

THE FORM OF MARRIAGE ACCORDING TO THE RULES OF ROMAN LAW, THE CANONS OF THE HOLY ORTHODOX CHURCH AND MODERN MACEDONIAN LAW

Abstract.....	1	IV. <i>The procedure for the conclusion of marriage in accordance with contemporary Macedonian legislation.....</i>	8
I. <i>Introduction.....</i>	1	V. <i>Conclusion.....</i>	13
II. <i>The Form for Contracting Marriage According to Roman Law.....</i>	2		
III. <i>Marriage Contract Format According to the Regulations of the Holy Orthodox Church.....</i>	4		

-Abstract-

Marriage and the form of its conclusion in the history of marriage law according to the period are characterized by their own specificities that are characteristic of that period and law. Thus, Roman law, considering the importance of marriage as a pillar of the state, regulated the conclusion of marriage by creating ways of concluding it which had been specific to the period in which it was valid. The Orthodox Church also, as part of the one Christian Church recognized by Rome, at first was only giving blessing to the concluded marriage, and later began to regulate it with its own rules, which made the conclusion of marriage in the Church mandatory for its believers. Contemporary Macedonian law, which has been relevant since the independence until today, although it has undergone minor changes, did not bypass the conclusion of marriage, but created its own rules for the same. Although these three types of regulations that refer to the form of the conclusion of the marriage have created their own specifics, the idea they carry is the same, namely that the marriage should be concluded and that it should be the basis of a new marital union ("small state i.e. a small church") on which as a basis the state will be founded i.e. The Church will ensure its survival in times.

Keywords: marriage, church, law, will, equality

I. INTRODUCTION

In the digital dictionary of the Macedonian language, one of the definitions provided for the term "form" states that it is a "way of existence," or "external organization of content."¹ This definition of form as a way of existence or external organization of content, in the context of the work I am undertaking, which concerns marriage according to Roman law, the rules of the

* Panche Kjosev, PhD Student at Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law; e-mail: pancekjosev@gmail.com

¹ Дигитален речник на Македонскиот јазик <<http://drmj.eu/show/%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D0%B6>> accessed 15.02.2024

Orthodox Church, and contemporary Macedonian law, will be explained in the following paragraphs. It will be determined whether there is similarity among them or if all three are different or coincide in some points, and whether the outcome of marriage according to each of them results in the formation of a new marital union.

Evidence exists regarding forms of matrimonial union practiced in numerous ancient civilizations. However, as this study also examines the protocols for marriage according to the Orthodox Church, for the purpose of this introduction, we shall consider the inception of marriage even in Paradise, i.e., the union between Adam and Eve.

In the book of Genesis in the Old Testament, specifically in the narrative of the creation of the world and its inhabitants, among the creations formed by God were the man and the woman. According to the image and likeness of God, they were brought into being. After creating them, God gave them the commandment, "Be fruitful and multiply and fill the earth..." (Genesis chapter 1, verse 28), thereby establishing the first marriage and imparting the initial instructions on how to live together.

In the Macedonian Family Law in force as part of Macedonian legislation, Article 15 states: "Marriage may be contracted by two individuals of differing genders, expressing their consent freely before the competent authority, in accordance with procedures defined by law."

Modestinus, a prominent Roman jurist, provides the following definition of marriage: "Marriage is the union of man and woman, a lifelong partnership, a sharing according to divine and human law."²

Therefore, regardless of the historical epoch in which a man and a woman had an intention to formalize their union in matrimony, adherence to the prescribed form and procedure for the conclusion of marriage is imperative. How such a union should be contracted according to the legal frameworks under consideration, will be explored in the subsequent discourse.

II. THE FORM FOR CONTRACTING MARRIAGE ACCORDING TO ROMAN LAW

In the book by Apuleius titled "Metamorphoses" or "The Golden Ass," we encounter a depiction of marriage among the gods, where Jupiter himself solemnizes the union between Cupid and Psyche, but in accordance with what Jupiter himself calls "the regulations of civil law."³ "He immediately commanded Mercury to find Psyche and bring her to heaven. Then, he offered her a cup of ambrosia and said to her: 'Take Psyche, become immortal, and may Cupid never be separated from your embrace; let your marriage last forever!'"⁴

These lines, excerpted from the same-titled book, depict the marriage between Cupid and Psyche by Jupiter. What is additionally fascinating in the same novel, on the very page, is the statement that "Psyche, as tradition dictates, came under the marital authority,"⁵ or as stated, under the authority of her husband, in what is referred to as a "manus" marriage. Essentially, under the hand or control of the husband, as "cum manu" in Latin translates „with hand“ or „with authority“.

