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MARRIAGE AS INSTITUTION OF FAMILY LAW: DISHARMONY
OF PRIVATE AND PUBLIC INTERESTS

Olga Yuryevna Ilina (a), Anatoly Nikolaevich Levushkin (b)*,
Alla Arkadyevna Serebryakova (c), Oleg Nikolaevich Zamriy (d)
*Corresponding author

(a) Tver State University, 22, 2nd Griboyedov Str., Tver, 170021, Russia, kinder_advokat@rambler.ru,

(b) Kutafin Moscow State Law University (MSAL) 9, Sadovaya-Kudrinskaya Str., Moscow, Russia,
lewuskin@mail.ru,

(c) Pskov State University, 2, Lenin Sq., Pskov, 180000, Russia, a.serebryakova@inbox.ru,

(d) Tver State University, 22, 2nd Griboyedov Str., 170021, Tver, Russia, zamriy.on@tversu.ru

Abstract

Demography, sociology, law, psychology – this is not a complete list of branches of science focused on family relations. Undoubtedly, depending on the goals and objectives set, scientists study the content and form of marriage, the features of this social institution, but at the same time, a priori, marriage is considered as a kind of union of a man and a woman. Marriage and family are closely interrelated. The family is defined as the group of individuals bound by mutual rights and obligations in the sphere of personal non-property and property relations arising from kinship, marriage, adoption and other legal facts underlying family relations. The doctrine concludes that "recent practice has revealed significant problems in the legal regulation of property relations of spouses in the context of the digital transformation of the economy". In the works of legal scholars, the problem of the correlation of private and public interests in this area of family relations is noted, which is due to the need to comply with mandatory regulations that reflect the public interest and the will of the state regarding the content and form of implementation of the private interests of persons positioning themselves as spouses. It should be noted that the problem of regulating family relations with a possible deformation of their content and, thereby violating the principle of preserving traditional family values. The authors of the article analyze marriage as an institution of family law, reveal the disharmony of private and public interests in the sphere of family relations.

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1. Introduction

The Constitution of the Russian Federation is aimed at ensuring the realization by the citizens of their rights in the sphere of family and matrimonial relations. Marriage is one of the few social institutions that are under study by representatives of various social sciences. The development of the dynamics of Russian legislation allows us to speak about new trends in the development of marriage and family relations, in particular, not only about the change in traditional branch institutions, but also about the emergence of new legal entities, changes in the structure of family legislation, indicating the transformation of its entire system (Levushkin, 2017).

Understanding marriage as a union of a man and a woman, that is, persons of different sexes, is also of research interest in the framework of the discussion on the recognition in the territory of the Russian Federation of same-sex marriages contracted abroad. As an independent basis for refusing to recognize such a marriage, reservations about public order should also be applied.

The institution of marriage is of great importance in family legal relations. Along with this, the problem of surrogacy is of no small importance among modern problems (Tsukanov et al., 2020). Family relations are relations between spouses and former spouses, between parents and children, between adoptive parents and a child without parental support, as well as relations between other subjects of family law. It is an indisputable thesis that, while giving a man and a woman the opportunity to freely express their will and act in their own interest with the existing intention to both conclude and terminate a marriage, the state is adamant that only the union that is registered under the procedure established by law is recognized as a marriage, and is considered marriage until it is dissolved or terminated on another basis, also only according to the procedure established by law. In this regard, we fully agree with N.N. Tarusina, who proposes "to withdraw the term "cohabitation" from legal discourse as a well-established designation of a family union without registration" (Tarusina, 2010, p. 48).

2. Problem Statement

"Training of lawyers for the business sector is currently based on a complex system" (Ershova et al., 2020, p. 1005). We believe that a modern lawyer should have systematic knowledge for the effective application of civil, family, and inheritance legislation based on the implementation of the convergence principle in law.

The social structure, the system of organizing joint life and communication involves various forms, which, undoubtedly, are improved under the influence of different factors. This thesis is fully applicable to the organization of marital relations, that is, the form and content of marriage. Let's agree with Trofimets (2019): "Although the modern institution of marriage retains continuity both "vertically" (in time) and "horizontally" (in space), the evolution of marriage and the family is noted, the forms of marriage and family unions are changing" (p. 21).

