ROMAN *DIVORTIUM* AND ITS INFLUENCE ON THE DIVORCE IN MACEDONIA

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INTRODUCTION

Accepting the challenge to analyse the divorce in Roman law, and to simultaneously compare it to its contemporary dimension in the positive law of the Republic of Macedonia, undoubtedly means that the analysis should entail a multifaceted specification of both similarities and differences, which would produce a comprehensive image of the tendencies of the institute of divorce, known as *divortium* in the Roman law.

The authors use the fact of “everlasting” topicality of this subjects, as well as of the solutions offered by contemporary law to justify the selection of this exquisitely subtle topic, which in a wider social context, has far-reaching consequences, both for the individual parties affected by a particular divorce, as well as consequences in general, indicating a certain level of society’s growth in the area of marital and family law.

In that sense, this paper seeks to provide a profound analysis of the reasons, the manner and the consequences of *divortium*, both separately for the Roman law and for the contemporary Macedonian law, but also in a sublimate which will once again reiterate and confirm the unbreakable link between the Roman law and its counterparts found in the contemporary law. The multifaceted review of this concept will lead us to the conclusions which should indicate whether this is an institute which is a legal transplant, accepted within the Macedonian presupposition of divorce, or whether there is a multitude of notions subjected to the influence of the tradition and the morale of the region, which are only basically similar to the Roman continental tradition.

Reaching a goal set in such a manner, can only be plausible if a detailed analysis of the primary sources of Roman law, referring to the regulation of divorce in ancient Rome, was initiated, together with a review of the viewpoints of eminent experts in Roman law and secondary sources of information. This analysis will be accompanied by positive legal regulations, but also possible developmental tendencies which would be potential or acceptable in some of the future attempts to regulate the issue of divorce in the Republic of Macedonia. The topicality of the subject is principally connected to the drafting of the Civil Code of the Republic of Macedonia, which will primarily provide an answer to the question whether family law (including divorce) will be part of this immense codification project, or whether the Law on Family will remain separate, i.e. independent from the Civil Code.

1. DIVORTIUM IN ROMAN LAW

Matrimonium iustum, iustae nuptiae, or a lawful Roman marriage pursuant to the rules of Roman law, has always been treated as a permanent relationship[1] between a man and a woman, based on legally relevant facts, which might be ended dependent on other legal facts including both natural causes and human actions.[2]

Namely, in the sources of Roman law, the dissolution of marriage was standardised as a divorce that could occur before death, if one of the spouses was held captive or lost their freedom in another way.

D. 24.2.1 [...] Dirimitur matrimonium divortio morte capivitate vel alia contingente servitude utrius eorum.[3]

The diversity of reasons for termination of a marital union[4] attested by the sources of Roman law, points out to the fact that the ancient Romans treated the

[1] The permanency of marriage was, in fact, suppose to denote a union of continuous cohabitation, and not a life-long community. For instance: Modestinus (D. 23.2.1) or (Just, Inst. 1.9.1)

[2] Please consult: PUHAN, Ivo. Roman Law. 1974, p. 198.

[3] ROMAC, Ante. Izvori rimskog prava. 1973, p. 176.

[4] On this occasion, it should be mentioned that the termination of a marital union cannot be considered equivalent to the divorce of marriage, although they produce the same legal consequences. Namely, divorce of marriage is just one of the modalities of termination of a marital union, primarily connected to the subjective reasons arising from the relations between the spouses, which can be of various natures.

marital bond as relatively permanent[5], as the possibility for *divortium* (besides the known *repudium*) becomes available later, which will be the focus of this short comparative research. Therefore, the differences between the definitions of marriage typical for the laws dating from the early period (Regal Rome), the middle period (Republican Rome) and the late period (Imperial Rome) are obvious and certain, due to which a proper chronological order in the analysis is necessary.