According to all sources consulted for this work, it is acknowledged that Roman law recognized two types of marriage: manus marriage, where the woman passed under the authority of the man, and free marriage.

² Даниела Тошева, Јустинијан Дигести:(избор од брачно право:23-24)/предговор, превод од латински јазик, белешки и индекс Даниела Тошева-Скопје,2019, 40

³ Апулеј, Метаморфози или Златното магаре, [превод од латински јазик Скопје, Макавеј,2012] 115

⁴ Ibid, 116

⁵ Ibid

However, to conclude a legally valid marriage in any form, as noted in the renowned Roman jurist Ulpian in his "Rules," the individuals entering into marriage must possess *conubium*, the right to marry. Both the husband and wife need to be sexually mature, i.e., capable of demonstrating mutual consent, if they are *sui juris*, meaning they agree independently, or if their fathers, if they are under their authority, consent.⁶ Additionally, it is necessary that there are no impediments to marriage, as the existence of certain obstacles precludes the formation of a valid marriage. Such impediments include: an existing marriage, mental illness prior to the marriage, blood relationship in the direct line unlimitedly, and up to the fourth degree laterally, relationship through affinity up to the first degree, adoption, marriage between a guardian and a ward, a Christian and a non-believer, etc.⁷

i. Manus marriage

Returning to the story of Psyche and Cupid, the portrayal depicts the formation of a *manus* marriage, though it deviates from the formalities prescribed and recognized by Roman law. According to Roman legal tradition, three distinct forms of entering into a *manus* marriage are present: *confarreatio*, *coemptio*, and *usus*. The question of which of these three forms is the oldest emerged during the examination of numerous scholarly articles, with the prevailing view leaning towards *confarreatio* as the oldest one, despite some scholars advocating for the priority of *coemptio*, a perspective we will delve into shortly.

a. Confarreatio

Confarreatio, notably, emerged as a customary practice primarily among the patrician class or the city's founding elite, revered as both guardians and adherents of temple rites and priests of the Gods. This matrimonial form required that a man be a priest or be part of those directly involved in religious life, providing guidance on religious practices. Subsequently, plebeians were permitted to enter into such marriages, but this form of marriage was abolished by the laws enacted by Theodosius, which prohibited the practice of old religions. It marked the first time in Rome's history that the eternal flame of the goddess Vesta, tended by the Vestal Virgins, was extinguished.⁸

The marriage itself was concluded, as indicated in Gaius' *Institutes*, with specific rituals and offering of sacrifices in the presence of ten witnesses. This entire process is elaborated more comprehensively by Corbett in his work "Roman Law of Marriage," while Buckland also provides his perspective in "A Text-Book of Roman Law from Augustus to Justinian," and Alan Watson in "Rome of the XII Tables: Persons and Property." In their discussions concerning the marriage ceremony in accordance with the *confarreatio* form, it is asserted that it took place before the altar of Jupiter *Farreus*, in the presence of the Pontifex Maximus and the Flamen *Dialis*. Specifically, Corbett asserts that as part of this marriage ceremony, a sacrifice to Jupiter was offered, consisting of "a sheep, spelt bread, fruits, and a salted cake."⁹ The two individuals entering into marriage sit at two separate chairs with covered heads, holding each other's right hands. Above them, the skin of the sacrificial sheep is placed. During the ceremony, words are spoken, believed to be prayers uttered as blessings for the marriage being solemnized. Of particular interest is the number of witnesses, which is ten, thought to

⁶ Ante Romac, *Izvori rimskog prava, Latinski tekstovi sa prevodom* (Informator,1973) 167

⁷ See more Иво Пухан, Мирјана Поленак-Акимовска, Владо Бучковски и Гоце Наумовски, *Римско право* (2014) 136

