

2013-01-08

Fråga-svar

Ukraina. Familjerätt, skilsmässa

Fråga

1. Har en ukrainsk kvinna rätt att skilja sig från sin ukrainska man utan mannens samtycke?
2. Får en kvinna resa ut ur Ukraina med barnen i familjen utan att ha den andra vårdnadshavarens skriftliga samtycke?

Svar

1. Skilsmässa

Council of Europe - European Committee of Social Rights, *Conclusions 2011 (Ukraine) Articles 7, 8, 16, 17, 19, 27 and 31 of the Revised Charter*, January 2012:

sid. 18

"Rights and obligations of spouses

Under Article 7 of the Family Code, men and women have equal rights and obligations in their relations within families, between spouses and towards their children. Under Article 141 of the Family Code, divorce does not alter parents' rights and obligations towards their children and parents who no longer live with their children must continue to have regular contact with them.

Under Article 157 of the Family Code, in the event of a dispute, the mother or father may ask the child protection services to establish the way in which the parent no longer living with his or her children will contribute to his or her upbringing. Judicial remedies are provided for if one of the parents fails to abide by the child protection services' decision. The courts' tasks also include setting up visiting and holiday arrangements."

UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant; Seventh periodic report; Ukraine [CCPR/C/UKR/7]*, 2011-09-16:

Sid. 54

"228. With regard to the dissolution of marriage, note should be made that, over and above basic provisions contained in the Family Code, the State Civil Registration Act, which entered into force on 27 July 2010, introduced a number of important new elements and amendments to the Family Code, the Civil Code and the Code of Civil Procedure; and that the Notaries Act specifically deals with the procedure for the dissolution of marriage.

Under the Family Code, dissolution of marriage by the State civil registration authority may take one of following two forms, depending on whether only one spouse or both spouses have expressed their intent:

(a) Marriage dissolution by mutual consent of the spouses;

(b) Marriage dissolution based on a petition by only one spouse.

In the first case, the marriage is terminated on the basis of a joint petition by the spouses, if they have no children (article 106 of the Family Code). Where the spouses have children, the petition for dissolution of the marriage must be accompanied by a written agreement specifying the spouse with whom the children will live, the participation of the other parent in ensuring appropriate living conditions for the children, and the conditions for the realization of that parent's personal rights in relation to the children's upbringing. For the marriage to be dissolved on the basis of a petition by only one spouse, the other spouse must have been declared missing or as having no legal capacity (article 107 of the Family Code). The State Civil Registration Act has invalidated a provision whereby the sentencing of a spouse to deprivation of liberty for a period of at least three years constituted grounds for dissolving the marriage on the basis of a petition by the other spouse. Under that Act, a spouse sentenced to deprivation of freedom may, regardless of the length of the sentence, propose the dissolution of the marriage by judicial procedure or through the State civil registration authority by mutual agreement with the other spouse, provided they have no children. A court may hear a case for marriage dissolution based on a petition by a spouse sentenced to deprivation of liberty, whereby a representative of that spouse participates in the proceedings, and at the same time examine any claims put forward by that spouse in relation to his or

her property rights or his or her share in the upbringing of the children. Since these provisions took effect, namely in the period July 2010-March 2011, the State civil registration authority has recorded 35 dissolutions of marriage by persons sentenced to deprivation of liberty, while official marriage records for such persons show 153 annotations of marriage dissolution based on court decisions.

230. The adoption of the above Act constitutes a decisive step towards improving current legislation on family relations and ensuring its convergence with European standards. The amendments made to procedural regulations for marriage dissolution are clearly helpful insofar as they significantly streamline the procedures in question and are conducive to the realization of the marriage- and family-related personal non-property and property rights of all citizens without exception.”

Family Law of Ukraine, 2003-01-01:

Sid. 28

“Clause 92. The right to close a marriage contract.

1. The marriage contract can be closed by a woman and a man, who applied for registration of their marriage as well as by spouses.
2. Non-adult person, who wants to close a marriage contract before marriage registration, needs signed consent of his/her parent or custodian. The signed consent must be notarized”

sid. 31

"Clause 105. Termination of marriage through divorce.

1. Spouses is divorced through the application of both spouses or the application of one of spouses on grounds of an act of a civil registrar's office in accordance with Clauses 106 and 107 of this Law.
2. Marriage is dissolved as a result of divorce through the application of both spouses on grounds of court decree in accordance with Clause 109 of this Law.
3. Marriage is dissolved as a result of divorce through the application of one of spouses on grounds of court decree in accordance with Clause 110 of this Law."

sid.32

"Clause 107. Termination of marriage through the application of one of spouses on grounds of act of a civil registrar's office.

1. Marriage is dissolved on grounds of an act of the civil registrar's office through the application one spouse if another spouse is:
 - 1) declared missing;
 - 2) legally incapable;
 - 3) convicted for crime and sentenced to deprivation of freedom for not less 3 years."

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"Clause 109. Termination of marriage on grounds of court decree through the application of both spouses.

1. Spouses, who have children, have right to lodge their application for divorce in the court with an agreement in written form about with whom of spouses their children will live after divorce and which part of support to satisfy children's needs will belong to that spouse, who will live separately, as well as conditions of exercising the parent's right for personal participation in upbringing of his/her child (children) ...

Clause 110. Right to apply for action for divorce.

1. Action for divorce can be made by one of spouses.

2. Action for divorce cannot be made while the wife is pregnant or within one year after a child was born, except cases when one of spouses conducted illegally with signs of crime as to the other spouse or a child.

3. The husband (the wife) has right to make the action for divorce during the pregnancy of the wife if the father of the future child is another man.

4. The husband (the wife) has right to make the action for divorce before the child is one year old, if the father is another man or if the court decree cancels the item of the birth record, saying that the man is the father of the child

5. A custodian has right to make the action for divorce, if this is in the interest of that spouse, who is acknowledged legally incapable."

2. Skriftligt samtycke för förälder som reser utomlands med ett barn

Immigration and Refugee Board of Canada, *Ukraine: Documentation required and procedures to be followed by a parent wishing to travel abroad with a minor child in the absence, or without the consent, of the second parent*, 2007-02-16

"...Ukrainian law stipulates that a parent travelling abroad with a child who is a minor requires the written notarized consent of the other parent. Otherwise, authorities will not permit the child to travel. The Consular Official noted that this rule is applied on a consistent basis."

"The Consular Official stated that if the parents are divorced, the parent travelling with the minor child is still required to obtain notarized consent before leaving the country."

Family Law of Ukraine, 2003-01-01:

Sid. 46

"Clause 160. Parental right to determine the child's place of residence.

1. The place of residence of the child under the age of 10 is determined upon parents' consent.
2. The place of residence of the child that has attained the age of 10 is determined upon parents' consent and consent of the child himself/herself.
3. Whenever the parents live separately, the place of residence of the child that has attained the age of 14 is determined by himself/herself.”

Sid. 47

“Clause 162. Legal consequences of the unlawful conduct of one of parents or any other person during determining the child's place of residence.

1. If one of parents or any other person, at his/her own discretion and without consent of the other parent or other persons with whom the minor child has lived in accordance with law or judicial decision, changes the child's place of residence, including by kidnapping, the court, upon legal action of the person concerned, has the right without any delay to render the decision on taking the child back and giving him/her to person with whom the child lived before. The child may not be taken back only if his/her staying in the previous place of residence creates a real threat to the child's life and health.

2. The person that, on his/her own discretion, has changed the place of residence of the minor child shall have the duty to repair material and moral damage inflicted on the person with whom the child lived together.”

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

Källförteckning

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