

THE LEGAL NATURE OF MARRIAGE AND ITS PURPOSE

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Abstract

Marriage is an institution that is established by law as in our country and in many other countries (legislation), where for the connection of which certain conditions are required to be met in order to respect human rights and adequate protection of marriage.

Spousal relations between husband and wife are guided by equality between them, the position of spouses has not been the same in all stages of the historical development of marital relations.

Equality between men and women can also be considered as part of human rights and that men and women have the right to marry and to found a family without any limitation due to race, sex, nationality or religion, and are equal during the conclusion of the marriage, the continuation of the marriage and its dissolution.

In order to preserve the marriage, the legislations in force in different countries have provided for the possibility of reconciliation of the spouses, in which the court tries to explain to the spouses the importance of the marriage, the consequences that will be caused in case of divorce.

Keywords: marriage, spousal relations, court proceedings, judicial disputes etc.

1. Introduction

The object of the regulation of marital relations is marriage and marital relations, which are of different natures depending on the relationship that is created.

Matrimonial law has the object of regulation the conditions and procedures of marriage, the validity of marriage, the dissolution of marriage –the ways of marriage settlement, the causes of divorce and annulment, the consequences of dissolution of marriage, the rights and duties of spouses, and care for children.

Marriage is the living union of a man and a woman with the purpose of living together and creating a family. Whereas, the main goals of marriage are; the purpose of living together and creating a family, the purpose of spousal support, etc.

Marriage is a living community of a man and a woman regulated by law, by which the interests of the spouses, the family and the society are being realized. The relationships between the spouses are based on the free decision of the husband and the wife to stipulate a marriage, on their equality, mutual respect and mutual assistance.¹

Marriage, as a legal cohabitation, is founded on the moral and legal equality of the spouses, in the mutual sentiment of love, respect and mutual understanding, as the basis of unity in the family. Marriage and the family enjoy special protection from the state.²

On the day set for concluding the marriage, the civil registration office clerk, after confirming the identity of the parties, and based on the documentation and statements of the witnesses and future spouses, in the presence of two witnesses, reads to the future spouses the articles of this Code that contain the rights and obligations of spouses, receives an acknowledgement from each of them that they desire to marry and, after accepting their consent, pronounces them married in

¹ Family Law of Republic of Macedonia, Article 6, 2016

² Family Law of Kosovo, Article 1, no. 134/2015

the name of the law. The marriage act is immediately drafted, is signed by the spouses, the witnesses and the civil registration office clerk and is entered in the marriage register.³

a. The purpose of living together and creating a family

A marriage obligates both spouses to maintain, edify and educate their children, bearing in mind the capacities, natural predispositions and the desires of the children.

Marriage is concluded in front of the civil registration office clerk, upon the free consent of the future spouses.⁴

In addition to cohabitation which implies intimate relations between spouses, marriage also presupposes the purpose of having children and creating a family. The birth of children is not a necessary condition of marriage, as spouses can live in a marital union without having children.⁵

The positive law has provided conditions that the spouses must meet in order to enter into marriage. According to these conditions:

- A previously married person cannot conclude a marriage, unless the previous marriage has been voided or terminated.⁶
- A person who suffers from a serious mental illness or lacks the mental capacity to understand the nature of marriage cannot enter into matrimony.⁷
- Marriage is forbidden between an adoptive parent and the adoptee and their descendants, the adoptee and the spouse of the adoptive parent, between the adoptive parent and the spouse of the adoptee, between adoptees, as well as between adoptee and the children of the adoptive parent.⁸

2. Legal effects of marriage

In our society, marriage and the family enjoy special protection, which is also guaranteed by the constitution. The constitutional provisions of the Republic of North Macedonia pay special attention and protection to the family.⁹

Marriage entered into in legal form produces legal effects which are reflected in the legal status and rights and duties of the spouses. Any person who at the time of marriage undergoes changes in his legal status and from the moment of entering into the same person is considered a married person.¹⁰

According to the principle of equality, from the moment of marriage, the rights and duties between the spouses are divided into two groups: the personal rights and duties of the spouses and the property rights and duties of the spouses¹¹.