⁸ The Theodosian Code and Novels and the Sirmundian constitutions, a translation with commentary, glossary, and bibliography by Clyde Pharr in collaboration with Theresa Sherrer and Mary Brown Pharr with an introduction by C. Dickerman Williams (Princeton University Press, 1952) 472

⁹ Percy Ellwood Corbett, *The Roman Law of marriage* (Oxford at the Clarendon Press, 1930) 74

symbolize the ten gens, i.e., the founding clans of Rome. Furthermore, two other significant elements characterize the solemnization of this manus marriage: the exchange of water and fire between the partners, and the groom's question, "Quaenam vocaris?" (What is your name?), to which the bride responds, "Ubi tu Gaius, ego Gaia" (Where you are Gaius, there am I Gaia).¹⁰ However, it is believed that the exchange of fire and water, or the entry with fire and water, and the response to this question, take place at the entrance of the groom's house. These words and the ritual with fire and water are practiced in the other two forms of manus marriage, as well as in marriage without manus.

The pivotal aspect of contracting this form of marriage lies in the subsequent selection of the priests from the group of those who concluded this type of marriage, with the stipulation that their parents must have entered into such a marriage also. Over time, interest in the formation of these marriages gradually declined, as wives were unwilling to be under the manus of their husbands, leading to modifications where the wife was placed under manus solely concerning the religious obligations imposed by her faith. The persistence of this form of marriage was primarily attributed to the necessity for priests. However, it is widely believed that its decline occurred during the era of Theodosius in 394 AD when the offering of sacrifices was prohibited, and the temples for the worship of the old deities were closed or converted into Christian churches.¹¹

b. Coemptio

The second method or form of contracting marriage is called coemptio. As sources for it, I will once again utilize the research conducted by the authors mentioned above, as well as the book "Textbook of Roman Law" by Andrew Borkowski and Paul du Plessis, along with other authors who have written on this subject.

In his work *Institutes*, specifically, Gaius asserts that this type of marriage, or the subjugation of the woman to the man, occurs through the process of mancipatio, or fictitious sale conducted in front of five witnesses who must be adult Roman citizens and a scale-holder.¹² This fictitious sale, per aes at libram, or translated as "by bronze and scale," is considered to have originated from a time when brides were actually sold by their pater familias to the groom, provided that he was sui juris or independent, after reciting the formula of purchase, or rather, his pater familias and her father, receiving a sum of money for her. This purchase of the bride is considered to be a very ancient custom, which some regard it older than confarreatio. However, over time, this sale was reduced to a symbolic purchase of the bride for a nominal sum of money, or as indicated in the book "Roman Law" by authors Ivo Puhani and others, "numus unus".¹³

During the period in which Cicero lived, Corbett noted that all forms of marriage were accompanied by prayers and sacrifices.¹⁴ Additionally, as Arangelovik suggests, this form of marriage was initially practiced by plebeians and later adopted by all citizens. Interestingly, as he points out, in this form, "the woman came under the manus of her husband, but did not become part of his gens, nor did she bear his gentile name."¹⁵

¹⁰ Ibid

¹¹ See more Corbett, *The Roman Law of marriage* 71-78, William Warwick Buckland „*A text-book of Roman Law from Augustus to Justinian*“ (Cambridge University Press, 1921) 118-119, Alan Watson, „*Rome of the XII Tables Persons and Property*“ (Princeton University Press, 1976) 11-14

¹² See more Ante Romac, *Izvori Rimskog prava Latinski tekstovi s prevodom* 171

¹³ Иво Пухан, Мирјана Поленак-Аќимовска, Владо Бучковски и Гоце Наумовски, *Римско право* (2014) 138

¹⁴ See more Corbett, *The Roman Law of marriage* 79

¹⁵ Драгољуб Аранђеловића, *Предавања из Римског права* (Издавачко и книжарско предузеће Геца Кон А.Д., 1938) 279

c. Usus

The third form of marriage with manus is usus, which is the only form encountered in the Law of the Twelve Tables. Regarding this form, Professor Arangelovik mentions that there were authors who believed that its basis lay in the story of the abduction of the Sabine women, or in marriages where women were brought by means of abduction.¹⁶ According to Gaius, under usus, the woman came under the manus of the husband if she remained continuously married to him for one year. However, if she invoked the rule of usurpation *trinoctii*¹⁷, she could interrupt usus and thus remain free, or continue to be under the authority of her *pater familias*.¹⁸ According to Puhani and others, this form of marriage emerged among the least affluent plebeians and was executed simply by the young woman moving into the household of her spouse.¹⁹

