

Professor Dr Gordana Kovaček Stanić
Faculty of Law, University of Novi Sad
Serbia

Multicultural Vojvodina: Influences on Formation and Dissolution of Marriage

1. Introduction

Vojvodina is the Autonomous Province of the Republic of Serbia where population is multinational with different religious beliefs. Serbian population and Christian Orthodox religion are the most represented, but Hungarian population and Catholic religion are significant. There is also number of diverse nationalities, such as: Croatians, Slovaks, Montenegrins, Romanians, Ruthenian, Roma population etc. The census of population (2002) includes twenty nationalities.

In Vojvodina Serbian legal system is in effect. In Family law civil marriage is obligatory, so marriage concluded in religious form does not have any legal consequences. Nowadays a significant number of marriages are concluded in religious form apart from the civil ceremony. In this paper the author investigates if and in what way differences in nationality, religious beliefs, in particular distinctions in religious law, have influence on marriage and divorce in social context (marriage rates and divorce rates) in contemporary Vojvodina. The most significant distinction between Christian Orthodox and Catholic religion as the most represented religions, concerns divorce. Orthodox Church allows divorce, on the contrary to Catholic religion.

2. Formation of Marriage

In Serbia the family law relationships are regulated by the Family Act 1995.¹ This act is applicable on the entire territory of the Republic of Serbia, including the Autonomous Province of Vojvodina.

The Serbian Family Act defines marriage as cohabitation between a man and a woman governed by the law (Article 3/1). According to this definition, the basic elements of marriage are: cohabitation between two persons of the opposite sexes, monogamous cohabitation (cohabitation of one woman and one man), that is governed by the law. Cohabitation is complex relationship, which implies different relations between the spouses, based on love, including intimate relationship, respect, support, economic relationship, etc.

Nowadays, there is a widely accepted custom in Vojvodina to conclude marriage in the religious form apart from civil. In Serbian Orthodox religion marriage is regulated by Marriage Rules of the Serbian Orthodox Church.² The marriage is defined as “.....a holy secret in which two persons of the opposite sex, attach themselves to each other, in the way

¹ The Serbian Family Act was adopted by the National Assembly on February 17, 2005 and entered into force eight days after publishing, but its implementation began on July 1, 2005, hereinafter referred to as FA, *Official Journal of the Republic of Serbia* 18/2005. The draft of the Family Act was prepared by a drafting committee with Professor Marija Draškić as the coordinator, and myself as one of the members of this committee. More on Serbian family law in Gordana Kovaček Stanić, *Porodično pravo: partnersko, dečje i starateljsko pravo*, Novi Sad, 2009.

² *Marriage Rules of the Serbian Orthodox Church*, 2nd supplemented and corrected issue of the Holy Bishops Synod, paragraph 1-2, Belgrade, 1994.

prescribed by the Church through a spiritual and physical relationship, for the purpose of complete cohabitation and upbringing of children”.

The Catholic Church regulates the marriage by the Code of the Canon Law. The marriage is defined as “.....alliance (*matrimonial foedus*) in which husband and wife are establishing cohabitation which is in its nature aimed at spouses' welfare and birth and upbringing of children (canon 1055, paragraph 1).“ The Code also uses the term marriage contract (*matrimonialis contractus*), but it gives priority to the alliance rather than to the contract. This is a contract of a special nature because it has the following characteristics: it is “exclusive” because it can be concluded with one partner only at the time (the principle of monogamy), whereas the parties' freedom is limited in comparison to the contract in general, it is a life-time contract that cannot be dissolved during the parties' life, which is limiting parties' free will, and thirdly, parties cannot establish the material elements of the marriage contract. The marriage is sacrament.³

The principle distinction between civil, contemporary definition of marriage and definitions of marriage according to the religious law is the element of life-time duration of marriage. In other words, the Family Act has excluded the element of duration of marriage, although this does not imply, neither from the theoretical nor from the practical point of view, its shortness. The spouses today still get married with the wish to have long and harmonious marriage, but if this cannot be achieved for some reason, they have an option to get a divorce. The other significant difference is that religious definitions view marriage as sacrament (holy secret). The principle of monogamy as a basic rule in marriage relations is prescribed both in civil and religious law.

2.1. Material requirements for formation of marriage

There is a tendency in the contemporary family law to reduce marriage impediments, which leads to the liberalization and facilitation of marriage formation.

According to the Serbian Family Act material requirements are the following: opposite gender, expression of will to get married, cohabitation and lack of marriage impediments (existing marriage, incapability of reasoning, minority, lack of free will, relationship – blood, adoptive and affinity, guardianship), Articles 15-24 of the FA.

The marriage may only be solemnized between two persons of the opposite sexes, a woman and a man. In Serbia there is no act that governs the same sex union, cohabitation or marriage, nor the act that governs legal status of the persons who changed their sex (transsexuals).

The will is extremely important for the formation of marriage. The will of future spouses is tackled through the requirement of expression of will, marriage impediments - incapability of reasoning and lack of free will, while the will is also important for the requirement of marriage to be concluded with the intent to form cohabitation. The will of future spouses to get married is one of the most important requirements that have to be met in order to conclude a valid marriage. The expressed wills shall be confirming on one hand, and on the other hand, the person who is getting married must fulfill certain qualities so that his/her will is valid. The person who expresses the will shall be capable of reasoning; the will shall be freely expressed, without deficiencies in will, e. g. force and misconception.

