THE BASICS OF CIVIL LEGAL REGULATION OF SEPARATION FROM MARRIAGE

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Abstract: at all times, marriage was considered a personal matter based on the voluntary nature and freedom of these people. However, in democratic legal states, marriage is a personal relationship between a husband and wife, which is based on the principles that the couple must decide whether it will act or continue, and no one will be allowed to enter into a forced marital relationship. Thus, divorce from marriage is the desire of a husband or wife or both, and no person has the right to prevent the fulfillment of this desire or deny it. The task of the state and society in this case is to facilitate the resolution of misunderstandings between spouses without interfering in their internal work and family life, to establish certain legal mechanisms and measures aimed at reconciling spouses, as well as to establish legal instruments that encourage spouses to keep warm among themselves as much as possible.

Keywords: marriage, family, married couple, divorce, right and obligation, property, right to children, court, lawsuit.

НИКОҲДАН АЖРАТИШНИ ФУҚАРОЛИК-ҲУҚУҚИЙ ТАРТИБГА СОЛИШ АСОСЛАРИ

Аннотация: Ҳамма замонлар ва даврларда ҳам никоҳ бу шахсларнинг ихтиёрийлиги ва эркинлигига асосланган ҳамда шахсий масала сифатида кўрилган. Демократик ҳуқуқий давлатларда эса никоҳ эр ва хотин ўртасидаги шахсий муносабат бўлиб, унинг амал қилиши ёки давом этиши эр-хотин томонидан ҳал этилиши, ҳеч ким мажбурлаб никоҳ муносабатларида бўлишига йўл қўйилмаслиги тамойилларига асосланади. Шундай экан никоҳдан ажралиш – эр ёки хотиннинг ёхуд иккаласининг ҳам истаги бўлиб, ҳеч бир шахс бу истакни амалга оширишга тўсқинлик қилишга ёки бу инкор этишга ҳақли бўлмайди. Бу ҳолатда давлат ва жамиятнинг вазифаси эр ва хотин ўртасидаги тушунмовчиликларни уларнинг ички ишига ва оилавий ҳаётига аралашмаган ҳолда ҳал этишга кўмаклашиш, эр-хотинни яраштиришга қаратилган муайян ҳуқуқий механизмлар ва чораларни ўрнатиш ҳамда имкон қадар эр-хотин ўртасидаги илиқликни сақлаб қолишга ундайдиган ҳуқуқий воситаларни белгилашдан иборат.

Калит сўзлар: никоҳ, оила, эр-хотин, ажралиш, ҳуқуқ ва мажбурият, мол-мулк, фарзандлар ҳуқуқи, суд, даъво.

ОСНОВЫ ГРАЖДАНСКО-ПРАВОВОГО РЕГУЛИРОВАНИЯ РАСТОРЖЕНИЯ БРАКА

Аннотация: во все времена брак считался личным делом, основанным на добровольности и свободе этих людей. Однако в демократических правовых государствах брак-это личные отношения между мужем и женой, которые основаны на принципах, согласно которым пара должна решать, будет ли он действовать или продолжаться, и никому не будет разрешено вступать в принудительные супружеские отношения. Таким образом, развод от брака – это желание мужа или жены или обоих, и ни один человек не имеет права препятствовать исполнению этого желания или отрицать это. Задача государства и общества в данном случае состоит в том, чтобы способствовать разрешению недоразумений между супругами, не вмешиваясь в их внутреннюю работу и семейную жизнь, устанавливать определенные правовые механизмы и меры, направленные на

примирение супругов, а также устанавливать правовые инструменты, побуждающие супругов по возможности сохранять тепло между собой.

Ключевые слова: брак, семья, супружеская пара, развод, право и обязанность, собственность, право на детей, суд, иск.

INTRODUCTION

In the world, special attention is paid to the strength of families as stability and support of society. In order to support families, reduce divorces between spouses and ensure that children are brought up in a family, state programs are being implemented at a constant pace in most developed countries. This, in turn, determines the need to improve legal mechanisms aimed at creating the legal foundations of relations, reducing divorces, preserving marriage, one of the main criteria for building a family.

