ұйымдастыруға арналған, бірақ баланы отбасынан алып тастауға болмайтын жағдайда жетімдіктің алдын алу, балалардың отбасылық қолайсыздығының алдын алу бойынша рәсімдері көзделмеген. Балалардың қадағалаусыз және панасыз қалуының алдын алу бойынша шашыраңқы қоғамдық ұйымдардың жұмысы мемлекеттік билік институттары мен жалпы халықтың күш-жігерін біріктірмей тиімсіз.

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SOME FEATURES OF MARRIAGE AND FAMILY RELATIONS COMPLICATED BY A FOREIGN ELEMENT

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Family law is a system of legal norms governing family relations, i.e., personal and related property relations arising between citizens during marriage, kinship, adoption, and the placement in a foster family. Family law regulates a certain type of the public relations – the family relations which arise from the fact of marriage and belonging to a family. The most part of these relations has non-property character, but often they intertwine with the property relations.

The family and marriage are an integral part of any society. From the legal point of view the matrimonial relations represent one of the most important elements of the civil legislation. In the modern world for this area of legal regulation there are special rules of law. The realization of these norms is enabled both according to the international standards, and according to the domestic legislation of the certain countries.

The questions concerning the matrimonial relations occupy the special place in the doctrine and practice of the international private law. Questions of the contraction and divorce, marriage recognition invalid, definitions of the mode of property of spouses, regulations of alimentary obligations, adoptions and some other questions "provided that the specified relations have the international character" belong to this area.

Collisions in legal regulation of various family and marriage relations are shown not only in legal systems of the states where different religions, but also in the states with identical religion and legal systems of one "family" dominate (for example, in the countries of civil law). [1]

One of legal systems declares the decisive law the lex loci celebrationis. Advantage of use of this system is ease in definition of lex loci celebrationis. The lack of this system is that it induces interested persons to get married where there are no obstacles established by their domicile and thus to bypass the bans provided by the national legislation.

«For elimination of a similar situation the countries where the lex loci celebrationis system works, apply the resolutions forbidding a marriage in the place, excellent from a domicile of the persons marrying if such marriage is invalid or debatable under the law their domicile». The lex loci celebrationis system with certain reservations admits in Germany, England, and France.

According to other system, the law competent to regulate marriage conditions, the personal law which can be the law a domicile (Denmark, Norway) or the law of nationality (the majority of other countries) admits. And at last, some countries have apprehended a combination of these two systems: «simultaneous application of the law of nationality and a domicile or one of these laws with the law of lex loci celebrationis».

The form of marriage is regulated by the law of that place in which marriage consists (logus regit actum). In the majority of the countries it means that for the contraction of the marriage recognized by the law it is enough, but it isn't necessary to observe the requirements ordered by the law of lex loci celebrationis": the choice between this law (lex loci celebrationis) and their personal law is provided to the parties. In other countries submission is obligatory for the law of lex loci celebrationis" as the norm of logus regit actum has imperative character.

Depending on the established country marriage form it is possible to divide into three groups:

• the countries where only the marriage registered in government bodies (Kazakhstan, Russia, Germany, France, Belgium, Switzerland) officially admits;

• the countries in which equally generate legal consequences civil and church forms of marriage (England, Australia, many states of the USA);

• the countries in which the marriage is possible only in a church form. Several countries of Western Europe where the church form of marriage is obligatory for persons of a certain religion (Andorra, Liechtenstein, Cyprus), and also some states of the USA and the certain provinces of Canada belong to this category.

In some countries the marriage contraction is allowed both in a civil form, and in church, but with the obligatory subsequent notification of government bodies of the taken place church ceremony of wedding.

Accepted in 1978 the convention on a marriage and recognition has replaced with its valid the Convention of 1902 in the relations between member states and has made some changes to requirements imposed to a marriage form. [2]

Family legal relations are governed by laws, codes, standard and legal and other bylaws. In the majority of the modern states the law of domestic relations is separated from civil, codified and represents independent branch of the right (Russia, Algeria, the country of Eastern Europe and Latin America). The main sources of regulation of the matrimonial relations in the countries

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of continental Europe are special sections of civil codes (Germany, Italy, Switzerland) or ad hoc acts on marriage and a family (Hungary, Poland, Croatia, the Czech Republic). In France the Family code was adopted in 1998. In Great Britain more than 15 ad hoc acts on single questions of the matrimonial relations work.

