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# THE RISE OF CIVIL MARRIAGE AND DIVORCE IN MARRIAGE LAW IN SLOVAKIA AND CHANGES IN MARRIAGE LAW IN THE INTERWAR PERIOD

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## **Abstract**

The aim of the present paper is to map the changes that took place in family law in Slovakia at the turn of the nineteenth and twentieth centuries. The main change was the rise of civil marriage, which became an option for couples wishing to marriage alongside a church marriage. Couples were also permitted to divorce and remarry. The paper also aims to evaluate the effect of the changes in family law, with an emphasis on family breakup.

*Keywords:* church, divorce, marriage rate, divorce rate, Czechoslovakia

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## **1. Church marriage and its exclusivity until the nineteenth century**

In a Christian society the commencement of the reproductive process is, as a rule, linked to entry into marriage. Until the nineteenth century it was typical for the whole area of marriage to be governed almost exclusively by religious law. The Church required that marriage must be on a voluntary basis, concluded of the free will of the couple getting married, and that the marriage bond must be indissoluble [1]. Marriage law gradually introduced a number of obstacles to marriage that were intended to eliminate potential problems that could result in separation after marriage. These included natural obstacles such as direct relationship, an existing marriage and also age limits, physical handicaps – impotence, priesthood, monastic vows (celibacy), forced consent, kidnap, error and different religious beliefs. For the same reason, the Church required a public announcement of the intended marriage, which was made three times before the marriage. This gave space for the declaration of reasons why the marriage should not take place [2].

Marriage law was strongly affected by the Reformation, whose influence in central Europe peaked in the sixteenth century, and the subsequent Counter-Reformation. (Luther's significance for the emancipation of marriage and

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secular vocations is well known. Few realize, however, that Luther was in his views heavily influenced by many medieval thinkers/sources [3].) While the Reformation rejected the sacramental character of marriage and its indissolubility, dropped the requirement for priests to be celibate and transferred marriage to the jurisdiction of secular courts, the Counter-Reformation, under the guidance of the Roman Catholic Church, insisted on the previously existing principles. The Roman Catholic Church gave marriage a more fixed form in the decrees of the Council of Trent (1545-1563). Marriage was declared a sacrament at which a priest and other witnesses must be present and provide assistance prescribed in Church law. The solemnity of marriage was supported by the criminal law as well as the ecclesiastical legal system, which was responsible for the enforcement of marriage law. Breaches of marital vows, adultery and other sexual immorality were often punished by placing offenders in a pillory and exposing them to public humiliation [4].

Mixed marriages were initially prohibited but later they were allowed subject to the Church authorities' permission (dispensation), usually with the obligation that the non-Catholic parent agreed that their children would be raised in the Roman Catholic faith. Mixed marriages had to be conducted before a Roman Catholic priest. In the Kingdom of Hungary, which included the territory of present day Slovakia, major changes were made in marriage law during the Enlightenment. During the reign of Maria Theresa (1740-1780), non-Catholics were required to give permission for their children to be brought up as Catholics. Her son Joseph II (1780-1790) issued a decree of toleration that cancelled this rule and established that the children of mixed marriages would be brought up in the religion of their father. At the age of eighteen years, every person would then be free to choose whether to change religion [2]. Although the rules on children's upbringing were for a time restored after Joseph II's death and conversion to Protestant faiths was made difficult, major changes were made in Hungarian law in the second half of the nineteenth century. Firstly, Act No IV: 1868 freed Protestants from the Roman Catholic ecclesiastical courts and placed their affairs under the jurisdiction of the secular courts, and then a new marriage law was adopted in 1894.

The *Marriage Act* of 1894 was the outcome of lively debate that had extended throughout the second half of the nineteenth century. The main issue was the character of marriage, which began to be seen as a primarily civil (secular) institution [5]. The act, together with accompanying legislation on the religious affiliation of children and state registry offices (in Slovak: *matriky*), made civil marriages obligatory in Hungary. Marriage had to be concluded before a civil official of the state in order to be valid and divorce was also permitted in the case of such marriages. After divorce, the former husband and wife were allowed to enter into new marriages. Making civil marriage obligatory did not mean the prohibition of church weddings, but such ceremonies were seen as the internal affairs of the Church. These rules remained in force until the constitutional changes of 1918, when Austria-Hungary collapsed and its

successor states in central Europe amended rules on marriage according to the needs of their societies.

