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LEGAL GROUNDS FOR RECOGNIZING A MARRIAGE AS INVALID UNDER THE LEGISLATION OF UKRAINE

Summary

This article is dedicated to a comparative analysis of legislative norms regarding the annulment of marriage by the Family Code of Ukraine and Ukrainian family law. We explored issues such as types of void marriages, legal consequences of marriage annulment, and the list of individuals entitled to seek annulment of marriage.

The legal grounds for annulment of marriage are determined by the Family Code of Ukraine, which provides three approaches to marriage annulment:

- 1) marriage declared void;
- 2) marriage declared void by court decision;
- 3) marriage that may be declared void by a court decision.

Special attention is given in the Family Code of Ukraine to the possibility of declaring a marriage void after its termination, as well as provisions regarding the return of alimony received dishonestly from the spouses, but not for the last three years.

Provisions of family law are also mentioned, particularly the obligation of one of the spouses to compensate for material and moral damage. In summary, the Family Code of Ukraine provides legal regulation of marriage annulment compared to Ukrainian legislation.

We believe that the categories of "family" and "marriage" are interconnected phenomena and should be considered in inseparable internal legal unity. The historical development of the regulation of marital and family legal relations dates back to ancient Rome.

This article is dedicated to one of the current problems of family law and legislation – the issue of grounds for declaring marriage void. The main grounds for declaring marriage void are defined according to Chapter 5 "Nullity of Marriage" of the Family Code of Ukraine.

Articles 38-41 of the Family Code of Ukraine and related articles are characterized. Marriage and family relations concern everyone, as each of us has our own family.

These relationships, which create new life, deserve to be the basis of any legal relations in society.

The Family Code of Ukraine clearly provides a list of cases of marriage annulment. A marriage registered in accordance with the law by mutual consent between a man and a woman entails a number of legal consequences provided by law. There are cases where a court declares a marriage void and serves as a basis for the dissolution of such marriage on grounds stipulated in the Family Code of Ukraine.

A marriage is declared void by court decision if it was registered without the free consent of either the woman or the man. If a person suffered from severe mental disorder at the time of marriage registration and was under the influence of alcohol, drugs, or toxic intoxication, and as a result was unaware of their actions and unable to control them, such marriage is considered void.

Also, property acquired during a void marriage is considered to belong to both parties for joint partial ownership, and the share of each is determined according to their contribution to the acquisition of such property with their own funds and labor. The Constitution of Ukraine and the Family Code of Ukraine regarding the development of the institution of family, which is actively implemented in Ukraine, as well as the legal grounds for declaring marriage void under Ukrainian legislation, have been analyzed.

Keywords: family law, family legal relations, family, spouses, husband, wife, marriage, nullity of marriage, Family Code of Ukraine

Purpose, subject and research methods

The subject of the research is the legal consequences of marriage termination under Ukrainian legislation. The purpose of the article is to examine the legal grounds, features of declaring marriage void, and the fact of marriage dissolution at the legislative level.

Analysis of recent research and publications. The mentioned problem has been widely studied by a number of well-known legal scholars, namely: L. Dubchak, O. Balinska, V. Kucher, M. I. Koziubra, O.F. Skakun, A. M. Kolodii, and others. However, the conclusions drawn by these researchers require further generalization and development in family law.

Presentation of the main material.

In general understanding, the termination of marriage (divorce) is a legal fact that terminates family legal relations between spouses and entails the emergence of new legal relations between former spouses.

Let's consider the legal consequences of marriage termination in two ways:

1. By applying to the registry office and through judicial procedure.
2. In case of marriage termination (divorce) in the registry offices, the marriage terminates from the date of the relevant decision and the issuance of a certificate of marriage dissolution.

Let's note that if the termination of marriage occurred through judicial procedure, the marriage is considered dissolved from the date the court decision gains legal force.

Regardless of how the marriage was dissolved - whether through the registry office or in court by the respective authority. Additionally, the moment of marriage termination plays a significant role, as it signifies a change in the marital status and entails legal consequences.

There are situations where a couple remains officially married but lives separately. In such cases, there are no legal consequences of separate living until the marriage is officially dissolved.

The dissolution of marriage results in the termination of personal and property rights and obligations between the spouses. For example, a declaration for receiving alimony from a former spouse may persist even after divorce.

Upon divorce, one non-property issue to be resolved is determining the surname. Typically, upon marriage, a woman takes her husband's surname, which is also given to children born within the marriage. However, family law allows the husband to take the wife's surname. In case of divorce, the husband who changed his surname has the right to decide whether to revert to his pre-marriage surname. If there are children, the issue of their surname should also be addressed.