³ Viktor B. Nuić, *The General Law of the Catholic Church, The Present Christianity*, 1985, Zagreb, pp. 337.

Existing marriage is a marriage impediment, which derives from the monogamy principle. Existing marriage is a temporary impediment, so if the marriage is dissolved, either because of death, or because of divorce or annulment, the ex-spouses can conclude a new marriage without any obstacle, Article 17 of the FA.

The next important requirement for marriage is capacity to marry. In the Serbian law, the marriage age is 18, and is equal for a woman and for a man (Article 23 of the FA), it corresponds to the age when the legal capacity is obtained. However, the Court may, for the justified reasons, allow marriage of a minor, who reached the age of 16 and who achieved physical and mental maturity necessary to exercise marital rights and duties. Granting of permission represents the way to remove the effect of marriage impediment (dispensation). The age of 18 was introduced in the Serbian law by the Marriage Act 1946.

Serbian law does not allow the marriage between the blood relatives in the direct line without exception, and between blood relatives up to the fourth degree in the collateral line, or to be more precise, between all the relatives up to the third degree (brother and sisters, half-brother and half-sisters, uncle and niece, aunt and nephew), and in the fourth degree between cousins (the children of brothers and sisters and children of half-brothers and half-sisters), Article 19 of the FA. In the comparative law the second degree of blood relationship (brothers and sisters) is recognized as universally accepted irremovable impediment, except in Sweden, where half-brothers and half-sisters may obtain government's permission to marry (or permission of a body designated by the government).⁴ Many laws consider third degree as impediment (for example, uncle and niece, aunt and nephew), but certain countries allow the dispensation (like France for example). One of the countries that sets forth wide range of blood relatives between whom there is a marriage impediment is Greece (regardless to the degree in the direct line, and up to the fourth degree in the collateral line).⁵ Other types of relationship also represent the impediment. Adoptive relationship also represents the marriage impediment under the Serbian law, in the same way as blood relationship (Article 20 of the FA). If affinity is concerned, the marriage cannot be concluded between in-law relatives in the first degree (husband and ex-wife mother, wife and ex-husband father, step-father and step-daughter, step-mother and step-son), Article 21 of the FA. But, this impediment is removable, as the court can get the permission if finds justifiable reasons for concluding the marriage, taking into account marriage goals and family protection (Article 82/5 of the Law on Extra Civil Procedure⁶). However, there are legal systems in which the in-law relatives can freely conclude marriage (for example Sweden, Finland, Germany, Russia, Slovenia, and Croatia).⁷ There are examples where in-law relationship is considered as an impediment only

⁴ The intention is to grant dispensation only in case of particular reasons, such as parties being raised in diverse families, while the authorisation is granted only in small number of cases. Ch.2 sec. 3. Family Act (SFS 1987:230, with amendments 1988:1452), issue of the Ministry of Justice, 1989.

⁵ Effie Kounougeri-Manoledaki, Family Law in Greece, *Family Law in Europe*, London, Dublin, Edinburgh, Butterworths, 1995, pp. 202.

⁶ The Law on Extra Civil Procedure, *Official Journal of the Republic of Serbia* 25/82, 48/88, 46/95.

⁷ In Finland the in-law relation was abandoned as an impediment based on the 1987 Act, and for Sweden in David Bradley, Politics, Culture and Family Law in Finland: Comparative Approaches to the Institution of Marriage, *International Journal of Law, Policy and the Family* 12, 1998, Oxford, pp. 298; in Germany in 1998 by the Marriage Act, Rainer Frank, Parentage Law Reformed, *The International Survey of Family Law*, A. Bainham (ed.), The Hague, Boston, London, Martinus Nijhoff Publishers, 1997, pp. 177; Russia: Family Code 1995, Семейный кодекс и брачный договор, *Социальная защита*, выпуск 5/1996, Slovenia: Law on marriage and family relationships, *Official Journal* 15/76; Croatia: M. Alinčić, D. Hrabar, D. Jakovac-Lozić, A. Korać Graovac, *Obiteljsko pravo*, Narodne novine, 2007.

under certain circumstances, for example if the ex spouse is alive or if the younger party was a “child of the family” in relation to the other party (Great Britain). On the other hand Greek legal system attaches great importance to the affinity even today (in-law relationship is an impediment in the direct line without exception, and up to the third degree in the collateral line).⁸

The guardianship is a marriage impediment because it is considered as a relationship which is incompatible with marriage. The guardian has a duty to take care of the ward, and his rights and duties are comparable to the parental rights and duties. The guardianship is a relationship that may be revoked, so if the guardian and the ward wish to marry, guardianship shall be revoked and marriage can then be concluded (Article 22 of the FA).

According to the Marriage Rules of the Serbian Orthodox Church the following requirements shall be met in order to conclude marriage: opposite sexes, valid expression of will (par. 11), absence of marriage impediments and marriage bans. The marriage in which there is a marriage impediment is void (paragraph 5). If the impediment is removable the marriage can be declared valid. If there is a marriage ban, the marriage is valid but prohibited and it causes church punishment (paragraph 5/3). The marriage bans are related to the deficiencies in the form in which the marriage was concluded.⁹

The marriage impediments may be divided into irremovable (without possibility for dispensation) and removable (with possibility for dispensation), paragraph 12, 13. The relationship is irremovable impediment in the following cases: blood relationship in the direct line regardless of the degree; up to the fourth degree in the collateral line; affinity (the relationship between one spouse and blood relatives of the other spouse) and also collateral affinity (the relationship of a spouse’s relatives to the other spouse’ relatives) up to the third degree; spiritual relationship (which is created through baptism of a child) and adoptive relationship up to the second degree, relationship derived from the birth outside the marriage regardless of the degree in the direct line, up to the third degree in the collateral line. The relationship is removable marriage impediment in the following cases: from fifth to seventh degree in the collateral line, affinity from fourth to sixth degree and between two brothers and two sisters¹⁰, secondary affinity (the relationship of a spouse to the other spouse’s marital relatives up to third degree), spiritual and adoptive relationship from third to seventh degree.

