

PETER COSTEA

ATTORNEY AT LAW
4544 POST OAK PLACE, SUITE 350
HOUSTON, TEXAS 77027

PHONE: 713/337-4304

FAX: 713/231-0401

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The Blood Bath that Wasn't Supposed to Happen: Romania's Marriage Referendum

In less than three (3) weeks, at the end of September and the beginning of October, the European Union, Romania's main political parties, politicians, mass media and social media trolls succeeded in annihilating the greatest democratic endeavor in Romania's post-communist era: the defeat of the citizens-initiated constitutional amendment to enact natural marriage in Article 48 of Romania's Constitution. I was there for the last two (2) weeks of the campaign crisscrossing the country, campaigning in earnest and witnessing for myself the collapse of democratic intercourse and the blood bath left behind by the concerted attacks against the referendum by the European Union and its lackeys in Romania. How did this come to be and what motivated the aggressiveness of the opponents?

By way of background, in November 2015 a group of Romanian citizens initiated a constitutional amendment to enact the institution of natural marriage between a man and a woman in Romania's Constitution. They needed the backing of half a million valid signatures for this purpose but instead got 3 million in the required six (6) months. In the summer of 2016 the amendment was ruled constitutional by Romania's Constitutional Court, and it was then voted and approved by a large margin in Romania's lower chamber of Parliament, the Chamber of Deputies, in May 2017. Bickering among Romania's political parties over the amendment led to repeated and frivolous appeals to Romania's Constitutional Court, and the country's President, Mr. Klaus Iohannis, who is to take up the Presidency of the European Union for six (6) months in the first half of next year, also positioned himself against the proposed amendment. All appeals were exhausted by late spring 2018 and on September 11, 2018 Romania's Senate adopted the amendment with a vote of 107 to 13.

By law, the amendment was to be put to a vote in a national referendum within thirty (30) days of its adoption in the Senate. The Government scheduled the referendum for the weekend of October 6 and 7, giving the citizens only a little over three (3) weeks, 24 days to be precise, to campaign in favor or against the constitutional proposal. However, this time period was further reduced by a week because, according to Romanian law, the Constitutional Court had to validate the amendment a second time. The second validation, by a vote of 7 to 2, came down on September 17, but the Court's ruling only became effective upon its publication on September 18 in the Government's official legal publication. Only on September 17 was it entirely clear that the referendum would actually take place, allowing the citizens only nineteen (19) days of effective campaigning, not even three (3) full weeks. Citizens scrambled to mobilize the public for the referendum, draw up posters, flyers,

banners, and obtain permits from city halls to place and disseminate campaign materials in public forae.

Another major challenge was the requirement of a voter turnout threshold to validate the amendment, which required that at least 30% of all of Romania's eligible voters actually vote. This turned out to be an immense challenge because millions of Romanians live abroad, mainly in Western Europe and in the Republic of Moldova. According to Romania's official records, there are nearly 19 million Romanian citizens with the right to vote around the globe, of whom nearly 6 million had to vote to validate the amendment. In contrast, most Western democracies do not impose a turnout threshold, the Irish referendum of 2015 on gay marriage being validated by the vote of only 1.2 million votes.

The wording of the amendment on the ballot was also confusing. It merely asked citizens to vote "yes" or "no" in response to the question "do you agree with the law adopted by the Parliament for the revision of the Constitution?" It did not state, as one would expect, "do you agree with defining marriage in Article 48 of the Constitution as the union between a man and a woman?" Unlike the United States, Romania's laws do not allow citizens to challenge the wording of a ballot initiative. The wording is a template written into law, not by government officials, and cannot be attacked in courts. People were confused and concerned that the amendment was an underhanded scheme of sorts of the ruling socialist government which to this day remains the most unpopular government in Romania since December 1989. For this reason disinformation spread online like wildfire that the referendum was a "socialist scheme" designed to mislead honest and well-intended citizens.

In the end, however, 3,857,308 eligible Romanian voters voted around the world, of whom 3,531,732 voted in favor of the amendment, or 93.40% of the total. This equaled 21.1% of all eligible voters. By way of comparison, the highest adoption rate of any marriage amendments in the United States was in Tennessee with slightly over 81%. Had there been no threshold required, the marriage amendment today would be part of Romania's Constitution backed by an adoption rate unprecedented anywhere in the world. But when one considers the challenges, in retrospect it seems extraordinary that even one in five eligible Romanian voters voted.

But for the concerted efforts of the European Union, Romania's political parties, politicians, and the mass media, Romania would have become the fifteenth state in the Council of Europe to define marriage in its natural sense as the union between a man and a woman in its Constitution.

