

**TERMS OF MARRIAGE BETWEEN INDIVIDUALS OF NON-  
ORTHODOX FAITH IN THE RUSSIAN EMPIRE  
(ON THE BASIS OF THE LETTERS OF NICHOLAS I  
“LAW ON MARRIAGE ALLIANCE”)**

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**Rezumat:** În ultimele decenii, relațiile de familie au devenit din ce în ce mai exploitate de cercetătorii din domeniul precum sociologia, psihologia, antropologia, economia. De asemenea, istoricii încearcă să înțeleagă în ce fel realitățile istorice au influențat familia sau cum au fost receptate de către aceasta, schimbările de mentalitate. Articolul următor își propune să prezinte implicațiile canonice și juridice ale instituției căsătoriei, în lumina unui document aflat în Biblioteca Jagellonă din Cracovia. Documentul intitulat „Prawo o małżeństwie” sau “Legea despre alianța căsătoriei” emisă în 14 Februarie 1832 de către țarul Nicolae I oferă informații interesante și utile despre încheierea și desfacerea unei căsătorii, despre reguli, condiționări, limite și impedimente.

**Résumé:** Les dernières décennies, les relations de famille sont devenues de plus en plus exploitées par les chercheurs des domaines comme la sociologie, la psychologie, l'anthropologie, l'économie. Les historiens essaient, aussi, à comprendre comment les réalités historiques ont influencé la famille ou comment celle-ci a reçu les changements de mentalité. L'article ci-joint se propose à présenter les implications canoniques et juridiques de l'institution du mariage, à la lumière d'un document qui se trouve à la Bibliothèque Jagellona de Cracovie. Le document intitulé „Prawo o małżeństwie” ou “La loi sur l'alliance du mariage” émise le 14 Février 1832 par le tsar Nicolas I offrait des informations intéressantes et utiles sur la conclusion et la dissolution d'un mariage, sur les règles, les conditions, les limites et les obstacles.

**Summary :** In recent decades, family relationships have become increasingly exploited by researchers in fields such as sociology, psychology, anthropology, and economics. The historians also tries to understand how the historical realities influenced the family or how they were perceived by the change of mentalities. The following article aims to present the canonical and legal implications of the institution of marriage, in light of a document discovered in the Jagiellonian Library in Krakow. The document called "Prawo a małżeństwie" or “Law on Marriage Alliance” issued on February 14, 1832 by Tsar Nicholas I offers interesting and useful information about the conclusion and termination of a marriage, about rules, conditioning, limitations and obstacles.

**Key words:** marriage, family, rules, tsar Nicholas I, civilian and religious canons, moral principles, domestic values, marital union.

According to the opinion of an influential scholar of gender studies, N. L. Pushkareva, “in the scientific literature of the modern period [...] the researchers studying the family life were mostly interested in its structure, the kinship ties, the number of families, the relationship between family structure and the degree of economic development in the regions; however, they rarely paid any attention to subtle aspects, such as the private life of the various social stratifications, which in effect, led to the problematic being dispersed among unconventional disciplines and being analyzed in fragments”<sup>1</sup>. The history of the family law affinity, and particularly, the marital stipulations with individuals of a non-Orthodox faith, is yet among the unexplored matters.

In recent decades, the topic of the family ties has become of the most attractive issues in the historical science. As L.P. Repina has noted, the contemporary historical gender research have pierced all areas of historical grasp: it is perceived as a huge interdisciplinary domain that encloses socio-economic, demographic, sociological, anthropo-cultural, psychological and intellectual dimensions<sup>2</sup>.

The motifs of gender history can be clearly distinguished by its key explanatory shreds, each of which correspond to a specific area of past-aged individual's life: “family”, “labour in the household”, “law and politics”, “religion and education”, “culture” et al.

In the present article, one will attempt to apprise the basics of the family law reference, perceived from a religious as well as a traditional point of view, that were casted by the times and reflected in the fundamental acts/documents of the XIX<sup>th</sup> century. Particularly, the staple document that represented the main element of our study was „*Prawo o małżeństwie*” or the „Law on Marriage Alliance. Act of February 14 1832, Emperor Nicholas I”<sup>3</sup>. The document has been examined by the author in the Jagiellonian Library in Krakow.

