



## Research Article

# FEATURES OF DISSOLUTION OF MARRIAGE IN THE REGISTRY OFFICE WITH THE MUTUAL CONSENT OF THE SPOUSES AND AT THE REQUEST OF ONE OF THE SPOUSES UNDER THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

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## ABSTRACT

The article analyzes the procedure for dissolution of marriage by mutual consent of the spouses and the application of one of the spouses in the registry office of the Republic of Uzbekistan. The current legislation and law enforcement practice are studied, statistical data of the registry office on mutual dissolution of marriage and on the application of one of the spouses are given. Based on the study, the author proposes to improve the current family legislation of the Republic of Uzbekistan.

## KEYWORDS

Registry offices, divorce, mutual consent, statement of one of the spouses, spouses, marriage, will.

## INTRODUCTION

Marriage in the Republic of Uzbekistan, as in all democratic countries, is the result of the will of two parties (men and women) and is voluntary. One of the basic principles of the family law of the Republic of

Uzbekistan is free will. In cases where the spouses do not have common children, they no longer see the further development of their family relations, and these relationships do not bring joy, but rather cause



suffering, the spouses, by mutual agreement, without quarrels and offenses, can legally formalize the dissolution of the marriage.

Article 38 of the Family Code of the Republic of Uzbekistan regulates the procedure for divorce. Thus, the dissolution of a marriage is carried out in a judicial proceeding, and in the cases provided for in Articles 42 and 43 of the Family Code, in the civil registry offices. In accordance with Article 42 of the Family Code of the Republic of Uzbekistan, with mutual consent to the dissolution of the marriage of spouses who do not have common minor children, the dissolution of the marriage is carried out in the civil registry offices. But the absence of common children, including adopted ones, is not the only criterion for considering an application for divorce in the registry office. So, if there is a dispute between spouses about the payment of maintenance to a needy disabled spouse or about the division of property that is their common joint property, the spouses or one of them have the right to file a lawsuit for divorce in court. Spouses dissolving a marriage in their application to the registry office are required to confirm that they do not have common minor children and property disputes. In this case, the registration of divorce is carried out after three months from the date of submission of the application to the registry office at the place of residence of the applicants (Article 218 of the FC of the Republic of Uzbekistan).

F.M. Otakhuzhaev argues that if the spouses have minor children who were born out of their marriage (for example, if they were born from a previous marriage and there was no adoption), then this is not a basis for refusing to dissolve the marriage by the registry office [1]. General issues of marriage, divorce, including in the registry office, have been considered

more than once by the author of the article [2-8] and domestic scientists [9-11].

According to Yu.V. Baigusheva's spouses, filing an application for divorce by mutual agreement, conclude an agreement. In accordance with the principle of voluntariness of marriage enshrined in paragraph 3 of Article 1 of the Family Code of the Russian Federation, paragraph 2 of Article 16 and paragraph 1 of Article 19 of the Family Code of the Russian Federation provide for the possibility

of terminating a marriage by mutual consent of the spouses, that is, through the conclusion of an agreement by them. The opinion of V.A. Ryasentsev, who believes that by concluding this agreement, the spouses exercise their right to divorce

or, which is the same thing, the right to divorce. However, according

to Yu.V. Baigusheva, husband and wife do not need to be given a special right to conclude an agreement on the termination of marriage, just as the parties to an obligation agreement do not need to be granted the right to conclude an agreement on the termination of an obligation binding them. [12]

Considering the theory of the contractual regime of dissolution of marriage, it is necessary to cite the French Civil Code as an example. Thus, in accordance with Section I of Title 6 of Article 230, the spouses may demand the dissolution of the marriage jointly when they reach agreement on the termination of the marriage and on its consequences, by submitting a draft agreement regulating these consequences to the judge for approval [13]. Here, the court is the governing body.

Another example of mutual consent to divorce is found in the UK, which is governed by the Matrimonial Cases



Act, 1973. In the UK, divorce is possible by mutual agreement, but after two years of separation. [14] As noted by V.V. Izmailov only through an official divorce can you get complete independence from your

ex-spouse. Depending on whether both partners agree to it, divorce in the UK can be "without consent" or "with mutual consent". With mutual consent, the divorce case is decided in the family court. [15] Here, as in France, the divorce issue is decided by the court.