Europe's socialists railed against the referendum and, in their typical arrogant fashion, lectured Romania's socialist government to do everything it could to ensure the referendum would not pass. Back in late September, *Euractiv* reported that on September 26 leaders of the socialist group in the European Parliament met with Romania's Prime Minister, whose socialist democratic party is the ruling party in Romania, asking Romania's socialists to stand up "against the constitutional change to ban same-sex marriage." Discussions were heated and shouts were heard even by those standing outside the chambers where the conversations occurred, as socialist leaders raised their voices at their Romanian counterparts. The raised voices had an impact. Before the meeting, Romania's socialists pushed all along for the

referendum but, upon returning home, announced they would no longer campaign in favor of the amendment.

Romania's other political parties fell in line as well, including those who consider themselves politically on the right. More egregiously even, during the actual campaign, politicians aligned with conservative parties filed complaints against nongovernmental and civic organizations which put up billboards in support of the amendment, claiming that they violated applicable campaign laws. City halls around Romania moved in earnest to compel the removal of the banners deemed to violate the laws. Curiously, the same city halls previously approved the display of the same banners and in the same venues. One extreme example involved a church which draped its frontispiece with a huge banner asking people to vote for the amendment. City hall compelled the church to take down the banner, but after sustained public outcry, the mayor's office backed down. No due process or avenues to challenge the ad hoc decrees of city halls and mayors were available to the public. Banners were ordered removed on a whim upon the filing of a mere citizen's complaint. In the western city of Timisoara, City Hall decreed the halting of dissemination in public of flyers who were deemed offensive to same sex couples which noted that same-sex marriage would hurt children. These are just some of the many examples which back up the notion of an entirely chaotic campaign.

Courts were impotent and seemed unable to discern between campaign laws applicable to routine elections and those applicable to referenda, especially citizens' initiated campaigns. This referendum was the first citizens-initiated referendum in Romania's history.

The psychological war against the referendum was also fueled by a dissenting opinion appended to the September 17, 2018 Constitutional Court ruling where the dissenting judge portrayed Romania's citizens who subscribe to the "traditional view of marriage" as owing their views to a "retrograde vision" which was seemingly in conflict with the rulings of the European Court of Human Rights.

Many of Romania's politicians encouraged the citizens to boycott the referendum. This would be unthinkable for citizens of the American republic where no politician would dare encourage citizens not to vote. On the contrary, in most democracies citizens are encouraged to vote and in some, like Australia, they are penalized, albeit nominally, if they do not.

Romania's mass media coverage of the referendum was also a complete failure. It seldom invited supporters of the referendum to appear on shows, and it focused on largely irrelevant issues, such as "discrimination against sexual minorities" and the high cost of the referendum, around \$50 million, which, the critics said, could have been put to better use, such as building schools or hospitals. Not on a few occasions the only guests to appear on shows were trolls who delivered diatribes for minutes on end without being interrupted.

The Romanian marriage referendum failed and it is uncertain that it will ever be put to a vote again. Nevertheless, the positive outcomes must be noted as well: 3.5 million citizens battled confusion, threats, the politicians' opprobrium, the scorn of Europe's left and the relentless attacks of social media trolls, and voted for natural marriage. The referendum was free, no doubt. But also it was not fair. Had all citizens voted, very likely 90% or more of all eligible

voters would have voted in favor of the amendment. But the 30% threshold, undemocratic in my
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opinion, doomed it to fail. Nevertheless, even though the referendum failed, one can say that this exercise in democracy was an unofficial plebiscite of sorts, similar to the one held in Australia in 2017, where citizens expressed their view on marriage very clearly. In the Australian plebiscite a little over 38% of the citizens supported keeping natural marriage as the normative family institution in Australia. In this respect the Romanian outcome was certainly crushing. The votes in favor of the amendment were also unusually high among the Romanian's living in Western Europe where more than 100,000 of them voted. This shows they were well aware of the consequences of same sex marriage in the countries where they work wanting to ensure that they do not replicate in Romania.

For now, same sex marriage in Romania remains forbidden by explicit legislation and marriage continues to be defined in the country's Civil Code as the union of a man and a woman. Changing the law will be challenging because it requires a vote of 60% or more of the Parliament. It is doubtful this will happen in the near future or even in midterm. When 3.5 million Romanians tell politicians they want to preserve natural marriage as the norm in their country it would be foolish for those who represent them in the Parliament to legislate otherwise. At least for now.