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Marriage Issues in the Family Law of Central Asian Countries

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ABSTRACT

In the context of deepening integration processes in the world, global changes in social relations have a significant impact on the institution of the family, its position, composition, structure, tasks and activities. Today, as a result of the collapse of family traditions in many countries, the number of divorces is increasing, the birth rate is falling, non-traditional forms of marriage are appearing, and the number of children born out of wedlock and children deprived of parental care is increasing. care increases, the approach to family relationships changes dramatically, and in the new conditions it becomes necessary to improve the institutional foundations of support. This article examines issues related to the procedure and conditions for marriage under the family law of Central Asian countries, including Georgia, China, South Korea, Russia, Armenia, Moldova, Uzbekistan, Azerbaijan, Kyrgyzstan, Kazakhstan, Belarus, Tajikistan, Turkmenistan, Estonia, etc. Suggestions and recommendations are given regarding the main problems that arose during this process, the procedure and conditions for marriage, as well as circumstances preventing marriage.

Keywords: marriage, conditions for marriage, procedure for marriage, marriageable age, circumstances preventing marriage, blood relatives, close relatives, medical examination.

Introduction

Many scientific researches are required to be carried out in our country and on a global scale to increase the educational, cultural and scientific potential of families. After all, "How much right does a person have to say he is happy?" If you are happy with your family, you have the right to say that you are happy. I consider myself happy when not only my family is happy, but also my people," Sh.M. Mirziyoev said. [1].

It is known that human development is influenced by 50% genes and 50% environment. Interestingly, parents provide not only 50% of genes, but also the environment for development[2]. It should be noted separately that the state of violence and neglect of children is of concern to the society. Everyone and society have a legal and moral obligation to help ensure the safety and well-being of children. As of January 1, 2024, the demographic indicators of Uzbekistan show that the number of marriages was 283.8 thousand, and the number of divorces was 49.2 thousand [3].

The issues of legal protection of marriage are also reflected in the "Universal Declaration of Human Rights", "On Civil and Political Rights"[4] and "On Economic, Social and Cultural Rights"[5]. Also, the provisions of the Convention "On mutual legal assistance and legal relations in civil, family and criminal matters" [6] adopted by the CIS member states in Minsk on January 22, 1993 are also applied to legal relations involving citizens of the Commonwealth member states. It is the only unified law for the CIS countries. On March 28, 1998, the Protocol on introducing some additions and changes was also signed [7].

In our country, attention and care for the family is one of the main directions of the state policy. For example, Article 76 of the Constitution of the Republic of Uzbekistan states that the family is the main link of society and that it is under the protection of society and the state. At the same time, the state undertakes to create social, economic, legal and other conditions for the full development of the family. Article 4 of the Family Code of the Republic of Uzbekistan (hereinafter referred to as FC) guarantees that the family is under state protection and that paternity, motherhood and childhood are protected.

The first obstacle to the creation of a family is the marriage relationship. If our general encyclopedia recognizes that marriage is based on traditional family values of the people of Uzbekistan, the voluntary consent and equal rights of the parties, then Article 2 of the FC stipulates that the regulation of family relations is the union of a man and a woman voluntarily entered into marriage.

Since marriage is the only basis for the creation of a family, it is regulated not only by moral norms, but also by special legal documents, which legally ensures that the family is under the protection of the state. The current OC does not define the concept of marriage. It can be observed that the concept of marriage is defined in the family law of some countries. For example, Article 1106 of the Civil Code of the State of Georgia (Marriage is a voluntary union of a man and a woman for the purpose of starting a family, registered in the territorial service of a legal entity operating under the management of the Ministry of Justice of Georgia - Community Development Agency.) [8], Marriage and Family of the Republic of Belarus of the code

Article 12 (Marriage is a voluntary union of a woman and a man, concluded under the conditions stipulated in this Code, aimed at building a family and creates mutual rights and obligations for the parties.)[9]. Two approaches to defining the concept of marriage have long been established in scientific research. The first is a sociological approach, which defines marriage as a historically conditioned and regulated form of relations between members of society of different sexes. This concept of marriage applies to real cohabitation, because rights and obligations between a man and a woman do not arise from it. The second is the legal approach that we prefer. It can be seen that marriage can be defined as the union of a man and a woman registered in the registry office in full compliance with all the established conditions[10]. From the point of view of jurisprudence, marriage as a special type of relationship between men and women is an important legal fact that determines the scope of rights and obligations of spouses towards each other.