Therefore, those who used this form of marriage could, by taking advantage of the opportunity provided by the Twelve Tables for the three nights, never come under the authority of the husband and live in a form of marital union known as a free marriage, in which both parties are equal and no one is subjugated to the other, but can independently make decisions.

ii. Free marriage (*sine manus*)

The free marriage, or marriage *sine manus*, is a marital arrangement whose name inherently signifies its essence. It denotes a marriage devoid of manus, wherein the woman does not come under the authority of the husband or his family, nor does she become a part of it. She retains her independence, whether previously endowed or under the guardianship of her father, and all possessions remain her own, or belonging to her family. However, for a marriage to be recognized, it necessitates a formal ceremony and certain conditions for it to be concluded, for its validation in front of both the law and society.

Numerous authors have documented the wedding customs of the Roman people, describing the ceremonies surrounding the actual marriage. However, for the scope of this discussion, these aspects—such as the conclusion, the dowry, the accompanying festivities, and the escorting of the bride to the groom's home—are not relevant. Even the ritual of introducing the bride into the groom's household was not considered conclusive evidence of a marriage contract. As Corbett notes, a concubine could reside in the husband's household without being his wife.²⁰ The consent of both parties, or the intention to marry, was the paramount element required for the formation of a marriage. As emphasized by the renowned Roman jurist Paul: "Marriage cannot be established if all parties, including those entering into the union and those under whose authority they are, do not agree."²¹ In the same work, the Digests of Justinian, another example of consent is provided by Paul, who states: "Pomponius also writes, and it is true, that

¹⁶ See more Драгољуб Аранђеловића, *Предавања из Римског права*, 279

¹⁷ The Law of the Twelve Tables prescribed that a woman who did not want to come under the authority of her husband should spend three nights outside the house every year, thus breaking the continuous cohabitation annually.-Мирјана Поленак Акимовска и Владо Бучковски, *Избор на текстови од Римското право* (Македонска ризница, 2000) 22

¹⁸ Romac, *Izvoli Rimskog prava Latinski tekstovi s prevodom*, 171

¹⁹ See more Иво Пухан, Мирјана Поленак-Акимовска, Владо Бучковски и Гоце Наумовски, *Римско право* (2014) 138

²⁰ Corbett, *The Roman Law of marriage*, 92

²¹ Даниела Тошева, *Јустинијан Дигести:(избор од брачното право:23-24) /предговор, превод од латинскијазик, белешки и индекс Даниела Тошева*, 40

if I have under my authority a grandson from one son and a granddaughter from another son, they can marry each other only if I approve."²²

Having considered these instances, it becomes apparent that consent plays a pivotal role in the establishment and execution of a marriage contract. As time progressed and societal shifts occurred in Rome, the authority of the Pater Familias and his consent for the marriage of his children varied depending on whether they were independent or still under his authority. Consequently, when individuals attained independence or reached the legal age of majority, parental consent took on a more formalized nature compared to situations involving minors seeking to marry. Additionally, Corbett observes that during the later stages of the empire, it became customary to formalize marital arrangements through prenuptial agreements. These agreements delineated provisions regarding the dowry and gifts offered by the husband to the wife prior to the marriage ceremony. Crucially, the formalization of such an agreement became a prerequisite for validating a marriage.²³ In essence, the act of consenting to marriage was enshrined in a written document, thereby solidifying the mutual agreement to wed.

III. MARRIAGE CONTRACT FORMAT ACCORDING TO THE REGULATIONS OF THE HOLY ORTHODOX CHURCH

"Therefore a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh. This is a great mystery, but I speak concerning Christ and the Church."²⁴

In these words of the holy apostle Paul, the foundation of a marriage according to the Church is depicted, and it is the establishment of a new marital union where the husband and wife will be inseparable in their love, akin to Christ and the Church

However, in order to get to this new marital union and its formation, there is a procedure that must be followed by the newlyweds, guided by a priest. The priest, even after the marriage ceremony remains their advisor and guide, assisting and guiding them in moments when the marital partners require support.

