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Codifications of family law

Abstract of the PhD Thesis

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I. Summary of the research task, objectives of the research

In the previous hundred years the number of divorces significantly increased, which process was especially accelerated after the World War I and II, as the dissolution of marriages became easier and more free throughout Europe. Thus, it can be stated that besides the right to get married, the right to divorce evolved as a fundamental human right by this century.

Besides history, sociology and psychology, law and legal practice have also a role in the formation of matrimonial relationships. For the purpose of decreasing the number of divorces, public opinion expects legal solutions, which prevent or effectively react on anti-family behaviour. However, matrimonial law is unable to meet this requirement since 1894, so from the date of its first inclusion into a separate act.

During the arrangement of legal disputes, the fastest closing of cases is in the interest of the parties, which is especially true concerning matrimonial proceedings. Legislation in force is contrary to this wish, since 'time to think' phases are incorporated into the process of proceedings, thus delaying the decision.

Legal practice does not only need to face with national matrimonial proceedings, but the number of cross-border matrimonial cases is increasing as well. Based on Union statistics, more than 2.400.000 marriages are bound in every year, out of which 307.000 are international ones, meaning 13 % of all marriages. At the same time, approximately 1.047.427 marriages are dissolved per year, where 136.000, so 13 % of all divorces have an international nature. The number of international marriages and divorces is not proportionally divided among Member States. 60% of international marriages and 65% of international divorces appear in four large Member States (France, Germany, Spain and the United Kingdom).

Thus we can draw the conclusion that the dissolution of a marriage bears outstanding social significance, which cannot be ignored by legislation, jurisdiction and jurisprudence. Its distinguished role is due to the rate of matrimonial proceedings among all types of actions, and the object of it, with regard to the fact that matrimonial law regulates the most intimate relationships affecting the parties and their children.

The institution of marriage is not only endangered by the considerable ratio of divorces, but also by a new process, evolving throughout Europe (and all over the world): the consolidation of domestic partnerships at the expense of marriages and their recognition as an equal form of relationship. It is shown by the increasing number of domestic partnerships and

is reflected in the fact that the institutionalized form of domestic partnerships has recently been regulated as a family law relationship in several Member States.

Raising current questions regarding the regulation of matrimonial proceedings is not only justified by its 'prominent' position among civil proceedings, but also by the effect or possible effect of the new Civil Code codification on family law, matrimonial law and the dissolution of marriage.

These above mentioned facts induced me to choose matrimonial law, more precisely, divorce law as the subject matter of my thesis. Due to the interdisciplinary nature of divorce law, as it includes all substantive and procedural regulations concerning the dissolution of marriage, the thesis does not and cannot endeavour to involve the entirety of relevant legislation, given the existence of length limits.

The main field of my research *is the analysis of procedural provisions concerning the dissolution of marriage; however, it is unavoidable* to review the conditions of contracting and dissolving a marriage set out by substantive law. Besides these issues, I only examine further substantive law matters from one point of view: how the application of substantive law provisions affects the conduct of an action to dissolve a marriage.

The analysis of the dissolution of marriage can only be complete if I compare the institution of the action for dissolving marriage with other ways of terminating marriages, such as actions for voiding or for annulment of a marriage, or for the determination of the non-existence of a marriage.

The **limits** of my research have to be set not only within national law, but in connection with the family law of the European Union as well. The development of European civil procedure and family law accelerated in the previous ten years, resulting in the fact that the investigation of these fields is the task of individual monographs. Nevertheless, the significance of cross-border matters undoubtedly underlies the narrow examination of this area.

The objective of my research is to look for answers how the decrease of actions for the dissolution of marriage can be reached through modifications of legal acts if the decrease can be reached at all.

If this aim can be fulfilled, what kinds of modifications are needed? Can the tightening of matrimonial law regulations bring results and if yes, is this – presumably – strong intervention necessary into the intimate emotional relationship of the spouses?

Choosing an opposite approach and method, can the strengthening of the recently weakened institution of marriage be accomplished through the liberalisation and simplification of rules concerning the dissolution of marriage? How can the regulation of matrimonial proceedings be amended in order to make marriage more attractive compared to domestic relationships.

Another objective of my research is to examine whether Hungarian codification solutions of matrimonial proceedings are appropriate to meet the demands of family law model of the 21st century.

