

2013-01-07

## Fråga-svar

### Kazakstan. Kvinnors rättigheter, skilsmässa

#### Fråga

1. Vad säger lagstiftningen i Kazakstan om skilsmässa?
2. Vad ska man göra för att kunna begära om skilsmässa?
3. Finns möjlighet för en av makarna att begära skilsmässa eller ska både makarna ansöka om skilsmässa tillsammans? Kan en av makarna begära skilsmässa på grund av våld i hemmet?
4. Kan man få underhållsbidrag av ex-maken?
5. Vem får i regel vårdnaden av ett gemensamt barn efter skilsmässa?

#### Svar

##### 1. Kvinnans rättigheter i lagstiftningen

[The Law on Marriage and the Family of Kazakhstan adopted on 12-17-1998]

Social Institutions & Gender Index (SIGI), *Kazakhstan. Discriminatory Family Code*, 2012:

“... According to the Kazakh Family Code, property acquired during marriage is considered joint property and is distributed accordingly upon the death of a spouse or upon divorce, provided the marriage was registered. It is unclear as to whether this is the case in practice.”

International Women's Rights Action Watch Asia Pacific, *Monitoring of Implementation of the Recommendations of the Committee on Elimination of Discrimination against Women to the Primary National Report of the Republic of Kazakhstan. Alternative Report. Originally written in 2004*

Additional materials added in November 2006:

sid. 32

"The Law of RK does not stipulate right of a not working spouse for the pension of a working spouse. It often happens that at divorce a spouse who was involved in taking care of the children and housekeeping (practically always women) are left without right for pension."

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sid. 30

"The Law "On Marriage and Family" of December 17, 1998 states:

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h) division of common property can be executed both during marriage and after divorce on request of either of spouses (Article 36)."

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sid. 31

Incomplete families, i.e. with one of the parents, constitute a separate category. As a rule this category is mainly represented by single mothers.

On the whole Kazakhstani society has normal attitude towards single mothers, and their number is constantly increasing."

UN Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; Second periodic report of States parties; Kazakhstan [CEDAW/C/KAZ/2] , 2005-03-17:*

sid. 23

"...women in the family is based on the principle of their having equal rights in family relations and on the mutual love and respect and mutual help and responsibility to the family of all its members. Marriage and the family, in keeping with article 1 of the law on marriage and the family presumes an equitable union between a man and a woman. The law does not give either of the spouses priority."

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sid. 59

"A spouse who, during the marriage, because he or she did the housekeeping, cared for the children, or for other legitimate reasons, had no income of his or her own, has an equal right to the common property in a divorce."

On line women in politics, *Women in Kazakhstan*, [2001]:

sid.223

"The Law on Marriage and the Family (17 December 1998) establishes the following principles as the foundations for marriage: voluntary agreement of the man and the woman on marriage; equality of spouses' rights within the family; inadmissibility of outside interference into family affairs; settlement of domestic disputes by mutual agreement; families as the preferred setting for raising children, taking care of their development and welfare; defence of the rights and interests of underage and disabled family members as a priority; guarantees of the rights of family member and possibilities of judicial defence of these rights."

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sid. 224

"Once a divorce action is started, the Court must decide the distribution of common property and the determination of the spouses' shares. Property relating solely to the needs of underage children is not subject to distribution and is given to the custodial parent. Unless the parties agree upon their respective shares, the shares shall be considered equal. However, spouses are entitled to change the established legal approach to common property through a marriage contract."

## **2. Begäran om skilsmässa**

UN Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; Second periodic report of States parties; Kazakhstan [CEDAW/C/KAZ/2]* , 2005-03-17:

sid. 60

"Marriage registration and divorce are performed in a State civil registry office.  
Article 182 of the law on marriage and the family establishes the procedures for registering a marriage with a civil registry office."

## **3. Möjlighet för en av makarna att begära skilsmässa, våld i hemmet**

UN Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; Second periodic report of States parties; Kazakhstan [CEDAW/C/KAZ/2]* , 2005-03-17:

sid. 57

"The grounds for dissolution of a marriage are identical for women and men.

Divorces are registered in civil registry offices solely with the mutual consent of the spouses or on the basis of a court decision."

On line women in politics, *Women in Kazakhstan*, [2001]:

sid. 228

"Domestic violence as a daily practice

According to the Ministry of Interior, domestic legislation only provides for criminal responsibility for physical abuse, torture, damaging the health or causing the suicide of a woman. The laws make no mention of other cases of abuse, for example emotional violence, economic violence, or intimidation and threats in the sphere of domestic or family relations."