## **2. Changes in marriage law after the establishment of Czechoslovakia**

The establishment of the Czechoslovak Republic created a state made up of two parts of the former Austro-Hungarian monarchy. The western part, Bohemia, Moravia and Silesia, was subject to Austrian law while the eastern parts, Slovakia and later Subcarpathian Ruthenia, were subject to Hungarian law. The western part of Czechoslovakia took over Austrian marriage law together with the rest of its legal system. This law permitted only 'traditional' Church marriage and marriage dissolution was permitted only in the case of non-Catholics [*Pozri bližšie dôvodovú správu k osnove zákona, ktorým sa menili ustanovenia občianskeho práva o manželskej zmluve, o rozluke a o prekážkach v manželstve*, <https://www.nrsr.sk/dl/Browser/Document?documentId=12985>]. In Slovakia, the Hungarian marriage law of 1894 remained in force and during the first years of the existence of Czechoslovakia, only a few provisions were amended [XXXI: 1894].

The Hungarian marriage law was universally considered to be progressive, modern and liberal. For this reason, after the establishment of the Czechoslovak Republic proposals began to be made in parliament on the one hand to unify marriage law in both parts of the republic and on the other to change its character, especially in the western part of the country. The Hungarian law and its fundamental principles served as an inspiration for the western part of Czechoslovakia.

The concept of civil marriage was raised in the first session of the Czechoslovak parliament, when Dr V. Bouček proposed reforming the marriage law of the western part of the republic and allowing the couple getting married to decide whether to have a civil or church marriage [<https://www.nrsr.sk/dl/Browser/Document?documentId=12689>]. A more detailed proposal was made by Dr J. Stránsky who tried to propose specific changes to the rules on civic marriage in the inherited Austrian civil code [<https://www.nrsr.sk/dl/Browser/Document?documentId=12833>]. Although neither of these proposals passed in the end both clearly reflected a practical need in society. The basis for the new reform of married life was developed through two further draft laws that were gradually developed and amended by the legislative committee of the Czechoslovak parliament [<https://www.nrsr.sk/dl/Browser/Document?documentId=12985>, 298; <https://www.nrsr.sk/dl/Browser/Document?documentId=13694>, 1007]. The new act, or amendment, on marriage was passed on 22 May 1919 [Z. č. 320/1920 Sb. z. a n., doplnený vl. nar. č. 362/1919 Sb. z. a n.]. Initially it was intended only for the western (former Austrian) part of the new republic, because the eastern part already had civil marriage and universal access to divorce based on the older Hungarian law. The new marriage act ultimately came to apply to the whole Czechoslovak Republic [<https://www.nrsr.sk/dl/Browser/Document?documentId=14085>, 1398]. The

explanatory report on the first draft of the act characterised conducting a civil marriage first as an obligatory act for all persons without difference. The framers of the act also considered it to be a step towards the disestablishment of the church and a measure that would bring Czechoslovakia into line with other modern countries of the world. Legislators saw marital happiness “in the moral value of the marriage bond rather than in a church blessing”.

In the end, Act No 320/1919 allowed couples to choose how they would marry. It meant that a marriage concluded before a competent registrar had the same validity as a marriage concluded before a competent minister of religion, i.e. a priest of the religion to which one or both of the couple getting married belong. The couple getting married chose the form in which their marriage would be solemnised [6]. The amendment of 1919 allowed church marriage but the law recognised such marriages only after their entry in the civil register of births, deaths and marriages (in Slovak: *matrika*).

It should be noted that in Slovakia practically all the provisions of the Hungarian act XXXI: 1894 remained in effect unless they were expressly repealed or replaced by Act No 320/1919. The main changes related to the keeping of the register. In Hungary the civil registers had been kept by special civil registrars. Ecclesiastical parish offices did not have this competence. This meant that marriage became official after it was entered in the civil register by the registrar (civil marriage) [<https://www.nrsr.sk/dl/Browser/Document?documentId=14487,1755>]. This provision was mentioned in the decree of the Minister of the Czechoslovak Republic plenipotentiary for the administration of Slovakia, on the administration of civil registers [Nariadenie MPS č. 12/1919 zo dňa 14 januára 1919 o štátnych matrikách, § 6. Úradné noviny (ďalej ÚN), ročník I/1919, č. 3–4, s. 3, Minister ČSR s plnou mocou pre správu Slovenska bol najvyšším správnym orgánom v tomto období na Slovensku]. Under the new law, priests in Slovakia acquired the power to conclude valid marriages, which they had lost after the adoption of the Marriage Act in 1894. The administration of the civil register of marriages in the Czechoslovak Republic was stabilised only in 1922, when the Minister of the Czechoslovak Republic plenipotentiary for the administration of Slovakia issued a decree on the method for making entries in the civil register [MPS č. 3463/1922].