The analysis and evaluation of the results of civil law codification, affecting family law as well, is also a set aim of my research, in line with deciding whether the reformed regulation of the dissolution of marriage meets the requirements, while raising the attention to the deficiencies of the regulation.

II. Methods and sources of the research

The research method applied during the writing of the PhD thesis **is of a mixed nature**, that is to say the research method of the different chapters varies which is justified by the complexity of the topic and thus, by the complexity of the thesis. Thus, one chapter of my thesis, namely the historical part being an essential part is based on the historical-descriptive method.

As for the legislation in force, I have chosen and applied mainly the descriptive method which helped to achieve my aims to the largest extent. I used the comparative law method when dealing with the tendencies of international legislation.

The sources of my research were, on the one hand, the contemporary Hungarian legislation and the Hungarian legislation in force and, on the other hand the European Union legislation and the relevant legal acts of the given states with the legislation of which I dealt with. I explored those sources with the help and making use of a wide legal literature and case-law.

1. Process of the research

It was the determination of the process of the research which helped to achieve the aims of the research. Firstly, as a theoretical preliminary question I have dealt with and clarified the relationship between the three fields of law affecting my thesis, namely those of the family law, private law and civil procedural law, moreover I have clarified the basic notion of marriage.

The codification works on the Civil Code have highlighted again the importance of the relationship between family law and civil law, and especially they raised the question whether family law is a separate field of law which therefore necessitates a separate legislation or it can be considered as a part of private law and being such the legislation on family law can coexist peacefully with the other provisions on private law.

That question could not even been raised if our legislation would not follow the Soviet model after 1945. It is because prior to that date the point of view of the jurisprudence was uniform in the aspect that family law constituted inseparable part of private law and civil law.

Practically speaking, the whole Hungarian private law existed only in the form of customary law until 1959 since prior to that date the intentions for codification did not attain their purpose. It was the field of family law where the private law has been regulated by legislative means in 1894 through the adoption of Act XXXI of 1984 (Marriage Act) which contained exclusively provisions on marriage, however, not including the matrimonial property law.

The first overall codification of family law was carried out in 1952 in the Hungarian law when, similarly to the Soviet model, the legislation on family law has been incorporated into a unified system.

Family law became gradually separated from civil law and then a really separate field of law in the Hungarian jurisprudence and legal literature.

The idea of dissolving the borders existing previously between the fields of law was emerged after the democratic transition in Hungary. The opportunity of that was raised firstly by László Kecskés but also György Bíró and Barnabás Lenkovics has put into question the classification of family law as a separate field of law. Tamás Lábady came to the same conclusion, too.

The point of view in the Hungarian jurisprudence was not uniform concerning the separate nature of family law when the codification works began. Nevertheless, on the basis

of the uniform opinion of the persons dealing with and involved in the codification works developed after the adoption of the decision of the government of 1998 the whole legislation on family law has been inserted in the new Civil Code. That offered an opportunity for family law to adopt those rules of civil law which were not regulated at all or, which were regulated incompletely in the Family Law Act in force.

In my opinion historical traditions cannot be left out of consideration even though the two fields of law at issue have been developed separately for 50 years and thus, family law is to be considered as an integral part of civil law. The features evolved due to the different way of development are not so distinctive in nature so as to raise the family law to the grade of separate field of law, but it is justified and reasonable to keep its specificities.

It can be stated that the extent of sameness is much greater than the extent of diversity between family law and civil law and that family law is attached to civil law in several aspects.

It should be pointed out that matrimonial property law has become more and more complex due to the multiplication of its elements the regulation of which is not possible without civil law (e.g. company law, insurance law, property law). The application of the rules of civil law in this field has been a practice for several decades in the case-law which, however, has never been enforced directly but in an indirect manner due to the interpretative activity of the Supreme Court.

The incorporation of family law into the civil code makes possible that classical principles of civil law could be applied directly in family law cases. However, the principles of family law, the number of which are rather few but which are of great importance, should be maintained in the First Part of Book IV.

When disputes concerning marriage emerge, the settlement thereof is, in general, incumbent on procedural law. ‘Procedural law is the maidservant of substantive law’, that is to say the aim of procedural law is to enforce the substantive laws. However, procedural law affects the outcome of the single procedures in a basic manner and to a large extent. Thus, for example the simplification or complication of proceedings concerning divorce depends on procedural rules.