A marriage concluded without the full and free consent of one or both of the spouses is void.¹² A marriage concluded based on a mistaken identity of one of the spouses is voidable. Mistaken identity occurs when one of the spouses conclude a marriage with a person, who is not the one

³ Ibidem, Article 29

⁴ Family Law of Kosovo, Article 8, no. 134/2015

⁵ Family Law, Abdullah Aliu, pg. 88

⁶ Ibid, Article 9

⁷ Ibid, Article 12

⁸ Ibid, Article 14

⁹ Constitution of the Republic of North Macedonia, Article 40

¹⁰ Ibid

¹¹ E Drejta Familjare, Abdullah Aliu, pg. 126.

¹² Ibidem, Article 33

s/he wishes to wed. The marriage may be declared void if the spouse would not have married this person if they had known of the mistake regarding the substantial qualities of the spouse.¹³ A marriage concluded by a person suffering from a grave mental illness or with impaired mental development so as to make him/her incapable of understanding the scope of the marriage, is void.¹⁴

Marriage shall not be valid when the will has been obtained under coercion, threat or by mistake or any other lack of free will of the future spouses.¹⁵

a. Equality of spouses in marital relations

By equality of spouses in marital relations according to the Law on Family of the Republic of Macedonia it is meant the regulation of marital relations on an equal manner. By law spouses in marriage are equal in all personal and property relations. The spouses, each according to his/her abilities make sure to satisfy the need of the family.¹⁶

In marriage, namely in all personal and property relations, spouses are equal. The wedlock is entered into for the entire lifespan. Spouses are obliged to be faithful to one another and reciprocally assist, respect and financially support one another, especially in case that the other is lacking a sufficient material basis for living. Spouses shall develop and live out the feeling of reciprocal solidarity, as well as solidarity towards their own or adopted children.¹⁷

Spousal relations between husband and wife are guided by equality between them, the position of spouses has not been the same in all stages of the historical development of marital relations. Developments speak of a change in these relationships that arise from a more difficult position of the woman towards the improvement of her position. In many positive legal systems the woman is legally equal to the man.

Equality between men and women can also be shared as part of human rights. Men and women have the right to marry and to found a family without any limitation due to race, sex, nationality or religion, and they are equal in the marriage relationship, as well as in the continuation of the marriage or the dissolution of the same if they decide in that way. By this, respect for the equality of spouses implies their equality in all personal and property relations resulting from marriage.

Article 15 of **Convention on the Elimination of All Forms of Discrimination against Women** addresses issues of equality of women in conjugal life. It also includes equal rights to conclude contracts and to administer property and equal treatment in all stages of procedure in courts and tribunals. This defines the importance of every legal system to guarantee men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.¹⁸

¹³ Ibidem, Article 34

¹⁴ Ibidem, Article 35

¹⁵ Family Law of Kosovo, Commentary, Article 18

¹⁶ Family Law of Republic of Macedonia, 2016, Article 33

¹⁷ Family Law of Kosovo, Article 42

¹⁸ Convention on the Elimination of All Forms of Discrimination against Women, Article 15

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

b. Mutual help of spouses

The Family Law of the Republic of Macedonia, in addition to defining the rights and obligations of spouses, also provides for mutual assistance of spouses, where according to the law spouses in their family relations are obliged to help each other reciprocally. Each spouse is independent in the choice of his/her profession and occupation.¹⁹

Within marriage men and women have the same rights and obligations. Marriage partners have a mutual obligation of loyalty, for moral and material support, and for cooperation in the interest of the family and cohabitation.²⁰

A marriage obligates both spouses to maintain, edify and educate their children, bearing in mind the capacities, natural predispositions and the desires of the children. If the contribution by the spouses for marital obligations is not stipulated in the marriage contract, they shall contribute to the needs of the family in accordance with their conditions and abilities.²¹

c. Maintaining a common family economy and family planning

The joint property of the spouses is the property acquired through work throughout the marriage of the spouses. The joint property may also include property rights and obligations. The spouses are co-owners in equal parts of the joint property, unless they decide otherwise.