President Of The Republic Of Uzbekistan Sh.M.Mirziyoyev's decree “on the development strategy of New Uzbekistan for 2022-2026” dated January 28, 2022 PF-60[1] and approved by the decree of February 7, 2017 PF-4947 “strategy of actions in five priority areas of development of the Republic of Uzbekistan for 2017-2021”[2] was defined as one of the priority areas of strengthening family health, protection of motherhood and childhood.

RESEARCH MATERIALS AND METHODOLOGY

The fact that ideas about marriage are currently changing, that same-sex marriages are legally permitted under the influence of the predominance of individual rights in individual States, as well as equality and freedom in quotation marks, indicates the need for a clear definition of the legal concept of marriage at the legislative level. The draft law on amendments and additions to the Constitution of the Republic of Uzbekistan should also clearly state that marriage is a union based on the voluntary consent of a man and a woman.

The current legislation of Uzbekistan defines measures for the reconciliation of spouses at the dissolution of marriage, the tasks of state bodies in this regard. However, when a marriage cannot be preserved in any case, the provisions on the legal grounds and procedure for the dissolution of marriage, the duties of state bodies (judicial or civil registration authorities) in this process, the legal basis for the dissolution of marriage have found expression in the Family Code. Nevertheless, the legislation does not provide for provisions concerning the institution of the regime of separation of spouses while maintaining marriage, as well as the question of with whom children remain during divorce when parents live separately from each other, usufruct issues during divorce, the procedure concerning the regime of separation of spouses when applying for divorce. In addition, the tasks of the guardianship and guardianship authorities to protect the interests of children in the process of divorce by spouses are also not provided for by the current legislation.

The dissolution of a marriage generates certain legal consequences. The main of such legal consequences is the termination of marital relations, the termination of rights and obligations between them, as well as the complete termination of responsibility for joint marital life. In addition, as a result of the dissolution of the marriage between the spouses, the question arises about the fate of the property acquired during the marriage, the question of who the children will stay with, the question of residence, the question of inheritance of the surname, the question of alimony and child support and a number of other issues [3].

Divorce from marriage is not based on the general consent of the couple, but on the lawsuit of one of them, a number of issues will have to be resolved by the court when it is considered by

the court. Article 44 of the Family Code establishes issues that must be resolved by the court at the time of issuing a resolution on separation from marriage. The legislation, however, provides for a rule that the couple can resolve these issues by mutual agreement and the possibility of presenting such an agreement to the Court[4]. When viewing the case of separation from marriage, the couple can submit an agreement to the court on the following issues:

on which of them minor children live after separation from marriage;

on the procedure and amount of payment of funds for the provision of minor children and (or) incapacitated needy husband(wife);

on the division of the common property of the couple.

RESEARCH RESULTS AND DISCUSSION

In the absence of such an agreement under the second part of Article 44 of the Family Code, or if it contradicts the rights and interests of children or one of the spouses, the court determines the following issues:

1. Which of the parents of minor children live with after separation from marriage. The resolution of this issue does not establish clear norms in the Family Code. That is, on what grounds the court determines which of the parents of the child lives, is not established by legislative norms. This situation is also not provided for by the resolution of the plenum of the Supreme Court of the Republic of Uzbekistan dated July 20, 2011 № 6 “On the practice of applying legislation on cases of separation from marriage by courts”. Even when it comes to asking and considering the opinion of children with which of the parents they stay at the time of separation from marriage, the legislation does not set clear recommendations. However, taking into account the opinion of a ten-year-old child in matters of adoption, restoration of parental rights is established by law. From this, on the basis of the analogy established by Article 7 of the Family Code, it is possible to ask and take into account the opinion of a ten-year-old child about which of the parents he will stay with, Of course. However, this circumstance is not enough to solve this extremely complex issue. Therefore, this gap in the legislation should find a solution.

In practice, however, this issue is resolved by the court on a general basis[5]. This takes into account which of the parents is more suitable for the rights and interests of a minor child to stay with, which of the parents the child is most attached to, the relationship of the child with his brothers and sisters, which of the parents takes care of him more, the age, moral and personal characteristics of the parent, the type of Recommendations about this are provided for by the Supreme Court Plenumining's decision of September 11, 1998 №23 “On the practice of applying laws by courts in resolving disputes related to the upbringing of children.” The recommendation that it is necessary to take into account the opinion of the parents of a child who has reached the age of ten about which one to live with is also set out in paragraph 3 of this decision.