It is certainly true that the relations and actions included in the subject of regulation by the Family Code of the Russian Federation do not exist in isolation, since those existing in the family legal sphere are complex, especially since they mean special relations that are autonomous in their own way. That is why

they should not be compound with others that have their own subject of regulation, which does not exclude their interaction with the Family Code of the Russian Federation (Nechaeva, 2017).

Within the context of the constitutional principle implementation of the social state, as set out in Article 7 of the Constitution of the Russian Federation, the vector of its socio-economic policy should be aimed at "creating conditions for a worthy life and a free development of man" (Barkov et al., 2020, p. 1368). Over the past few decades, a hybrid form of social union, which is a combination of social and legal characteristics inherent in marriage, has become widespread. However, the presence of the corresponding features, the prevalence of some while completely ignoring others, is determined solely by the private interests of the participants of this union.

The goals of legal regulation of family relations, the tasks for their achievement, as well as the principles as guidelines for regulating the rights of family members are prerequisites for the family legislation publicization (Leskova et al., 2020). In this regard, it is possible to state the task that is relevant for the family law science, namely, the justification of the prerequisites, the search, development, and the formulation of recommendations for resolving the conflict of private and public interests in this area of family law regulation.

It seems that the legislator, and not only the Russian one, deliberately does not include the definition of marriage in the structure of the law, since regulates in detail the relations on the conclusion, termination and recognition of marriage as invalid. Accordingly, the interest of the state in the existence of a certain format of the union of persons who position themselves as spouses is reflected in the norms that provide for conditions and obstacles, the procedure for state registration of marriage, the grounds and procedure for the termination in the civil registry offices and the court, as well as the grounds, procedure and legal consequences of the recognition of marriage as invalid.

At the same time, we believe that at present there is every reason to raise the question of the characteristics of marriage as a social and legal institution to the scientific community.

Therefore, the serious socio-economic and political changes that took place in Russia in the 90s of the XX century, the rigid state regulation was replaced by a market economy, with its inherent system of economic incentives, certain restrictions and prohibitions (Mokhov et al., 2020). The issue of deliberate imitation of the marital relations absence and the formal confirmation of these circumstances is very relevant. The point is that the state of matrimony as a legal state may entail additional restrictions for the subjects of family legal relations, for example, the obligation to declare not only their income but also the income of their spouse and minor children.

3. Research Questions

The discussion about the concept and characteristics of marriage in the context of ensuring the social request, that is, the interests of at least two persons, by the norms of the current legislation providing for mandatory state regulations on the format of marriage, at the present stage of the development of jurisprudence is saturated with various, sometimes polar judgments. In this regard, arises the question on the formation and normative consolidation of the marriage concept as a legal institution, which, however, does not exclude the justification of the exclusively family-legal appliance of the definition.

Accordingly, Tarusina (2019) rightfully raises the question of the "regulatory and legal definition of marriage" (p. 99). Indeed, the Family Code of the Russian Federation does not contain a definition of the concept of marriage, which is ambiguously assessed by representatives of the science of family law. In this respect, Tarusina (2019) appeals to the experience of the legislators of the member states of the Commonwealth of Independent States, which is quite appropriate taking into account historical factors and the general trend in the legislation development. Levushkin (2014) expresses the same opinion, pointing out that the definitions available in the laws of some states do not fundamentally differ from each other.

Significant changes that took place in the early 90s of the XX century in the socio-economic structure of society directly affected family relations (Serebryakova, 2017).

Ilina (2019) has rightly noted that the modern family is increasingly acquiring the features of a civil-legal structure, and therefore, the need for the existence of the concept of marriage as a family-legal category is clearly manifested, since many norms of civil legislation establish special rules for spouses, that is, persons whose union corresponds to the public-legal format.