Historically, in the early centuries, marriage was regulated according to civil law of the Roman state. Subsequently, church marriages began to be solemnized, but they did not carry legal significance according to the state laws. Justinian was the one who, through his 74 novels, allowed people of the middle class to marry in the church and for the church to issue them a document certifying that the marriage had been solemnized. As a result, in Byzantium, church marriage became mandatory for everyone.²⁵

There were certain conditions which were required for a marriage to be solemnized, including: the parties entering into marriage must be of different genders, they must provide a joint solemn declaration in front of the priest, and the marriage ceremony must be conducted in a manner prescribed by the Church.²⁶ Additionally, just like the Roman law stated, there should be no marital impediments or prohibitions for the solemnization of marriage²⁷. If such impediments

²² Ibid

²³ See more Corbett, *The Roman Law of marriage*, 94-95

²⁴ *Новиот Завет на нашиот Господ Исус Христос-Ревидирано издание*, (Библиско Здружение на Република Македонија, 2010) 502

²⁵ See more Никодим Милаш, *Православно црквено право* (Истина, 2014) 613-617

²⁶ See more Македонска православна богословија „Свети Климент Охридски“ Скопје, *Црковно право (втор дел) Брачно право и црковно –судска постапка* (Скопје, 2006) 9

²⁷ Marital impediments and prohibitions include: blood relation, affinity by marriage, spiritual affinity, affinity by adoption, pre-existing marriage, after the ceremony of becoming priest, differences in religious beliefs and so forth. Prohibitions may include restrictions such as the prohibition for a widow to remarry before ten months have passed since the termination of her previous marriage, the lack of consent if minors marry,

or prohibitions exist, the marriage will not be considered valid or recognized, and it will be treated as if it had never been concluded.

Prior to the solemnization of marriage, or as commonly referred to, during the phase known as "Preparation for Marriage," the prospective marital partners are required to:

- Submit written statements
- Undergo premarital counseling or examination, and
- Publish the intention to conclude the marriage²⁸

In regards to the written statements, the prospective marital partners are required to provide the following documents to the priest who will officiate the marriage:

- A family pedigree verifying that the individuals intending to marry are not closely related by blood
- A certificate of free marital status issued by the competent priest of the parish of origin. Additionally, the priest may request a certificate of free marital status issued by a civil institution and other supporting evidence if necessary.
- A declaration affirming that they freely enter into marriage, that there are no marital impediments, and that they are not afflicted by any contagious disease.²⁹

Regarding the premarital examination, Milash states that it consists of two parts. In the first part, in addition to the prospective marital partners, their parents, and witnesses are present and they determine whether they consent to the marriage and whether there are any marital impediments that could prevent the wedding. In the second part, the priest examines whether they are familiar with the basics of the Orthodox faith, the main prayers, and the essence of the sacrament of marriage. If they are not familiar, the priest is obliged to instruct them, and the wedding ceremony cannot take place until they are adequately instructed.³⁰ As for the publication of the intention to conclude the marriage, it is conducted by the parish priest following the conclusion of the liturgy. Specifically, the intention to marry is announced three times in the church to ascertain whether anyone is aware of any impediments that would prevent the marriage from taking place.

The wedding ceremony, as outlined in the Great Book of Ceremonies, follows immediately after the exchange of rings, although sometimes these two ceremonies were conducted separately in the past. According to Milash, several aspects need to be considered for a marriage to be solemnized:

- The timing, location, and manner of conducting the ceremony.
- The witnesses present at the wedding.
- The registration of the couple in the marriage registry.³¹

Formerly, weddings were conducted within the liturgy, but today, although there are individuals who still marry during a liturgical service, non-liturgical weddings are more prevalent. The days on which weddings took place must have been approved by the Church itself, and the venue could be the parish priest's church, another church if the prospective marital partners had a wish, or another location, provided there is special approval from the bishop of the bishopry where the marriage was to be solemnized. Maendorf identifies five elements of the wedding liturgy, namely: prayers, the placement of crowns, the reading of Holy Scripture, the Lord's

insufficient witnesses, failure to register the marriage in the registry, and similar restrictions. See more Македонска православна богословија „Свети Климент Охридски“ Скопје, *Црквено право (втор дел)* 10-30