The conditions for entering into marriage laid down by the act can be divided into two groups. The first were those for which exceptions could be granted. The second were conditions for which no exception could be granted. Couples wishing to get married had to apply for exceptions to the competent administrative authorities. Dispensation (permission) granted by a church was not legally binding for the conclusion of a marriage. This meant that a marriage entered into with only church-granted exceptions was invalid. If such a marriage took place, the officiating priest could be punished for a criminal offence [Zák. čl. V:1878, §§ 252, 253, 256 a 257; zák. čl. XXXI:1894, §§ 122 a 125]. For example, if a priest authorised a person’s marriage and knew that the person was already married, he could be sentenced to up to five years in prison. These penalties naturally also applied to civil marriages. In Slovakia, exceptions for

obstacles other than the obligation to present proof of family status could be granted only by the county head (in Slovak: *župan*), as representative of the public administration in the county where the marriage was to take place. From 1924, the county head also granted exceptions in cases where one of the persons getting married was a foreigner. Foreigners wishing to marry had to present proof that their new marriage did not contravene the laws of their homeland. The county head was entitled to grant an exception from this obligation [Z. č. 113/1924 Sb. z. a n., §113 zák. čl. XXXI: 1894].

Notice remained a fundamental requirement for getting married. The statutory minimum notice period for a civil marriage was five days before the marriage. Church marriage required that the notice had to be read out orally before the congregation in at least one Sunday mass. This minimum notice period was permitted only when justified by circumstances. The standard requirements defined by the law were a 10-day notice period for civil marriages and three announcements for a church marriage. In Slovakia, an exception or a shorter notice period could, again, only be permitted by the competent county head.

The county head could also permit marriage to be concluded with the assistance of a proxy. The letter authorising the proxy had to include a precise identification of the person being represented for the purposes of marriage. Act No 320/1919 removed the previous statutory requirement for the Church to give consent for the marriage of a person who was forbidden to marry under ecclesiastical regulations.

The new act did not affect the old Hungarian rule that only the civil register was accepted as reliable evidence or reliable proof of birth, marriage or death [Zák. čl. XXXIII:1894, §§ 1 a 23, Pozri tiež Nariadenie MPS č. 12/1919 zo dňa 14 januára 1919 o štátnych matrikách, ÚN I/1919, č. 3–4, s. 3]. Church registers were accepted for public purposes only when entries were made before the establishment of the civil register, which meant before 1895 in the former territory of the Kingdom of Hungary. Based on these provisions, the Ministry plenipotentiary for the administration of Slovakia required that if a marriage took place only in the church, the priest had to make out two copies of the marriage deed [Nariadenie MPS č. 27/1920/7653 prez. adm. 1919 ÚN II/1920, č. 14–15, s. 1–2]. One copy was to be kept in the church register with all its attachments and the other was to be sent within three days to the competent authority for the place of marriage – the district magistrate (in Slovak: *hlavný slúžny* – a civil servant representing the county head for a part of a county) or the citizen acting as the administrative head of a town.

Priests were required to enter their own personal data in the marriage deed – to permit subsequent verification – alongside the basic personal data of the persons getting married. The law highlighted the importance of correctly recording the family status of the persons getting married and the circumstances under which any previous marriages were terminated. The marriage deed also included precise information on previous partners, their age at death, the date of a divorce decree or the date when a court declared the previous marriage invalid.

The marriage was entered in the civil register only after it was approved by the supervising registry authority – the district office (in Slovak initially *služnovský úrad*, later *okresný úrad*)

The basic age for marriage was eighteen for men and sixteen for women. Marriage at a younger age could be permitted based on a decision of the county head. Persons aged twenty or under had to obtain the consent of their parent or guardian to marry [z. č. 447/1919 Sb. z. a n. o znížení věku maloletosti, § 1 a 5].

Marriage was prohibited for blood relations whether in the ancestral or descendant line, between siblings, between one sibling and the blood descendant of another sibling, between a spouse and a direct blood relative of the other spouse, even in the event of a divorce or annulment of the marriage. The competent county head could grant an exception for marriages between one sibling and the blood descendant of another sibling. An exception could also be given for marriage between cousins.

Understandably, the law prohibited marriage if a previous marriage had not been duly terminated by annulment or divorce. Mental health could be an obstacle to marriage, for example if a person had been deprived of legal capacity. Marriage was also prohibited between guardians and their wards and between adoptive parents and their adopted children. In the latter case, the county head was permitted to grant exceptions. Women were forbidden to marry for ten months from the end of a marriage that was dissolved or annulled. This obstacle was removed if the woman gave birth during the aforementioned ten-month period. It could also be waived with the consent of the competent county head.