The existing marriage is considered as irremovable impediment. Apart from the existing marriage, existence of certain number of previous marriages constitutes impediment (previous four marriages of the same person, while previous three marriages constitute removable impediment, par. 12/8, 13/7. It could be said that these rules took in consideration not only simultaneous but also successive polygamy. According to secular family law successive polygamy is legally irrelevant today. Another impediment which exists according to the

⁸ For Great Britain: John Dewar, *Law and the Family*, London, Dublin, Edinburgh, Butterworths, 1992, pp. 45-46. Marriage (Prohibited Degrees of Relationship) Act 1986. For France: Nicole Guimezanes, Family Law in France, *Family Law in Europe*, London, Dublin, Edinburgh, Butterworths, 1995, pp. 130, articles 161, 164 SS, for Greece op. cit. *Family Law in Europe*, pp. 202.

⁹ Marriage bans were related to some material elements as well, but this is not applicable since 1961, ASBr. 12/Zap. 37 from 1961 (for example a ban for a woman to get married within 10 months from termination of previous marriage).

¹⁰ This impediment has been removable since 1948, ASBr. 20/zap. 15 from 1948, op. cit. *Marriage Rules* 1994, p. 7.

Marriage Rules of the Serbian Orthodox Church considers the person who was twice divorced due to his/her fault. This person cannot marry again (paragraph 114).

A religious difference is irremovable impediment, but mixed marriage is allowed under certain conditions. The person who belongs to a different religious group has to sign a written statement to the effect that he/she will not convert his/her spouse from the orthodox religion, that he/she will baptize and raise the children in Orthodox spirit, while the person who is Orthodox has to „... solemnly promise that he will persistently strive, in a kind manner, to talk his/her future spouse into orthodox church” (paragraph 115). Irremovable impediments are also the following: final exclusion from the church, priest and monk’s vow and life-time ban to marry based on the law or final and binding court judgment.

Removable impediments are the following: adultery between persons who wish to get married, committed at the time when the adulterer lived together with his/her spouse, conspiring against the spouse by the persons who wish to get married, age over 70 for man and 60 for woman, and age difference more than 15 years.¹¹

As far as the capacity to marry is concerned, “age under 16 for a man and age under 14 for a woman (par. 12/1) is considered as a personal impediment”, while “age of 18 for a man and 16 for a woman” is considered as a removable impediment (paragraph 13/1). The following marriage bans were abolished in 1946: marriage of a woman within ten months from the dissolution, divorce or nullification of the previous marriage and marriage of a person who is under father's, tutor's or guardian's tutorship without father's or mother's consent, tutor's or guardian's consent or consent of the tutorship or guardianship authority (paragraph 37/1 item 1-4).¹²

According to the Catholic Church law there are three constitutive elements for the formation of marriage: consent, parties' capacity, and canonical form.¹³ Only the persons of the opposite sexes may consent to marriage. The impediments to marriage are (canon 1083-1094): certain age (according to the Code: 16 for a man, and 14 for a woman, Episcopal Conference can establish higher age, and that happened when Yugoslav Episcopal Conference established the age of 18), sexual inability, existing marriage, religious difference, monastic order, monastic public life-time vow of purity, abduction, crime of murder, blood relationship, in-law relationship, public morality, legal relationship (adoptive relationship). Blood relationship is impediment in the direct line regardless of the degree and up to the fourth degree in the collateral line, regardless of the fact whether the relationship is by the same ancestors or by only one of the ancestors. Dispensation is possible starting from the third degree of relationship. In-law relationship is impediment in the direct line, but it is possible to obtain dispensation. The impediment public morality exists between a man/woman and relatives of a woman/man in the direct line after formation of cohabitation, if the marriage is not valid. The legal relationship is considered as an impediment if it relates to adoption and it exists in the direct line and in the second degree of the collateral line; dispensation is possible. Abduction of a woman is considered as an impediment with the purpose to secure free consent. The crime is an impediment if relates to the murder of person’s spouse or the spouse of the person with whom the marriage is to be solemnized. The new Code abolished

11 This impediment did not exist according to the Marriage Rules 1933, but was introduced by the holy archpriest synod in 1937 Syn. no. 2410/Notice. 586 from 1937, op. cit. *Marriage Rules* 1994, p. 8.

12 The holy archpriest synod abolished these bans in 1946, and 1961, Syn.no. 1006 of 1946. and Asno.. 12/Zap. 37 of 1961, op. cit. *Marriage Rules* 1994, p.15.

13 Op. cit. Nuić, p. 351.

adultery as a marriage impediment. A religious difference exists if one person was baptized in the Catholic Church, and the other was not baptized at all. Mixed marriages may be solemnized between Catholics and members of other Christian religious group, with permission. The precondition to obtain a permission is that the person who is Catholic commits himself that he will do everything he can so that the children are baptized and raised in the Catholic Church, and to notify the other future spouse about that on time in such a manner so that future spouse is aware of such a promise and duty; both parties shall be informed of the material goals and characteristics of marriage, which cannot be excluded by any of them (canon 1124-1129).