The out-of-court divorce procedure has found its wide application in the United States. Thus, an out-of-court procedure for dissolution of a marriage is possible if there is a marriage contract that resolves all property issues and defines the rights and obligations of the parties in relation to children [16]. And according to M.S. Ivanova, on the basis of a marriage contract, a marriage can be dissolved in any state in the absence of a dispute. In the absence of a marriage contract, an extrajudicial procedure for dissolution of a marriage is provided only by the laws of the states that allocate separate and common property of the spouses. The parties have the right not to apply to the court for a divorce, provided that the spouses have no property claims against each other and there are no common children. Divorce under these conditions is formalized by the body or official of the state that issues and registers the document of marriage. [17]

In the Republic of Korea, divorce is dealt with by a special body, the Family Court. It should be noted that marriage and family matters in the Republic of Korea are regulated by the Civil Code. Divorce is possible in two ways - by mutual agreement or at the request of one of the parties. With the mutual consent of the parties to the dissolution of the marriage, the parties by agreement determine the issues of raising their children (if they have not reached an agreement, then the Family Court determines). In this case, divorce in

the presence of minor children will be carried out after 3 months, and in the absence of such - after 1 month (Article 75 of the Law of the Republic of Korea "On Registration of Family Relations").

In the Republic of Uzbekistan, after the spouses decide to dissolve the marriage, in most cases they live separately in the same city, or in different cities or regions. And then the question arises, in the registry office of which district or city it is necessary to apply for divorce? In accordance with part 1 of paragraph 108 of the Rules for the registration of acts of civil status of 2016, the registration of the dissolution of marriage of spouses living separately is carried out on the basis of their joint application by the registry office at the place of residence of one of them. Thus, divorcing spouses have the right to apply to any registry office at the place of residence of the spouses to file an application for divorce by mutual consent.

In addition, it is provided at the legislative level that, if one spouse is unable to arrive at the registry office with a joint application, the other spouse can submit a joint application alone. In this case, the signature of the first spouse is certified by a notary or the head of the registry office at the place of his residence. The spouses in their application express their consent to the dissolution of the marriage and confirm the absence of minor children, if one spouse cannot be present at the registry office on the day of the dissolution of the marriage, then also consent to the dissolution of the marriage without him. The registry offices have the right to apply to the relevant authorities to confirm the absence or presence of common minor children (clause 108 of the Rules for the Registration of Civil Status Acts No. 387).

After passing through the conciliation procedure and upon receiving



a protocol on the impossibility of further preserving the family, the registry offices dissolve the marriage 3 months after the application is submitted if both or one of the spouses are present and each of them is given a certificate of divorce.

When entering into a marriage, on the basis of Article 20 of the Family Code of the Republic of Uzbekistan, spouses can choose a common surname (the surname of one of the spouses) or keep the premarital one. If the spouses chose a common surname upon dissolution of marriage on the basis of article 46 of the Family Code, then the spouse who changed his surname has the right to continue to use this surname or return to his premarital surname. If the spouse decides to return his premarital surname, he must indicate his desire when writing an application for divorce in the registry office.

The registry office during the registration of the dissolution of marriage in case of reciprocity to dissolve the marriage on the basis of paragraph 112 of

the Rules for the registration of acts of civil status collects a state fee from one or both spouses. If one of the spouses is not present, the registry office collects the state fee in full. Based on the first paragraph, subparagraph “b” of paragraph 5 of the Size of the State Duty Rates (Appendix to the Law of the Republic of Uzbekistan “On state duty” of 01/06/2020) for registering a divorce in the registry office with the mutual consent of the spouses, the amount of the state duty is 1.5 - a multiple of the base calculated value.

We have studied cases of divorce by mutual consent of the spouses in the Nukus city registry office and have provided the following table.

Table 1.