²⁸ Ibid,33; Бранко Цисаж *Црквено право II (Брачно право и црквеносудски поступак Српске православне цркве)*(Космос,1973) 119-123

²⁹ Ibid

³⁰ See more Милаш, *Православно црквено право*, 624-625

³¹ Цисаж *Црквено право II* , 123

Prayer, and the drinking of the common cup and the circular procession, sometimes referred to as "Isaiah's Dance."³²

When discussing the number of witnesses at a wedding, Cisaj refers to the divine commandment, "If they do not listen, take one or two others along with you, so that every word may be confirmed by the evidence of two or three witnesses"³³, to emphasize the requirement for at least two witnesses. Typically, these witnesses are the godfather and the best man, although in certain dioceses of the Macedonian Orthodox Church - Ohrid Archbishopric, such as in the Diocese of Strumica, the godfather and godmother are also encountered. In addition to the designation of the witnesses, they must also meet certain conditions, such as being of church age, i.e., sixteen years old, being legally competent, not being deprived of the right to vote for the church parish council, being Orthodox, etc.³⁴.

Following the conclusion of the wedding ceremony, the parish priest records the marriage in the registry book of the wedded couples, including the particulars of the newlyweds, the officiating priest, and the witnesses. A certified extract is then issued to the newlyweds. In cases where the marriage is solemnized outside the church and without prior authorization from the competent bishop, the priest is obligated to provide precise reasons within the registry book detailing why the wedding was not conducted in the church, along with the manner in which it was conducted. The priest assumes full responsibility for the accuracy of the information entered into the registry book.³⁵

IV. THE PROCEDURE FOR THE CONCLUSION OF MARRIAGE IN ACCORDANCE WITH CONTEMPORARY MACEDONIAN LEGISLATION

In our legislation, marriage is constitutionally and legally protected. Specifically, Article 40 stipulates that "the Republic ensures special care and protection for the family. Legal relations in marriage, family, and extramarital community are regulated by law."³⁶ Here, it is evident that marriage, or more precisely the conclusion of marriage by the state, is not left to be regulated by customs or religious communities but rather enjoys protection under the highest legal act of the country. It is stated that marriage is governed by law. The regulatory framework that dictates and regulates marriage, its conclusion, the rights and obligations within it, as well as the methods of termination, the Family Law serves as the primary legislation.

The provided legislation gives us a general definition of marriage, as stipulated in Article 15, wherein it is elucidated that "Marriage may be contracted by two individuals of different genders, expressing their consent freely before the competent authority, in a manner prescribed by this law."³⁷

Mickovikj and Ristov, considering this definition, have delineated the essential conditions for the conclusion of marriage, which, according to them, are as follows: the difference in gender between the individuals intending to marry, the concurrence of freely expressed consent from the individuals intending to marry, and adherence to the prescribed form for the conclusion of

³² See more Јован Маендорф, *Брак Православна перспектива* (Скопска Православна Епархија, 2012) 31-38

³³ *Новиот Завет на нашиот Господ Исус Христос-Ревидирано издание*, 50

³⁴ See more Цисаж *Црквено право II*, 125-127, Македонска православна богословија „Свети Климент Охридски“ Скопје, *Црквено право (втор дел)*, 35

³⁵ See more Цисаж *Црквено право II*, 127-128, Македонска православна богословија „Свети Климент Охридски“ Скопје, *Црквено право (втор дел)*, 36, Милаш, *Православно црквено право*, 631

³⁶ article 40 from the Constitution of the Republic of North Macedonia < <https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf> > accessed 19.02.2024

³⁷ article 15 from the Family Law (Consolidated text) < https://www.mtsp.gov.mk/wbstorage/files/zakon_emejstvo_osnoven.pdf > accessed 19.02.2024

marriage.³⁸ However, according to our legislation, for a marriage to be contracted, there must be no impediments to marriage³⁹, which serve as conditions preceding the actual contracting and are examined by the registrar. In other words, if a marriage is contracted despite the presence of any impediments, the marriage cannot be considered valid.

Of particular interest to this study, is the formal procedure for marriage solemnization, constituting the third essential condition for contracting a marriage. The form, or rather the procedure for entering into marriage, as highlighted by the definition itself, underscores the solemnization of marriage before the competent authority and in accordance with the law. This implies that our legislation not only prescribes the location for marriage solemnization but also legally regulates the entire procedure for its contracting.