The imperial order included several terms in reference to the conclusion and the dissolution of the marriage, that were to be considered when one of the concerned individuals would be of a non-Orthodox faith, notably: Romano-Catholic, Evangelical-Lutheran, Evangelical-Lutheran-Reformist. The inquiry of the given document conveys a huge historical value in what regards the erudition of the rules of family and marital law in the Russian empire of the XIX<sup>th</sup> century, considering that the strain of this document has extended beyond the territorial limits of the Russian Empire, which, evidently, has pondered upon the residents of Bessarabia.

<sup>1</sup> Н. Л. Пушкарева, *Изучение истории русского материнства в отечественной историографии советского и постсоветского времени*, in *Материнство и детство в России XVIII-XXI вв.: Всероссийская научная конференция*, Часть I, Москва, 2006, с. 111-127.

<sup>2</sup> Л.П. Репина, *Гендерные исследования в истории: теория и практика*, Москва, 2001, с. 5.

<sup>3</sup> *Prawo o małżeństwie*, Warszawa, 1836.

There were a series of stipulations required for the conclusion of the marriage, commonly known, at all European people for centuries. These included: the marital age, the consent of the parents, absence of a certain forbidden degree of kinship, spiritual consent and permission to marry no more than three times, the confession of the grooms, physical and mental health, and absence of compulsion to marriage. In order to ensure the respect of these set-ups, the procedure of the marital conclusion comprised several steps: the choice of the bride, courtship, engagement, and then wedding. The given procedure required a strict execution of initial and secular conditions since they served as a guarantee of strength, in the creation of a strong family.

According to “Law on Marriage Alliance”, chapter 1, article 1, they curtail the marital bond - “Marriage between two Catholic individuals impels a union that can be brought to a standstill only by the death of one of the spouses” - and specifies the conditions under which the marriage between two Catholic figures can be realized:

1. the legal age;
2. mutual consent;
3. parental permission;
4. physical ability to live together<sup>4</sup>.

The article 6 establishes the legal age for young-men as 18 years old, whereas for young-ladies 16 years old; article 8 on the other hand underlines the fact that the marriage will not be valid in the case where the groom will be 14 and the bride - 12 years old<sup>5</sup>. The respective article clearly points out the fact that legal efforts were being made for the planks of the marital age to be raised.

In line with the investigations of M.G. Rabinovich, there was a slight tendency observed in Russia, among townspeople particularly, to increase the marital age. At the end of the century, there was a public general opinion (especially in the bourgeois sphere) that getting married at 16, was pretty early for a young-lady, 18 to 22 years was qualified as the right age, whereas virginity at 25 was a treat of a spinster, thereby a tragedy. As for men, getting married at 30 was being considered the perfect timing, better than 18, because as they said “he would overwhelm and then get wiser”<sup>6</sup>. This increase of the marital age was characteristic for the whole of Europe.

Article 10 stipulates the equality statute between the wife and the husband, in what regards the choice of the groom or the bride “the union between the individuals in question would not be valid if forced”<sup>7</sup>. Nevertheless, this aspect of the article was mostly applicable for the parental consent, rather the one of the groom and the bride. It was commonly known that marriages, in the majority of the cases, have been concluded under the parental pressure. Probably, this article's target was to protect the youth from forced marriage, realized under the pressure of their parents.

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<sup>4</sup> *Prawo o małżeństwie*, Warszawa, 1836, p. 5.

<sup>5</sup> *Ibidem*, p.5.

<sup>6</sup> М.Г. Рабинович, *Очерки этнографии русского феодального города. Горожане, их общественный и домашний быт*, Москва, 1978, p. 213-214.

<sup>7</sup> *Prawo o małżeństwie*, p. 12.

At the same time, according to both the civilian, and the religious cannons' principles, it was utterly forbidden to conclude a marriage without the parental compliance. Article 15 stated: "it is forbidden to conclude a marriage, until the age of 21, without the paternal approval"<sup>8</sup>

However, not only the conclusion of a marriage of an underage person without parental yield was being considered invalid. There was a sacred and highly respected tradition that concerned the blessing of the parents whenever one decided to get married, independently of the age of the respective individuals. Marriages lacking parental blessing were considered invalid, and as for the children born in such families, there were perceived as an illegitimate child. Members of the family that would not respect this tradition were disinherited and viewed as outcasts of the family. The parental approval, therefore, was essential when concluding the marital union, from both sides.