The wealth of the spouses is presumed as joint, unless one spouse proves its personal character. Personal assets that are not considered part of the marital estate are:²²

- assets, which prior to the marriage were jointly owned by one spouse and another
- person(s) or over which s/he was entitled to a real usage right;²³
- assets acquired during marriage through gift, inheritance or legacy, unless in the instrument evidencing the gift or in the testament it is stated that the assets were given
- to both spouses;
- assets strictly for the personal use of each spouse and assets gained as accessories from personal wealth;
- work equipment necessary for the performance of the profession of one of the spouses, except for those that have been specified for the administration of a trade activity;
- assets gained from an award of personal damages, except for pension funds obtained as the result of a partial or full loss of work capacity;²⁴
- assets gained from the disposal of the above-mentioned personal wealth;
- the exchange of assets, when this is expressly declared in a contract of sale.²⁵

It is worth noting that marriage as an institution has many characteristics that are part of it, the parties who want to marry must first of all have the free will to marry the future spouses and then the legal procedures must be completed and that every marriage bound without the will of the

¹⁹ Family Law of Republic of Macedonia, 2016, Article.32

²⁰ Family Code of Albania, Article 50

²¹ Ibid, Article 53, and Article 54

²² Family Code of Republic of Albania, Article 77

²³ Ibid

²⁴ Family Code of Republic of Albania, Article 77

²⁵ Ibid

spouses must be considered invalid. So, the free will of the spouses is a basic condition for the marriage, but also for its longest functioning.

The marriage between the future spouses is bonded for an indefinite period of time, but in certain cases and for certain reasons it may come to the dissolution of a marriage before the competent bodies for this case.

3. Resolving the disputes of a marriage

The institution of marriage shall be preserved. Spouses to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling, reconciliation procedures foreseen by this law or otherwise, to save the marriage.²⁶

Marriage is dissolved only upon claim and by court order through annulment (void marriage) or dissolution (divorce). Annulment or dissolution becomes legally effective when the judgment of the court annulling or dissolving marriage becomes final.²⁷

Special protection during marital disputes is a rule on which the court relies during divorce or solution of marriage.

According to Article 43 of Family Law of Republic of Macedonia, a final verdict for divorce or annulment of the marriage, shall be delivered by the court to the administrative authority competent for keeping the register of marriages, within 30 days at latest, for registration of the changes, as well as to the Centre for Social Work, provided that there are minor children or children to whom the parental right has been extended in the marriage.²⁸

When pronouncing the judgment the court should pay special attention to the interests of the children, the mentally handicapped and the uninsured spouse. In marital disputes, the court, by decision based on the lawsuit filed by the spouses, may impose temporary measures to ensure financial maintenance for the spouse and for his residence.

When resolving marital disputes, the court is obliged to try to reach the reconciliation of the spouses by showing them the importance and consequences of the marriage.²⁹ When the court conducts the reconciliation procedure of the spouses, it shall assign special sessions in efforts to reach reconciliation, as far as it concludes that chances to achieve reconciliation still exist and the reconciliation period shall allow spouses a period for reflection and consideration of their decision and to consider all circumstances and consequences.

Today, contemporary families have evolved, the number of large families is decreasing, unlike what we observed in the old customary law, but we also notice that many marriages today are in crisis, this is also seen from the cases of divorce, statistical data presented by competent bodies, the website and data of the Statistical Entity of the RNM, judicial data, etc.

The court order³⁰ on divorce shall be preceded by a period of efforts of reconciliation guided by the court in special court sessions and the same is sent to the parties only after the completion of the procedure and only if the reconciliation has not been successful.

²⁶ Komentar, ligjit per familjen i Kosoves, n.59, Prishtine, 2012, pg. 163

²⁷ Ibidem, Article 60

²⁸ Family Law of Republic of Macedonia, 2016, Article 43

²⁹ Abdulla Aliu, & Haxhi Gashi, E drejta familjare, Prishtine, 2007, pg.170.