According to Dimitrija Trajkovski and Mirjana Slaninka-Dineva, the process of marriage solemnization comprises three distinct components: prenuptial procedures, the marriage ceremony itself (wedding), and registration.⁴⁰

This division of the process will serve us well in providing a clearer and more comprehensible description and depiction of the marriage solemnization procedure.

i. Pre-marriage procedure

The pre-marriage procedure, as stipulated in Article 23 of the Family Law, commences with the submission of an application, either in written or oral form, to the registry office responsible for maintaining the marriage registry. The application requires the applicants to provide extracts from their birth registry books, and in certain cases, additional documents may be necessary.⁴¹ Once the application is submitted, the registrar is required to verify whether the marriage can be solemnized. If legal impediments are identified, the request is rejected by issuing a decision. According to Article 24, paragraph 3 of the Family Law, the applicants have the right to appeal within 8 days from the date they receive the decision. This appeal should be addressed to the head of the registry office responsible for maintaining the marriage registry. The date and time of the marriage solemnization are arranged by the registrar in consultation with the applicants submitting the marriage request.⁴²

ii. Marriage Solemnization

The act of marriage solemnization is a ceremonial event, and according to the Family Law, it may take place within a "specified official space"⁴³ or outside of it. Approval from the organizational authority's management is required for marriage solemnization outside of official spaces. For a marriage to be solemnized, the following individuals must be present: the prospective spouses or one of the prospective spouses and the legal guardian of the other if marriage with a legal guardian's consent is permitted, the municipal advisor of the municipality where the marriage is solemnized, the registrar, and two adult witnesses who will attest to the veracity of the statements made before the registrar by the prospective spouses. If marriage

³⁸ Дејан Мицковиќ и Ангел Ристов, *Семејно право* (Стоби Трејд, 2015) 114

³⁹ According to the Family Law, impediments to marriage may include minority status, pre-existing marriage, consanguinity, affinity arising from adoption, affinity through marriage, extramarital consanguinity, etc.

⁴⁰ Димитрија Трајковски и Мирјана Сланинка-Динева, *Семејно право* (Светлост Графика, 2005) 82

⁴¹ Apart from the birth registry extract, the following documents may be submitted: Court decision permitting marriage (applicable in cases where one of the applicants is a minor or when there's a decision to marry between relatives), Divorce decree or any other legal document proving the termination of a previous marriage, Authorization for marriage and Genetic structure opinion issued by an institution specializing in genetic research

⁴² See more article. 25 from the Family Law

⁴³ See more article. 26 from the Family Law

through a legal guardian is permitted, the power of attorney must be in the form of a public deed. It should include details about the grantor of the power of attorney, the legal guardian, and the individual with whom the grantor of the power of attorney intends to enter into marriage.⁴⁴

After the registrar verifies the presence of the prospective spouses or one of them and the legal guardian, if applicable, as well as the witnesses to the marriage, he/she begins to read the report. This report confirms that the first parties have made statements before the law, i.e., the power of attorney is read, and the second parties guarantee the veracity of the statements given. Furthermore, the registrar confirms that there are no legal impediments for the marriage to be solemnized. After reviewing the report, the advisor must ascertain if there are any objections to it. If there are none, the advisor will inform the parties about the significance of marriage, as well as the rights and obligations arising from it. Subsequently, the advisor will confirm their consent to enter into marriage through individual statements from the prospective spouses.⁴⁵

iii. Marriage Registration

Marriage is considered registered or concluded once the prospective spouses have signed the marriage register, confirming their consent to the marriage. The statements of consent, which the registrar records in the register, are signed by the prospective spouses. Additionally, when the witnesses, registrar, and advisor also sign the register, the marriage is deemed concluded. Following the signing, the advisor declares the marriage concluded, after which an extract from the marriage register is issued to the newlyweds.⁴⁶

V. CONCLUSION

After examining the forms of marriage contract according to the three legal systems, namely Roman law, the rules of the Orthodox Church, and marriage according to modern Macedonian legislation, it is evident that besides in Rome where marriage with manus, i.e., a marriage where the woman passes under the authority of the man, is encountered, the free marriage in which both parties are equal and consenting to the contract is a legalized reality in all three legal frameworks. This equality and respect for the will to marry are fundamental principles, except in cases involving minors, where parental consent is required, is a basic condition for a marriage to be contracted.

