

A DELICATE TOPIC: INABILITY OF ONE OF THE SPOUSES TO PURSUE A CONJUGAL LIFE

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Rezumat: *Articolul analizează un subiect insuficient tratat în istoriografie, ce ține de istoria familiei – impotența unuia dintre soți în viața conjugală și, implicit, divorțul. Întemeiat pe exemple concrete din Basarabia primei jumătăți a secolului al XIX-lea, demersul științific al autoarei pune în lumină realitățile vremii, abordează chestiunea acordării divorțului și prezintă modul în care erau respectate canoanele bisericii. Ca surse de cercetare au fost utilizate preponderent documente din fondurile Arhivei de Stat a Republicii Moldova.*

Abstract: *The article covers a topic related to family history – impotence and divorce, insufficiently treated in historiography. In this study based on concrete examples from Bessarabia, it will be presented the daily reality in the problem of divorce granted for the inability of a spouse to conjugal life and how the canons of the church were respected in the first half of the nineteenth century. As sources of research were used documents from the funds of the State Archives of Republic of Moldova.*

Résumé: *L'article ci-joint fait référence à un sujet insuffisamment traité dans l'historiographie, qui tient de l'histoire de la famille – l'impotence de l'un des maris dans la vie conjugale et le divorce. Notre démarche scientifique, tout en partant des exemples concrets de la Bessarabie de la première moitié du XIX-e siècle, présente la réalité quotidienne liée du problème qu'on vient de mentionner, le divorce et la façon dont les chanoines de l'église ont été respectés. La recherche s'est basée surtout sur des documents provenant des fonds des Archives d'Etat de la République de Moldavie.*

Keywords: *family, conjugal life, inability, impotence, divorce, canonic law, Bessarabia, Russian Empire.*

Marriage can be treated from various points of view: legal, economic, social, psychological, moral, religious, and physiological. As the *Dictionary of Psychology* states, “the own note of the family, as a social institution based on mutual choice of marital partners, is to ensure reproduction of the species, in determined socio-cultural conditions”¹. Marriage of a man and a woman is also a biological phenomenon, being

¹ Paul Popescu-Neveanu, *Dicționar de psihologie* [Dictionary of psychology], Bucharest, Albatros Publishing House, 1978.

the means of propagating the human race and a factor of generations' continuity². In a close relationship, marriage – as a biological fact – covers physiological and psychological aspects. The physiological factor consists in the sexual attraction of two different genders, which may result in pregnancy and the birth of a follower, or various diseases, etc. Alongside these physiological moments, in a marriage, family psychology, marital relations, and love lead to a harmonious development of the individual. In addition to biological factors, it is well-known that the family had and continues to have a social-economic and a basic role in a state. Therefore the state, according to religious rules, try to solve the problem, engaging in a sensitive intimate issue of a family, such as the sexual relations between spouses, because abnormal relations in a family had an impact not only on the family, but also in the community, on the collective mentality, and on the entire society.

In medieval and modern times the marriage was considered sacred, and ecclesiastical authorities allowed divorce only in very serious cases. The impotence falls under the moral grounds for divorce³. According to the Medical Dictionary, impotence is the inability of a man „to have a satisfactory sexual intercourse”. This type of „disorder is caused by organic or psychological origin”⁴. The analysis of case of impotence in the nineteenth-century, but in earlier periods, is difficult and controversial, because it shows the mentality of the times. Few couples or women had the courage to testify about such a problem in their family life.

The problem of inability of one of the spouses to pursue a conjugal life in Moldavia, Wallachia, Transylvania and Russian Empire was examined in papers, studies and books signed by the Family History researchers, which present the phenomenon in the context of family life or in terms of the position of the woman

² П.В. Левитов, *О брачном союзе и его значении в области половых отношений* [About the marital union and its importance in the field of sexual relation], in “Христианское чтение”, 1905, 7, pp. 65-84.