Another important aspect of the marriage alliance was the physical sanity of the young couple. According to article 22: "if it is proved to be, prior marriage, that one of the combined entities, due to irremediable disability, was unable to perform marital duties, the marriage itself may, at the request of the other person, be invalidated"<sup>9</sup>. This rule, was particularly applicable in the case of mentally ill individuals, as "the main goal of the marriage was to create a strong union between the man and the woman, to give birth to children and thereby the avoidance of a sinful life, which therefore means it has to be concluded once, and last for the entire life of the spouses"<sup>10</sup>.

Primarily, mentally affected people could not make individual conclusions and thus were constantly under the custody of some relative. On the other hand, this aspect, in a particular way, reflected a guarantee against the possibility of having disabled children.

The Christian wedding traditions have century long roots. The obedience of the church rules was essentially important whilst the conclusion of the marriage. It was already during the XVI<sup>th</sup> century that the famous catholic Trinity Cathedral<sup>11</sup> has estimated that unreligious marriages were to be considered invalid<sup>12</sup>.

In the "Law on Marriage Alliance", the third section, regarding "Marital Ceremonies", describes them in detail. Firstly, the bride and the groom "must notify the priest"<sup>13</sup>. Secondly, according to article 43, "the announcement is being made

<sup>8</sup> *Prawo o małżeństwie*, p. 9.

<sup>9</sup> *Prawo o małżeństwie*, p. 13.

<sup>10</sup> Цатурова М.К. *Русское семейное право XIV-XVIII вв.*, М., 1991, с. 6.

<sup>11</sup> **Триденский собор** — девятнадцатый Вселенский собор (по счёту Римско-католической Церкви), открывшийся 13 декабря 1545 г. в Триденте (ныне Тренто), главным образом в ответ на Реформацию, по инициативе Папы Павла III и закрывшийся там же 4 декабря 1563 в пontiфикат Пия IV, был самым важным собором в истории Католической Церкви.

<sup>12</sup> Рабинович М.Г. *Очерки этнографии русского феодального города*, с. 218.

<sup>13</sup> *Prawo o małżeństwie*, art. 41, p. 15.

during both the arrival of the groom and of the bride”<sup>14</sup>. Thirdly, “if the wedding does not take place during 6 months after the first notice, then it has to do so through a new one”<sup>15</sup>.

During this time, the engagement usually takes place, which in effect represents the first phase of the “marital union”. The delay of six months has been established due to several reasons: for the two young spouses to get closer, the discussions concerning dowry of the bride, its sizes, and the wedding day. In addition, this period of time, served for the gathering of information regarding the couple, particularly the one that might serve as an impediment for the wedding.

Apart from the aspect that frameworked the marital conclusion, the legal document comprised a series of “obstacles that were enforced to end the marriage conclusion”:

1. unfaith;
2. a past marriage, legally deficient;
3. spiritual vows and clergy;
4. murder;
5. incest and kinship
6. rules of public decency (*honestas publica*)”<sup>16</sup>.

The first “obstacle” concerning the unfaithfulness of one of the couple, was determining when concluding a marriage. Often, individuals belonging to divergent religion beliefs were forbidden to get married, as it was considered, at that point, a major issue.

M.K. Tsaturova, in her scientific research study, presents interesting statements, provided with the belief that the Sacred Document allowed the marriage between people, where one of them was of unchristian faith. In the first epistle of the Corinthians, St. Paul, the Apostle says: “To the others, I speak, not God: if one of the brothers has an unfaithful wife and she agrees to live with him, then he must not let her; And the wife, that has an unfaithful husband, and he agrees to live with her, she must not let him; as the unfaithful husband will be enlighten by the faithful wife, and the unfaithful wife will be enlightened by the faithful husband; otherwise their children would have been foul and they are now holy”<sup>17</sup>.