It should be noted that the special attention of the state to the preservation of the public-legal format of the union, called marriage, is reflected in the new version of Article 72 of the Constitution of the Russian Federation. Thus, the discussion on the issue, which remains constantly relevant on the pages of the legal press, was closed. We remind that the wording of paragraph 1 of Article 12 of the Family Code of the Russian Federation provoked various interpretations of the stated norm: "to enter into a marriage, the voluntary consent of the man and of the woman entering into it, and their reaching the marriageable age, shall be necessary". Although in this case, the legislator focuses on the conditions of marriage conclusion, which, in fact, is indicated in the title of the article, the mention of the gender identity of persons entering into marriage allowed scientists to note this feature when trying to give an appropriate definition.

Despite the tolerant attitude of society to cohabitation and the actual imitation of marital union by persons of the same sex, which, however, confirms the presence, even if a small part of the population, but still a social request for the legalization of this phenomenon, the public interest has an unambiguous form of expression. Note that at present, not only in the context of the conditions of marriage, the heterosexuality of persons entering into marriage is designated but also in Article 72 of the Constitution of the Russian Federation, among the issues referred to as the subject of joint jurisdiction of the subjects of the Russian Federation, "protection of the institution of marriage as a union of a man and a woman" is indicated.

It is a common fact that Article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms proclaims: "Men and women of marriageable age have the right to marry and found a family, according to the national laws governing the exercise of this right". It is necessary to fully agree with the ironic remark of experts in international law: "When drafting article 12, it seems that they proceeded only from the usual situation when a man and a woman want to marry and start a family. However, social changes in Western Europe and the associated transformation of moral and social norms have complicated the interpretation of this article" (Bugrova, 2019, p. 72).

The development of modern legal relations contributes to an increase in the number of contractual relations in the field of marital relations (Levushkin et al., 2020).

The next issue of theoretical and practical significance for research is the validity of the private and public interests' ratio in establishing the form of marriage. As far as is known, marriage is recognized only by the union of a man and a woman, which is registered under the procedure established by law, according to paragraph 1 of Article 10 of the Family Code of the Russian Federation, a marriage shall be entered into at registry offices. It should be noted that a clarification is necessary for the law enforcer, since according to Article 4 of the Federal Law "On Acts of Civil Status", the powers for state registration of acts of civil status, including marriage, can be delegated to other public authorities.

In our opinion, such a feature of marriage as state registration is of particular interest to researchers, because it is its significance that most clearly, as evidenced by the results of sociological surveys and questionnaires of citizens, demonstrates a kind of social protest against the formalization of relations between men and women.

Relations in the field of security and protection of the property rights of family members have the widest application, both in Russia and internationally (Vlasov et al., 2019). Definitely, the experience of cohabitation, forming a common budget and running a common household is quite justified in terms of the positive prospect of marriage and the duration of the marriage. By the way, the Concept of the demographic policy of the Russian Federation for the period up to 2025 notes that the promotion of family values is necessary "to form in society a positive image of a family with a stable registered marriage of spouses who have several children or adopt children left without parental care".

The analysis of this thesis allows us to assert unequivocally that the state assumes stability, that is, a long period of marital relations. Perhaps this is what the legislator was guided by, establishing a ban for the husband to institute court proceedings on the dissolution of the marriage during the wife's pregnancy and in the course of one year after the birth of the child.

At the same time, the principle of a voluntary conjugal union proclaimed in Article 1 of the Family Code of the Russian Federation, means mutual voluntary consent not only to the conclusion of marriage, but also the free expression of the will of each of the spouses to its dissolution (Zamriy et al., 2019). Evidently, even in this situation, the state implements its interest in ensuring the stability of marriage, providing special rules for the marriage annulment procedure.

Another issue that demonstrates the problem of the private and public interests balance in marriage, namely the possibility of polygamy, cannot be ignored. It is a common fact that Article 14 of the Family Code of the Russian Federation contains a ban on marriage between persons one of whom at least already consists in another registered marriage.

However, studies of the structure of modern society indicate a clear predominance of females, and therefore, the proportional ratio of the number of men and women cannot be balanced otherwise than by the "rotation of the husband" or by actual polygamy. The last of these options in one form or another is not only found in our society, but also belongs to the category of tolerant perceived phenomena. Scientists also note this fact but in the context of the study of the Islamic law norms.