The procedural rules on divorce show the connection of the legislator with that kind of proceedings. It shows whether the legislator expresses its deprecation related to divorce and thus whether it makes more difficult and longer to bring to an end such proceedings or, on the

contrary, it leaves the spouses, being matured adults, free to divorce without any great difficulties.

The topic of my thesis, namely the question of regulation of divorce makes it indispensable to clarify, first of all, the notion of marriage. In that aspect I have reviewed the notions of marriage laid down in the Marriage Act of 1894, in the Act XX of 1949 and in the Family Law Act.

It can be declared that even presently there is no uniform point of view accepted in the legal literature concerning the definition of marriage, some author define that notion in a broader sense whilst the others in a narrower sense.

When comparing the different definitions of marriage the following common elements can be found. The institution of marriage is monogamous and it is always between a man and a woman. Another element of the notion of marriage is that it creates a matrimonial partnership. Typically, making a match can be carried out within the framework of the state's given procedural order and it produces several legal effects by creating rights and obligations of the spouses.

Besides the Constitution, the protection of marriage is emphasized also by certain international agreements. Thus, for example the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union should be mentioned in that regard.

The Constitutional Court played an important role in the realization of the protection of the institution of marriage and in giving new interpretation thereof by developing the constitutional protection of marriage in its several decisions. The settled and unchanged point of view of the Constitutional Court is that protection of the institution of marriage is incompatible with the notion of marriage between persons of the same sex. In several European countries not only the registered partnership but also marriage between persons of the same sex is permitted.

The Fundamental Law of Hungary still protects the institution of marriage which is defined therein as a partnership between a man and a woman, based on the voluntary decision thereof. In such a way the Fundamental Law has defined the notion of marriage for the first time at constitutional level.

After that I explored the historical roots and historical legislation on marriage and on divorce from the aspect of the Hungarian peculiarities deriving from it and of their present applicability.

'Only such development of law is sound the root of which is based on the history, on the firm ground of historical law'. The statement of Kornél Sztehlo is especially true when dealing with matrimonial proceedings. The procedural rules on family law and fields of law related thereto are impregnated in the domestic legal awareness and historical traditions still live in the mind of the persons seeking legal protection.

By reviewing the historical development of the last 200 years it can be stated that the rules on matrimonial law have been created and developed in the course of the legislation's and enforcement of law's impact of the one on the other.

Amongst the legal institutions the institution of separation from bed and table regulated in the Marriage Act of 1894 is still remarkable which, while maintaining the framework of marriage, applied certain legal effects of divorce.

It is indisputable that the Marriage Act of 1894 made possible to divorce exclusively on the basis of the principle of culpability, and as regards the institution of divorce the emphasis has been gradually shifted from the principle of culpability to the principle of agitation. For example, the jurisprudence has applied the institution of 'faithless leaving' in order to alleviate the strict rules of the principle of culpability. 'Faithless leaving' is considered to be a transition between the two principles.

The principle of culpability was regulated in the Presidential Decree No 6800/1945 at legislative level. It was the adoption of the Family Law Act which meant the victory of the principle of agitation and which has established the basis of our legislation on divorce in force. After the legislation of 1945 it was only in 1986 when the separation as an element appeared. The other guidance to prove that the marriage is upset was the intent of the parties to agree in the last decades. The different laws have approached in different ways the divorce based on concordant will and the question of arrangement.

Having overviewed the legislation of the last one and half century, more uniform legislative approach can be detected concerning the obligation of the court to mediate between the parties since one of the main tasks of all our family laws is to protect the institution of marriage.

The maintenance and survival of the ex officio procedure is a common feature of our legislation on family law which is, in fact, considered to be very extraneous in civil proceedings but which was justified by the protection of marriages at a higher level.

A kind of double tendency can be observed concerning the legislation on divorce. On the one hand, the purpose of legislation after World War II was to make easier to marriage and to divorce than it was under the previous and stricter Law on marriage and under the Code of Civil Procedure drafted by Sándor Plósz. As a consequence, the number of divorce proceedings has been significantly increased by the early 1970s.

After that the legislative tendency has veered round and the rules both on marriage and divorce have been aggravated in order to protect the institution of marriage. However, that modification did not have definite results.

I have described and analysed the Hungarian legislation in force and the Hungarian case-law, moreover the Book on Family law of the new Civil Code to be adopted expectedly in the near future in two chapters. Within the framework of the legislation in force I have overviewed in details and analysed in a critical manner the national case-law and the statements of the legal literature.