Comparative table on the dissolution of marriages in the registry office by mutual consent of the spouses with the total number of divorces in the city of Nukus (This table has been prepared based on the annual reports of the Nukus city registry office for 2015-2019 and January-October 2020)

Year	Total divorces in Nukus	By mutual consent of the spouses in the registry office	%
2015	272	25	9,1
2016	240	29	12
2017	293	31	10,6
2018	336	32	9,5
2019	310	30	9,6
2020 (January-October)	180	18	10

On average, once every 12-13 days, the Nukus city registry office receives applications for divorce by mutual consent. From the above table, it appears that out of 100% of divorced couples, 10% of married couples dissolve their marriage by mutual agreement in the

registry office. It should also be noted that those who divorced in the registry office, after receiving a three-month period for reconciliation, did not appear for registration of divorce. In this case, the legislator determines that if the spouses have expressed a desire





to dissolve the marriage, but 6 months have passed from the date of filing the application, then the spouses must again apply for divorce by mutual consent on a common basis.

As W.Sh. Sharakhmetov, all three methods are a simplified form of divorce, since mutual consent of the parties is not required for divorce, and the presence of minor children is not an obstacle to applying to the registry office [10].

The Civil Code of the Republic of Uzbekistan regulates the procedure for recognizing a citizen as missing. According to Article 33 of this code, in the absence of any information about the place of stay of a citizen for one year at the place of his residence, he may be recognized as missing on the basis of an application submitted by interested persons.

Chapter 30 of the Civil Procedure Code of the Republic of Uzbekistan regulates the process of recognizing a citizen as missing. So, the application is submitted by the interested person to the court. The interested person in his application indicates the purpose for which it is necessary to recognize the citizen as such and the circumstances that confirm the unknown absence. Based on Article 307 of the Civil Procedure Code of the Republic of Uzbekistan, this case is considered by the court, where the participation of the prosecutor is mandatory. With the adoption of a decision by the court, the guardianship and guardianship body appoints a trustee of the property of a citizen recognized as missing (Article 308 of the Code of Civil Procedure of the Republic of Uzbekistan, Article 34 of the Civil Code of the Republic of Uzbekistan). As noted by B.R. Topildiev, one of the grounds for the emergence of trust management of property is a court decision on recognizing

a citizen as missing, which, according to the purpose of designation and the implementation procedure, is mixed with civil law and administrative law elements [18].

After a court recognizes a citizen as missing, the second spouse can apply to the registry office to dissolve the marriage with him. At the same time, the spouse wishing to dissolve the marriage must write an application indicating the address of the property manager of the missing spouse, the surname that he chooses when dissolving the marriage, and attach to it a court decision by which the court recognized the second spouse as missing. Having accepted the application, the registry office on that day sends a notice to the trustee, and if he has not been appointed, to the guardianship and guardianship authority. The notice must indicate the time for submitting information about the existence of a dispute about children, property, payment of maintenance. 1 month after the submission of the application, the registry office registers the dissolution of the marriage in the presence of the applicant.

However, there are also cases when, after declaring a citizen missing, the citizen appeared. Then the court must cancel the decision on recognizing the citizen as missing and the management of his property is terminated. At the same time, the registry office cancels the act record if the marriage was dissolved, and the certificate of divorce, and the divorced marriage is restored if the spouses submit a joint application. But, as in the case of the appearance of a spouse declared dead, a spouse who has previously been recognized by the court as missing cannot restore the marriage if the spouse who dissolved the marriage is in another registered marriage. In this case, upon application of a person recognized as missing, a certificate of divorce is issued.



As N.Kh. Rakhmonkulov [19], this option of dissolution of marriage leads to some difficulties in the dissolution of marriage between a citizen of the Republic of Uzbekistan and a foreign citizen. For example, under French law, the recognition of a citizen as missing is carried out in two stages, with 10 years between the two stages, and in the countries of the Anglo-Saxon legal family such an institution is completely absent.

Now consider the second case - the recognition of a citizen by a court as incompetent. A citizen with a mental disorder (mental illness, dementia) on the basis of Article 30 of the Civil Code of the Republic of Uzbekistan may be recognized as incapacitated, to whom a guardian is appointed.

Also, the judge, having accepted the case for consideration, appoints a forensic psychiatric examination in order to clarify the mental state of the citizen. If a citizen refuses to undergo the appointed examination, then the court is competent to send him for an examination forcibly (Article 312 of the Code of Civil Procedure of the Republic of Uzbekistan). The court considers a case in which the prosecutor and a representative of the guardianship and guardianship agency must necessarily participate, and the participation of a citizen is made dependent on the state of his health.