In comparison the civil marriage law and religious marriage law, one may notice that civil law has restricted approach in establishing the requirements for formation of marriage. The blood relationship and affinity as impediments are established in family law in a narrow sense comparing to religious law. Besides, according to the Orthodox law, four previous marriages, religious difference, old age, *tempus lugendi* of 10 months after dissolution of previous marriage for the women are considered as impediments. These impediments do not exist in family law today.

2.2. Form of solemnization of marriage

There are two basic systems in the comparative law related to the form of solemnization of marriage. One is the system of obligatory civil marriage, which does not exclude the possibility to conclude religious marriage too. Today civil marriage is mandatory in many countries (Germany, France, Belgium, Netherlands, Switzerland, Russia, etc.). In Serbia civil marriage has been obligatory since the adoption of the rules after the Second World War – Yugoslav Principle Marriage Act 1946. In Vojvodina the civil marriage was obligatory much earlier, because the Hungarian law was in force before the Second World War (Marriage Act 1894, paragraph 29/1 which required mandatory civil marriage).

The other system is the system of dualism, i.e. the system of equal importance of the civil and religious form of marriage, so that the future spouses may decide to choose one or the other form. Dualism of forms is also recognized in many countries: Great Britain, Scandinavian countries, Greece, Italy, Spain, Portugal, US, Australia etc. In these countries a great number of marriages are solemnized in the religious form (in Great Britain more than 2/3 first marriages are solemnized in the religious form). The dualism of forms is introduced in some of the Eastern European countries. Thus Czech Republic permits a religious marriage based on the Law 1992 (no. 234). Poland has approved religious marriage before civil marriage based on the Concordat with Vatican from 1989, even according the opinion of the Supreme Court this ceremony did not take legal effect of marriage¹⁴ The Croatian Family Act 1998 introduced religious form as an alternative to the civil form. The effective Family Act 2003 (Articles 6, 8) stipulates that a marriage solemnized in the religious form takes equal effect as the civil marriage if the requirements set forth by the law are met.¹⁵

14 Marko Mladenović, Marina Janjić-Komar, Christa Jessel-Holst, *International Encyclopedia of Comparative Law*, Vol. IV, Ch. 10, Marry Ann Glendon (ed.), Tübingen, Mohr Siebeck, Dodrecht, Boston, Lancaster, Martinus Nijhoff publishers, 1998, p. 23 and further, Polish Supreme Court SN, April 8, 1992 JbOstR 34 (1993) 93.

15 These requirements are the following: that marriage was solemnized before the officer of the religious group which has regulated the legal relations with Croatia in that respect, that future spouses have obtained a certificate from the registrar that they fulfill the requirements to get married, and that they got married within three months from the date of issue of the certificate. After solemnization of marriage the officer of the religious group before whom the marriage was solemnized has a duty to deliver to the registrar a certificate on solemnized marriage,

2.3. Form of marriage according to the effective Serbian family law

In Serbia the civil form of marriage, as a mandatory one, consists of premarital procedure, ceremony of solemnization of marriage and registration of marriage. The registrar is authority in charge to solemnize marriage.¹⁶ If the marriage is to be solemnized between the citizens of Serbia staying abroad, the marriage may be solemnized before the diplomatic-consular officer. The premarital formalities include request of the spouses to get married (Articles 292-304 of the FA), registrar's duty to check whether the requirements for marriage validity are met, and setting the date when the marriage will be solemnized (Article 294 of the FA). After that, the registrar will talk to the future spouses, with no public present, and inform them on the legal consequences of marriage (Article 295 of the FA). In addition to that, the registrar shall recommend to the future spouses to inform each other about their health condition, and to visit appropriate medical institution, in order to obtain full information about all the data that are relevant for their health, diagnosis and prediction of diseases, medical treatment and results of treatment. The registrar will recommend to the future spouses to inform themselves on possibilities and advantages of family planning, to visit marriage or family counseling service, to learn about importance of maintaining of harmonious marriage and family relations and to agree on the last name (Articles 296, 297 of the FA).

The act of solemnization of marriage is public, ceremonial and is usually conducted in a room designated for that purpose (Article 299/1 of the FA). Exceptionally, it may be allowed that the marriage is solemnized at some other place, if there are especially justified reasons for that. The place has to be decorated to look ceremonial and the dignity of the act of solemnization has to be respected. In practice this solution is often used, so that the marriages are solemnized in the private premises (at home) or public premises (hotels, restaurants). Future spouses, two witnesses and registrar shall be present during the solemnization of marriage. All the persons who have legal capacity may be witnesses. Exceptionally the marriage may be solemnized in the presence of one future spouse and proxy of the other future spouse if there are particularly justified reasons for that (Article 301 of the FA). During the act of solemnization the registrar informs the future spouses about the marital rights and duties, and after that the future spouses give the affirmative marriage statements (Article 302 of the FA). The act which follows is registration of marriage, i.e. entering of marriage in the marriage register (Article 303 of the FA).