The codification of civil law had substantive effects on all fields of law of private law, thus including family law, even though it did not have as its aim to fundamentally modify the legislation on family law. That endeavour is considered to be right and correct having regard to the fact that the traditional system of family law, and especially matrimonial law based on historical traditions is impregnated in the public awareness of the Hungarian society.

That is why the proposal for codification has maintained and strengthened the two ways of divorce, namely the divorce based on arrangement and that of based on not concordant will. However, as regards the divorce based on arrangement it altered the present principle according to which the total and final breakdown of marriage is presumed if the parties agree on collateral matters.

The other important modification concerning divorce based on arrangement is that the number of collateral matters has been reduced which has led to the simplification and thus also to the reduction of time of the proceedings. Nevertheless, I feel that there is a gap since according to me it does not govern either the question of sharing the movables of the household (common home).

The Proposal denies the concept of divorce based exclusively on the basis of permanent separation which is, in my point of view, a significant step taken back comparing it with the present rule.

It is also necessary to distinguish the procedural rules on the two different ways of divorce, certainly by maintaining the possibility of interoperability between the two types of proceedings. It is up to the procedural law to insert the mediation procedure into the course of divorce proceedings establishing in such a way the possibility for the parties at least to become aware of the mediation in family law matters.

The presentation and analysis of legal acts of the European Union on European civil procedure and European family law being relevant concerning the Hungarian legislation in force was also indispensable. The reform of regulating divorce cannot be considered as to be able to be based solely on the basis of the Hungarian legislation but it is necessary to evaluate the solutions of certain foreign states and to compare them with the domestic legislation. I have dealt with that aspect in relation to three countries in Chapter VI of my thesis.

The German divorce system, similarly to the solution of most of the European countries, is based exclusively on the principle of agitation. The German legislation accepts only one reason for divorce which is basically the total and irreparable breakdown of the marriage. Divorce is allowed if the matrimonial life of the spouses has broken down and the reparation of matrimonial life is not expectable. It must be presumed if the spouses, given that certain other conditions are met, live separately already for one year or they live separately for at least three years.

In the Austrian matrimonial law, rather exceptionally in Europe, both principles, namely the principle of culpability and that of the agitation are applied at the same time. Besides the reasons based on culpability and other reasons, the third group of reasons for divorce is linked to the final upset of the marriage which includes the case of breakdown of the matrimonial life and the case of divorce based on arrangement.

The matrimonial law of Italy is to be pointed out in several aspects. For example it is because the legal institution of separation, i.e. the separation from bed and table is still regulated by legal means and is a vivid institution.

The last part of the thesis contains the summary of the results of my research and the *de lege ferenda* proposals I have formulated.

III. Summary of the research results and possibilities of application

1. General observations

Upon the writing of my dissertation, I set as a main aim to raise attention concerning the possible directions of amendment of matrimonial divorce law. In order to realize this attempt, I created a comprehensive and synthetic study, which can be utilized by both theoretical scholars and legal practitioners.

Therefore, I dealt with the theoretical questions and historical background of divorce law in a detailed way; moreover, I examined this issue from that point of view, which previously existing legal institution should survive and could contribute to the strengthening of the institution of marriage and to the decrease in the number of divorces.

These objectives were supported by the detailed analysis of domestic case-law regarding matrimonial divorce law and by the overview of some foreign examples, appropriate for utilization in Hungary.

Upon designating my *de lege ferenda* recommendations, first of all, I needed to decide whether I would attempt to reform the rules concerning matrimonial proceedings in a comprehensive way, or I suggest the amendment of certain provisions. Raising this question is further justified, since both legal scholars and practitioners called for connecting the codification of the new Civil Code to the comprehensive supervision of the current Civil Procedure Code and the creation of a new one. However, in connection with the codification of the Civil Code, the reform of matrimonial proceedings is possible without the whole reform of the Civil Procedure Code, requiring the complete reconsideration of rules governing the action for the dissolution of marriage. Nevertheless, in the field of family law there is no need for fundamental changes, or for the comprehensive modification of rules of matrimonial proceedings, however, the refinement of certain provisions is essential, due to family law codification.

Consequently, in my *de lege ferenda* recommendations I will suggest the modification of some provisions of matrimonial proceedings.