³ To note that preceding from religious canons, from the mentality of the society and from customs towards the end of the eighteenth century and early nineteenth-century, the grounds for divorce were classified as: I. Moral - adultery, abortion, attempt on husband's life, crime, venereal disease, leaving home, etc.; II. Religious - heresy, holding during the baptism their own child, violation of the rules of the marriage sanction; III. Physical - **impotence**, incurable disease, infectious disease; IV. Civil - disappearance of a spouse, taking the vow, etc. See Nicolae Fuștei, *Creștinismul pe înțelesul tuturor* [Christianity Explained], Chișinău, 2008, p. 284; Sorina Bolovan, Ioan Bolovan, *Contribuții privind divorțialitatea în Transilvania la sfârșitul secolului XIX și începutul secolului XX* [Contributions regarding divorce in Transylvania in the late 19th and early 20th century], in C. Padureanu (coord.), *Studii de demografie istorică (secolele XVII – XXI)* [Historical demography studies (17 – 21 centuries)], Arad, 2010, pp. 99-114; Mircea Brie, *Divorțul ca formă de erodare a familiei în comitatele Bihor și Sătmar (a doua jumătate a secolului XIX)* [Divorce as a form of erosion of the family in the counties of Bihor and Satmar (the second half of the 19th century)], in *Studii de demografie istorică...*, pp. 77-98.

⁴ *Dicționar de medicină. Larousse* [Dictionary of Medicine. Larousse], Univers Enciclopedic Publishing House, p. 313.

in couple's life⁵. Reporting on the family in Moldova in medieval times, the researcher Lilia Zabolotnaia argues: „Even if divorce was scheduled for non-conjugal relationships, obviously very difficult, almost inconceivable was for the wife to denounce her husband. In medieval society it was unusual to display personal life, especially sex life. In case the divorce was filed for that reason, in the trial it used to be called any other reason, but not this one, fact confirmed by a total lack of documents”⁶. For the period between the 16th and 17th century, only one document in the Romanian countries speaks explicitly about initiating divorce due to conjugal impotence; it is an application for separation filed by a woman, in 1691⁷. Taking into account this cause for dissolution of a marriage, the researcher found that it was mentioned extremely rare in documents about divorce in other European countries, for example in Poland, where merely a single case was detected, when an attempt was made to terminate a marriage on the ground of the conjugal non-compliance⁸. Yet, there is no work concerning the problem of impotence in Bessarabia.

The Church's view on problem of inability of one of the spouses to pursue a conjugal life

According to religious canons, the profane that intentionally caused him this physical defect was removed from the sacred mysteries for three years (Ap. 21, 22, 23, I Sobor.1). Commenting the laws of Holy Apostles, of Episcopal Synods etc.,

⁵ Constanța Ghițulescu, *În șalvari și cu ișlic. Biserică, sexualitate, căsătorie și divorț în Țările Românești ale secolului al XVIII-lea* [In salwars and ishlik. Church, sexuality, marriage and divorce in the Romanian Countries of the 18th century], București, 2004; C. Padureanu (coord.), *Studii de demografie istorică (secolele XVII – XXI)* [Historical demography studies (17 – 21 centuries)], Arad, 2010; *Ciclul vieții familiale la românii din Transilvania în a doua jumătate a sec. al XIX-lea și începutul sec. XX* [Family life cycle of Romanians from Transylvania in the second half of the nineteenth century and the beginning of twentieth century], editori Ioan Bolovan, Diana Covaci, Daniela Deteșan, Marius Eppel, Elena Crinela Holom, Presa Universitară Clujeană Publishing House, 2009; M. K. Царурова, *Русское семейное право XVI-XVIIIвв* [Russian family law in 16-18 centuries], Москва, 1991, Lilia Zabolotnaia, *Femeia în relațiile de familie din Țara Moldovei în contextul european până la începutul sec. al XVIII-lea (Căsătorie, logodnă, divorț)* [The woman in family relations in Moldova in the European context until the beginning of 18th century (Marriage, engagement, divorce)], Chișinău, 2011, p.175.

⁶ Lilia Zabolotnaia, *Femeia...*

⁷ The author publishes the full text of the document taken from Nicolae Iorga, *Documente românești din arhivele Bistriței (scrisori domnești și scrisori private)* [Romanian documents from the archives of Bistrița (royal letters and private letters)], Part II, Bucharest, Librăria Socecă Publishing House, 1899, p. 80 and a detailed analysis of it, see L. Zabolotnaia, *op.cit.*, p. 175.

⁸ It's about Lithuanian magnate Krzysztof Moniwid Dorohostajski, charged of impotence with second wife, Zofia s Radziwiłłow, in Lilia Zabolotnaia, *Femeia în relațiile*, pp. 177-178.