2.4. Religious form of marriage according to the dominant religions in Serbia

As it was explained before, the religious marriage does not have family law effects in Serbia, but there are no obstacles to solemnize marriage according to the religious rules. Solemnization of religious marriage before the civil one was considered as a crime until 1994, when this criminal offence was abandoned from the Serbian Criminal Act. There is no precise provision in the effective law in which religious form marriage may be solemnized. Taking into account constitutional provisions related to the prohibition of discrimination that includes a ban of discrimination based on the religion¹⁷, one may conclude that marriage may be

and the registrar has a duty to enter the marriage into the marriage register. Op. cit. Alinčić, Hrabar, Jakovac-Lozić, Korać Graovac.

¹⁶ Until the amendments of the previous Law on Marriage and Family Relations 1993 the president or the representative of the Municipal Assembly was a competent authority, while the registrar was supportive authority. The competence was therefore transferred from the elected representative to the professional officer.

¹⁷ Constitution of the Republic of Serbia 2006, *Official Journal* 98/06, Article 21/3.

solemnized based on the rules of all the recognized religious groups to which the spouses belong to.

As for the Orthodox Church, as a dominant one, the priest of the church to which the future spouses belong to shall have jurisdiction and if the future spouses are members of different church municipalities, the priest of the church municipality whose member is the future groom shall have jurisdiction (paragraph 55 of the Marriage Rules of the Serbian Orthodox Church). The marriage will usually be solemnized in the church, before noon, during the days when the Church allows weddings.¹⁸ The persons who wish to get married have to be present during the act of solemnization, and witnesses too. Witnesses have to be of age of majority, baptized and Orthodox, and if they are married they have to be married in the church. The premarital examination and the banns of matrimony precede solemnization of marriage.

Premarital examination consists of examination of will to get married, whether the will exists and whether it is free, and whether there is a previously given promise to the other person to marry (paragraphs 61-62). Banns of matrimony have a goal to establish if there are impediments or bans for formation of marriage, by calling the believers to report them, if they are aware of any. The competent priest will perform banns of matrimony in the church in his municipality, three Sundays or holidays in a row, after completed liturgy, in front of the gathered believers (paragraph 63, item 2).

In the Catholic Church, the marriage is solemnized before the competent assistant and two witnesses. Any person may be a witness, and it is not required that he/she fulfills certain criteria; the witness does not even have to be baptized. The marriage will be solemnized in a church where one of the parties has domicile or residency; if the parties have different domiciles or residencies they can freely choose the place. In the past the priority was given to the priest of the place where the future bride had a domicile or residency. The ceremony of solemnization of marriage is regulated by the liturgy books, but Episcopal Conference is free to make its own ceremony which corresponds to the customs of the place and people corresponding to the spirit of Christianity. According to the Backa Code¹⁹, engagement examination and interpretation of marriage precedes to marriage (Chapter VII). Engagements are announced on three Sundays or holidays in a row. Unlike the Code of Canon Law, Backa Code requires that the witnesses are Catholics, but Ordinarius may grant authorization to persons who are not Catholics to act as witnesses.

3. Dissolution of marriage

3.1. Dissolution of marriage according to effective Serbian family law

The marriage is dissolved in case of death of the spouse (or if the missing person is declared dead), annulment and divorce. Death and divorce are ways to dissolve valid marriage, while annulment is a way to dissolve a marriage which is not valid (void or voidable).

¹⁸ Days when solemnization of marriage cannot be performed: Wednesday and Friday every week, from the begging of the Christmas fast until 7/20 of January, from the first week before Eastern fast until Toma's week; during fasts ("*Petrovski*" and "*Gospojinski*") at the day of cutting off the head of Saint John the Baptist and on Saint John Baptist's Day (paragraph 64, 65). The marriage is solemnized in the ceremony enacted in *Trebnik* (paragraph 66 item 1).

¹⁹ Backa is one of the regions in Vojvodina.

The Serbian Family Act sets forth two causes of divorce. One is divorce by mutual consent (Article 40), the other is disturbance of marriage relations and objective impossibility to achieve cohabitation between the spouses (Article 41). Causes of divorce are general and no-fault causes. Divorce by mutual consent was introduced in the family law in Serbia (Vojvodina) in the seventies of 20th century.²⁰ Divorce by mutual consent was reformed by the Serbian Family Act 2005, by setting the requirements for divorce by mutual consent more restrictively. The spouses have to agree on the divorce, on exercise of the parental rights and on the division of joint property (Article 40). According to the Law on Marriage and Family Relations 1980, previously in force, the spouses were supposed to agree only on the consequences related to the children, i.e. on the exercise of the parental right, while the agreement on the division of joint property was not a requirement for the divorce agreement.²¹ In the court practice, there were significant number of divorce by mutual consent followed by the long and exhausting property trials. The aim of setting of the divorce by mutual consent requirements in a more restrictive way is to make the divorce by mutual consent genuinely consensual, requiring an agreement on all the most important consequences of the divorce. The property is divided based on the agreement in order to avoid long trials. Divorce by mutual consent is regulated in its pure form, in other words, the Court will not examine the circumstances that caused the divorce. The Court only has an obligation to assess whether the agreement of the spouses on exercise of parental right is in the best interest of the child.

The other cause of divorce is disturbance of marriage relations, or objective impossibility to achieve cohabitation between the spouses. Disturbance of marriage relations shall be serious and permanent. Impossibility to achieve cohabitation between the spouses shall be objective. In this case, the marriage procedure is started upon the action of one of the spouses (Article 41). Disturbance of family relations as cause of divorce originated from the divorce cause “the unbearable life together”, which was regulated by the Principle Marriage Act 1946. In that time the court was obliged to determine which initial cause caused the consequence. The initial causes were listed by the way of example: conflicting tempers, permanent disagreement, irreparable hostility, while the initial cause could consist of any other cause as well. This is abandoned today, so the court do not have to determine specific cause.