Firstly, the issues related to the procedure and conditions of marriage according to the family law of the countries of Central Asia, including Georgia, China, South Korea, Russia, Armenia, Moldova, Uzbekistan, Azerbaijan, Kyrgyzstan, Kazakhstan, Belarus, Tajikistan, Turkmenistan, and Estonia were analyzed.

Secondly, the similar and different aspects of the legal norms regarding the procedure of marriage, conditions of marriage, age of marriage, circumstances hindering marriage, medical examination of married persons, voluntariness of marriage were compared.

Thirdly, after analyzing the legislation of foreign countries, it was concluded that it is necessary to expand the range of circumstances that hinder marriage in our national legislation.

According to the rule, marriage includes the following: procedure and conditions of marriage, voluntariness of marriage, age of marriage, circumstances preventing marriage, order of medical

examination of persons to be married. Here we consider each of the above in the framework of national and foreign legislation.

Procedure and conditions of marriage.

As in other countries of the world, in Uzbekistan, the issue of marriage and family goes beyond the scope of the couple's personal work, and we can see direct state intervention. The order of marriage is FC

It is expressed in Article 13, according to which it is determined that marriages made in the registration bodies of civil status documents (hereinafter referred to as registry offices) and marriages made according to religious rituals do not have legal significance. According to the rule, the marriage is performed with the participation of the parties one month after they apply to the registry office. The extension of the marriage registration period is considered based on the joint applications of the parties to the marriage, and if there are sufficient reasons, as well as at the initiative of the registry office, this period can be extended up to three months[11]. It should be noted that FC's

Clauses 3, 4 of Article 13 also contain exceptions to the one-month period. First, the registry office can shorten the period by one month if there are valid reasons (this includes birth certificates of children, a certificate from a medical institution about the bride's pregnancy or illness of one of the parties, a business trip certificate, and similar documents). Secondly, in special cases, pregnancy, childbirth, illness of one of the parties, and other cases, marriage can be concluded on the day of application. Procedure and conditions of marriage. As in other countries of the world, in Uzbekistan, the issue of marriage and family goes beyond the scope of the couple's personal work, and we can see direct state intervention. The order of marriage is FC

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The procedure for state registration of civil status documents is carried out in two different ways. The first is if the marriage is registered in the registry office. The second is held solemnly or out of place according to the wishes of the couple.

If the registry office refuses to register a marriage, a complaint can be submitted directly to the court or to a higher authority, depending on the jurisdiction.

If we pay attention to the legislation of foreign countries, we can see the following similarities and differences in our national legislation regarding the procedure and conditions of marriage:

Article 812 of the Civil Code of South Korea stipulates the procedure for the formation of marriage and states that it should be carried out in accordance with the law on the registration of family relations and related documents. Also, a marriage certificate is issued if there is no age of marriage, circumstances preventing marriage, and bigamy[12]. Marriage between Korean citizens is performed by applying to the Korean ambassador, minister or consul about the marriage in a

foreign country. The same provisions in Book 4 of the Japanese Civil Code,

See Chapter 1, Articles 739, 740, 741. Only the number of witnesses in a marriage should be two or more, and it is indicated that the testimony should be given orally[13].

Book 5 of the Chinese Civil Code entitled Marriage and Family

Chapter 1, Article 1040 stipulates that this book regulates civil-legal relations arising from marriage or family. Also, protection of marriage and family by the state is reflected in Article 1041, according to which freedom of marriage, monogamy, marriage is based on equality between women and men. At the same time, it is envisaged to protect the legal rights and interests of women, minors, the elderly, and the disabled. Another important aspect is that article 1042 prohibits extortion of money or other property through marriage, bigamy, domestic violence. In particular, it is forbidden to mistreat or run away from family members. Marriage According to Article 1046, husband and wife enter into marriage freely and voluntarily. Neither party can force the other party to enter into a marriage against their will, nor can any organization or person interfere with the freedom of marriage. Both men and women who want to get married apply personally to the marriage registration authority. If the proposed marriage is found to be in compliance with the provisions of the Code, the marriage is registered and a marriage certificate is issued[14].