Bishop Nicodemus (Milos) claims that the person who caused the fault committed a great sin, characterized as a suicide⁹. The reason that caused such a *pravila* to appear was the activity of Valesieni sect created in the second century, translating in its own way the words of Jesus in Mt. 19, 12, it introduced among its followers the emasculation. Against this sect *pravilele* of Holy Apostles were directed. It seems that this sect was widespread, for the repetition of these *pravilas* is found in the *First Council of Nicaea (325)*, and *Fourth Council of Constantinople*¹⁰.

In the Western Church, the impotence as grounds for divorce is mentioned in the canons of the Synod of Liftin (Belgium) in 743, in canon 17 of the Synod of Vermer (diocese Suasson) in 753, in canon 15 of the Synod of Zaltsburg in 799¹¹. The researcher Zagorovski claims that the use of this ground for divorce, and making its reference to church decisions, shows that the church gives to this motif a destructive power of the family and it is a testimony to the frequent examples in practice. Thus, the canon 20 of the Synod of Compiègne in 756-757 states: “If the wife says that her husband was not able to lead a proper conjugal life, while the husband will support the opposite, the husband must be believed.”

The Orthodox Church using this cause for divorce shows the following:

1) Impotence should be before marriage. Its loss during marriage, could not serve as grounds for the dissolution of a marriage, because the marriage from a Christian point of view includes not only physical elements, but also moral.

2) Unawareness of the husband of his disability before the marriage could be grounds for divorce, because the Orthodox Church was admitting marriage with such men, except the emasculate ones, assuming that the disability can be treated.

3) The woman can file for a divorce if she did not know of her husband's impotence before marriage because it is believed that such a marriage was concluded without her consent¹².

The problem of impotence in various codes and acts

In Byzantine law the provisions regarding impotence have been reported in *Codex Justinianus* (529- 534) and the laws of Leo and Constantine. *Codex Justinianus* claims that “marriage may be dissolved blamelessly if the husband had

⁹ Епископ Никодим (Милош), *Правила Святой Православной Церкви с толкованиями* [The laws of the Holy Orthodox Church with the interpretations], Часть 1, Holy Trinity Orthodox Mission, 2001. http://lib.eparhia-saratov.ru/books/13n/nikodim_milosh/rules1/rules1.pdf. Accessed in November 28.

¹⁰ *Ibid.*

¹¹ А. Загоровский, *О разводе по русскому праву* [Divorce by Russian law], Харьков, 1884, p.140.

¹² *Ibid.*

no contact with his wife for three years”¹³. The laws of Leo and Constantine proclaim the same conclusion if „the man for three years never had conjugal cohabitation with his wife”¹⁴.

Pipin's Capitulary of 753 announced that in the case of husband's impotence, the wife is allowed to wail her husband „for the husband leaving nuptial bed” and if that was demonstrated the spouses could divorce, wife being entitled to dispose of her fate. But already in the capitulary of 757 he claims that for such an accusation, the credence is given to man's words¹⁵.

The researcher Tsaturova claims that in the Russian Empire, based on this reason, marriage could be dissolved only after three years of marriage¹⁶. *Zakon Gradskii* says: „A marriage is dissolved with a rational and good reason, when someone will not be able to have a physical communication with his wife, and fulfil what is required from spouses indicated by its nature: if after three years of marriage, the spouse does not fully show that he is a real man, the wife may on her own or with the her parents help to divorce him, even if the husband is against it”¹⁷.

Case Studies in Bessarabia in the 19th century.

In the early nineteenth century in Bessarabia, the civil trials were based on local norms of law and custom. After the annexation of Bessarabia to Russia, the legislation of the empire was also introduced on this territory. While the general issues related to family relationships were included in *Kormcheea Kniga* (Кормчая Книга), *Sobornoe Ulojenie* (Соборное Уложение), and *The decrees of the King, of the Council, and of the Senate*, some family problems as divorce issue were within the Church's jurisdiction¹⁸. In the document no. 22 038 of February 28, 1806 issued by the Russian Synod it is mentioned the divorce caused by an inability to meet

¹³ *Новые Заповеди Иустиниана царя* [Codex Justinianus], Гл. 44, гр.43, гл.4, л.42 об. Apud А. Загоровский, *О разводе...*

¹⁴ Главизны Леона царя и Константина [The laws of Leo and Constantine], Гл.49, зачаток 2-ой, гл.9, л.123 на об. Apud А. Загоровский, *op. cit.*

¹⁵ А. Загоровский, *О разводе*, с.140.

