



Kolegji AAB

FACULTY OF LAW

DEPARTMENT: CIVIL LAW

MASTER STUDIES

THEME:

**MARRIAGE AND RESOLUTION OF MARRIAGE IN COMPARATIVE
RIGHT**

Mentor:

Prof.Ass.Dr.Muhamet Kelmendi

Candidate:

Dëshira Musa

Prishtinë

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Introduction

Family right as an integral part of the legal system, studies the entirety of legal norms that regulate family-marital relationships between parents and children of the adoption and foster care. Object of the family right includes the entirety of legal norms that regulate relations arising from family, marriage, adoption, custody and relationships between parents and children.

With the act of marriage the person becomes a subject of the right. As an object of the matrimonial right of personal nature are a) the parental rights between parents and children b) between the adopted, and c) custody of juveniles.

Family right norms have prescriptive imperative character. The law of family relations in Kosovo guarantees the right of children protection from economic exploitation, abuse, rape, illegal use of narcotic substances. Children both in marriage and outside marriage have the same position in terms of rights and obligations.

The tradition is an indirect source of the family right in cases specified by law.

Law as a source of family right - law in the formal sense is defined as the provision regulating legal form, which is issued by the highest state body.

The family is a union of people which because of marriage, sex or adoption are linked with each other in psychological, moral, economic and legal relationships, living in a common economy and bear social responsibility for each other. The full understanding for family is: "the family is a group of people involved in marriage or extramarital community or gender, which have legal rights and obligations and their disregard would cause legal sanctions".

Marriage as a civil-legal institute is a factual relationship between two persons (of the opposite sex, monogamy) which governs relations between spouses, and their relationship to the born children from this marriage. Marriage in the past was usually based on the natural and customary right and after the constitution of the positive right was arranged with the norms of the positive right and had a binding character, because it created and produced the legal effects with the very act of marital intercourse constitution. In Kosovo, the marital relationship is regulated by the Family right nr. 2004/32, which regulates and defines the rights and responsibilities of spouses during and after the marriage relationship. In some countries it is even allowed the link of the contract before and after marriage, in which are defined the rights and obligations of spouses, as well as the division of assets in case of divorce, it would have good impact, as in the case of request for divorce, the procedure would be much faster and clearer, since such contracts will define and determine mutual obligations between spouses.

The aim of this thesis topic is related to the way of regulating and addressing this very sensitive area of society in Kosovo, in some countries in the region as well as in the Anglo-Saxon countries, and by comparing these models we can come to a clear conclusion on how marriage can be regulated in a better way and keep it coherent. It is a known fact that marriages in recent times, unfortunately, are more amorphous. Very often conjugal relations are disrupted as a result of intolerance and coordination of marital obligations and there are many other secondary factors that influence the disorder of this relation, so it is the duty of every society that with legal norms

do its best to avoid this disorder, normal if possible when there is still hope that this report can survive.

What is most essential in Kosovo should be opened consulting centers which will deal exclusively with the regulation of spousal relations, and that could aware couples to keep this relation for the above reasons, and to hold hearings sessions and give marital advices on how can a couple survive the marital crisis and how we can overcome this crisis without damaging consequences and irreparable for them or children that were born from this marriage relationship.

In this theme we are considering the above-mentioned laws as well as many quotes by different authors for matrimonial right, which are incorporated into this topic. Resources that are incorporated into this theme are manual and electronic nature, therefore here are presented in polygraph way. In this paper will be elaborated the definition of marriage, form of marriage, forms of the termination of marriage, the rights and obligations of spouses and so on.

The research methodology has a very important character, because it is the way of obtaining data on a phenomenon or a certain phenomenon and through it presents an objective analysis on the phenomenon. As is well known in this paper, the research methodology is:

analytical method that aims to find factual elements

Comparative Method - which aims to make regional comparisons in this field as well as some international law in this field,

Statistical- method which is based on specific data on this phenomenon.

Through this work I will try to present the forms of the marriage, and the termination of marriage, the rights and obligations of spouses in marital relations, and the role of marriage function in society as a whole. In this paper I will try that in polygraph way while consulting electronic and manual material to make a description of marriage in our own right comparing with certain marital rights to many countries in the region, which I took as the object of comparison examination with our family right.

Since marriage has social character and elaboration in this area is of substantial character, because it proves how does this very vulnerable link function in society.