Certainly, at the beginning, and for the purpose of providing an answer to the basic question, it is suitable to provide a quick review of the Roman *matrimonium iustum*: requirements for conclusion of marriage, obstacles to marriage and forms stipulated by law.

1.1 Forms of matrimonium iustum

The discussion on different forms of marriages, through the prism of which the comprehension and importance of the marital union for the ancient Romans can be best seen, should begin with the oldest recollections and attestations of *raptus mulierum* or abduction of women as the most primitive "form" of conclusion of marriage[6]. The negative connotation of such an act, results in a certain „skipping" of the abduction of women as a manner of establishing a marital union, and out of those reasons *coemtio* or purchasing a wife in the form of *per aes et libram* is almost always deemed as the oldest form of lawful Roman marriage.

Gai, Inst Coemptione vero in manum convenienium per mancipationem, it est per quondam imaginarium venditionem; nam adhibitas non minus quam aquibque testibus Romanis puberibus, item libripende, emit vir mulierem cuius in manum convenit.

Based on coemption the wife comes into *manus* by way of mancipation, i.e. some kind of alleged sale, since the husband, in the presence of five witnesses, Roman citizens of age, as well as a copper measurer, buys the wife and takes her into *manus*.

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[5] The idea closest to the stance of the Christian Church on the unresolvedness of a marital bond.

[6] In this context is the myth of abducting the Sabine women. However, history has recounted about the shame of the Romans of this event, consequently in a later stage of development it was forbidden to conclude marriage between an abductor and an abducted girl. Please consult Маленица, Антун и Наташа Деретиќ. Римско право, p. 207.

Besides *coemptio*, in the ancient law[7] there was a significant place amongst the forms of marriages that belonged to *confarreatio*. This ceremonial form was reserved exclusively for the rich and reputable Romans. Therefore, it is no coincidence that Dionysius referred to this marriage as sacred, and Pliny the Elder believed that there was nothing more religious and more sacred than the bond established through a *confarreatio*, confirmed by the following example of sources of Roman law:

Gai, Inst, 1-109-113 Farreo in manum convenieunt per quoddam genus sacrifice, quod Lovi farreo fit; in quo farreus panis adhibetur, unde etiam nonfarreatio dicitur; conplura praeterea huius iuris ordinandi gratia cum certis et sollemnibus verbis praesentibus decem testibusaguntur et fiunt. Quod ius etiam nostris temporibus in usu est; nam flamines maiores, id est Diales, Martiales, Quirinales, item reges sacrorum nisi ex fareatis nati non leguntur; ac ne ipsi quidem sine confarreationesacerdotium habere possunt.

On the basis of *farreus* the wife came into *manus* thanks to a kind of sacrifice offered to Jupiter Fareus, whereby spelt bread was presented, and that is why it was called *confarreatio*. Many other acts were done during this type of ritual by pronouncing certain solemn words in the presence of ten witnesses. This ritual is performed in the present as well, and the high priests of Jupiter, of Martial and of Quirinale, as well as the supreme priests of the cult cannot be elected if they are not the direct ascendants of persons who have concluded marriage by *farreus*, and they also cannot perform the duties of priests if they themselves have not concluded marriages by way of *confarreatio*.

Pursuant to the aforementioned, this was the most solemn form of conclusion of marriage, whereby the bride and the groom had to be present in person, together with their *patres familias*, ten adult Romans as witnesses and *Flamen Dialis*. In addition to the offering of a sacrifice, during this act, the bride would be escorted to the house of the groom where she would be welcomed by fire, water and bread, simultaneously pronouncing the solemn words *Ubi tu Gaius, ibi ego Gaia*[8], after which she would skip the doorstep of the house.

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[7] This form persisted until the Republican period.

[8] There are some divergences in the translations of this formulation. For instance, it is sometimes translated as "Where you are (master), I am (mistress)" – PLUTARCH, Acta Romana, or "As you are Gaius, I am Gaia".