Articles 10, 11 of the Family Code of the Russian Federation [15], Article 9 of the Family Code of the Republic of Armenia [16], Articles 9, 10, 11 of Chapter 3 of the Family Code of Moldova [17], Articles 9, 11 of the Family Code of the Republic of Azerbaijan [18], Articles 12, 13 of the Family Code of the Kyrgyz Republic [19], Articles 10, 11, 12 of the Family Code of the Republic of Tajikistan [20], Articles 1107, 1109 of the Civil Code of Georgia [21] determine the procedure and conditions of marriage we can see similarities with the norms of our national legislation. According to the Family Code of the Russian Federation, there is a difference in the term of marriage, and the deadline for the application is indicated. In accordance with the rule, it is specified that the parties to be married should be formed in person after one month from the date of application and not later than twelve months. According to the Family Code of Moldova, the maximum time limit for marriage registration shall not exceed two months from the date of filing the marriage application. Similarities with our national legislation can be seen in relations related to valid reasons, conclusion of marriage in special cases, appeal against refusal to register marriage. Also, the conditions for marriage are Article 11 of the Moldovan Family Code

Paragraph 2 has a different aspect, according to which, the obligation of the parties to inform each other about their health is indicated as an obligation to the parties. In the Family Code of the Republic of Tajikistan, additional conditions are specified for foreign citizens and non-citizens. Article 1109 of the Civil Code of Georgia stipulates that the initial consent of the persons who want to get married does not create obligations to get married later, the engagement is not a basis for filing a lawsuit demanding the conclusion of a forced marriage.

The Family Law of the Republic of Estonia stipulates that marriage must be between a man and a woman as a prerequisite for marriage. At the same time, the court may extend the legal capacity of a minor to marry a person who has reached the age of 15. According to the rule, an adult with limited legal capacity can enter into marriage only if he/she fully understands the legal consequences of marriage. If a guardian is appointed to a person, it is considered that he does not understand the legal consequences of marriage, unless otherwise stipulated by the decision on the appointment of a guardian.[22]

In Article 15 of the Family Code of Turkmenistan, the structure of marriage, Article 16, the procedure for concluding a marriage, Article 17, the conditions of marriage, Article 18, the obligation of the civil registry office to familiarize persons who want to enter into marriage with their rights and obligations, as well as the conditions and procedure for registering a marriage, in Article 19[23] detailed rules for marriage registration. It can be seen that these norms are similar to the norms defined in the regulation on bodies for writing civil status documents, approved by

the decision of the Cabinet of Ministers of the Republic of Uzbekistan No. 550 of October 20, 2023.

In the Marriage and Family Code of the Republic of Belarus, there is a norm called "preparation for marriage" before the procedure and conditions of marriage. According to it, legal, medical and psychological counseling services are organized at district, city executive committees and registry offices of local district hFCims in cities in order to prepare persons entering marriage for family life. It is possible. This type of services can be provided to persons entering into marriage by other specialized institutions established in accordance with the law. Although the procedure for concluding a marriage is based on general rules, we can see a different aspect in the term of marriage registration. In this case, it is carried out according to the agreement of the marriage registration body and the parties. According to Article 16 of the Code of Marriage, marriage is performed within the period agreed upon by the parties entering into marriage with the civil status registration body, but no later than three days and no later than three months from the date of filing of the application[24].

The procedure for concluding a marriage in accordance with the Marriage and Family Code of the Republic of Kazakhstan is reflected in Article 13, in addition to the general rules, in special cases (severe illness, disability, circumstances related to being in prison), when one of the parties to the marriage cannot come to the registry office, state registration of the marriage will be carried out in the relevant state institutions. Another point is that the marriage is concluded after fifteen calendar days from the date of application to the registrar. Shortening the period of state registration of marriage does not have different aspects related to state registration and filing an appeal against the refusal of state registration[25].

Articles 134, 135 of the Civil Code of Turkey stipulate the procedure for marriage, and it is envisaged that a man and a woman should submit an application. In accordance with Article 137 of this Code, the Marriage Officer examines the marriage application and the documents to be attached to it. If he sees a deficiency in the application, he fills it in or rejects it. Each of the parties to get married can appeal to the court against the decision to refuse to formalize the marriage. The appeal will be reviewed on the documents and a final decision will be made. According to the rule, if the marriage officer determines that there are conditions for marriage, or if the refusal decision is canceled by the court, he will inform the parties about the date and time of the marriage or issue a marriage license. The marriage license entitles the parties to marry in front of any marriage officer within six months from the date of issuance. The marriage ceremony is held in public at the marriage office, in front of the marriage officer and two adult witnesses who have the power of reason. However, at the request of the parties, the ceremony may be held at other locations deemed appropriate by the marriage officiant. According to Article 142, the marriage officer asks each person to be married whether they want to marry each other or not. Marriage happens when the parties give positive verbal responses. The official explains that the marriage was concluded by mutual consent of the parties in accordance with the law. According to Article 143, as soon as the marriage ceremony is over, the couple is issued a marriage certificate. A religious ceremony for marriage cannot be performed without presenting a marriage certificate. The validity of a marriage does not depend on a religious ceremony. Also, the marriage process, marriage registration, correspondence related to marriage and other matters related to marriage are regulated by law[26].