If after divorce, the child and the father have different surnames, the father has the right to give the child his surname. One of the significant issues in divorce is the upbringing of children by the parent living separately, as well as the child's interaction with other relatives.

According to the Family Code of Ukraine, parents have equal rights and obligations regarding their children. The issue of child custody between parents can be resolved through an agreement, which determines the form of communication between the child and both parents, as well as the issue of financial support. The dissolution of marriage necessitates resolving property matters.

The dissolution of marriage primarily results in the termination of the joint property regime of the spouses regarding property acquired after the divorce, even if they continue to live together and manage household jointly. As for property acquired during the marriage, the regime of joint ownership persists until its official division.

Personal property and gifts are not subject to division and remain with the respective spouse, according to Article 57 of the Family Code of Ukraine. However, Article 62 of the Family Code of Ukraine provides cases where personal property may be recognized as joint property – if it was significantly improved during the marriage using family funds.

Let's delve into the concept of marriage more thoroughly. Marriage is the voluntary consent of a wife and husband who have decided to create their family. Article 21 of the Family Code of Ukraine defines marriage as a family union between a woman and a man, which must be registered with the state civil registration authority.

Unlike the previous Marriage and Family Code, the new Family Code of Ukraine stipulates that the marriage registration application is submitted by the woman and man to any state civil registration authority of their choice, whereas before, the application could be submitted at the place of residence of either the bride or groom, or their parents.

The institution of marriage is one of the fundamental institutions of family law, and adherence to the law's requirements regarding marriage formation will determine the conditions of its validity in the future.

L. M. Baranova emphasizes the basic principles of studying family relations, which are characteristic of all or most of the family law institutions established by legal norms. Moreover, the norms defining the regulation principles of family relations are the basis for other legal provisions reflected in the Family Code of Ukraine [1].

Article 51 of the Constitution of Ukraine declares that marriage is based on the free consent of a woman and a man. Each spouse has equal rights and responsibilities in marriage and family. Parents are obliged to support their children until they reach adulthood. Adult children are obligated to take care of their non-working parents. The family, childhood, motherhood, and fatherhood are protected by the state.

Research results

"Fundamental principles governing the legal regulation of the institution of family, focusing on Article 21 of the Constitution of Ukraine and Part 5, 6 of Article 7 of the Family Code of Ukraine, establish the principle of equality of participants in family relations.

Participants in family legal relations cannot have any privileges or restrictions based on racial, political, or religious beliefs, financial status, place of residence, or other characteristics. This principle ensures equality of rights and obligations between a woman and a man in marriage [2].

Therefore, marital equality is considered an axiom in current legislation, forming the basis for legal relations between a woman and a man on a psychological level of societal life.

Let's consider the principles of marriage invalidity. There are three approaches to recognizing a marriage as invalid:

Firstly, the marriage is recognized as invalid without a court decision (automatically invalid marriage). Marriage is considered invalid in the presence of certain grounds specified by law.

Secondly, marriage is deemed invalid by court decision. The court's decision must be based on proven circumstances presented during the court hearing, which indicate a breach of the conditions of marriage.

Thirdly, marriage can be declared invalid by court decision. Its legal consequences may arise due to a breach of the conditions of marriage.

Additionally, the Family Code of Ukraine considers the following marriages as automatically invalid:

1. Registered with a person who is simultaneously married to another registered marriage;
2. Registered between persons who are relatives in a direct line of consanguinity, as well as between full siblings;
3. Registered with a person who has been declared legally incapacitated [4].

There are cases where one of the spouses is already in a marriage, so the Family Code of Ukraine regulates such issues by annulling the registration record of such marriage. The subsequent marriage becomes valid from the moment the previous marriage is terminated.

It is worth noting that marriage is considered invalid if it was registered with a person who was declared legally incapacitated by a court. That is, a person who, according to a court decision, was legally incapacitated at the time of marriage registration, as defined by Articles 236 to 241 of the Civil Procedure Code of Ukraine [3].

We cannot ignore the fact that marriage is deemed invalid by court decision if it was registered without the free consent of the woman or man and under duress.

By the Law of Ukraine dated December 22, 2006.

524-V "On Amendments to the Family and Civil Codes of Ukraine," amendments were made to Part 5 of Article 30 of the Family Code of Ukraine: if previously it was identical to paragraph 3 of Part 1 of Article 41 ("concealment of a serious illness, as well as an illness dangerous to the other spouse, their descendants, may be grounds for invalidating the marriage"), then after the revision it took the following form: "concealment of information about the health status by one of the betrothed, as a result of which physical or mental health of the other betrothed or their descendants may be compromised, may be grounds for invalidating the marriage." [6, c. 50-51].