2. From which of the parents and in what quantities alimony is collected for the provision of minor children. The provision of their minor children until they reach adulthood is one of the forms of caring for children and the obligation of the parent established at the level of Constitution. According to the first part of Article 64 of the Constitution of the Republic of Uzbekistan, parents are obliged to feed and educate their children until they reach adulthood.

Usually when a child lives with his parents, a minor child is not required to raise the issue or bring this situation to the framework of the legal field in connection with the fact that the parent provides a separate provision. However, in cases where the father or mother has not fulfilled or refused to fulfill their obligation to provide the child financially, appropriate measures are prescribed through the law norm. In the second part of the commented article, when the father

(mother) does not voluntarily fulfill the obligation to provide provision to his minor children, his obligation to pay alimony in the prescribed manner[6] is imposed on him. On the collection of alimony, the court can accept two types of documents. The first is a settlement decision, and the second is a court order.

In cases where the parent does not fulfill his obligations to pay alimony to his minor children and does not apply to the court on the issue in this regard, the guardianship and trusteeship authority with a request to collect a supply for him in the interests of the child is entitled to file a claim and apply to the Court[7]. This rule follows from Article 45 of the Constitution of the Republic of Uzbekistan. According to this article of the Constitution, the rights of minors, the incapacitated and the lonely elderly are under the protection of the state.

In the following cases, the guardianship and guardianship authorities have the right to file a claim for the provision of a minor child from a father or mother for the collection of alimony in the amount established by law:

- in the absence of an agreement between parents about the payment of alimony to minor children;
- when alimony is not paid voluntarily to minor children;
- when any of the parents does not file a claim or application with the court to collect alimony.

Article 97 of the Family Code establishes that, based on the equality of parents with respect to children, the duties of parents in providing for children are also equal. At the same time, the parent has equal obligations both to pay alimony for minor children and to provide for them. At the same time, parents have equal responsibilities to provide not only minor children, but also adult, disabled, and children in need of help.

The parent may agree among themselves on the procedure for the payment of alimony for the maintenance of minor children. Parents by mutual agreement determine the amount of alimony for minor children, the terms of their payment, the form of alimony payment. For example, by agreement of parents, alimony is not in monetary form, but in the form of payment for food or clothing, medicines, payments for a minor child (for example, for a tutor, for sports clubs), vacation expenses during summer holidays [8]. The parents' agreement on the payment of alimony for the maintenance of minor children can also be expressed in the form of the transfer of certain property in the name of minor children as the payment of alimony. For example, a father (mother) is allowed to transfer his company into ownership as alimony payments to his minor children, and the parent, having concluded an agreement on this, confirms this circumstance.

The agreement between parents on the procedure and form of payment of alimony for the maintenance of minor children of parents must meet two requirements. Firstly, this agreement must be executed in a proper manner and not contradict the rules established by law. Secondly, it should not be directed against the interests of the child and not infringe on his interests.

The amount of alimony for the maintenance of minor children by parents is determined by an agreement between them. If the parent has not reached an agreement on this matter, alimony for the maintenance of minor children is established by the court. At the same time, the court establishes the amount of alimony in relation to the monthly earnings and (or) other income of the parent as follows:

- for one child-a quarter;
- for two children - a third;
- for three or more children-half.

The current Family Code does not strictly establish a list of circumstances in which the amount of alimony can be reduced or increased. However, the financial or marital status of the parties was determined as the most fundamental circumstance for this[9]. That is, if the financial situation of the father (mother) paying alimony for a minor child has improved and he has moved to a higher-paid position, the amount of alimony increases in proportion to monthly earnings. Conversely, when transferring to a position with a lower monthly salary, the amount of alimony for minor children may be reduced.A change in the marital status of the father (mother)means that he will have children from another marriage, in this case the amount of alimony paid to a minor child will change, and in this case the father (mother) will pay alimony not for one child, but for two children (three or more).

The basis for reducing or increasing the amount of alimony was the Family Code that leaves open what goes into “other notable cases”and establishes that in each situation these cases are determined by the court. As an example of cases worthy of attention in most situations, one can cite the provision of the second party in connection with the incapacity of family members, situations that prevent him from continuing his previous work, the employment of a child or his involvement in entrepreneurial activity (for example, emancipation), which means his full capacity for treatment.