Another impediment for a marriage conclusion was a past marriage, legally unfinished. The Catholic Church did not accept divorces, as only death could separate the spouses, and in such cases the liberation from a past marriage was not needed for a new one to be concluded. The marriage was being considered invalid also in cases where one of the spouses had a physical incapacity.

Article 68 illustrates the conditions of a new marital union: “The female representatives were forbidden to consolidate a new marital union within 10 months

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<sup>14</sup> *Ibidem*, p. 17.

<sup>15</sup> *Ibidem*, p. 17-18.

<sup>16</sup> *Ibidem*, art. 15, p. 13.

<sup>17</sup> Библия. Первое Послание к Коринфянам. Глава 7:12-14.

of the death of her later husband or of the day when the first marriage was declared invalid”<sup>18</sup>.

A further marital union was strictly regulated and rarely permitted. It was crucial for the former marriage to be declared invalid, in order for the future one to be concluded. Article 69 denotes: “Males representatives as well as the female ones, whose marriage was found invalid, are allowed to conclude a new marital union after 3 years since the day of sentence”<sup>19</sup>.

One of the main conditions preventing marriage was the absence of a certain prohibited degree of kinship, property or spiritual bearings. The nullity of marriage was declared in the following cases:

1. the presence of a certain consanguinity in the lateral line of the second and subsequent canonical degrees;
2. a property affinity on the side line of all prohibited degrees;
3. spiritual kinship;
4. civilian kinship”<sup>20</sup>.

It was within the purview of the priest where the assessing of the extent of a prohibited marriage lied. ***Consanguinity was not allowed until the seventh degree inclusive***, i.e. between relatives in the ascending and descending lines between brothers and sisters, stepfather and stepdaughter, stepmother and stepson, son-in-law and mother-in-law, daughter and father-in-law, nephew and aunt. Similar prohibitions applied within Orthodox, the Greek-Catholic, Evangelical-Lutheran and Evangelical-Reformed Churches.

The complexity of the question lied in the establishment of the property degree. ***Property*** arose through marriage, in which the husband and his relatives were being considered part of the wife's relatives' property, and vice-versa. It ***was forbidden to the sixth degree***, inclusive. The difficulty of establishing the existing degree of property reposed on the fact that many families would not maintain any contact with each other and thus would not be aware of the marriage of their distant relatives<sup>21</sup>.

Spiritual affinity, which occurred through baptism, was thought as a first degree kinship, between the god-mother or the god-father and thereby, another potential obstacle to the marriage conclusion.

A further impediment that could prevent marriage was adoption. The marriage between the stepmother and her stepson or between the stepfather and his stepdaughter was categorically prohibited, considering that adoption was equated to blood affinity.

Summarizing the above, we note that the study of historical and legal sources, such as the “Law on Marriage Alliance. Certificate from February 14, 1832, the Emperor Nicholas I” has a particular importance in reconstruction the family law, as well as domestic, spiritual, moral and religious values of the society during the XIX<sup>th</sup>

<sup>18</sup> *Prawo o małżeństwie*, Section 5, art. 68.

<sup>19</sup> *Ibidem*, Section 5, art. 69.

<sup>20</sup> *Ibidem*

<sup>21</sup> Цатурова М.К. *Русское семейное право XIV-XVIII вв.*, p. 9.

century. The legislation of the XIX<sup>th</sup> century, in a certain sense, reflects an accumulation of a series of written and unwritten laws, customs regarding family and marital relation over the last few centuries. This, in effect, allows tracing the evolution of the way certain pillars of the family law institution were conserved: the conditions of marriage, the duties of the spouses, the raising of the children, the divorce, etc.

Virtually, most of the fundamental postulates of the family have kept unchanged traditions for centuries and as for the documents from the “past”, they allow us to get a glimpse at the history of the morality and marital relations, through the prism of the ages.

The works reflecting the history of family relations, entitle us to comprehend how gender structures functioned, as the actual practice deviated from the dominating gender icons of the society, influencing them<sup>22</sup>.

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<sup>22</sup> *Гендер и общество в истории*, Под редакцией Л.П. Репиной, А.В. Стоговой, А.Г. Суприянович, Санкт-Петербург, Алтейя, 2007, с. 3.