In our opinion, it is expedient to present paragraph 3 of Part 1 of Article 41 in a new edition by analogy with Part 5 of Article 30 of the Family Code of Ukraine, and the reference norm contained in Article 38 of the Family Code of Ukraine should be supplemented by referring to Part 1 of Article 30 of the Family Code of Ukraine - spouses are obliged to inform each other about their health status - and, accordingly, this reference should supplement the definition of marriage invalidity."

In the context of the discussed issues, it is important to mention the marriageable age, which starts at 18 years old, but there are cases from 16 years old with parental consent. Additionally, marriage registration cannot occur between close relatives, such as:

1. Between an adopter and the adopted child;
2. Between first cousins;
3. Between an aunt and nephew;
4. Between an uncle and niece;
5. With a person who concealed a serious illness or an illness dangerous to the other spouse, or with a person who has not reached the marriageable age.

If one of the spouses considers their marriage unlawful, they can appeal to the court to declare the marriage invalid; the cost of the court fee is determined by the provisions of Part 2 of Article 4 of the Law of Ukraine "On Court Fee." [5].

A marriage between a wife and husband is deemed invalid if it was registered without the free consent of the woman or man, as well as in cases of its fictitious nature. Reasons for registering a fictitious marriage can vary, such as inheritance or obtaining housing.

As O. Rozhon points out, national family legislation has some inconsistencies between Article 38 and Article 40 of the Family Code of Ukraine because Article 38 does not mention the absence of the intention to create a family and acquire rights and obligations of spouses (fictitious marriage), whereas Part 2 of Article 40 of the Family Code explicitly addresses this. According to scholars, such inconsistency in family law norms may lead to the loss of legal

significance of Article 38 of the Family Code of Ukraine, as in cases of considering a marriage invalid due to its fictitious nature, the court will rely solely on Article 40 of the Family Code of Ukraine without assessing the general grounds for marriage invalidity [6, c. 29].

Article 32 of the Constitution of Ukraine [7] and Article 301 of the Civil Code of Ukraine, Part 5 of Article 5, and Part 4 of Article 7 of the Family Code of Ukraine proclaim the inadmissibility of state interference, other authorities, and individuals in family life, which is a high value necessary for the normal life of a person in a democratic society.

Family members are free to make decisions regarding family interests. No one has the right to dictate their will or interfere in the private affairs of the family in any other way. This principle ensures the right to autonomous family life free from state intervention, local government authorities, legal entities, and individuals.

An essential issue is child support after the termination of marriage. It is resolved in court in the absence of agreement between the former spouses. When deciding on child support issues, the court considers such factors as the child's health and current financial situation, the health and financial situation of the support payer, the presence of other dependent children or incapacitated husband or parents, and other circumstances of importance.

Termination of marital relations by divorce affects the emotional state and health of the individual, creates serious legal problems for each of the former spouses, complicates the economic situation of the former spouses, changes relationships with the closest social environment, and poses acute problems related to fulfilling parental roles.

Divorced individuals often have to simultaneously adapt to the termination of marital relations and form a new lifestyle. Various illnesses often accompany the most stressful events during the termination of marital relations. The results of foreign scholars show that divorced individuals are more prone to alcoholism than married individuals [8].

It should be noted that after the termination of marital relations by divorce, the presumption of consent of one of the spouses regarding the execution of transactions with joint property provided by the Family Code of Ukraine ceases to apply. At the same time, after the termination of marital relations, other rights of each of the former spouses, such as the right to receive pension benefits related to the loss of a breadwinner or the right to inheritance in case of the death of the other former spouse, are also terminated.

Despite the termination of relations between former spouses, the legal relationships between parents and children, as well as between the former couple and other relatives, do not cease.

A father who lives separately from the child not only has the right but also the obligation to actively participate in the child's upbringing and financial support (such as paying child support). Similarly, other relatives do not lose the right to communicate, participate in raising children, or provide any material and non-material assistance.

According to Article 157 of the Family Code of Ukraine, a father who lives separately from the child has the right to communicate with the child, participate in their upbringing, and make decisions regarding the child's education. The inability to exercise these rights significantly complicates the fulfillment of responsibilities towards the child. To protect this right and the interests of the child, the legislator determines that "a father with whom the child resides should not hinder the communication of the child with the other parent if such communication does not harm the physical and mental health of the child or their moral development" [9].