This form of marriage is of special significance for us in this research, since the Roman *divortium* was foreseen in the form of *difarreatio*, contrary to the *confarreatio*.

The simplest form of conclusion of marriage, which would become predominant in Rome was *usus*, or a form simply denoting the moving in of the wife to the *domus* of her husband, which constituted a factual marital union.

Gai. 1.111. Usu in mani bonveniebat, quae ano continuo nupta preservabat, enim velut annua possesio usu capiebatur, in familiam viri transibat filiaque locum optinebat. Itaquelege duodeci tabullarum cautum est, ut si que nollet eo modo in manum mariti convenire, ea quotannis trinoctioabesset atque eo modo cuiusque anni usum interrumperet.

Build upon *usus* a wife came into *manus* by being married for an uninterrupted period of one year, because by being into a year-long *manus* one would acquire maturity, and would now enter into the family of the husband and would acquire the legal status of a daughter. Hence, the Law of the Twelve Tables stipulated that a woman who does not want to come into *manus* of the husband in such manner, should be absent for three consecutive nights in a year and thus the *usus* would be interrupted each year.

Usus, as it can be noticed from the example, was the simplest form of marriage laid down by law, primarily intended for the poor plebeians. However, this form of marriage in itself hides another diversity of the quality of a Roman marital bond, epitomised through the so called *manus* that the husband established over his wife after the marriage was concluded.

Thus, the coemption and the *confarreatio* meant necessary conclusion of marriage with a *manus*, unlike the *usus*, in which the usage of the foreseen right to a “three-night absence“ provided the woman with an opportunity to choose by herself whether to conclude marriage with *manus* or without one.

Without having the intention to meticulously study the differences between *matrimonium cum et sine manu* we should note that they are directly related to the status of the woman within the family of the husband. Consequently, in a *cum manu* marriage the woman was placed in the category of *filae loco*, providing her with a treatment equal to that of a sister in the family of the husband,

while *sine manu* marriages meant that the status of the woman would remain the same as the one before entering into marriage[9]

1.2. A chronological review of the Roman Divortium

The *repudium* or a unilateral termination of a marital bond, laid down as an exclusive right of the husband in the Roman law was an unsustainable category, which was to be confirmed by the introduction of *divortium* which could also be initiated by the wife, as a manner of terminating a marriage. Accordingly, starting from the middle period, when *sine manu* marriages became prevalent, the introduction of divorce made marriage seem utterly "free"[10][11].

As a consequence of introducing divorce, the deed could be performed at the will of the husband, at the will of the wife, as well as by mutual consent of both spouses[12]. Likewise, divorce could be requested by the *pater familias* of a wife who was a persona *alieni iuris* and entered into marriage *sine manu*. The reasons for terminating a marriage were not clearly stated, divorce could be requested only in a statement given by one of the spouses. Namely, giving a statement in front of witnesses was the usual form, a written *libellous repudii*, or a factual termination of cohabitation[13]. The will for divorce could be expressed in a written form, verbally or through a messenger (*per litteras, per nuntium*).

Such an idea for a free marriage and an opportunity for a simple divorce should not be interpreted in a way that portrays the Roman marriage as an ever unstable category. Hence, Aulus Gellius, while considering the works of the famed jurist during the end of the Republic, Servius Sulpicius Rufus, refered to the first famous divorce. Namely, Carville, the famous warlord during the Punic wars, was supposed to get a divorce by order of the censors, because even

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[9] She remained to be the daughter in the family of her *pater familias* if she was a persona *alieni iuris*, or she remained independent as a persona *sui iuris*. Besides having implications upon the status of *status familiae*, such hierarchy had direct implications upon the hereditary rights of the woman.

[10] To terminate a free marriage, one did not require a basis, but divorce requested out of no reason could instigate a revolt of the censor. When it comes to the form, termination of free marriage was basically as informal as the manner of its conclusion. Please consult: БОРКОВСКИ, Ендру и ПЛЕСИС, Пол ду. Учебник по римско право. 1994, p. 128.

