



Marriage and the Obligations Arising from It

Brikena Buda Dhuli¹

Egi Dhuli²

¹Ph.D. Aleksander Moisiu University of Durres,
Durres, Albania

²Aleksander Moisiu University of Durres,
Durres, Albania

Received: 25 December 2023 / Accepted: 25 February 2024 / Published: 23 April 2024
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Doi: 10.56345/ijrdv11n1s131

Abstract

Marriage, as an institution of law, is based on the moral and legal equality of spouses, on the feeling of mutual love, respect and understanding, as the basis of family unity. Healthy family and marital relationships contribute to the elimination of gender stereotypes. It all starts in the family and is transmitted throughout society. For this reason, rightly, if we want to know how much a society respects the principles of non-discrimination and gender equality, it is very effective to carry out this analysis also for the family. Both marriage and the family, as very important institutions, enjoy the special protection of the state. The general principles that pervade these institutions are: i) the principle of reciprocity of rights and obligations ii) the principle of equality in rights and obligations iii) putting the interests first: of children, of marriage, of the family iv) reciprocity: in loyalty, for moral help, for material help, for cooperation in the interests of the family and coexistence. Marriage is a legal and social coexistence between two different people whose responsibilities and rights are defined by law and social traditions. Couples marry for a variety of reasons, including love, cohabitation, and sometimes economic or social reasons. Equality between spouses is accepted as a rule social concept and as a principle of family law. The principle of equality and non-discrimination as well as that of violence in marital and family matters is one of the main points in the paper.

Keywords: Institution of law, gender equality, Human rights

1. Introduction

Marriage has a significant impact on the lives of individuals and society in general. It is an institution that depends on culture, traditions and law. Couples marry for a variety of reasons, including love, cohabitation, and sometimes economic or social reasons. Marriage is a legal and social coexistence between two different persons whose responsibilities and rights are defined by law and social traditions. Despite various changes in time and culture, some basic elements of marriage include: Legal cohabitation: Marriage creates a legal bond between two individuals. Their benefits and responsibilities are defined by law, including tax aspects, inheritance and parental rights. Responsibilities and rights: Spouses have a responsibility to support and respect each other. They have a right to each other in all aspects of life, including love, help and care. Childcare: If the couple has children, they are responsible for their education and care. The law defines the rights and obligations of parents in this context. Division of assets: Marriage creates an economic bond between the spouses and the law determines the division of the assets acquired during the marriage in the event of separation or divorce. Separation of financial obligations: Spouses have mutual financial obligations, including financial

support in the event of separation or divorce, according to the provisions of the law. Simplifying Wealth Adoption: Property acquired during marriage is often shared, and this includes daily property, real estate, and inheritance rights. Family relationships: Marriage creates a family structure and a close bond between each other's family members. Marriages involve relationships with family members, including parents, brothers, and sisters.

2. The Right to Marriage and Family

The family code is divided into three parts. The first part deals with general principles, the second part is dedicated to spouses and the third part is dedicated to children. This code regulates marriage by providing for the same conditions and prohibitions foreseen for women and men, invalidity, the dissolution of marriage and the consequences of its dissolution, the rights and obligations deriving from marriage, the personal and patrimonial relationships of spouses, maternity and paternity issues, adoption, guardianship, etc. The Family Code in its entire dimension is governed by principles such as reciprocity of rights and duties, equality of spouses, children, marriage and family, non-discrimination due to being a man or a woman. Equality between spouses has been accepted as a social concept and as a principle of family law only thanks to great efforts of progress and development. Previously, this equality not only found no legal sanction, but, on the contrary, both social morality and the legal provisions of the time justified inequality and discrimination against women. The rights and obligations between spouses do not violate or affect the essence of their human rights. Marital rights and obligations are also of particular importance in guaranteeing the rights enjoyed by children born from this marriage. Article 50 of the Family Code expressly states that "With marriage the husband and wife enjoy the same rights and assume the same obligations". In all legal provisions of this Code, which deal with marital rights and obligations, we note that they are treated as rights and obligations for each spouse, without distinction between husband and wife. Each of them has the right and obligation to express their free and complete will regarding the main issues of conjugal life, including issues relating to children born out of wedlock, to provide assistance for the creation of cohabitation and family, but also to take legal action, to reverse the other spouse's actions that prevent him from exercising his marital rights and obligations. For some rights and obligations, spouses maintain a sort of autonomy, while for others they do not allow such possibilities. Spouses' autonomy also depends on the importance of a marital right or obligation. Marriage as a relationship makes the spouses holders of a status that derives from their being husband and wife. This civil status gives them some specific rights and obligations of a personal/non-pecuniary nature, such as: the obligation and right of fidelity, the obligation and right to moral assistance, the surname of the spouses, the surname of the children, the obligation and right to cohabitation, citizenship, representation as rights-obligations of a patrimonial/material nature, mention: Obligations of material assistance, contribution of the spouses relating to the obligations deriving from the marriage - Their extent can be determined contractually if there is one, or - the their extent depends on the conditions and capabilities of the spouses. The Family Code is presented in a contemporary dimension in terms of equality, reciprocity and non-discrimination, in order to protect marriage and family, as well as the rights and duties of all its members. Note articles 52 and 54 of the Family Code: When the spouses do not agree on the surname of the child, article 52 of the Family Code provides that the child takes the father's surname. According to Article 54 of the Family Code, spouses "...contribute to the needs of the family according to their conditions and capabilities". This means that if they are not equal in conditions and capabilities, so will their contributions. The mother of a child born out of wedlock has the right to request judicial recognition of the child's paternity even when she herself has not reached the age of majority. It should be emphasized that these restrictions do not violate the essence of the right to equality between spouses, since the interests of marriage, children and family are primary.