Based on the results of my research I draw the conclusion concerning the direction of regulation that the liberalization of the rules of actions for the dissolution of marriage is justified, and these rules should be simplified. This direction seems to be contrary to the protection of marriage in the Fundamental Law of Hungary; however, in fact, it is not. The

current regulation of the action for the dissolution of marriage is based on the principle that the system of procedural ‘brakes’, incorporated into the trials, serves the aim of making the dissolution of marriages more deliberate.

This intention of the legislator became obsolete and in the light of practical experiences, it is not an appropriate tool for making divorces more mature. The small number of actions resulting in the reconciliation of the parties does not support the maintenance of this direction of legislation in force.

Instead maintaining the procedural ‘brakes’, the protection of marriages would be realized in a more effective way by the restoring of a previous institution, the separation from bed and board, existing in several countries.

Taking the above mentioned observations and comments contained in my dissertation into account, I would determine the direction of changes in the followings supported by the creation of specified legal provisions.

2. The detailed overview of the results of the research - de lege ferenda recommendations

My recommendations regarding the modification of the Family Law Act concern the dissolution of marriage by common agreement. It has already become clear that the part of dissolution by common declaration affected by the agreement cannot be maintained under the present social and ownership relations. The financial circumstances of the spouses became complex, however, the provisions of the Family Law Act did not follow these tendencies or not in the appropriate way, which can make the coming to an agreement impossible or considerably delay it. It does not serve the interests either of the common child or of the spouses.

It is also an empirical fact that spouses can easier arrange their pending legal relationships after the dissolution of the marriage.

The determination of incidental matters is the most difficult part of the regulation of action for the dissolution of marriage, as it is a tool in the hands of legislator to considerably influence the length of the proceedings and the complexity of the divorce. The wide range of issues, in which coming to an agreement is an obligation, may even hinder the consensus of the parties.

Taking these reasons into account, I determined the amendments I found necessary, which affect Paragraph 18 Section (2) Points a.) and b.) of the Family Law Act as well. Modifying Section (1) is not justified now, since the protection of the interests of the minor child should prevail as a fundamental principle.

Upon the determination of the issues subject to agreement, it should be paid attention, in which matters the obligation of concluding an agreement should be narrowed, thus facilitating the settlement and the dissolution of the marriage.

My significant recommendation of modification concerns the property affected by the agreement. That regulatory model should be found which best serves the interests of the parties and their common minor children. The question raises how the subsequent relation of the spouses is influenced or to what extent the interests of the child is supported by the fact if the spouses do not arrange for the division of the movable property of household found in the common residence when they agree on the usage of the common residence and the placement and maintenance of the common children. Therefore, it is necessary to maintain the arrangement obligation in limited cases, concerning certain pieces of movable property e.g. which belong to the common household.

By creating the above outlined regulatory system, if the parties do not have a common child requiring maintenance, the spouses will only need to agree on the usage of the joint residence, the movable property thereof and on the alimony for the spouse. Determining the minimum issues of incidental matters does not mean that spouses are prevented from agreeing on other incidental questions. The complete financial accounting remains as an option.

Diverging from the prevailing regulation, in the case of mutual agreement approved by the court, I would exclude it from the discretion of the court to decide whether the marriage has completely and irretrievably broken down. In the case of the mutual agreement of the parties I find it necessary and important to establish this presumption.

Consequently, I recommend the inclusion of the following provisions instead of Paragraph 18 Section (2) Point a) of the Family Law Act:

18. § (2) The complete and irretrievable breakdown of marriage is shown by the final common declaration of will by the spouses for divorce made without undue influence. The complete and irretrievable, final breakdown of marriage shall be presumed if

a) the spouses have come to an agreement regarding the placement and maintenance of the common child, the regulation of contact between the absent parent and the child, the alimony

for the spouse, the usage of the common residence and the division of movable property thereof, and their agreement has been approved by the court;

It is justified to reconsider the regulations of permanent separation, which is the other way of dissolving a marriage with common agreement. The notion of permanenet separation, as a ground for dissolving a marriage, has become widespread since its introduction in 1986, and it is an existing institution in plenty of European countries. Instead of its abolition, the current length (3 years) of permanent separation should be reduced based on foreign examples, thus tailoring the provisions according to Hungarian reality. In my opininon, 1 year of separation supposes the complete, irretrievable and final brakdown of marriage and that the spouses have agreed on the questions affecting the common children requiring maintenance. It is mentionable that in this case the parties do not have to come to an agreement in front of the court, just to prove that their existing practice serves the interests of the child.