Considering the divorce procedure the Family Act has introduced specialization of judges for the family law matters (Article 203 /2, 3, 4).²² It is stipulated that the specialized panel consisting of one judge and two lay judges is competent in the first instance, while specialized panel consisting of three judges is competent in the second instance (Article 203/1). The judges shall have special knowledge in the field of children’s right, while lay judges are elected from experts who have experience in work with children and young people. This novelty is extremely important, since specialization of judges is necessary in order to have a good quality trial, because such a trial is related to personal relations and therefore requires special knowledge, not only the legal one, and a special sensibility. The majority of the European family laws recognizes specialization in the family law trials, requiring special panels, like in Serbian law nowadays, or having special departments within the court, or special courts (courts for young people, for example).

The Family Act 2005 has introduced the mediation procedure during divorce proceedings. It consists of two phases, reconciliation and settlement (Article 229-246). The aim of

²⁰ Serbian Marriage Act, *Official Journal* 52/74; Vojvodina Marriage Act, *Official Journal* 2/75.

²¹ Law on Marriage and Family Relations, *Official Journal of the Republic of Serbia* 22/80, 22/93, 35/94, 29/01.

²² The application of this Article was postponed until July 1, 2006.

reconciliation is to resolve disturbed relationship between the spouses without conflict and without divorce (Article 234), and the aim of settlement is to resolve disturbed relationship between the spouses without the conflict after annulment or divorce (Article 241/1). Mediation is a phase in divorce proceedings only if a divorce is disputed, but will not be conducted if one of the spouses does not agree to mediation, if one of the spouses is not capable of reasoning, if the domicile of one of the spouses is unknown, and if one or both spouses live abroad (Article 230). It was not necessary to explicitly refer to life abroad, as a reason not to conduct mediation. In other words, if the spouses are not able to appear, they will simply not agree to mediation. The spouses that live abroad, and wish to take part in the mediation, are unreasonably excluded.²³ Mediation will not be conducted in case of divorce by mutual consent, it is presumed that the parties have already sought professional help to reach an agreement, before starting the divorce proceedings. In the divorce proceedings, the Court, or the other institution authorized in mediation, will strive to achieve agreement on exercise of parental right and division of joint property (Article 241/2 of the FA). The Family Act 2005 expands the list of institutions authorized for the mediation procedure. Apart from the court and guardianship authority, marriage or family service and other institutions specialized for mediation in family law matters could get the authorization for conducting mediation. The precondition to transfer the mediation to the guardianship authority, marriage or family counseling service, or other authority that is specialized for mediation in family law matters is consent of the spouses for psychological-social counseling (Article 232 of the FA). Expanding the list of institutions that are competent to conduct mediation procedure should contribute to a better quality and efficiency of procedure. If the spouses reach an agreement on the most important issues, the Court will assess such an agreement, and if it concludes that the best interest of the child are met, it will include the agreement in the divorce judgment (Article 75/2 and Article 225/1). Confidentiality, as one of the important characteristics of the mediation, is secured by the prohibition to the judge who conducted the mediation procedure to take part in decision-making in a subsequent phase of the procedure, if mediation was unsuccessful (Article 231/3 of the FA). This means that confidential facts from the spouses' life that were revealed to the judge during the mediation will remain a secret. The parties' attorneys cannot attend the phase of reconciliation, unlike the settlement phase where their presence is allowed.

3.2. Dissolution of marriage according to the rules of the Serbian Orthodox Church

According to the rules of the Serbian Orthodox Church the marriage will be dissolved in case of death of a spouse, or declaring the spouse death, taking monastic vow and appointment for the episcopate (par. 79-85). The marriage may be terminated based on the judgment – in case of divorce (par. 85-114). These rules have only historic significance, since the divorce is in the jurisdiction of the state according to the contemporary Serbian law.

Serbia and Vojvodina have a long tradition of divorce, the divorce was allowed before Second World War. The divorce was in the jurisdiction of church courts in Serbia if the spouses were Orthodox or in the case of a mixed marriage, while regular, civil courts had jurisdiction in case of the divorce of other religious groups or non-Christians. The causes of divorce were regulated by the civil law, by the Serbian Civil Code²⁴, but also by the religious law,

²³ Based on this, the solution which was proposed by the Draft FA was amended.

²⁴ According to the Serbian Civil Code, the causes of divorce were the following: adultery, conspiracy against the spouse, conviction for the crime longer than eight years (according to the amendments from 1862, initially for life sentence), derogation from the Christian law, abandoning the spouse and absence (par. 94-97). These are

Marriage Rules of the Serbian Orthodox Church. Religious courts were rendering judgments based on the state laws - Serbian Civil Code and religious law, but civil law had a priority in case of divorce.²⁵ In Vojvodina of that time, a divorce was regulated by the Hungarian law (Marriage Act - XXXI: 1894).²⁶

According to Marriage Rules of the Serbian Orthodox Church the causes of divorce were the following: adultery, conspiracy against the spouse, willing abortion, abandoning the spouse in a meanful way, if the spouse is missing, physical and mental disease, immorality, abandoning Orthodox Church (par. 88-107). These are individual causes of divorce, which are based on fault. The exclusively guilty spouse did not have the right to initiate divorce proceedings (par. 86).