The social request, that we have repeatedly mentioned, to change the existing order of family relations regulation attracts the attention of the state. In this regard, we consider it possible to cite the ruling

of the Constitutional Court of the Russian Federation No. 851-O-O of December 18, 2007 "On the refusal to accept for consideration the complaint of the citizen Ryazanov Nagim Gabdylakhatovich against the violation of his constitutional rights by paragraphs 1 of Articles 12 and 14 of the Family Code of the Russian Federation", which contains the following public legal position: "Russia is a secular state, therefore religious institutions that allow polygamy of marriage unions, a different approach to solving this issue in some other states, cannot influence state policy in the field of family relations, the basic principles of which are characterized, in particular, by the principle of monogamy, proceeding from the attitude towards marriage as a biological union of only one man and one woman, which does not allow being in several marriages at the same time".

4. Purpose of the Study

The foregoing allows us to formulate the goal of this study – to determine the social and legal characteristics of marriage, the list and forms of correlation of which should demonstrate a harmonious combination of private and public interests in the mechanism of legal regulation of the relevant sphere of public relations within the framework of family legal regulation.

5. Research Methods

The authors of the study used general scientific and private scientific methods of research work. In particular, the dialectical method of scientific cognition, system, functional, deduction, induction, analysis, synthesis, as well as special legal methods were implemented: formal-legal, comparative-legal, the method of legal modeling and others.

6. Findings

Currently, there is an objective need to develop and justify new directions for improving the system of family legislation of the Russian Federation based on the goals of the state family policy and the existing social and legal potential. The tendency to family legislation publicization has been repeatedly noted. This process is due to the fact that the state is constantly expanding the scope of its intervention in the private legal sphere of family relations to perform the functions of protecting the rights of citizens and ensuring their private interests in the family legal sphere.

The conducted research allows us to draw conclusions based on the analysis and generalization of current legislation and materials of scientific discussion:

- the socio-legal nature of the institution of marriage presupposes a harmonious combination of social characteristics that reflect the interests of individuals intending to create a marriage union, and legal ones that represent the embodiment of the public interest in recognizing a marriage union that corresponds to a certain format;
- we believe that at the present stage of doctrinal knowledge, the emerging trend of inter-sectorial relationships between family, civil, corporate and entrepreneurial relations deserve special scientific understanding.

- the absence of a definition of marriage in the domestic legislation is not a disadvantage, since the legal technique chosen by the legislator fully corresponds to the achievement of the set goal in regulating family relations;
- modern marriage is a special stratum that reacts to changes in the public vector within the mechanism of family legal regulation, which is due to the need to create the most comfortable conditions for ensuring the private interests of individual family members.

It seems that the modern concept of marriage in family law is based on the traditional understanding of marriage as a union of a man and a woman concluded to start a family, based on mutual respect and consent, which is fully correlated with the public interest in preserving the moral format of family life.

7. Conclusion

From the perspective of the system-structural approach, it is necessary to distinguish the general and special parts in the structure of the family law system. In the general part, the concept of "marriage" should be legalized. Marriage should be understood as an equal union between a man and a woman, concluded with the voluntary and full consent of the parties in accordance with the procedure established by law, for the purpose of starting a family, generating property and personal non-property relations between the spouses. The establishment of this legal definition will be an obstacle to the legalization of same-sex marriage.

In modern domestic legislation, there is a strengthening of public principles in the mechanism of legal regulation of relations connected with the formalization of the union between men and women. The process of liberalization, among other consequences, led to the devaluation of family values, which objectively required the intervention of the state in the mechanism of family law regulation. The increased emphasis on the heterosexual characteristic of the marriage union at the level of constitutional norms, on the one hand, became an additional guarantee of ensuring public interest in the organization of marital relations and, on the other hand, emphasized the preservation of the traditions of the Russian state and society, continuity in the formation of the way of family life.

The introduction of amendments to the Constitution of the Russian Federation marked the beginning of a new stage in the development of the concept of marriage as an institution of family law and family legislation, which became a kind of invitation to representatives of the scientific community and the field of law enforcement to the discussion.

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