Through the thesis of this topic as crucial objectives were:

- deeper study in terms of recognition of marriage institute
- Study and analysis features of marriage
- Study displaying marriage problems
- Study and analysis of normative regulation of different countries about marriage.
- The importance and necessity of the existence of marital relationship, both in terms of family as well as the social

After the war in Kosovo we are all witnesses how conjugal relations are disturbed as a result of social problems and as a result of misunderstandings and ill-treatment of one or the other spouse. Unfortunately very often it is reached up to spousal conflict because one spouse is called in the positive law while the other spouse in customary law. This divergence and conflict of opinions and beliefs and lack of spousal tolerance has led to the deterioration of these relations and dysfunction of spousal relation. Also the increase of scale of mate immorality from one or both sides has resulted in the submission of applications for divorce.

Therefore adequate commitment of institutions who will have the opportunity to prevent the actions of the termination of marriage and that would affect the settlement in marital conflict would be better to be regulated better with applicable legislation and other associated acts by the center for social work. This theme is also important because through it will be able to sensitize the general public about their rights in marital relations, because unfortunately many couples do not know their rights and obligations deriving after formal marriage act.

Expected results on this topic are to expand the field of the study, creation and termination of marital relations. This area has the possibility to expand and process in analytical and scientific aspect, therefore it is an obligation to address this topic more broadly by the relevant state institutions which study this field. As we all know marriage is sacred and the creation of healthy family relationships exclusively depends on how each company approaches to regulating this field.

Do not forget an important element that the development and education of children from this marriage relationship is essential to the development of good family relations. Through the study of this field I expect to touch the issue on the foundation and give my modest contribution to the definition of marital relations and reciprocal rights and obligations of spouses and the possibilities of overcoming marital problems.

Conclusion

The spousal relationship is a matter regulated by the laws of different states. The essential purpose is to regulate marital relations, as well as the rights and obligations arising from that spousal relation. In the field of conjugal relations study the most essential thing is the rights and obligations of spouses in their conjugal relation. Therefore, these relations are regulated by substantive law in force, but many conjugal relations comply with the common law, because as it is known to us Albanians (to a considerable part) the customary right is still applied practically, and is an essential element in the development of spousal relation. Here it is more than necessary the respect and endorsement of common interests which are usually placed before the creation of spousal relation. Maintaining a healthy spousal relation is a very essential element in the functioning of marriage, and there should not be touched only the theoretical aspect of marriage as a particular social relation that regulates relations between spouses, but also the practical aspect of developing this relation. As it is known the cultivation of normal marital relationships is a prerequisite of this relation, as well as the preservation of marital fidelity is an element of the functioning of this relation, a product of normal development of the children to come out of this marriage, as we know it will also affect the normal development of society. Here were discussed topics pertaining to the creation, termination and avoid of marital conflict, and the rights and obligations of spouses in marital relation. Taking into consideration how these relationships are solved in some countries in the region compared to their settlement with the legislation in force in Kosovo. It is a very essential fact that any spousal relation is established with the aim of creating a family, so the progress of this relation will also affect the normal functioning of the family and society. Therefore it is the duty of the legislature to modify the law on the provisions family that would reach to prevent serious disruption of spousal relation and given a caution and great competence of reconciliation councils which through engaged psychologists would be able to find the cause of the deterioration of spousal relation, as well as the eventual possibility of finding a formula for resolving marital problem, because unfortunately today not only in Kosovo, but also globally, divorce has become a practice not to forget that the divorce's effects are first seen in spousal children which in psycho-emotional aspect would have problems and serious defects that will also affect their mobility in the environment that surrounds them, and in most cases those children would feel underestimated and would not have the proper parental care which is a very essential element of their normal psycho-emotional and social level. It is the obligation of every society through certain legal provisions to regulate as best as possible the area of spousal relation, the rights and obligations of spouses and to consider the interests of children in this spousal relation. Therefore, also here we need the strengthening of the family not only in the legal aspect but the psychosocial and institutional as well, because in this way would be avoided the consequences and would be able to increase the level of marriage meaning and the role and its function in practice in order to avoid marital problems, and of the normal functioning of society. While it is imperative of Balkan countries the EU accession then this area of right has incorporated many principles of the EU in terms of family and spousal relation, the comparative method, which was used here has great correlation between them, because these comparative provisions have many similarities and are compatible with EU principles in this field.

This field could further expand and modify provisions in the councils of conciliation on the rights of children and to care institutions for women and children of spousal divorce.

Kosovo in this regard has made great progress not only in theoretical aspect but also practical even though the divorce as a result of the complexity of the laws applicable in Kosovo, there are still judges who invoke the law of the former Yugoslavia although LMF 2004/32 in Kosovo it is the one who determines the criteria of divorce, and the who obligates. Therefore it remains in the Parliament of Kosovo, when the new law comes out to abrogate through the official newspaper the old laws.

It is also an obligation that the family right in general aspect to begin to be studied since the ninth grade, so that not only lawyers but also other persons to have general knowledge about this very important area of society, because then it would previously be familiar with this process and would avoid the consequences of a failed marriage.