The reconciliation was conducted as a part of divorce proceedings based on the Orthodox rules in the following way:

“The priest tries to conduct reconciliation of the divided spouses fatherly and kindly as his priest's duty. While conducting this service the priest will take into consideration only the sanctity and importance of marriage and will not take care of any other reasons. He will especially avoid all the issues that can intensify the conflict or could lead to an impression that he takes the side of the party who is rejecting reconciliation. The attempt of reconciliation shall be conducted in such a way so that it clearly leads to a conclusion that Church supports forgiveness between the spouses and expect reconciliation of the spouses, for higher Christian goals. If the children were born in a marriage, the priest would ask for reconciliation for their children sake, who would suffer innocently”, (par. 192).

The aim of mediation according to the Orthodox rules is reconciliation of the spouses and abandoning the idea of divorce. Today the mediation has two goals, first is reconciliation, and second, if reconciliation is impossible, to reach an agreement on the most important consequences of divorce (the settlement). According to the Orthodox Church, the mediation shall be performed by the priest in a special way (fatherly and kindly). Impartiality as one of the most important characteristics of mediation today, is required by Orthodox rules as well.

3.3. Dissolution of marriage according to the rules of the Catholic Church

According to the rules of the Catholic Church, the marriage, as a matter of the rule, may be terminated only in a case of death. As an exception, marriage could be dissolved if it was not consummated (dissolution is granted by the Pope). The dissolution is also possible in case of a marriage between two persons who are not baptized in accordance with Pavle's privilege

individual divorce causes based on guilt. However, there was also one general cause, whereby the court would establish the impossibility of cohabitation. In that case the Court would first rule on the factual separation, which led to divorce after expatriation of time – five years (Article 218 of the Law on Church Authorities).

²⁵ The theory states that church laws were disorganized and disharmonized. Lazar Marković, *Family Law, II book of the Civil Law*, Belgrade, 1920, pp. 95.

²⁶ The causes of divorce were the following: adultery or sexual promiscuity, formation of new marriage knowing that there is still a previous marriage, abandoning longer than six months or unknown place of residency for at least one year, conspiracy or serious abuse, conviction to death or at least five years of imprisonment. Apart from these individual causes, there were the causes that could lead to a divorce only if the judge would establish that future cohabitation became unbearable (par. 80). Those were the following: severe infringement of the spousal duty, inducing a child to a crime or immoral life, immoral life of the spouse, conviction to imprisonment for less than five years or imprisonment due to the offence committed for gain. In this case the court would first have to decide on the separation (of half a year to one year, or more, upon party's request). The divorce was based on the fault.

(canon 1143-1150); the marriage may be dissolved if at least one party was not baptized at the time of formation of marriage, and if in the meantime both parties were baptized, the marriage may not be consummated after second baptism (based on Peter's privilege, which is not codified, but is applying on the instruction from 1973).²⁷ According to the Catholic law, it is possible to dissolve marriage cohabitation, while marriage remains intact (it used to be called separation from bed and board), and no new marriage may be solemnized (canon 1151-1155). The reasons for separation are the following: adultery, when one spouse is putting the other spouse or children in a serious danger or is making the life together too difficult. The Code provides the innocent spouse with the possibility to continue life together; the Code supports continuation of life together, unless the church authorities rule otherwise.

4. Marriage and divorce in a social context

In Vojvodina live diverse population. Serbs constitute 65% of all inhabitants, while Hungarians are the largest national minority (15%). Apart from Serbs and Hungarians, who constitute the largest portion of population, Population Census 2002 included twenty different national groups. These are: Croatians 3%, Slovaks 3%, Yugoslavs 2%, Romanians 2%, Roma people 1%, Ruthenians with around 1%, while there are below 10 000 members of other national groups.²⁸

Chart I

Population in proportion to nationalities in Vojvodina*			
		Number of population	% of total population
1	Serbs	1.110.000	65%
2	Hungarians	252.000	15%
3	Croatians	50.000	3%
4	Slovaks	49.000	3%
5	Yugoslavs	41.000	2%
6	Montenegrins	30.000	2%
7	Rumanians	26.000	2%
8	Roma	20.000	1%
9	Ruthenians	14.000	1%
10	Total	1.709.778	
	* population over 15 years of age		

According to the religious belief, 69% of population is Orthodox, 20% is Catholic, 0.7% of inhabitants declared themselves as non-believers while 4.7% are not declared. The rest of the population belongs to the other religions, like for example: Protestant, Islam, Judaism, Oriental cults.

²⁷ Op. cit Nuić Instruction of Congregation of Religion p. 379.

²⁸ *The census of population, households and apartments 2002*, Population, 12, Republic Statistics Authority, Belgrade 2003, pp. 112, 226, 227, 302, 303.