Voluntary marriage and marriage age: The global progressive processes taking place in the modern world certainly affect many areas of social relations. Modern democratic society provides people with many opportunities for self-realization and self-satisfaction. Under national law, marriage is voluntary. In order to enter into marriage, the future couple must have the ability to freely express their consent. Forced marriage is prohibited.

According to Article 8 of the Family Law of the Republic of Estonia, a promise to enter into marriage does not give rise to a claim for marriage, nor does it give rise to a claim for damages in case of breach of promise[27]. The attitude towards marriage and the family as a whole is

manifested mainly by determining the ideal age for the first marriage[28].

The topic of ideal age at first marriage was discussed by S. Zakharov[29] reviewed using data from the "Parents and Children, Men and Women" (RiDMiJ) survey, which allowed an international comparison of the focus of the study, but did not shed light on the factors influencing ideas about the ideal age. In family law, the age of marriage is set at eighteen for men and women. This norm is also specified in the civil, family and marriage legislation of the Russian Federation, Georgia, Belarus, Estonia, Moldova, Tajikistan, Turkmenistan, Kazakhstan, Kyrgyzstan, Armenia, and Azerbaijan. In the Family Code of the Republic of Armenia, although the age of marriage is set at eighteen, there is an exception. With the consent of parents, adoptive parents or guardians, a person can get married even after reaching the age of 17 (Article 10, Clause 2).

Chinese law requires a man to be twenty-two years old and a woman to be twenty years old (Article 1047 of the FC) to enter into marriage, while in Japan a man cannot get married until he turns eighteen and a woman until she turns sixteen (Article 731 of the FC), southern In Korea, anyone eighteen years of age and older can enter into marriage (Civil Act Article 807), while in Turkey a man or woman cannot marry until they reach the age of seventeen (FK Article 124).

The situations that exclude the specified youth may arise in different cases in the legislation of foreign countries. In particular, in Georgia, the marriage of an adult with limited legal capacity is allowed with the written consent of the guardian. According to the marriage and family law of Kazakhstan, the age of marriage can be reduced by no more than two years if there is a valid reason (pregnancy, birth of a child). This norm is also confirmed in the Family Code of the Republic of Moldova. In accordance with the Marriage and Family Code of the Republic of Belarus, in special cases related to pregnancy, birth of a child, as well as in the case of minors having full legal capacity before reaching adulthood, the civil status registration body may reduce the age of marriage by no more than three years. Lowering the marriage age is carried out at the request of the persons getting married. In this case, the consent of parents and guardians of minors is not required for marriage. Article 13 of the Family Code of the Republic of Armenia

In case of good reasons according to paragraph 2, the local state authorities in the place of residence of the persons who want to get married have the right to allow the marriage of persons who have reached the age of sixteen at the request of these persons. The procedure and conditions under which marriage may be allowed under the age of sixteen, as an exception and taking into account special circumstances, may be determined by the laws of the constituent entities of the Russian Federation.

Circumstances that prevent marriage: Marriage registration is, first of all, an opportunity for the participants of family relations to exercise the rights and demand the fulfillment of obligations arising for them in connection with the establishment of marriage relations.

Our national family law sets out a number of obstacles to marriage. Obstacle to marriage should be understood as cases in which state registration of marriage is impossible and illegal.

According to Article 14 of the FC, the following are not allowed to enter into marriage:

at least one between registered married persons;

between relatives closely connected by genealogy, between biological and half-brothers and sisters, as well as between adopters and adoptees;

At least one is not allowed between persons who have been declared incompetent by the court due to mental disorder (mental illness or mental retardation).

Now let's take a closer look at this situation.

The first situation that prevents marriage is when at least one of them is in another registered marriage. Another registered marriage means a previous marriage that has not been annulled according to the procedure established by law. Persons who were previously registered in a marriage must submit a document confirming the annulment of the previous marriage to the

registry office. This can be a marriage annulment certificate, a spouse's death certificate, or a court order declaring a valid marriage invalid.

The second condition that prevents marriage is close kinship. Prohibition of marriage between close relatives exists in all civilized countries and is explained by both physiological and moral aspects. L.M. According to Pchelintseva, close kinship is related to medical-biological and moral considerations related to taking care of healthy offspring of the couple, which prevents marriage. Because it is believed that due to the combination of pathological genes, as a result of such marriages, the risk of giving birth to children suffering from serious diseases is very high [30].

The third situation that prevents marriage is marriage between adopters and adopted children.

Adoption is a form of placement of a minor without parental care into a family, in which the same legal relationship is established between the child, their descendants and the adopted person(s) and their relatives[31]. The law prohibits marriage between adopters and adopted children, as their relationship is equated to that between parents and children by descent.