Based on the above mentioned observations, I recommend the inclusion of the following provisions instead of Paragraph. 18 Section (2) Point b) of the Family Law Act:
18. § (2) b) the spouses separated at least one year earlier i.e. they live in separate residences and prove that they have resolved the placement and maintenance of their child in the child's interests.

As a result of my research I came to the conclusion that among the legal institutions of the past, the notion of separation from bed and board regulated in the Marriage Act is very remarkable, which applied some consequences of the dissolution of a marriage while maintaining the framework of the marriage. During the period of separation from bed and board the parties still had the possibility to 'revive' their marriage and re-establish the common matrimonial life.

In my opinion one tool of reducing the number of actions for the dissolution of marriage is the restoration of separation from bed and board according to the needs of the present. It would mean an appropriate solution e.g. for those elder spouses, who do not want to begin a 'new life', but still do not intend to maintain the matrimonial life and joint property.

At the same time, it could be a possible tool of avoiding the dissolution of marriage for those couples, who would be satisfied with a less drastic opportunity than divorce, taking the interests of their common minor children into account.

During separation from bed and board the matrimonial tie remains unaffected, being a link, a common point for the separated spouses, which may form a basis of the re-

establishment of matrimonial life later. On the other hand, by subjecting themselves to this legal institution, spouses would have enough time for coming to an agrement, and for closing all matters in a comforting way.

As separation from bed and board sounds outdated, it could not be introduced to the Hungarian legal system again, therefore, I would de lege ferenda suggest using the name of legal separation, following foreign examples.

In order to familiarize and endear this new institution, I would emphasize the importance of connecting it with the insurance of legal aid: the due of legal separation would be half of the due of the action for the dissolution of marriage, which could be incorporated into the due of the action for the dissolution of marriage if this action is initiated in the course of legal separation.

For the introduction of legal separation, the amendment of the Family Law Act and the Civil Procedure Code will be indispensable. Taking it into account that legal separation would function as a completely new institution in the proceedings of both acts, I unify my recommendations:

1.§ (1) In case of the complete and irretrievable breakdown of marriage if the maintenance of the common matrimonial life cannot be expected from the spouse or if it is necessary with regard to the interests of the minor child, the court can order the legal separation of the parties by a judgement upon the request of any spouse.

(2) The complete and irretrievable breakdown of marriage is shown by the final common declaration of will by the spouses for divorce made without undue influence. The complete and irretrievable, final breakdown of marriage shall be presumed if

a) the spouses separated at least 6 months earlier, or

b) the spouses have come to an agreement regarding the placement and maintenance of the common child, the regulation of contact between the absent parent and the child, the alimony for the spouse, and their agreement has been approved by the court.

(3) The matrimonial tie is maintained during legal separation. From the day the judgement ordering separation becomes final and enforceable, the marriage has no legal effect.

2.§ (1) In the course of legal separation an action for the dissolution of marriage shall not be initiated within six months from the order of legal separation.

(2) Legal separation is terminated by the restoration of common matrimonial life and by the dissolution of marriage after the elapse of deadline set out in Section (1).

Besides the modification of the Family Law Act, I firmly believe that significant changes could be brought by the partial, narrow amendment of the rules governing matrimonial proceedings in the Civil Procedure Code. Following the regulations of the Civil Procedure Code in force, I set forth my *de lege ferenda* recommendations in this field.

In matrimonial proceedings, the prevailing provisions concerning the exclusion of public differ from the general rule. The court may declare the hearing closed from the public at the party's request, even if the general conditions are not met or without deliberation. Nevertheless, the court shall announce its decision publicly, even if the previous hearings were closed from public. This provision is quite doubtful with its current wording, since the justification of the judgement can contain statements, which can also infringe the privacy, personal and other rights of the spouses. It would be more expedient to restrict the presence of public only for the announcement of the operative part, partly restoring the previously existing rules.

Therefore, I would complement Paragraph 284 Section (1) of the Civil Procedure Code with the followings:

284. § (1) In matrimonial proceedings the court may declare the hearing closed from the public at the party's request, even if the conditions set out in Paragraph 5 do not exist. The court shall advise the parties of this fact. In case of closed hearings the announcement of the justification of the judgement also takes place in closed hearings.