The 1919 marriage act regulated marriage for the whole of the interwar period. It was amended only in 1924, when certain powers were delegated from the Ministry of Justice to the county heads. After the abolition of counties in Slovakia in 1928, the powers of the county head were transferred to the head of the district, the official in charge of the district office [Pozri bližšie prílohu A. k vl. nar. č. 96/1928 Sb. z. a n.].

### 3. Divorce

The standard Slovak terms used for divorce during the interwar period were *rozluka* and *rozlúčenie*. The law defined all the ways in which a marriage could be terminated as the death of the husband or wife, a court decree of divorce or a court decree of annulment of the marriage. The law itself distinguished between legal separation (in Slovak: *rozvod*) and absolute divorce (in Slovak: *rozluka*)

Divorce could only be obtained through a court order. A husband or wife could petition for divorce if the husband or wife committed adultery or other sexual immorality, or illegally entered into another marriage. It was also permitted if one spouse abandoned the other and did not live in the same dwelling for at least six months, or if one spouse physically assaulted the other. Other permitted cases were if a spouse was sentenced to death or more than five

years in prison. A spouse could also petition for divorce if their partner attempted to seduce a child belonging to the family, lived an immoral life and so on.

If a man was found to be at fault in the breakdown of the marriage, he was automatically obliged to pay his wife maintenance (in monthly instalments) if her income was insufficient to provide for her upkeep. The husband was obliged to keep paying maintenance until his former wife remarried. When she remarried, the obligation of the former husband expired.

The court also decided where minor children would live and how their maintenance would be provided for. The law stipulated that children should live with their mother until the age of seven years. On reaching the age of seven years, the court would place them in the care of the parent who was not at fault in the action for divorce. If both parents were at fault, sons were put in the care of their father and daughters in the care of their mothers. The law required that parents must have regular opportunities to meet with children with whom they did not live in a shared household.

A judge was obliged to issue, at the request of at least one of the spouses, an order for their legal separation *from bed and board*. The judge could order such a separation for six or more months. This legal separation was referred to in Slovak as *rozvod*. In the law of the time, spouses who were legally separated in this way and who decided to renew marital life together could do so at any time. It was sufficient for the couple to notify the competent court. An absolute divorce (in Slovak: *rozluka*) became possible after a couple had lived separately under a legal separation order for more than two years. If, after this period, at least one of the spouses requested an absolute divorce the court would replace its order for legal separation with a decree of absolute divorce.

The intent of the lawmakers was that divorce should proceed gradually and allow a ‘cooling off period’ to delay the complete dissolution of a marriage. The effects of legal separation and absolute divorce as regards property ownership were completely identical [7].

The main difference between the legal separation and absolute divorce related to the possibility to remarry. Legal separation did not mean the complete dissolution of the marriage and did not permit remarriage. This was possible only after the full dissolution of the marriage by the decree of absolute divorce. It must be noted that the general public tended to regard legal separation (*rozvod*) and absolute divorce (*rozvod*) as one and the same thing because they overlapped so much [8].

#### **4. Overview of marriage and divorce in Slovakia in the interwar period**

The changes in marriage law had only minimal effects on the intensity of marriage as such. They did begin to have some effect on the divorce rate though. The dissolution of marriage by a decree of judicial divorce, which had been permitted in the Hungarian marriage act, was reflected after the establishment of

the Czechoslovak Republic by an overall increase in the number of marriage terminations (Table 1) [1, p. 50].

**Table 1.** Balance of marriages in Slovakia from 1919 to 1937.

Year	Marriages	Terminated marriages					Net increase in marriages	Terminated marriages (%)			Net increase in marriages per 1000 persons
		Separation and divorce	Annulment	Death		Total		Divorce and annulment	Death		
				M	W				M	W	
1919	49402	113	*	-	-	-	-	0.2	-	-	-
1920	35623	434	5	8901	7661	17001	18622	2.6	52.3	45.1	6.2
1921	32936	544	4	8930	7166	16644	16292	3.3	53.6	43.1	5.4
1922	28632	609	2	9568	7339	17518	11114	3.5	54.6	41.9	3.6
1923	26212	587	4	8526	6572	15689	10523	3.8	54.3	41.9	3.4
1924	25410	527	7	9257	6811	16602	8808	3.2	55.8	41.0	2.8
1925	27412	476	9	8939	6705	16129	11283	3.0	55.4	41.6	3.6
1926	28321	470	12	9189	6982	16653	11668	2.9	55.2	41.9	3.6
1927	27912	495	17	9587	7002	17101	10811	3.0	56.1	40.9	3.3
1928	28675	535	4	9436	7021	16996	11679	3.2	55.5	41.3	3.6
1929	28306	631	5	9952	6,997	17585	10721	3.6	56.6	39.8	3.3
1930	29029	647	6	9043	6523	16219	12810	4.0	55.8	40.2	3.9
1931	27311	606	7	9606	6916	17135	10176	3.6	56.0	40.4	3.0
1932	26500	620	2	9028	6642	16292	10208	3.8	55.4	40.8	3.0
1933	26605	722	8	9599	6785	17114	9491	4.3	56.1	39.6	2.8
1934	25827	813	5	9277	6503	16598	9229	4.9	55.9	39.2	2.7
1935	25564	868	7	9644	6785	17304	8260	5.1	55.7	39.2	2.4
1936	26127	930	3	9442	6612	16987	9140	5.5	55.6	38.9	2.6
1937	26821	821	5	9513	6419	16758	10063	4.9	56.8	38.3	2.8