³⁰ Ibidem

According to the Republican Statistical Office, the issue of divorce is as follows:³¹

In 2019, the number of divorces by months was as follows :

Year	Total	I	II	III	IV	V	VI
2019	1990	141	149	187	187	167	161

Year	Total	VII	VIII	IX	X	XI	XII
2019	1990	172	43	114	202	244	223

According to the table above it is observed that in 2019, there were fewer divorces in August, while there were more divorces in November.³²

In 2020, the number of marriages was a total of 3,380 or 32.9% for women (age group 20-24 years old) and 3,780 or 36.8% for men (age group 25-29 years old), while the average age of marriage is 27 years old for women and 29.7 years old for men. In the same year of 2020, the number of divorces was 1569, and even.³³

By age	
35-39 years old	

According to the duration of the marriage	
324 divorces	5-9 years after marriage
20.7%	

By months	
May	July
29 divorces	199
1.8%	12.7%

Based on the above data, in 2020 the least divorces were in May 29 divorces or 1.8%, while the most divorces were in July 199 or 12.7%, a total of 228 divorces, while in terms of the age most of divorces occurred from 35-39 years.

In the following, through a table, data from the case-law on the cases of resolving marital disputes in the civil court in Skopje for the years 2018, 2019, 2020 and 2021 will be presented.³⁴

³¹ Државен завод за статистика- 01.06.2021 Година/Year LIX Број/No: 2.1.21.18

³² Ibid

³³ Ibid

³⁴Gjykata Themelore Civile- Shkup

http://sud.mk/wps/portal/osskopje2/sud/izvestai/statistika/!ut/p/z1/jZFBb8IwDIV_TY-rjaAlcAsbq4CMSUBG8WUqKASmtkEhpX9_FHZBgjDfbL3n78kGghSozE57nbm9KbP83K8o_u7hW9wavKL4nHOZ8g85FDIZjcUiguVFECedDrIJCjafDZAPscsWPY7JOwI99kfT9p_fl6D_8PFB8af8LYCgTWWtKh2snK2UP1LDJD9x2ax8Euoi8FxtDKRzs75-gJfrNtNAVm2VVTas7Hm8c-5w7AcYYF3XoTZG5yrcmCLAE5adOTPlb5UNxH-cQyGILF5S_Inyk9iOfgFKpVO2/dz/d5/L2dBISEvZ0FBIS9nQSEh/?current=true

Year 2018	
Accepted cases	1103
Completed cases	998
Withdrawn cases	96

Year 2019	
Accepted cases	1133
Completed cases	1157
Withdrawn cases	151

Year 2020	
Accepted cases	1012
Completed cases	916
Withdrawn cases	100

Year 2021	
Accepted cases	784
Completed cases	791
Withdrawn cases	68
Unsolved cases	573

Based on the above data, it is noticed that there are more cases of divorces in 2019, with a total of 1157 cases, while fewer cases of divorce for the period 2018-2021, in 2021 there is a total of 791 cases. In 2019 it is observed that cases received from previous years have been completed. As for the study period during the years 2018-2021, the Civil Court in Skopje has managed to convince the spouses to withdraw the lawsuit and agree to continue their married life as follows: 2018 -96 cases, in 2019-151 cases, in 2020-100 cases and in 2021-68 cases. During 2021 year, there is a total of 573 unresolved cases in the Civil Court in Skopje.

4. Conclusions

The family as a social community is the most important factor in the development and formation of human personality. Spousal relations between husband and wife are guided by equality between them, the position of spouses has not been the same in all stages of the historical development of marital relations.

Equality between men and women can also be shared as part of human rights. Men and women have the right to marry and to found a family without any limitation due to race, sex, nationality or religion, and they are equal in the marriage relationship, as well as in the continuation of the marriage or the dissolution of the same if they decide in that way. By this, respect for the equality of spouses implies their equality in all personal and property relations resulting from marriage

Marriage should be preserved as a relationship of social importance, given the consequences that are caused by the dissolution of marriage, especially the consequences associated with the upbringing and education of children.

The right to marry and to found a family and to have the equal protection of a spouse are guaranteed by the ECHR, Articles 8-12.

The protection of marriage is insisted to be preserved even in court hearings. This is noticed in the court proceedings in the civil court in Skopje for the period 2018-2021, where a case can be resolved by divorce only after the end of the procedure and only if the reconciliation in court between the spouses has not been successful.

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