[11] C. 8.38.2. *Libera matrimonia esse antiquitas placuit. Ideoque pacta ne licerat divertare, non valere et stipulation, quibus poenae introgarentur ei qui divortium fecisset, ratas non haberi constant.*

[12] Also: ПУХАН, Иво. Римско право. 1974, p. 199.

[13] Ibid.

though he had a good wife, she could not bear any children. The manner in which this event was witnessed, points out to the fact that divorces were feasible, but were rare.

Later on though, Juvenal illustrates another case, i.e. a case of a woman who within five years had eight husbands, which depicts "the other side of the medal"[14]. At that point in time, on the historical stage, a crisis appears in the Roman society, which especially affects the Roman morale and religion, causing in turn, instability of marriage and frequent divorces[15].

The instability of marital bonds, undoubtedly causing erosion to the concept of Roman family during the Republican period, was the direct incentive for Augustus to attempt to regulate the matter in the area of family law (including marital law).

Concurrently, the impoverishment of the people primarily due to the frequent civil wars, but also due to the debauchery and immorality of the elite (senators and equestrians), including the debauchery of the imperial family in Rome became apparent. The evident social crisis, has led the population to look back to the time when traditional norms and moral values were established and respected, as a result, the attempt of Augustus to resolve the issues of marriage and family was welcomed by the endorsement of the Roman population.

By aiming at reforms, Augustus adopted *Lex Iulia de adulteris* and *Lex Iulia de maritandis ordinibus* dating 18 BC, and *Lex Pappia Popaea* dating 9 BC

With the first of the laws that Augustus adopted, he forbade a series of acts causing immorality, disinterest in marriage and in bearing children. Some kind of order was also introduced in divorce. Adultery with someone else's wife was punishable; coitus with a chaste and single woman (*adulterium, stuprum*) was also punishable, while sexual intercourse with a slave was allowed. The other laws mainly governed the obligation of mandatory entering into marriage by a certain age, as well as childless marriages, which were afterwards merged and are known in the sources of Roman law as caducary laws[16].

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[14] Hence, the opinion of the praiseworthy Seneca, that some women do not count years by the consuls, who change every year, but by men whom they divorced.

[15] Please consult: ROMAC, Ante. Rimsko parvo. 1981, p. 114.

[16] The general trend of Augustus's reform was aimed at improving the position of women. Please consult БОРКОВСКИ, Ендру и ПЛЕСИС, Пол ду. Op. cit., p. 132.

Having in mind their content, the laws of Augustus had a huge impact on the regulation of *divortium*. Thus, the husband had to immediately enter into marriage, and he could not even divorce if he did not prove immediately that he will enter into another marriage, and the woman had a deadline of six months to remarry (account was not even taken of *turbatio sanquinis*).

Augustus regulated the reasons for divorce, by setting them out in laws and customs. Therefore, nothing else except adultery, madness, illness, old age, husband's enlisting in the army, husband's becoming a priest and woman's infertility could be taken into account as reasons for divorce. The only recidivism, of the previous provisions referring to divorce, was the treatment of marriage as free, i.e. the conclusion of marriage and the divorce were an affair solely of the husband and the wife, dependant on their free will.

The family legislation of Augustus was later amended and supplemented by *Senatus Consulta*, and even though their aspiration was noble, overall accepted and well-intentioned, it did not produce the expected results, mostly because of the great animosity felt towards such ideas by the equestrians, the rich class of Romans, who refused to live in accordance with strict rules stipulated under this reform, and did not want to live in formal and stable marital unions.

Although, Augustus himself believed that he had "reinstalled many of the ancestral traditions, which in practice, were starting to fade away[17], to the point of observing them in his closes family, first and foremost for his daughter Julia, and then his granddaughter of the same name, the Roman society, despite the proclaimed will, felt hesitant about such issues, or as Titus Livius would articulate it *nec vitia nostra nec remedia pati possumus*[18].