3. Division of property, which is their joint property at the request of the husband and wife (one of them). Chapter 5 of the Family Code provides for provisions on property rights and obligations of husband and wife. Current legislation establishes a legal and contractual procedure for the property of a couple. Therefore, the scope and content of property rights and obligations of the husband and wife are determined based on these two procedures.

The commented article provides for the legal status of joint common property arising from the legal order of the property of the husband and wife and the basic provisions in this regard.

The first part of Article 23 of the Family Code provides for a rule of clarification according to the basis and moment of occurrence and condition of the common property of the husband and wife. In order for certain material goods to be the common property of the husband and wife first of all, it is necessary that they be acquired during the marriage. Marriage is the basis for formalizing legal relations between husband and wife, the result of which, along with personal non-property rights between husband and wife, also arises. Therefore, the following property is the Joint common property of the husband and wife:

1) to be acquired during marriage;

2) to be taken at the expense of the common funds of the future couple, until the marriage is recorded.

In addition to the acquisition of property on the basis of these circumstances, a different situation should not be provided for in the law or marriage contract. If the law or marriage contract provides for a special rule regarding the legal regime of the property of the husband and wife, the legal regime of joint common property changes.

In the second part of Article 23 of the Family Code, it is established what is included in the common property of a husband and wife. According to him, the common property of a husband and wife includes:

1) the income that the husband and wife earn from the labor activity of each;

2) the income earned by the husband and wife from the entrepreneurial activity of each;

3) income earned by husband and wife from the results of each of the intellectual activities;

4) pensions, benefits received by husband and wife;

5) other cash payments that are not intended for a special purpose:

- amount of material assistance;

- amounts paid in the form of compensation for damage caused in connection with the loss of working capacity caused by being crippled or causing different damage to health, etc;

6) movable and immovable objects obtained at the expense of the total income of the husband and wife;

7) securities of the husband and wife received at the expense of their total income;

8) payments received by the husband and wife in the account of their total income;

9) deposits of husband and wife;

10) shares in capital included in credit institutions or other commercial organizations;

11) any other property of the husband and wife acquired during the marriage.

These objects are either formalized in the name of one of the husband or wife, or they are also common property of the husband and wife, regardless of whose name the funds were made or by which of the husband and wife.

The third part of Article 23 of the Family Code provides for an important condition relating to the legal procedure for the property of a couple. Consequently, not having independent wages and income for the maintenance of household affairs between husband and wife, child care and other reasons is not considered the basis for changing the legal regime of common property. The sentence “other valid reasons”, expressed in this norm, can include the illness of one of the husband or wife, incapacity for work and other similar circumstances.

It does not matter that a husband and wife who do not have an independent salary and income are engaged in the performance of common family duties, and the property received at the expense of the salary and income of one of them is the common property of the husband and wife. In relation to such property, as well as wages and income, the husband and wife will have equal rights.

According to part four of article 23 of the Family Code, the rights of spouses to own, use and dispose of property that is jointly owned by members of the household and the peasant farm are determined by the laws on the farm and the peasant farm.

According to the third part of Article 18 of the Law of the Republic of Uzbekistan dated August 26, 2004 №662-II “On farms” in the new edition, If, when forming the authorized fund of the farm, the head of the farm transfers to the farm property that is the common (shared or joint) property of his family members, all these assets are subject to transfer to the ownership of the farm. owners are required to obtain a notarized consent.

This rule is consistent with the rules established by part four of Article 24 of the Family Code, and establishes the requirement of notarization of the consent of the spouses to dispose of common property. And the inclusion of the common property of the spouses in the authorized fund of the economy is a form of disposal of property.

In accordance with parts 2-3 of Article 16 of the Law of the Republic of Uzbekistan dated April 30, 1998 №604-I “On the dehkan farm”, the property of the dehkan farm belongs to its members on the basis of common joint ownership, unless an agreement between its members provides for the creation of common shared ownership. The ownership, use and disposal of the property of a peasant farm is carried out by mutual consent of the members of the farm.

The property of a peasant farm formed on the basis of the common property of the spouses, in the absence of a specific agreement, will have a regime of joint ownership of common property, and the exercise of rights in respect of it will be carried out by mutual consent. On the basis of an

agreement on the regime of peasant-farmer property of spouses created on the basis of common property, a regime of shared ownership of common property may be introduced.