The strict rules of the formality of authorization in matrimonial proceedings should also be reviewed. The certification of an authorization, given to a person other than a law firm or an attorney, by a notary public is not especially burdensome, however, it can make the litigation possibilities more difficult for that spouse, who intends to authorize his relative to represent him in the proceedings. Nevertheless, this special rule is not applicable to those other actions, which can be combined with matrimonial proceedings; therefore, this distinction is pointless.

Based on these grounds, I recommend the abolition of Paragraph 279 Section (3) of the Civil Procedure Code, meaning that the rules of authorization would be governed by the general rules.

In the course of my observations I found that the introduction or restoration of mandatory legal representation would make matrimonial proceedings more effective and professional, moreover, would serve the protection of parties.

Concerning this issue, my *de lege ferenda* suggestion is the following. I recommend the modification of Paragraph 73/A Section (1) Point c) as follows (the current Point c) would change for Point d)).

73/A. § (1) Legal representation is mandatory:

c.) in matrimonial proceedings;.

In substantive law the rules of dissolution based on common agreement started to be separated from the reason of the complete and irretrievable breakdown of marriage. This distinction should be introduced and emphasized in procedural law as well. Provisions, enabling the useless delaying of action for the dissolution of marriage, cannot be maintained, e.g. in the case of dissolution by common agreement, it is not justified to restrict the first hearing to the personal hearing of the parties.

If the parties reach a settlement in incidental matters, during the first trial at the latest, in a document verified by an attorney, the hinderance set out by law concerning the first trial serves the interests neither of the parties, nor of the common minor child. Furthermore, it does not meet the standards of the principle of effectiveness.

It should be given consideration to abolish the special regulations applicable to the setting of the subsequent hearing, which follows the first hearing. The assumption of the legislator that the parties may reconcile during this period, thus letting the action for the dissolution of the marriage ‘die’, was not verified by practice. Another reason against the maintenance of this rule is that the plaintiff is entitled to withdraw his claim without the consent of the defendant at any time during the proceeding.

In connection with the first hearing, my recommendation also involves the introduction of family law mediation. Parties are not familiar with the potentials offered by the institution of mediation proceedings yet. Therefore, I would acquaint the parties with this institution, which has been applied before.

Family law mediation before the filing of an action can play an important and effective role in preventiong the launch of an action for the dissolution of a marriage and in preparing a settlement.

Thus, I would link the recourse of family law mediation before the filing of an action with legal aid. If the parties subject themselves to mediation before launching an action, then the due of the action for divorce is half of the originally determined due.

If mediation did not take place between the parties before the proceedings, the court shall advise the parties of the possibility of mediation during the first hearing. If the spouses would like to subject themselves to mediation, it would create a special cause for the suspension of proceedings in actions for the dissolution of marriage.

According to my observations I would recommend the following modifications concerning the rules of first and subsequent hearings in the action for divorce.

285. § (1)

(3) The court may attempt at any time during the proceedings to steer the parties towards reconciliation. If reconciliation is successful, the court shall dismiss the case, and shall not decide as to the bearing of court costs. The court shall advise the parties of the possibility of mediation. If the parties intend to subject themselves to mediation, the court – on the common application of the parties – orders the suspension of the proceedings according to 137. § Section (1) Point a).

(4) If during the first hearing in a divorce case the parties fail to settle their differences, the court shall continue the hearing in cases set out by Section (1), and if the parties requested the dissolution of their marriage on the grounds set out by Section (2) Point a) or b) of Act IV of 1952 on Marriage, Families and Guardianship (Family Law Act) and their settlement was included in a document verified by an attorney.

Besides these modifications, the abolition of Paragraph 285 Section (4) is also necessary.

Making a distinction between divorce on the grounds of common agreement and on the ground of the complete and irretrievable breakdown of the marriage justifies making a difference between the dues paid for these proceedings. In my opinion, it is not reasonable that the due paid for proceedings lasting one or two days is equal with a row of trials aiming at the investigation of grounds that resulted in the complete and irretrievable breakdown of a marriage. Moreover, the differences in the amount of dues can also encourage the parties to come to an agreement. I suggest that the due of action for divorce by common agreement should be half of the other type of action for divorce. If the parties do not make a settlement during the first hearing at the latest, the court shall call the plaintiff for completing the due while postponing the hearing.