The Imperial period was marked by the regulations imposed by the imperial legislation, heavily influenced by the reasons for divorce. The Valentian and Theodosius imperial constitutions of 449 stipulated that for the divorce to be valid, a request had to be extended to the other party for the divorce, that is, a notice called *libellous repudii*[19] in a written form. Such a writ, was frequently used as a form for divorce in the East Empire, and became mandatory for the entire

[17] *Res gestae divi Augusti*, cit. МАШКИН, Сп. Н. А. Историја на Стариот Рим, p. 383.

[18] We can endure neither our vices nor the remedies for them. Please consult *Res gestae divi Augusti*, cit. МАШКИН, Сп. Н. А. Историја на Стариот Рим, p.384.

[19] *Matrimonia contractanon nisi misso repudio solvi praescipimus* (C. 5.17.8.pr.)

country. Later on Justinian foresaw an inclusion of seven witnesses as well, but this practice hardly ever showed signs of life[20].

During this period the physiognomy of divorce was highly influenced by the Christian emperors. Especially Constantine, who in the constitution of 331, specified the reasons for divorce, along with the punishments when the reasons laid down by law were missing[21].

The subsequent constitutions of Valentinian III and Theodosius II foresaw milder punishments for divorce, than those stipulated by Constantine, therefore it can be concluded that the Christian emperors had introduced reasons for divorce, whereby marriage could be divorced only on reasonable grounds, or in contrary such a procedure would be accompanied by a sentence consisting mostly of confiscation of property (and sometimes even criminal prosecution resulting in exile)

The most prominent reformer Justinian separately regulated the divorce, as it was expected, although Christianity, being already the official religion, used its influence to introduce rigorous rules regarding divorces.

This period is marked by the introduction of two basic types of divorce *divortium cum damno and divortium sine damno* or divorce inflicting harmful consequences and divorce without harmful consequences. The divorce with harmful consequences could be *repudium sine ulla causa or repudim ex iusta causa*, that is, improper, unilateral termination of a marital union or termination of a marital union because of the fault of one of the spouses. The divorce upon the request of the innocent party, without harmful consequences was possible in cases of adultery, serious crime, assault endangering the life of an individual, pandering, leading an immoral life etc. The guilty spouse would suffer harmful consequences such as loss of dowry, ban for entering in a new marriage, deportation, incarceration in a monastery etc.

Divorce without harmful consequences could be *divortium communi consensus* or divortium bona gratia. The first sub-type was a divorce upon a mu-

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[20] D. 24.2.9.

[21] The woman would *lose dos, and donatio ante nuptias*, and deportation to an island followed, while the husband would have to return the entire dowry, and he would be imposed a ban for remarrying.

tual consent by the spouses, and the second was a divorce upon the expressed will of one of the spouses.

Justinian's *Novellae* simply standardised such classification of the forms of divorce of marriage:

Nov. 22.c.4 Distrahuntur itaque in vita contrfentium matrimonia alia quidem consentiente utraquepartr, pro quibus nihil hic dicendum est, pactis causam,sicuit utrique placeuerit, gubernantibus, alia vero per occasionem rationabilem, quae etiam bona gratia vocatur, alia vero citra omnem causam, alia quoque cum causa rationabili.

During the lifetimes of the spouses, marriage ends by mutual consent of both parties, whereby nothing should be said, since the parties had resolved that issue in accordance with their best interests, or on justifiable grounds called *bona gratia*, or they did not state any reasons, or they did provide reasonable grounds.

Subsequently, it can be concluded that Justinian had attempted to prevent divorce, in an indirect manner, but it cannot be stated that divorce was abolished.