¹⁶ М.К. Цагурова, *Прекращение брака по русскому семейному праву XVIII в.* [Termination of marriage in the Russian family law of the 18th century], In: Вестник Московского университета. Сер.11, Право, 1990, 5, р. 59-65; М. К. Цагурова, *Три века русского развода. XVI - XVIII века* [Three Centuries of Russian divorce. 16 - 18 centuries], Москва, 2011.

¹⁷ *Закон Градский*, Гл. 48 гр. 11, гл.2, л.71 на об. Apud А. Загоровский, *О разводе*.

¹⁸ *Кормчая, напечатанная с оригинала патриарха Иосифа* [Rudder, printed from the original of the Patriarch Joseph], Москва 1912; Алексей Степанович Павлов, *50-я глава Кормчей книги, как исторический и практический источник русского брачного права* [The 50th chapter of the Rudder - historical and practical source of Russian marriage law], Москва, 1887; *Полное собрание законов Российской империи* [Complete Collection of Laws of the Russian Empire], 1832 г. Т. 7, СПб., 1833.

marital obligations arising from birth or other motifs acquired during life: „о разлучение от супружества за неспособность к супружескому сожитию или от природы или от других случившихся в течении времени причин „¹⁹; document no. 29728 of January 8, 1824 provides cause for divorce the impotence of the husband „о разводе по причине оскотления мужа”²⁰. The given cause is specified in *Hexabiblul* of Armenopulos, *Кормчая книга* and other laws adopted by Synod²¹.

It is well known that according to church canons, the divorce can be requested only by the innocent. According to Armenopulos, Title 12, there were general reasons for divorce, reasons for husband's divorce at the expense of the wife and vice versa. The encoder mentions that he listed only those „which deserve to be taken into account and ... to recognize those specifically, which could dissolve a marriage without penalty”²². The impotence of the husband is in the foreground, „when a man cannot copulate with his woman, and in the past three years he has been emasculate to copulate with his woman”. In this case, both wife and her parents can dissolve the marriage, even without her husband's consent. The man is forced to give back to the woman the entire dowry, if he took it, „and the gift before the wedding remains in his possession, so he would not receive any prejudice”²³.

The legal methods of demonstrating the impotence were: personal confess of the defendant, plaintiff's or defendant's oath; medical examination of the virginity, testimonies of wife's mother or father and even testimonies of neighbours. In order to prove the veracity of the motif a medical expertise was needed. Sometimes there was no need to do a medical examination because the defendant was admitting the fact²⁴. The consequences were complicated only for the incapable husband being that he did not have the right to remarry.

To indicate the case of the impotence the documents use the terms „without limb s power” and „is related”. Thus at 23 March 1813 Vasile Coşcodan from village Condrăteşti submitted a complaint about the examination of the case with his wife Mary, daughter of Dumitru Bosiioc, from the same village cannot be together as “without limb s power”, which is why his wife left the parents²⁵. Following a

¹⁹ *Полное собрание законов Российской империи* [Complete Collection of Laws of the Russian Empire], Собрание Первое. Том XXIX. 1806 — 1807 гг., СПб., 1830

²⁰ *Полное собрание законов Российской империи* [Complete Collection of Laws of the Russian Empire], Собрание Первое. Том XXXIX. 1824 г. СПб., 1830

²¹ *Кормчая, Manualul legilor sau așa numitele cele șase cărți adunat de pretutindenii și prescurtat de vrednicul de cinstire păstrătorul de legi și judecător în Salonic Constantin Harmenopulos* [The manual of laws or so-called six books everywhere gathered and short to honor worthy guardian of law and a judge in Thessaloniki Constantin Harmenopulos], tr. de Ioan Peretz, București, 1921.

²² *Manualul legilor* [The manual of laws...], titlul XII.

²³ *Ibid.*

²⁴ В.И. Добровольский, *Брак и развод, Очерки по русскому брачному праву*, Ст-Пб, 1903, с.138-139.

²⁵ ANRM [National Archives of the Republic of Moldova], F. 205, inv. 1, d. 330, f. 1.

complaint was given „a book with determination” to live together three years with no right to divorce. At that time it was thought that impotence can be treated. And in case of family Anastasia and Toader Rusu indicated that her husband would be finding sick, „without limbs power”, indicating to live two years with her husband and if it will not recover, then ask for divorce²⁶.