As a result of the acceptance of the above mentioned recommendations the distinction of the two types of divorce would also be realized in the rules concerning civil procedure, taking the characteristics of the different actions into account.

3. The possibilities of utilization of the research results

The detailed analysis of the questions of matrimonial law and divorce law, and their correlation with substantive and procedural law is very scant. Regarding these issues, the handbook of András Kőrös and the book of Erika Filó can direct us; however, these books mainly deal with substantive law issues.

The present PhD dissertation enriches the domestic legal literature by subjecting the rules of matrimonial law to a new research method: it examines the current provisions of matrimonial law from a procedural point of view, while designating new possible directions for the reform of the rules governing the dissolution of marriage.

The analysis and results contained in my dissertation can directly be utilized by the representatives of legal practice and theory during their work. The critical remarks regarding the legislation in force and de lege ferenda recommendations could serve as a compass for the legislator during the due review of of family law and matrimonial law therein.

Furthermore, the results of my dissertation can significantly be utilized in the course of graduate and postgraduate university trainings and during the teaching of elective courses.

IV. Publications in the subject matter of the Thesis

1. **NAGY,** Andrea: Matrimonial proceedings; In: Wopera, Zsuzsa (ed.): Civil proceedings Special Part; KJK KERSZÖV, Budapest 2004. pp.25-62
2. **NAGY,** Andrea: Matrimonial proceedings; In: Wopera, Zsuzsa (ed.): Civil proceedings Special Part; KJK KERSZÖV, Budapest 2005. pp.25-61
3. **NAGY,** Andrea: Retrospection to the 50 years of the action for the dissolution of marriage; In: Wopera, Zsuzsa (ed.): The Civil Procedure Code is 50 years old; Novotni Kiadó Miskolc 2003. pp.98-103
4. **NAGY,** Andrea: Historical background of regulating matrimonial proceedings in the Family Law Act; In: Gyekiczky, Tamás (ed.): What accompanies from the past; Gondolat Kiadó, Budapest 2005.
5. **NAGY,** Andrea: KJK Kerszöv CD. Jogtár Commentary Civil Procedure Code Chapter XV., 2006, 2007.
6. **NAGY,** Andrea: Comparative legal outlook to the German divorce law system; In: Harsági, Viktória – Wopera, Zsuzsa (ed.): Challenges of jurisdiction in the 21st century; HVGORAC Lap- és Könyvkiadó Kft Budapest, 2007. pp.259-269
7. **NAGY,** Andrea: Modifications of jurisdiction rules of matrimonial proceedings from the change of the regime till nowadays; In: Publicationes Universitatis Miscolcinensis 2006. pp.427-438
8. **NAGY,** Andrea: The regulation of matrimonial proceedings after the entry into force of the Act XXXI of 1894; In: Publicationes Universitatis Miscolcinensis 2007. pp.635-654
9. **NAGY,** Andrea: Determining the market value of shares in legal practice concerning the division of joint marital property; In: Publicationes Universitatis Miskolcinensis 2008. pp.629-635
10. **NAGY,** Andrea: Changes in the jurisdiction rules of matrimonial proceedings and attempts of modifications in the European Union; In: Advocat 2008. No.3-4, pp.1-6
11. **NAGY,** Andrea: Determination of the market value of shares regarding joint matrimonial property; In: Cég és Jog, May 2009. Vol.XVII. No.5, pp.11-14
12. **NAGY,** Andrea: Legislative endeavours concerning matrimonial proceedings in the EuropeanUnion; In: Wopera, Zsuzsa – Asztalos, Zsófia (ed.): Unifying civil procedure law in Europe, HVG-ORAC Kiadó, Budapest, 2009. pp.100-105

13. **NAGY,** Andrea: Some thoughts on German divorce law; In: Acta Conventus de Iure Civili, Tomus VII., Publication of University of Szeged, Faculty of Law, Department of Civil and Civil Procedure Law, Lectum Kiadó, Szeged 2007. pp.167-179
14. **NAGY,** Andrea: Matrimonial proceedings – Commentary to the Act III of 1952 on civil procedure, CompLex DVD Jogtár kommentár, 2009., 2010, 2011, 2012.
15. **NAGY,** Andrea: Determination of the market value of shares; In: Szikora, Veronika (ed.): Challenges and possibilities in nowadays' private law; Publication of University of Debrecen, Faculty of Law, Department of Civil Law, Debrecen 2009. pp.305-313