Similarly, the Family Code has provided (articles 58 to 64) for the intervention of the public authority (court) when one of the spouses does not want to voluntarily fulfill the obligations. The court is seized at the request of the other spouse. Such cases are: authorization by the court of one spouse to carry out legal actions in the interest of the family, in cases where the other spouse opposes such action or is unable to carry it out (Article 58); represent the spouse in cases where he cannot express his will on the part of the other spouse (article 59). the fulfillment by a spouse of the urgent needs of the family, such as the maintenance of the family, the education of children, family interests and the resolution of other situations of an urgent nature (Article 60), cases in which one of the spouses visibly fails to fulfill his obligations and puts the family's interests at risk.

Domestic violence is defined by Albanian law as "any action or inaction of a person towards another person which involves the violation of physical, moral, psychological, sexual, social and economic integrity, exercised between people who are or have had a family relationship". In most cases the violence is aimed at: women within the couple, children by parents, between children themselves, from children to parents, to the elderly, to people with disabilities. For the first time

the rules against domestic violence are found in the Family Code. The Code, in fact, protects the victim spouse from marital violence, thus reserving limited treatment for the protection of other family members. Article 62: The spouse against whom violence has been committed has the right to apply to the court requesting the imposition of an urgent measure of removal from the marital home of the spouse who committed violence. The importance of this provision of the Family Code lies in the fact that through it a norm was established which was followed by a complete elaboration in a separate law, Law No. 9669\18.12.2006 "On measures against violence in family relationships". The aim of the law is to prevent and reduce domestic violence in all its forms, through appropriate legal measures, as well as to guarantee the legal protection of family members who are victims of domestic violence, paying particular attention to children, the elderly and people with disabilities. Violence is not only a symptom of a marriage or cohabitation in crisis, but in general of unacceptable behavior that the law must deal with. Institutional reactions to situations of violence against minors in the family have changed radically, especially due to the impact deriving from the concrete implementation of Law no. 9669 "On measures against violence in family relationships". Women are disproportionately affected by domestic violence. Therefore, domestic violence is often seen as one of the forms of gender violence, since it is practiced against women precisely because they are women. Law no. 9669 of 12.18.2006 "On measures against violence in family relationships" is a law of an administrative-civil and not criminal nature. It works as an additional tool alongside the penal code. There are two main authorities against domestic violence: "Administrative Authorities and Judicial Authorities". The law provides a complete framework of protection measures for victims of domestic violence. In this way, this law goes beyond the measures provided for by the Family Code, offering on the one hand high security and protection to the minor and his relatives and on the other the rehabilitation of the perpetrator of the abuse. The measures are protective, rehabilitative of the victim, as well as economic. The courts issue, depending on the case, the protection order or the immediate protection order.

References

Kushtetuta e Republikës së Shqipërisë
Kodi i familjes së Republikës së Shqipërisë
Kodi I procedurës së Republikës së Shqipërisë
Ligji Nr. 9669, datë.18.12.2006 "Për masat ndaj dhunës në marrëdhëniet familjare"
Ligji Nr. 9690 , datë 18.12.2006 "Për masat ndaj dhunës në marrëdhëniet familjare"