Chart II

Population in proportion to religion in Vojvodina*			
1	Christian Orthodox	1.173.937	68,7%
2	Catholic	336.870	19,7%
3	Protestant	62.219	3,6%
4	Islam	5.993	0,4%
5	Judaism	305	0,01%
6	Oriental cults	149	0,01%
7	Other religion	4.123	0,2%
8	Atheists	11.711	0,7%
9	Not declared	80.727	4,7%
10	Unidentified	33.744	2,0%
11	Total population	1.709.778	100,0%

* population over 15 years of age

According to marital status, 59% of the population is married, 25% of population is not married, and 4.4% is divorced. The considerable difference exists in the category of population who declared as non-believers (atheists) comparing to believers, regardless to the religion (the percentage of divorce is 6.7% in the category of population who are non-believers, 4% in Orthodox group and 5.4% in Catholic group). The initial idea of this paper was to determine whether a difference in religion, in particular a difference in the permissibility of divorce influences the behavior of the population. As it explained before, the Orthodox religion allows divorce and Catholic religion does not. It may be concluded that an impact of particular religion is not evident, as Catholic population has a higher divorce rate than Orthodox population. Population who declared themselves as believers behave in practice more in accordance with the secular law, than in accordance with the religious law. This phenomenon may be the consequence of the long mandatory application of the civil family law in Vojvodina which recognized the institution of divorce (starting from XIX century - Hungarian Marriage Act 1894 and continuously up today).

Chart III

Marriage status of population in Vojvodina*				
	Nationality	Married (%)	Single (%)	Divorced (%)
1	All population	59	25	4,4
2	Serbian population	59	26	4,0
3	Hungarian population	59	21	5,4

* population over 15 years of age

Chart IV

No	Marriage status of population in Vojvodina*			
		Married (%)	Single (%)	Divorced(%)
1	All population	59	25	4,4
2	Christian Orthodox	59	26	4,0
3	Catholic	59	21	5,4
4	Atheist	59	27	6,7
5	Not declared	52	33	5,5

* population over 15 years of age

If the population is observed from the perspective of marital status depending on the type of area, it may be noticed that there is a significant difference depending on this criterion. In the cities, divorce is more frequent than in rural areas (5.3% of the urban population is divorced; to 3.2% of the rural population). This factor has most significant influence in family relations in Vojvodina, in contrast to the nationality and religion as factors. It might be the consequence of the fact that rural population kept the more patriarchal model of the family relations than urban.

Chart V

No	Marriage status of population in Vojvodina*			
	Urban/Rural	Married (%)	Single (%)	Divorced (%)
1	Population over 15 years of age	59	25	4,4
2	Urban population	57	26	5,3
3	Rural population	60	24	3,2

* population over 15 years of age

The marriage rate (nuptiality) in Vojvodina (and in Serbia) through the period of several decades is declining. E.g. in 1981 the marriage rate in Vojvodina was 7.6 (similar in Serbia: 7.5), while in 2006 the marriage rate in Vojvodina was 5.2 (similar in Serbia: 5.4). The divorce rate is lower in 2006 than in 1981, but the divorce rate per 1000 solemnized marriages is higher in 2006 than in 1981. The ratio between number of solemnized marriages and the number of divorces leads to a conclusion that today divorce is more frequent than in previous periods. In Vojvodina app. every fifth marriage was divorced twenty-five years ago, while every fourth marriage is divorced today. The difference is higher in Serbia: app. every seventh marriage was divorced twenty-five years ago, while every fifth marriage is divorced today.

Chart VI

No		Marriage rate (1000 population)				Divorce rate (1000 population)			
		1981	1990	2000	2006	1981	1990	2000	2006
1	Year								
2	Vojvodina	7,6	6,0	5,9	5,2	1,6	1,30	1,1	1,1
3	Serbia	7,5	6,2	5,5	5,4	1,05	1,1	0,8	1,2

Chart VII

No		Divorces (number on 1000 marriages)			
1	Year	1981.	1991.	2002.	2006.
2	Vojvodina	213	223	227	232
3	Serbia	141	145	238	206

5. Conclusion

The family law in Serbia, which is applicable on the entire territory of the Republic including the Province of Vojvodina, is the secular, modern law, based on principles of equality, nondiscrimination, human rights, especially rights of the child. In the field of marriage formation and dissolution, these characteristics are materialized as well. Impediments to the formation of marriage are reduced to such an extent so that they constitute the recognition of basic principles, like the principle of monogamy, prohibition of incest, respect of the will of future spouses. The civil form of marriage is mandatory. Divorce is regulated liberally, concept of fault is abandoned, thus, causes of divorce are no-fault and general causes, fault does not have any influences to legal consequences of divorce. Mandatory civil form of marriage and institution of divorce have long tradition in Vojvodina, based on the Hungarian Marriage Act 1894. Although in contemporary Vojvodina religious family law does not have legal relevance, religious marriage form is common nowadays, as future spouses choose to conclude their marriage in religious form after they conclude it in civil law form.

Vojvodina is multicultural, multiethnic and multi-religious surrounding. As a matter of fact, the indicators of marriage relations – statistical data on marriage and divorce rate, do not show much differences in different population groups. The influence of nationally and religion as examined factors is not significant in marriage relations. However, difference in divorce rates might be seen in comparison two population groups, one, declared themselves as believers and on the other hand the atheists. The frequency of divorce is higher among the atheists. Although there is a distinction comparing Orthodox and Catholic religion regarding permissibility of divorce, since the Orthodox rules allow divorce and Catholic rules do not, it is noticeable that this fact does not made the difference in the frequency of divorce among

Orthodox and Catholic believers. On the contrary, divorce is more frequent in Catholic population than in Orthodox. As said before, this phenomenon may be the consequence of the long mandatory application of the secular family law in Vojvodina which recognized the institution of divorce and probably the fact that significant number of believers are not active, genuine believers, so they follow secular family law rules in the marriage relations rather than religious rules. It might be notice that most significant influence in family relations in Vojvodina has the type of area where population live – urban or rural. The divorce rate is considerably higher among urban population than among rural, probably due to more patriarchal model of the family relations accepted among rural population.