The main sources of regulation of the matrimonial relations in the Republic of Kazakhstan are: The Constitution of the Republic of Kazakhstan, the Code about marriage (matrimony) and family, the international contracts, the Civil Code, the Civil Procedural code. The law of domestic relations in the Republic of Kazakhstan is similarly separated from civil law and codified.

From legal side laws are perceived in a literal sense, respectively all definitions which are fixed in normative legal acts and other sources of the right regulation give a total characteristic to these or those definitions. Let's sort the concept given in our national legal system. So, according to the Code of the Republic of Kazakhstan about marriage (matrimony) and a family of December 26, 2011 in part 26 to article the equal union between the man and the woman concluded at free and full consent of the parties in the order established by the law of the Republic of Kazakhstan, for the purpose of creation of a family, generating the property and personal non-property rights, and duties between spouses" is called as 1 marriage (matrimony) ". [3] From definition we see that marriage can consist irrespective of an origin and existence of civil belonging to any state. From this to be exact follows the question: by what norms to be guided if the family and marriage relations are complicated by a foreign element? At the international level all these norms are consolidated by conventions and bilateral agreements which regulate different provisions concerning the mentioned branch. Let's consider some of them: Hague Convention of 1961 second name «The Convention Cancelling the Requirement of Legalization of Foreign Official Documents». [4] Cancellation of legalization of foreign official documents is a canceling requirement of legalization of foreign official documents for member countries of the Convention. The special sign (stamp) which is put down on the official documents created in one state and which are subject to transfer to other state, replacing procedure of consular legalization — an apostille is established by the convention. The documents certified by an apostille of one of the State Parties of the Convention have to be accepted in other State Party of the Convention without any restrictions. Legalization -it is the highest extent of assurance of documents recognized in all countries which signed the Hague Convention of 1961. Authenticity of an apostille can be verified in the Ministry of Foreign Affairs of any member country of the Convention. The Hague Conference has currently 80 Members: 79 States and 1 Regional Economic Integration Organization.

The Republic of Kazakhstan joined this convention on April 5, 2000, and into force entered on January 30, 2001. It follows from this that with the participating states of the Hague Convention of October 5, 1961 our citizens can enter into marriage alliance, subsequently that at everyone the general property relations are born and not only. But, the Hague Convention does not consider in more detail family legal relations therefore the Minsk Convention of January 22, 1993 on legal aid and legal relations on civil, family and criminal cases will be one of sources considering the matter. She was imprisoned between the CIS countries, namely Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Turkmenistan, Tajikistan, Uzbekistan, and Ukraine. The main idea of the convention is that the documents received in any of these 12 countries do not need any additional legalization. And only condition: representation of the notarized translation of the document. Absence of requirements to legalization of documents is only part of the signed agreement. First of all, the contract provides the legal protection to citizens of Bargaining parties, the right for the free appeal to courts, prosecutor's offices and other human rights institutions in the territory of twelve countries. It concerns both legal and individuals. Legal protection grants the right to citizens of the listed states and the persons living in the respective territories to use in all agreeing countries legal protection same, as well as citizens of the country in the territory of which they are. The same conditions, as to own citizens of the country are provided to them, they are exempted from

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payment and compensation of the judicial and notarial fees and expenses. Let's consider more carefully the Minsk Convention, namely the part 3 devoted to family affairs. For example, article 31 of this agreement establishes the provision of contest and clarification of motherhood or paternity agrees by which "establishment and contest of paternity or motherhood is determined by the legislation of Bargaining Party which citizen the child is on the birth". On questions of annulment of marriage according to part 1 of article 28 of the Minsk Convention "on cases of annulment of marriage the legislation of Bargaining Party which citizens are spouses at the time of filing of application is applied" but if spouses from different Bargaining Parties, the legislation of Bargaining Party which institution considers case on annulment of marriage is applied. All of us perfectly know that the environmental problem every day only becomes worse and from it suffers not only the habitat, but also ourselves in general, health, without receiving the necessary organic compounds and vitamins, glitches that brings in result to cancer and chronic diseases. And in this regard, the wide circulation got adoption, at the international level too. Without fail adoption requires permission from competent authorities, according to part 2 of article 37 of the mentioned Convention "if the child is the citizen of other Bargaining Party, at adoption or its cancellation it is necessary to receive consent of the lawful representative and competent government body, and also consent of the child if it is required by the legislation of Bargaining Party which citizen he is" [5].