In spite of the Roman marital law being heavily influenced by the Christian concept of marriage and the treatment thereof as a holy secret, the process of amending marriage by establishing simpler forms of concluding one, seemed an unstoppable process in the Roman society. The process of abolishing the laws of Augustus was first initiated by Constantine, who found the modus of approximation of the Christian postulation, on the one hand, and the Roman tradition on the other hand. His followers strictly adhered to such practice, as we already witnessed, and they lavishly promoted the Christian family values as well as the level thereof and the morale deeply rooted in such union. Hence, it is undisputable that the Christian values were implemented in the Roman marital law, especially in terms of issues of divorce; nevertheless the Roman tradition of free marriage still persisted.

2. DIVORCE IN CONTEMPORARY MACEDONIAN LAW

Divorce, in a contemporary sense, presents a legal instrument used to put an end to the family relations arising from marriage. When this spiritual union and community of interests cease to exist, mutual life becomes hard to handle. In such cases, the union most commonly ends in divorce.

The research on the reasons for divorce conducted in the area of national family legislation imposes the need for an analysis of their placement within the Law on Family.

The Law on Family of the Republic of Macedonia[22], in Article 6 defines marriage as "a living community of a man and a woman regulated by law, by which the interests of the spouses, the family and the society are being realized. The relationships between the spouses are based on the free decision of the husband and the wife to conclude a marriage, based on their equality, mutual respect and mutual assistance".

However, the marital relationship can have its strengths and weaknesses, due to which the relationship during its course, may cause difficulties to the spouses. The misunderstandings between them, regardless whether subjective or objective, frequently result in a "marital crisis" that can sometimes be overcome without bringing about an ultimate ending of marriage.

Pursuant to the positive legal regulations of Macedonian family law, there are three forms or manners of divorcing, closely connected to and conditioned by the reasons leading to divorce.

The first would, of course be, uncontested divorce, accepted in the judicial practice, whereby the courts for such a divorce, no longer engage in determining the reasons behind such decision of the spouses.

This kind of divorce is initiated by an amicable proposal including all provisions referring to the agreement on the manner of exercising parental rights and duties, as well as on the manner of providing subsistence for minor and/or adult children who require extended parental care. Upon an obtained opinion from the Social Work Centre, the court takes a decision on an uncontested divorce if: the decision was made independently, the decision is serious and unwavering. Such a divorce is frequently initiated by young married couples who have not acquired mutual property and are childless, and the consequences are easily overcome due to such circumstances.

Parallel to the uncontested marriage, the positive legislation of the Republic of Macedonia recognises divorce upon a request by one of the spouses, in case of having shattered marital relations to such an extent that the mutual life of

[22] Official Gazette of the Republic of Macedonia No. 153 from 20.10.2014.

the spouses became unbearable. The most rational solution in that case is, of course, divorce. The center of gravity of this reason lies within the objective circumstances, and not within the subjective reasoning of such a situation by the spouses, therefore the assessment of those circumstances does not encompass assessment of the level of guilt of one of the partners since that would be considered a biased category[23].

The third manner, i.e. reason for divorce pursuant to the positive legal regulations of the Republic of Macedonia is the factual termination of a marital union for a period exceeding one year[24]. When considering the meaning of factual termination of a marital union, both theory and practice agree that the spatial distance of the companions, does not always mean that there is a factual termination of the marriage, if the relationship of the spouses meets the definitions for the functions of marriage. And vice versa, living under one roof, does not necessarily mean that the relations are proper and normal. This means that upon assessing the fact of termination of a marital union, the subjective and quality bonds of the spouses should be primarily taken into consideration.

The end of a divorce has far-reaching consequences, which may be grouped in different categories and may be of both material and immaterial nature, mainly affecting the members of the nuclear family of the spouses. Also, the number of divorced couples as a statistical data certainly portrays the situation of family law in individual societies, whereby one can sense the tendencies towards which the family law and the family legislation would gravitate in the future.