Failure maintenance of sexual relations causes aggression of impotent man and led to implementation of violence verbal and physical. Such is the case with Ecatherine and Samson. On 20th of August 1813, Ecatherine's mother, Ileana, widow from Gura Galbenă addressed a complaint to Dicastery, that his son in law failures to perform marital obligations, beating his wife and mother-in-law. Dicastery ordered to investigate the case. The results of investigation claimed that Samson hit them with a stick. Although it was found that Catherine was continually beaten, the authorities asked the women to await his treatment and that will not heal, to allow second marriage²⁷.

A divorce case, which was based not only on the motif of impotence, but also on an indecent assault on his wife's honour, accompanied by tyrannical beatings was that of Fedora and Andrei Cuciuc. Fedora, resident of Mimoreni village, Orhei district, married Andrei Cuciuc, resident of Buiucani village in 1814²⁸. Few months after the marriage, she filed a complaint accusing her husband of impotency. In their first night of marriage he attempted to dishonour her by giving her for defilement to a relative Nanie Iosef, a merciless beating, not supporting her and he was also feeble-minded. Unable to endure such an inhuman behaviour, Fedora told relatives and addressed to the court²⁹. Based on this case a survey was initiated after which the following was established: 1. Andrei and Fedora were wed on January 24, 1814 by the Pastor Vasile with the will and the consent of both parties, 2. Andrei confirmed that he was impotent and confessed that all Fedora's words, referable to her defilement, were actually true. Nanie denied his fault. Following some research it was proved that Andrei and Gafița, Nanie's wife, were cousins, their mothers Meliana and Maria being sisters, so Nanie would be brother-in-law from a cousin. 3. It turned out that Andrei was kind of feeble-minded and did not support his wife, but tyrannized and beat her³⁰.

However, not always the authorities would take into consideration the above-discussed motif. Thus, on May 21, 1827 the inhabitant of Bender town, Muntean addressed to the Metropolitan with the request to dissolve her marriage³¹. The petitioner reported that six years ago she got married legally to Ștefan Muntean, but during her married life she had no physical contact with her husband, fact which

²⁶ ANRM, F. 205, inv. 1, d. 325.

²⁷ ANRM, F. 205, inv. 1, d. 329.

²⁸ ANRM, F.205, i.1, d.681, f1-1v

²⁹ ANRM, F.205, i.1, d.681, f.5-9.

³⁰ *Ibid.*

³¹ ANRM, F.205, i.1, d.5675, f.1-1v.

could be demonstrated. Being young and not wishing to lead a debauched life, she requested to allow the divorce in order to remarry.³² The resolution of this case was negative³³. As shown, not always even a demonstrated case of impotence ended up with divorce. The above case is illustrative, the woman being forced to continue to live together with her husband.

The punishment for impotence

The person guilty of impotence had no right to remarry. In case of Fedora and Andrew, the Dicasterial Decision of 30 December 1814 was as follows: 1. The divorce between Fedora and Andrew was permitted on the following grounds - impotence, attempt on his wife's honour, tyrannical beatings. 2. Since Fedora was not guilty in adultery, but was tainted by Nanie with Andrei's permission, would not be subject to epithemy and was permitted to remarry. 3. Andrei was deprived for life of the right to remarry. 4. The case of attempt on Fedora's honour, committed by Nanie in collusion with Andrei, to be examined by the Civil Government³⁴. The divorce case was resolved in favour of the woman, all her accusations being proved. In cases of Anastasia and Toader Rusu, and Ecatherine and Samson the Dicasteria recommended that the spouses to live together three years since their wedding day.

Conclusions

Following the research and analysis of the files, we can conclude that in Bessarabia in the first half of the nineteenth century the women or their kinsfolk addressed the complaints by the ecclesiastical authorities. Although impotence may serve as grounds for divorce, the ecclesiastical authorities did everything possible to keep the family, looking for false reason and that impotence can be treated to prevent the divorce. The woman was forced to live with her husband at least three years after wedding. Simultaneously, women were particularly affected. Although in some cases, it was found that the impotent husband beat his wife, the spouses were not allowed to divorce.

³² *Ibid.*

³³ ANRM, F.205, i.1, d.5675, f. 2.

³⁴ ANRM, F.205, i.1, d.681, f.9.