Due to many changes and advanced ways of rendering legal aid the new Convention on legal aid and legal relations on civil, family and criminal cases, in the city of Kishinev is created on October 7, 2002 (further called Kishinev). But, not all countries - participants ratified this Convention, having considered that Minsk is competent. In the Kishinev Convention part 3 opens the main aspects of the matrimonial relations. The section of both conventions devoted to family affairs begins with article about a marriage. In the Minsk convention it is article 26, and in Kishinev - article 29. The contents of these articles completely identically define that concerning marriage conditions the applicable law is defined on the basis of the principle of nationality of future spouses, and for stateless persons - the principle of the habitual residence. Besides, concerning obstacles to a marriage requirement of the legislation of that Bargaining Party in the territory of which marriage consists have to be surely observed. Article 27 of the Minsk convention (respectively article 30 of the Kishinev convention) is devoted to legal relationship of spouses and consists of six points. So, according to the point 1 "personal and property legal relationship of spouses are determined by the legislation of Bargaining Party in the territory of which they take a joint residence". If spouses live in the territory of different Bargaining Parties, having thus the same nationality, concerning their personal and property legal relationship the applicable law is defined according to the principle of nationality (point 2). [6] At different nationality of such spouses the applicable law is defined according to the principle of the last joint residence of spouses (point 3). In case spouses had no joint residence in territories of Bargaining Parties, the legislation of Bargaining Party which institution considers case (point 4) is applied. On cases of personal and property legal relationship of spouses establishments of Bargaining Party which legislation is subject to application according to the above points (point 6) are competent. Article 28 of the Minsk Convention (article 31 of the Kishinev convention) is devoted to annulment of marriage. According to point 1 of this article the applicable law is determined by cases of annulment of marriage according to the principle of nationality of spouses at the time of filing of application. In case of existence at spouses of nationality of different Bargaining Parties the legislation of Bargaining Party which institution (justices) considers case on annulment of marriage (point 2) is applied.

The only distinction is in contents of the considered article that in point 2 of the Kishinev convention is not simply about institution which considers case on annulment of marriage as it takes place in the Minsk convention, and about "establishment of justice". We believe that this distinction has nature of editorial specification of the content of norm. Article 29 of the Minsk convention is called "Competence of establishments of Bargaining Parties" while article 32 of the Kishinev convention similar to it is entitled as "Competence of establishments of justice of

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Bargaining Parties". In this case we meet editorial specification of the name of article. According to point 1 of the considered article on cases of annulment of marriage of the spouses having identical nationality, competence of establishments (justice) of Bargaining Party is defined according to the principle of nationality of spouses at the time of filing of application. If for this moment both spouses live not in the country of the nationality, and in the territory of other Bargaining Party, also establishments of this Bargaining Party are competent. According to point 1 of article 33 marriage recognition is applied by the invalid the legislation of Bargaining Party which according to article 29 from this Convention was applied at a marriage. It should be noted that application of standards of the Minsk and Kishinev Convention is fixed by the standard resolution of the Supreme Court of the Republic of Kazakhstan of July 10, 2008 N 1 according to by which in point 15 the following is specified: "Cooperation in rendering legal aid between the CIS countries on civil, family criminal cases is, as a rule, carried out according to the Convention on legal aid and the legal relations on civil, family and criminal cases (Minsk, of January 22, 1993, with changes on March 28, 1997 (further - the Minsk convention), the Republic of Kazakhstan ratified by the resolution of the Supreme Council of March 31, 1993 which came into force on May 19, 1994), the Convention on the legal aid and legal relations on civil, family and criminal cases (Kishinev, of October 7, 2002) ratified by the Law of the Republic of Kazakhstan of March 10, 2004 which came into force on April 27, 2004 (further – the Kishinev convention). According to point 3 of article 120 of the Kishinev convention between the State Parties stops the action the Minsk convention and the protocol to it of March 28, 1997. At the same time, according to point 4 of article 120 of the Kishinev convention, the Minsk convention is applied in the relations between the State Parties of the Kishinev convention and the state, being its participant for whom the Kishinev convention did not come into force." [7].