(Article 165 of the Criminal Code). This prohibition is based on moral factors.

The fourth condition that prevents marriage is when one person is declared incompetent by a court due to mental illness. A citizen who cannot understand the importance of his actions or control them due to mental illness or mental retardation may be found incompetent by the court in accordance with the procedure established by law, and such a citizen may be placed under guardianship. (Clause 1 of Article 30 of the Civil Code).

It is also appropriate to analyze the legislation of foreign countries regarding the situation that hinders marriage. In the Civil Code of Georgia, marriage is prohibited if one of the parties is a person in need of assistance, except for the cases provided for by our national legislation, if they did not conclude a marriage contract before marriage (Clause "e" of Article FK1120).

An important case can be seen in the Family Law of the Republic of Estonia. Even if the family relations between direct relatives, side relatives, alien and non-alien mixed brothers and sisters are terminated due to the adoption of one of the persons, it is considered as an obstacle to marriage and marriage is prohibited (Article 12).

Article 14 of the Family Code of the Republic of Tajikistan includes the following cases in the list of cases that prevent marriage, in addition to the cases specified in the national legislation:

- children of brothers and sisters;
- mother's uncle and nephew, father's uncle and nephew, mother's aunt and nephew, father's aunt and nephew;
- persons fed by the milk of one woman;
- persons who have not passed mandatory medical examination;
- persons who have been found by the court to have limited legal capacity due to the abuse of alcohol, narcotic drugs, psychotropic substances and precursors or other intoxicating substances. Armenian family law also prohibits marriage between children of parents' brothers and sisters (Article 11).

We can see that the circumstances that prevent marriage according to the family law of the Russian Federation, Kyrgyzstan, Turkmenistan, Azerbaijan, Belarus are similar to our national legislation. Article 15 of the Moldavian Family Code lists the cases that prevent marriage, and in this list we can see several cases that differ from our national legislation. Among the cases that prevent marriage, he included the following:

- relatives in the correct family tree up to the fourth generation;
- relatives of the adopter in the correct family tree up to the second generation and adopted

persons;

- sponsor and sponsored persons during the period of sponsorship;
- both persons sentenced to deprivation of liberty while serving their sentence;
- persons of the same sex.

These cases can also be observed in the family legislation of Kazakhstan. In particular, according to the Chinese Civil Code, it is forbidden to be married to direct blood relatives or relatives up to the third degree. (Article 1048.) according to Korean law, marriage is not allowed in the following cases:

1. between blood relatives of the eighth degree (including blood relatives of adopted persons);
2. between blood relatives of the adopters on the sixth degree and close relatives of the adoptee on the fourth degree;
3. between the sixth degree blood relatives of the spouses;
4. between spouses of blood relatives of the sixth degree.

The Civil Code of Turkey divides the cases that prevent marriage into 3 types. These include factors such as consanguinity, previous marriage, and mental illness. Marriage between uncles, aunts, aunts, uncles and their children is prohibited in the family tree (Article 129). Marriage between adopters and adoptees and between blood relatives of one of them and the other is prohibited. According to the rule, a person who wants to remarry must prove that the previous marriage has ended. The spouse of the missing person is prohibited from marrying if the court does not issue a decision on the annulment of the marriage. Turkish law sets a waiting period for women, and if the marriage ends, a woman cannot remarry within three hundred days after the end of the marriage (Article 132). This period ends with the birth of the child. If the woman is not pregnant from her previous marriage or the couple whose marriage ended wants to remarry each other, the court cancels this term.

Conclusions:

To summarize the above, the circumstances that prevent marriage in the family code have their own interpretation in foreign countries. In our opinion, it is appropriate to expand the range of persons who prevent marriage in order to maintain a healthy gene pool. It is also necessary to expand the range of circumstances that prevent marriage, taking into account the inability of citizens to move independently geographically (in case of deprivation of liberty of both parties) and, as a result, their personal participation in marriage. In conclusion, it can be said that the prohibition of marriage between close relatives exists in all civilized countries and is explained by both physiological and moral aspects. After all, consanguinity is considered to be related to medical-biological and spiritual-moral considerations related to the care of healthy offspring of the couple that prevent marriage. Because it is believed that due to the combination of pathological genes, the risk of having children with serious diseases as a result of such marriages is very high. Therefore, it is appropriate to supplement Article 16 of the Family Code of the Republic of Uzbekistan with the following provision.

The third part of Article 16

- "- children of brothers and sisters;
- persons of the same sex;
- persons fed with the milk of one woman;
- sponsor and sponsored persons during the period of sponsorship".

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