On April 26, 2012, the law of the Republic of Uzbekistan №327 “on family entrepreneurship” was adopted, which provided for the rules on the establishment of a family enterprise on the basis of the common property of the family, including the spouses.

The seventh part of Article 6 of the law of the Republic of Uzbekistan “on guarantees of freedom of entrepreneurial activity”dated May 2, 2012 №328 was defined as follows: for the implementation of individual entrepreneurship, the consent of the husband (wife) is required in cases where one of the spouses uses the common joint property of the couple, if Also, paragraph 3 of Article 7 of this law establishes that “relations related to the implementation of family entrepreneurship, the structure of an ordinary company and a peasant economy, the functioning and termination of activities are regulated by legislation.”

Proceeding from this norm, part 1 of Article 4 of the Law “On Family Entrepreneurship" provides the following provision: a family enterprise on a voluntary basis carries out production (performance of works, provision of services) and sale of goods by its participants, common property owned by the participants of a family enterprise, also a family enterprise is a small business entity, created on the basis of the property of each of the participants.

According to the first paragraph of paragraph 1 of the Regulation “On the procedure for the implementation of family entrepreneurship and handicraft activities without the formation of a legal entity”, approved by Resolution No. 225 of the Cabinet of Ministers of the Republic of Uzbekistan dated July 19, 2012, family entrepreneurship is an activity carried out by spouses on the basis of their common property belonging to them on the right of joint common ownership, as well as this joint entrepreneurial activity of individuals who are not legal entities, based on the personal work of spouses and family members helping them.

The division of the property of the farm and peasant farm, which is considered a manifestation of the common property of the couple, is carried out on the basis of articles 223 and 225 of the Civil Code.

4. Determination of the amount of such provision at the request of the wife (husband), who has the right to receive provision from the husband (wife). Article 118 of the Family Code establishes a strict list of cases in which the ex-husband (wife)becomes the right to receive provision after separation from marriage.

The first two grounds that give the right to alimony from the ex-husband (wife)are considered exactly the same as the grounds on which the married couple is obliged to provide financial assistance to each other (Article 117 of the Family Code refer to it in the comments).

In particular, the right to alimony after separation from marriage is first granted by the ex-wife during pregnancy and in the middle for three years from the date of birth of the child. The actual termination of the marriage contract does not give the wife the right to demand the appropriate payment of alimony, regardless of how long it lasted. The right to alimony is justified by the ex-wife (husband), who needs help before the middle disabled child reaches the age of eighteen or from childhood facing a child with disabilities of Group I, but in this case the child must be born before the marriage is terminated.

Just as an incapacitated and financially assisted magnificent couple has the right to receive a supply from each other, the former couple has the right to demand alimony from each other, but in this case the law provides for other requirements, in addition to the condition of incapacity for work and the need for material assistance. These requirements primarily refer to the moment at

which the incapacity of the ex-husband (wife)begins. In particular, an ex-wife (husband) in need of assistance who has remained incapacitated for a year before marriage or from the moment of separation from marriage is considered entitled to alimony.

In essence, this norm relates the payment of alimony to a former husband (wife)in need of help in which the incapacity for work is associated with the fact of termination of the marriage, but does not imply that the incapacity of the husband (wife)has arisen during the marriage.

CONCLUSION

An exception to the general one-year period in this case provided for by law is the wife (husband), who, first of all, is engaged in raising children, household affairs and has a difficult financial situation by receiving a pension in the minimum amount due to lack of sufficient labor experience.

If a couple has been in marriage for a long time, the right to demand alimony in court will be entitled to a wife (husband) in need of assistance who has reached retirement age within five years from the moment of separation from marriage. If the marriage in this case lasted no less than 10 years, it is considered that it lasted for a long time.

The ex-couple was given the right to establish the amount of alimony paid after the divorce from marriage and the procedure for its payment based on mutual agreement. It is necessary that such an agreement comply with the requirements established by Chapter 17 of the Family Code and take into account the interests of the recipient of alimony in the framework provided for by law in it. In particular, it may concern the extension of the deadlines after the termination of the marriage and related to the payment of the retirement age of the former couple.

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