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sid. 229

"Staying in an abusive relationship

Economic dependence on a husband, compounded by the low level of income in general and the impossibility for a woman of renting or buying another home, plays an important role in preventing women from leaving an abusive marriage."

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sid. 230

"Marital rape

According to Kazakh lawyers, marital rape does fall under the provisions of Article 120 of the Criminal Code, and is thus not determined as a separate category or registered separately. In an informal survey by the Feminist League of judges, it was discovered that in Almaty there was only one case that was considered marital rape, a number of years ago. The case reached the court, but proceedings then stopped because of a compromise between the two parties."

#### **4. Underhållsbidrag av ex-maken**

Social Institutions & Gender Index (SIGI), *Kazakhstan. Discriminatory Family Code*, 2012:

"...The absent parent is only expected to provide financial support if the couple have a child who is under the age of three, or disabled..."

#### **5. Vårdsnaden av ett gemensamt barn efter skilsmässa**

Social Institutions & Gender Index (SIGI), *Kazakhstan. Discriminatory Family Code*, 2012:

"Article 60 of the same law also stipulates that men and women have equal roles within the family, and that mothers and fathers should share parental authority and make joint decisions regarding their children's education, taking into account the best interests of the children. . . . Women and men have the same rights to (and in) divorce. In the event of divorce, where a couple cannot reach agreement between them regarding child custody, the court will make the decision in the best interests of the child ...

UN Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; Second periodic report of States parties; Kazakhstan [CEDAW/C/KAZ/2]*, 2005-03-17:

sid. 23

"In the event of a divorce, the responsibilities in terms of raising the children are established by agreement, provided there is no dispute or differences between the parents. The capabilities of the parent with whom the child remains after the divorce - financial condition, occupation, working conditions - are taken into account. The relationship between the child and the parent, how close they are to each other, is taken into account, as are the feelings of a child who has reached the age of 10.

If the parents cannot reach agreement on raising the child after the divorce, the dispute is settled in court. A judge who determines that the parents or the person whom the child is with will not provide the proper care places the child in the custody of a guardianship agency."

On line women in politics, *Women in Kazakhstan*, [2001]:

sid. 224

"Parents have equal rights and bear equal responsibilities towards their children (Article 60 of the Law on Marriage and the Family). All decisions concerning children's education and upbringing are to be made between the parents, based on the children's interests and taking into account their opinions. If the parents cannot agree on an important matter they may apply to a custodial body or to the court."

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"In case of divorce, the child has the right to communicate with both parents even if they reside in different states. The non-custodial parent in divorce cases has a right to communicate with the child, participate in matters of upbringing and decisions about children's education. Parents must reach a mutual decision on the place of residence of a child in cases where parents live apart. Disputes on this matter are to be settled by the court. Upon persistent non-compliance with a court decision, the court may rule on handing over a child, based on the child's interests and wishes"

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sid. 225

"Within marriage, the husband is automatically registered as the father of any children borne by the wife. The father of any child born within 270 days of divorce or acknowledgement of the invalidity of marriage, or from the moment of death of the mother's husband, is deemed to be the mother's former husband. If the mother states that the child's father is not her spouse or former spouse, the court shall determine paternity. Where children are borne by unmarried mothers, paternity is based on a joint statement of registration by both parents made to civil authorities. Paternity disputes are to be resolved by the courts."

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## Källförteckning

International Women's Rights Action Watch Asia Pacific, *Monitoring of Implementation of the Recommendations of the Committee on Elimination of Discrimination against Women to the Primary National Report of the Republic of Kazakhstan. Alternative Report. Originally written in 2004*

Additional materials added in November 2006

<http://www.iwraw-ap.org/resources/pdf/Kazakhstan%20Shadow%20Report.pdf>

On line women in politics, *Women in Kazakhstan*, [2001]

<http://www.onlinewomeninpolitics.org/kz/kazakhstan.pdf>

Social Institutions & Gender Index (SIGI), *Kazakhstan. Discriminatory Family Code*, 2012

<http://genderindex.org/country/kazakhstan>

UN Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; Second periodic report of States parties; Kazakhstan [CEDAW/C/KAZ/2]*, 2005-03-17

[http://www.ecoi.net/file\\_upload/228\\_1159865299\\_kasakhstan.pdf](http://www.ecoi.net/file_upload/228_1159865299_kasakhstan.pdf)