The important role in ensuring legal aid on civil, family and criminal cases is carried out by the bilateral contracts signed with the Republic of Kazakhstan at different times, but having similar specifics that is considered as unification of conflict norms of law of domestic relations. As an example, it is possible to sort the bilateral agreement between the Republic of Kazakhstan and the Islamic Republic of Pakistan about mutual legal assistance on civil, family and criminal cases of August 23, 1995. Chapter 2 of this agreement considers the relations connected with civil and family: payment of expenses, partial or liberation from payment of expenses, a competence of the courts, legal capacity and capacity, an order of recognition and execution of the judgment and so on. According to article 21 about a competence of the courts "If the present Contract does not establish other, courts of each of Bargaining Parties are competent to consider civil and family cases if the respondent has a residence in its territory..." [8] We see that the respondent has the right to demand consideration of the case on the place of residence. Here the principle of territorial jurisdiction which has some types is applied: alternative (the choice of court is made by the claimant, if business jurisdictional to several uniform instances); exclusive (for some affairs the court is defined by the law, but not the parties); contractual (when on the basis of the contract jurisdiction can change). Unfortunately, not with all states we have agreements or different ways of settlement of disputes. On this case, the principle of mutual aid works. In science of private international law, the reciprocity is understood as one of the fundamental principles of international cooperation allowing causing friendship of one state to another the adequate reciprocal relation. The principle of reciprocity in private international law is manifestation of the similar principle in the international public law - the principle of the equality and state cooperation fixed in the Charter of the UN in article 2. These principles have character of super peremptory norms or norms of jus cogens having the highest validity. Determination of such nature of these norms contains in article 53 of the Vienna convention on the right of international treaties of 1969 where it is told that these principles are accepted and admit the international community in general as norms the deviation from which is inadmissible.[9, 334] But in private international law, the principle of reciprocity opposite has no such validity, and the states have the right to refuse rendering legal aid, but without fail to cause a cause of failure in writing. Equality of the states - the principle of the international public law

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that assumes their respect to each other which is expressed and in rendering mutual aid to foreign persons concerning protection of the civil rights. Mutual cooperation - the private-law party of equality of the states.

The mankind seeks to order the activity, to normalize the interpersonal relations that from chaos to create an order, to maintain stability. So, the family and marriage relations are defined and normalized by means of religion, morals, public opinion. Distinctions in culture, traditions, historical development and a way of life in the different countries cause the existing distinctions in the matrimonial legislation. However modern processes, such as "deleting" of political borders, process of globalization of economy, expansion of cultural ties between the states, promote unification of the norms governing the matrimonial relations in various countries.

Consideration of the basic principles of the family legislation of the different states allows drawing a conclusion that all legal systems contain certain conditions which performance precedes permission to get married. All modern legislative systems fix obstacles to marriage which are the general for the majority of the states. As for the European states, the legislation of these countries resolves the arising conflict issues as follows: material conditions of marriage conclusion, i.e. ability to marriage, consent of parents, obstacles to marriage and their elimination, are defined for each of spouses by the law of the state which citizen he is. The law of a jail of marriage is applied to a marriage form, conditions of his reality and existence.

We sorted admissible forms of legal aid thanks to which the international family legal relations are governed. Specified for what documents are apostilled, and that the participating states by means of cancellation of legalization of some documents can have the same rights and duties at which countries they are present in a stay place for the operating moment. The matrimonial relations connected with a foreign law and orders are a component of the international civil legal relationship. Considering the Code of the Republic of Kazakhstan about marriage (matrimony) and a family, it is possible to notice that the 32nd head is entirely devoted to application of standards of the matrimonial legislation of the Republic of Kazakhstan to foreigners and stateless persons, dated for the international standards.

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