The procedure for filing an application and the subsequent actions of the registry offices are identical, as in the case of dissolution of a marriage with a citizen recognized by the court as missing. Thus, an application is submitted to the registry office indicating the address of the guardian of the incapacitated spouse, the surname that he chooses upon dissolution of the marriage, and a court decision on the incapacity of the second spouse is also attached. The guardian of the incapacitated spouse (if he is absent, the guardianship and guardianship authority) is notified on

the same day by the registry office. The term for dissolution of marriage and the requirements for notification are also identical, as in the previous case (Rules for the registration of acts of civil status).

But in practice, there are cases when a citizen suffering from a mental disorder recovers. In this case, the guardian, members of his family, guardianship and guardianship authorities, the prosecutor, medical institutions, self-government bodies of citizens can apply to the court, which appoints a forensic psychiatric examination and subsequently makes a decision by which the citizen is recognized as capable (part two of Art. 315 Code of Civil Procedure of the Republic of Uzbekistan), and the guardianship established over him is cancelled. In this case, as, for example, in cases of declaring a citizen dead, or recognizing a citizen as missing, the restoration of marriage after recovery is not provided for by family law. Persons who decide to continue marriage and family relations must undergo re-registration of marriage in the registry office.

And the last, third way of dissolution of marriage at the request of one of the spouses in the registry office when the other spouse is sentenced to imprisonment for a term of at least three years for committing a crime.

After the commission of acts provided for by the Criminal Code of the Republic of Uzbekistan, by one of the spouses, and for which a sentence of imprisonment for more than three years is imposed, the second spouse, on the basis of Article 43 of the Family Code of the Republic of Uzbekistan, in the absence of a desire to continue marriage and family relations with the convict, has the right to dissolve a marriage in the registry office, regardless of the presence of common minor children.



When submitting an application to the registry office, the applicant indicates the place of serving the sentence of the convicted spouse, chooses a surname for himself and attaches an extract of the court verdict to the application. Having accepted the application, the registry office on the same day notifies the institution for the execution of punishment of the time for submitting information about the existence of a dispute about children, property, maintenance of the spouse. At the same time, it is noted that if a response is not received in the notification within the specified time, then this circumstance is not an obstacle to registering a divorce. After one, but not more than three months from the date of filing the application, the registration of the dissolution of marriage is carried out by the registry office with the applicant.

Some family law theorists point to circumstances not covered by family law. So, in the case of a convicted spouse applying for divorce, the case is considered in the judiciary, as in the case if both spouses are convicted [20].

According to M.S. Kamenetskaya, all of these methods of dissolution of marriage in the registry office are confirmed by court decisions that have entered into legal force on recognizing the spouse as missing or incapacitated, as well as by a court sentence on imprisonment for more than 3 years. It is worth considering two points:

1. The presence of common minor children does not serve as an obstacle to divorce;
2. There is no need to obtain the consent of the second spouse.

The indicated circumstances are justified in relation to the first and second cases, since without finding a

person one cannot find out his will, as in case of his mental illness. And when a person is convicted, the application of this provision is unfair. [21]

Indeed, a marriage created by mutual consent, in which both spouses are equal, and terminating it without the consent of the second party is at least an infringement of the family rights of the second party. In this regard, the Civil Registry Rules require the applicant to attach to his application the consent of the second spouse to the dissolution of the marriage. The will of the spouses to dissolve the marriage under this paragraph is one of the distinguishing features of the family legislation of the Republic of Uzbekistan from the legislation of the Russian Federation.

The will and consent of both parties to divorce in this case can be considered as an agreement, which in turn is identical to the provisions of Article 42 of the Family Code of the Republic of Uzbekistan - divorce by mutual consent of the spouses.

Table 2.

Comparative table on dissolution of marriages by mutual agreement in the registry office and conviction of the spouse to imprisonment with the total number of dissolutions of marriages in the city of Nukus (This table has been prepared based on the annual reports of the Nukus registry office for 2015-2019 and January-October 2020)

Year	Total divorces in Nukus	By mutual consent of the spouses in the registry office	%	Dissolution of marriage in the registry office when the spouse is sentenced to imprisonment for more than three years for committing a crime	%
2015	272	25	9,1	1	0,3
2016	240	29	12	3	1,25
2017	293	31	10,6	0	0
2018	336	32	9,5	1	0,3
2019	310	30	9,6	2	0,6
2020 (January–October)	180	18	10	0	0

This category of cases is also rare (see Table 2). As can be seen from the table, only 7 cases of divorce with a convicted spouse were registered during the study period. At the same time, there was not a single case of dissolution of marriage with the missing and incapacitated.