Marriage is an institution of great importance in all three legal frameworks, thus each having foreseen its regulation. The initiation of marriage according to one of the rights begins with that in accordance with civil Roman law, is not conflicting with the contracting of a church marriage. Initially, according to Justinian's Novella 74, church marriage was permitted only for certain citizens, which was later recognized by the state. Until then, although allowed, it did not produce legal consequences in legal acts. Subsequently, in Byzantium, there was a complete transition from civil to church marriage, which gained importance and became the only recognized marriage in the state. Today, church marriage in our country remains outside the scope of recognition according to legislation, and the only marriage of significance is one contracted in front of the competent authority of the state. The contributions made by both the state and the church to the preservation of the institution of marriage and its solemn character are noteworthy. The moment of creating the "small state" or the "small church" holds significant importance for all parties involved. This initial step, along with acquainting prospective marital partners with their rights and obligations, as well as the significance of

⁴⁴ See more article. 28 from the Family Law

⁴⁵ See more article. 29 from the Family Law

⁴⁶ Ibid

marriage itself, yields fruitful outcomes and contributes to the establishment of a more stable society. Within such a society, both the individual and the collective find a starting point from which they can construct their surroundings. This environment sometimes surpasses the scope of influence of both the state and the church themselves.

Bibliography

1. Buckland W.W., „*A text-book of Roman Law from Augustus to Justinian*“ (Cambridge University Press, 1921)
2. Corbett P.E., *The Roman Law of marriage* (Oxford at the Clarendon Press, 1930)
3. Family Law (Consolidated text) <
https://www.mtsp.gov.mk/wbstorage/files/zakon_osemejstvo_osnoven.pdf > accessed 19.02.2024
4. [The Constitution of the Republic of North Macedonia](#) <
<https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf> > accessed 19.02.2024
3. *The Theodosian Code and Novels and the Sirmondian constitutions, a translation with commentary, glossary, and bibliography* by Clyde Pharr in collaboration with Theresa Sherrer and Mary Brown Pharr with an introduction by C. Dickerman Williams (Princeton University Press, 1952)
4. Watson A., „*Rome of the XII Tables Persons and Property*“ (Princeton University Press, 1976)
5. Апулеј, *Метаморфози или Златното магаре*, [превод од латински јазик Скопје, Макавеј, 2012
6. Аранђеловића Д, *Предавања из Римског права* (Издавачко и книжарско предузеће Геца Кон А.Д., 1938)
8. Климовски С., Дескоска Р и Каракамишева Т., *Уставно право* (Просветно дело, 2009)
9. Маендорф Ј., *Брак Православна перспектива* (Скопска Православна Епархија, 2012)
10. Македонска православна богословија „Свети Климент Охридски“ Скопје, *Црковно право (втор дел) Брачно право и црковно –судска постапка* (Скопје, 2006)
11. Милаш Н., *Православно црквено право* (Истина, 2014)
12. Мицковиќ Д. и Ристов А., *Семејно право* (Стоби Трејд, 2015)
13. Мицковиќ Д. и Ристов А., *Закон за семејството* (Стоби Трејд, 2015)
14. Поленак Акимовска М. и Бучковски В., *Избор на текстови од Римското право* (Македонска ризница, 2000)
15. Пухан И., Поленак-Акимовска М., Бучковски В. и Наумовски Г., *Римско право* (2014)
16. *Новиот Завет на нашиот Господ Исус Христос-Ревидирано издание*, (Библиско Здружение на Република Македонија, 2010)
17. Тошева Д., *Јустинијан Дигести: (избор од брачното право: 23-24) /предговор, превод од латински јазик, белешки и индекс Даниела Тошева* (Скопје: Д. Тошева-Николовска, 2019)
18. Трајковски Д. и Сланинка-Динева М., *Семејно право* (Светлост Графика, 2005)
20. Цисаж Б., *Црквено право II (Брачно право и црквеносудски поступак Српске православне цркве)* (Космос, 1973)
21. Чавдар К., *Коментар на Законот за семејството со судска практика, обрасци за практична примена, предметен регистар и придружни прописи* (Обнова-Кочани, 1998)