Therefore, the termination of marital relations entails personal and property legal consequences. All disputed issues related to divorce (communication with children, financial support, use of residential premises, etc.) are resolved through the mutual agreement of the former couple. In case of failure to reach a unified decision on any issue, the former couple resorts to court. Nonetheless, divorce does not occur without consequences.

Conclusions

Summarizing the above, it can be argued that family life evolves according to the languages and objective situations of each of us. The court pays significant attention to the issue of the invalidity of marriage, especially if the prolonged absence of cohabitation of the spouses due to one of them working abroad and the departure of one spouse from Ukraine after registering the marriage do not indicate the fictitious nature of the marriage.

If we have registered our marriage lawfully with trust in each other, then we must be responsible for our family life. Trust, honesty, and responsibility are essential. It is considered necessary to create an international unified registry containing information about marriages with "foreign elements." Also, one of the important issues of the legal systems of family law of foreign countries and Ukraine is the regulation of family legal relations, especially regarding marriage and divorce.

Marital legal relations are one of the main driving forces of the formation and development of society. This position is adhered to by most scholars conducting research in the field of family law.

Divorce leads to its factual termination and, consequently, the termination of the rights and obligations of the spouses. The peculiarities of marriage and divorce in conditions of a state of war manifest in distance marriage registration, marriage registration in occupied territories, divorce in uncontrollable territories, and divorce without the personal presence of one of the spouses. The experience of Ukraine in regulating relations concerning the conclusion and termination (divorce) of marriage in conditions of a state of war can be used by other states that are at war or potentially may find themselves in a similar situation.

It is proposed to consider "termination of marriage" as the termination of the validity of the registered marriage by confirming such termination through the registry offices or by court decision, which entails consequences for each of the spouses, such as gaining the freedom to enter into a new marriage, division of jointly acquired property during the marriage, appointment of child support for the upbringing and maintenance of minor children, appointment of guardianship, determination of the place of residence of children, etc.

The conclusion is drawn that family law in Ukraine and EU countries, as the primary principle of regulating marriage, defines the freedom of its conclusion and termination.

It is envisaged that marriage is indefinite, meaning that by creating a family, the parties primarily pursue the lifelong acquisition of such intangible goods as understanding in marital and intra-family relationships, caring for each other, and the birth and upbringing of children, among others.

Accordingly, the law grants the right to initiate the termination of marital relations only to the spouses, both through judicial proceedings and through registry offices. An important aspect of the divorce process is establishing the motive for the dissolution of marriage.

The Family Code links this to the presence or absence of mutual consent within the couple for the dissolution of marriage. Divorce aims not only to terminate marital and family legal relations but also to address many other issues that are important for the couple, both throughout the entire divorce process and after divorce.

Literature

1. Baranova L. M. (2009). Family law of Ukraine: textbook. Kyiv: Yurinkom Inter. 288 p.

2. Family Code of Ukraine dated January 10, 2002 No. 2947-III / Verkhovna Rada of Ukraine. Information of the Verkhovna Rada of Ukraine. 2002. No. 21–22. Art. 135. URL: <https://zakon.rada.gov.ua/laws/show/2947-14#Text>
3. Civil Procedural Code of Ukraine dated 23.06. 2005 No. 2709-IV/ Verkhovna Rada of Ukraine. Information of the Verkhovna Rada of Ukraine 2004, No. 40-41, 42, Article 492 URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text>
4. Kravchyk M. B. Peculiarities of annulment of marriage. Actual problems of domestic jurisprudence. 2018. No. 4. P. 49-52.
5. "On court fees" Law of Ukraine dated 06.10. No. 3828 of 2011 / Verkhovna Rada of Ukraine. Bulletin of the Verkhovna Rada of Ukraine, 2012, No. 14, Article 87 URL: <https://zakon.rada.gov.ua/laws/show/3674-17#Text>
6. Dissolution O. Termination of marriage in the event of its dissolution and recognition as fictitious: differences between legal consequences based on examples of judicial practice. Bulletin of the National Association of Lawyers of Ukraine. 2018. No. 9 (46). P. 25-35
7. Constitution of Ukraine dated June 28, 1996 No. 254k /96-VR. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>
8. Safonchyk O. I. Legal consequences of termination of marital and family relations. Actual problems of the state and law. 2011. Issue 58. P. 309– 315.
9. Family law: a textbook by V. A. Kreytor and V. Yu. Yevko. Kharkiv, 2016. 512 p