CONCLUDING OBSERVATIONS (ON THE INFLUENCE OF THE ROMAN CONCEPT OF DIVORCE UPON THE CONTEMPORARY MACEDONIAN FAMILY LAW)

At the mere beginning of the concluding observations, a much broader subject is being imposed, a subject that could be applied during the analysis of the influence of the Roman law upon its contemporary counterparts, which is the

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[23] Please consult: СПИРОВИЌ-ТРПЕНОВСКА, Љиљана. Семејно право, p. 133.

[24] The current solution offering a period of one year was selected upon considering the information and experiences of the judicial practice pointing out to the fact that the previous period of three years should be shortened. Such a deadline upon factual termination of a marital union is too long and would cause additional inconveniences during the formal divorce.

viewpoint of Alan Watson, to whose knowledge, laws are strongly rooted in the past[25]. Namely, obtaining and accepting the legal concepts from the past and transplanting them in the contemporary systems, may be best recognised in the Roman civil law, which occupies a significant place within the contemporary civil law. In that context, when it comes to family law, reference is made to the traditional or religious influences, which does not mean that history does not point out to unusual tendencies[26].

Without challenging the universal value of the Roman law and its enormous impact on contemporary solutions, it should be highlighted that the Roman family law can be considered highly conservative in comparison to modern concepts. However, certain institutes emerging in that primitive form of law still persist today.

A noteworthy example, of course, would be the monogamous marriage, which the Romans never abandoned,[27] and it is also stipulated in the Macedonian marital law. In this regard, both concepts opt for heterosexual marriages, but marriage is defined as living community, and not a lifetime union.

However, there is a common position that marriage as a continuous living community may be terminated by a divorce. It was and it still is one of the most prevalent manners of ending a lawful marriage. Pursuant to Roman law, marriage was breakable and this legal concept has endured until today, despite the strong influence of the Catholic Church, which, as we saw, considers marriage to be one of the seven holy secrets, which makes the bond absolutely indissoluble.

The conclusion for the aforementioned is obvious - there is an evident evolution of the legal conception of divorce in the Roman law. Starting from the seldom cases of a unilateral break up by the husband during the ancient period, through the *divortium* of a free marital bond *sine manu* during the classical period, all the way to the reforms of Augustus and the Christian emperors, we get the big picture with the help of Justinian's legislation, stipulating divorces with harmful consequences and divorces without harmful consequences.

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[25] WATSON, Alan. Legal Transplants, p. 144.

[26] For example, caducary laws in Rome or same-sex marriages in the modern world.

[27] Except in the time of Valentian when a man was allowed to enter into marriage with four different women due to the endangered male population during the wars with the barbarians.

It was exactly his definition of divorce performed by a mutual consent of both companions to terminate a marriage, which will become the inspiration for almost all legal systems, treating this solution as the most frequent and the best contemporary manner of terminating a marital bond.

Certain differences can be noted in the Roman practice of punishing the “guilty“ party, which is almost unimaginable in contemporary law.

Conceptually, there is no difference in the definitions of divorce as a manner of terminating a lawful marriage during the lifetime of the spouses[28].

The ancient Romans had always considered the form of divorce in correlation to the form of concluding the marriage. In Macedonian law, this could take place if certain conditions laid down by law are met.

When it comes to the reasons leading to divorce, it can be concluded that they should be considered in a wider social context, although from then until now they have been treated as legal facts or events laid down by law as the basis for divorce.

To sum up, it can be stated that the analysis of both concepts of divorce clearly indicates both similarities and differences. Such a situation can be prescribed to the immanence of the systems in a respective period. Noting that there are more connective points, and less drastic differences in the concepts of divorce, the analysis could be concluded by a partial acceptance of the idea of a legal transplantation, but also the ingenious legal concept pertaining to Roman law that is still present today.

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[28] Please consult: МИЦКОВИЌ, Дејан и РИСТОВ, Ангел. Семејно право, p. 156.

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