When conducting a sociological study to study the attitude of civil judges to divorce proceedings, together with the Oila Scientific and Practical Research Center under the Cabinet of Ministers of the Republic of Uzbekistan in 2019-2020, we came to the conclusion that it is necessary to reform the system of bodies involved in divorce. When studying the issue of transferring the authority to consider divorce cases from the registry offices to the courts, 60.8% of respondents did not support this proposal, since judges are already loaded with so many cases, and consideration of such applications by the registry offices somehow reduces the burden. 32.7% of respondents, on the contrary, support the idea of

considering divorce cases only by the courts. In addition, the issue of introducing specialization of judges in family cases was studied. 53.3% of respondents supported this proposal, pointing to a large number of divorce cases that require a special approach and training from judges.

In our country, the judicial system is being fully reformed, in connection with which some courts are being abolished or merged. By the Decree of the President of the Republic of Uzbekistan “On additional measures to further improve the activities of courts and increase the efficiency of justice” (dated July 24, 2020 No. UP - 6034), a standard structure of interdistrict, district (city) courts for civil cases was approved (Appendix No. 7 to No. UP - 6034), according to which in each court, depending on the number of applications, from 1 to 11 judges operate. When studying the activities of the Nukus Interdistrict Court for Civil Cases, it was found that for the period from 2015 to 2020, the court annually considers more than



4,000 cases, of which more than 1,000 cases are related to the dissolution and recognition of marriage as invalid, establishing paternity, alimony, adoption. That is, more than 25% of the total number of applications relate to family matters. If, on average, there are 7-8 judges in civil courts, then for a start it would be possible to specialize 1-2 judges only in family cases.

**Taking into account the experience of developed countries** (Germany, Great Britain, France, the Republic of Korea, the USA), it is proposed to create a specialization of judges based on the staffing of each court.

Based on the analysis of this and the previous paragraphs, as well as the study, it is proposed to transfer the powers to dissolve a marriage from the registry office to the judiciary, with subsequent specialization of judges in family cases. At the same time, it is proposed to amend Article 38 of the Family Code of the Republic of Uzbekistan, and state it in the following way:

#### **“Article 38. Procedure for dissolution of marriage**

Dissolution of marriage is carried out only in court.”

In addition, it is proposed to amend and supplement Article 42 of the Family Code of the Republic of Uzbekistan and state it in the following way:

#### **“Article 42. Dissolution of marriage in court with the mutual consent of the spouses**

With the mutual consent of the spouses to dissolve the marriage, who do not have common minor children, the dissolution of the marriage is carried out in

a judicial proceeding.

The court has the right, postponing the trial of the case, to appoint the spouses a period of up to three months for reconciliation.

If the court assigns a period for reconciliation to the spouses and postpones the proceedings no later than three days, it must notify in writing the commission of the gathering of citizens to strengthen family values at the place of joint residence of the spouses in order to take appropriate measures to reconcile them, if they do not live together - the commission of the gathering of citizens to strengthen family values at the place of residence of each of them.”

It is also necessary to exclude articles 43, 218 and 219 of the Family Code of the Republic of Uzbekistan, which regulate the procedure for dissolution of marriage in the registry offices at the request of one of the spouses.

The introduction of the above changes and additions will allow the registry offices to perform only their inherent functions of registering acts of civil status and free from unnecessary red tape in resolving divorce cases, since in practice there may be cases when the parties (do not have children and property disputes) agree to divorce and submit an application, but during the period for reconciliation

(3 months), the parties either have property disputes, or it turns out that the spouse is pregnant. In addition, if one body deals with the dissolution of marriages, it will be easier for citizens to navigate when submitting an application, and judges will

no longer have one duty to determine the jurisdiction of the case. Of course, the transfer of powers to dissolve a marriage to the courts will not reduce the number of divorces, and the burden on judges will increase accordingly.



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