\* divorce and annulment in 1919 together

In Slovakia, the Roman Catholic Church was the dominant religion. At the beginning of the twentieth century around 70% of the population was Roman Catholic and this share gradually increased so that in the last pre-war census in 1930, 71.6% of the people residing in Slovakia declared themselves to be Roman Catholics. Another relatively large group were Lutherans, who made up around 12% of the population. Greek Catholics made up 6-7% of the population of Slovakia followed by 4.5% for Reformed Protestants (Calvinists) and Jews [9].

At the turn of the nineteenth and twentieth centuries, Slovakia had a highly religious population and this situation did not change very much after the establishment of the Czechoslovak Republic. The population's strong religious beliefs were reflected mainly in the long-lasting character of marriages even though couples sometimes ceased living together after some time. Marriages survived severe family crises, often for the sake of children but also for social and economic reasons. Family stability was founded upon a woman's status in the family and her Roman Catholic upbringing [10].

The religious impulses of the population were strongly reflected both in spiritual and material culture [11], but religion also affected population development and the population climate in Slovakia [12, 13]. Its effects included



both higher fertility of marriages (more children in families), as one of the effects of acceptance of conception [14], and seasonal patterns in marriage that reflected the ecclesiastical year, customs and traditions and the seasonal nature of agricultural work. The marriage rate fell at the time of important church holidays. The lowest levels were during Advent (in December) and Lent (in March). There were also low numbers of weddings during the summer months (July and August), when agricultural work was at its peak [15].

Marriage in Slovakia during the interwar period was also characterised by a high level of homogamy. Nearly 95% of Roman Catholics and Jews who got married, married someone of the same religion. In the other faiths there was a slightly lower rate of homogamy. Greek and Armenian Catholics married someone from the same religion in around 70% of cases and nearly a quarter of their marriages were with Roman Catholics. Around 80% of Protestants' marriages were to someone of the same religion and 17% were to Roman Catholics. The high rate of homogamy in marriage undoubtedly helped to stabilise family life.

Looking at the overall development of marriage in Slovakia in the interwar period, this demographic process was influenced strongly by the First World War (1914-1918) and its psychological effects, which meant that only a few marriages took place, and socio-economic problems culminating in the economic crisis of the 1930s. During the First World War, fiancés delayed their marriages until after the war. When it ended, there was a compensation phase with a high rate of marriages including both the planned marriages that had been delayed because of the uncertain situation and the new marriages of persons who had been widowed by the war, especially soldier's widows. Slovakia had its largest number of marriages in the studied period in 1919. The marriage rate was four-fold higher compared to the previous wartime years and the high intensity continued in Slovakia until 1921 (Table 1). After the compensation marriage boom subsided, the marriage rate returned to its pre-war trend.

## **5. Conclusions**

The introduction of civil marriage made the Czechoslovak Republic one of the most modern European countries offering both civil marriage and judicial divorce.

The main effect of the changes in the marriage law in Slovakia was to cause a slow increase in marriage termination. This did not become a large phenomenon during the interwar period because it was opposed by the strong religious beliefs of the population and the tradition of living in a Christian family. The social and cultural environment, especially in rural Slovakia, condemned every attempt to change traditional behaviour. Legal separation and divorce were alien to the traditional view of society, as was the status of being a single mother or having a child outside marriage etc. The community condemned it as a phenomenon against the morality of daily life as represented in the prevailing Catholic view of the family and married life.

There was a slow rise in the number of divorces in Slovakia but this affected only a small and insignificant part of the population. The divorce rate was around 2-3 divorces per 100 marriages, while in the western part of Czechoslovakia, where the strength of religion in the population was significantly lower, the divorce rate was 4-7% and increased more rapidly in the period covered by this study [10, p. 31].

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