution of Ukraine and the Family Code, only a man and a woman have the right to marry. The discriminatory approach to the age of marriage in Ukraine was eliminated on March 15, 2012, when the first part of Article 22 of the Family Code of Ukraine was repealed, and the same age for marriage was set of 18, regardless of gender. According to Part 3 of Article 21 of the Family Code of Ukraine, a religious ceremony is not a ground for a state to recognition of the concluded marriage⁹. Under exception there are religious marriages which were concluded before the moment of creation or restoration of bodies of state registration of acts of civil status. In other states that were part of the Soviet Union, church marriages are also not recognized. For example, Article 10 of the Family Code of the Russian Federation stipulates that marriage is registered only by civil status registration bodies. Article 15 of the Marriage and Family Code of the Republic of Belarus provides for marriage only in civil registry offices.

The analysis of the legislation of European states revealed many examples of state recognition of church marriages. For example, according to Article 657 of the Czech Civil Code, a marriage is a union of a man and a woman, which can be registered by a public authority authorized to do so or by a church¹⁰. In the Slovak Republic, the Law on the Family and on Amendments to Certain Laws of 11 February 2005 establishes equality between both civil and ecclesiastical marriages. According to Article 5 of this law, a marriage may be entered into by a clergyman who has the appropriate rank of a registered church or religious society. Such a marriage may take place in a church or other place, as provided by the internal rules of the church, a religious society for religious rites. If there is a threat to the life of one of the spouses, the marriage can be concluded in any appropriate place. According to Part 5 of Article 5 of the Law of the Slovak Republic "On the Family and Amendments to Certain Laws", the Church body before which the marriage took place is obliged to notify the relevant registration authority within three working days, indicating this fact.

Article 3.24 of the Civil Code of Lithuania establishes that a marriage is concluded by a church (denomination) in accordance with the procedure established by the internal (canonical) legislation of the respective religion. Important is the second part of this article, which states that both secular

⁹ Family Code of Ukraine, 2002, (in Ukrainian).
<https://zakon.rada.gov.ua/laws/show/2947-14>

¹⁰ Czech Civil Code (in Czech). <https://www.zakonyprolidi.cz/cs/2012-89>

and religious marriage have the same legal consequences if the conditions of marriage established by Articles 3.12 - 3.17 of the Civil Code were not violated, and the marriage was concluded in the manner prescribed by canons of religious organizations registered in the Republic of Lithuania and recognized by the state¹¹.

In Poland, family relations are regulated by the Family and Care Code, which was adopted on February 25, 1964, and was last amended on November 30, 2019. According to Art. 1 of this code, a man and a woman have the right to marry both in the civil registry office and in accordance with the internal church rules. When choosing the second method, such a marriage is also registered by the state¹².

At the same time, according to Article 259 § 3 of the Romanian Civil Code, a religious marriage rite may be performed only after its registration with a public authority¹³. Although there is no such legal requirement in Ukraine, our survey revealed that some respondents in some churches were asked to confirm their secular marriage before a religious marriage ceremony.

In England, the Marriage Act of 1949 provided for the procedure for recognizing church marriages. This law stipulates that marriage according to the rites of the Church of England may be solemn and, in accordance with Article 5, concluded after obtaining a permit (special marriage license) granted by the Archbishop of Canterbury or another authorized person under the Ecclesiastical License Act of 1533 or another ecclesiastical body (general marriage license), certificate provided by the registrar (in accordance with Chapter 3 of the Marriage Act) [14]¹⁴.

In addition, the following European states recognize church marriage: Denmark (Marriage Act of January 1, 1970), Italy (Articles 82, 83 of the Italian Civil Code), Portugal (Article 1587 of the Portuguese Civil Code), Norway (Marriage Act of July 4, 1991), Sweden (Marriage Act of May 14, 1987), Finland (Marriage Act of June 13, 1929), etc.

Conclusion

The study showed that in a number of European countries (in Great Britain, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Sweden, the Czech Republic, Finland and others), the state recognizes church marriage as well as secular.

¹¹ Civil Code of Lithuania, (in Latvian). <https://www.infolex.lt/ta/60696>

¹² Family and Guardianship Code, (in Polish).

<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19640090059/U/D19640059Lj.pdf>

¹³ Civil Code of Romania, Portal Legislativ, (in Romanian).

<http://legislatie.just.ro/Public/DetaliiDocument/175630>

¹⁴ Marriage Act, 1949. <https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/76/part/II/enacted>

From the standpoint of the principle of equality, it seems unclear the established approach in Ukraine and some other European countries not to recognize the church rite of marriage. This position is especially unclear for those states which have allowed same-sex partnerships and marriages, but at the same time do not recognize church marriages. Given the survey, which showed the support of more than 30% of respondents, it is advisable to amend the legislation of Ukraine and establish legal rules that would recognize church marriage and make it equal with the legal consequences of secular marriage.

References

- Antokolskaia, Masha V., (2000), "The Process of Modernisation of Family Law in Eastern and Western Europe: Difference in Timing, Resemblance in Substance", *Electronic Journal of Comparative Law*, Vol. 4.2.
<https://www.ejcl.org/42/art42-1.doc>.
- Czech Civil Code, 2012. <https://www.zakonyprolidi.cz/cs/2012-89> (in Czech).
- Civil Code of Lithuania. <https://www.infolex.lt/ta/60696> (in Latvian).
- Civil Code of Romania, Portal Legislativ.
<http://legislatie.just.ro/Public/DetaliiDocument/175630> (in Romanian).
- Family Code of Ukraine, 2002. <https://zakon.rada.gov.ua/laws/show/2947-14> (in Ukrainian).
- Family and Guardianship Code.
<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19640090059/U/D19640059Lj.pdf> (in Polish).
- Marakhovskaya, Eleanora, (2018), "Modern interpretations of the Catholic Church's teaching on marriage and the family", *Visnyk KHNU im. V.N. Karazina. Series "Theory of Culture and Philosophy of Science"*, 58, p. 53–60, (in Ukrainian).
- Marriage Act, 1949. <https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/76/part/II/enacted>
- Marriage indicators. Eurostat.
https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_nind&lang=en
- Mulloková, Oksana, (2016), "Interreligious and interfaith family-marriage relations in Abrahamic religions (religious-legal aspects): dissertation for the degree of Candidate of Philosophical Sciences". Zhytomyr (Ukraine), 207 p., (in Ukrainian).
- Slyusar, Lyudmila, (2011), "The evolution of marriage in Ukraine: XVII - early XX century", *Demography and social economy*, 2, p. 67-72, (in Ukrainian).
- Shimon, Svitlana, (2015), "Legal nature of marriage according to the Family Code of Ukraine", *Scientific journal of the National Pedagogical University named after M.P. Drahomanov. Series 18: Economics and Law*, 28, p. 151–158, (in Ukrainian).

Tsebenko, Solomiya, (2014), "Modern Orthodox ideas about the human right to marriage and the family in the light of international standards", *Lviv Polytechnic Publishing House*, p. 147-152, (in Ukrainian).

The form of the survey on the religious rite of marriage.
<https://docs.google.com/forms/d/e/1FAIpQLSc8VsABJHS7zwmZF7heuKo3BLIaLt1AH2YNNdeXh-6N-QvXUA/viewform> (in Ukrainian).