



Alimony After Divorce According To Kosovo's Legislation

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Abstract: There is a large number of scientific works that have dealt with alimony as a right or obligation in family law relations. But regarding the treatment of alimony based on Kosovo's legislation, there aren't many written articles dedicated to this issue. This paper analyzes alimony as an important element on the survival of many families after divorce. Through this paper conducted after the research made in the legislation of Kosovo and some other European countries, I will elaborate how alimony in Kosovo legislation is defined? Why it is vital for people to enjoy custody after divorce? Then I will discuss about the custody methods, child care, as well as the court proceedings in providing alimony. This paper aims to address the positive and negative aspects of alimony in Kosovo. The academic interest of this paper is on defining alimony according to Kosovo legislation by elaborating in details the way this legislation regulates the provision of alimony. Several methods, national and foreign legal analysis, research into various scientific articles have been used, and a scientific interpretation of the legal provisions regulating the issue of alimony has been made.

Keywords: Family relations; divorce; rights; obligations

Introduction

Family relationships are very important in terms of rights and obligations between family members. Living in a family means living within certain rights and obligations. A characteristic of family relationships is that these relationships are created between people who are in the bloodstream but also those who are in the degree of affinity or adoption. Another characteristic of family relationships is that some relationships last even after the factual separation of spouses. The factual separation of spouses involves the creation of some other rights and obligations after

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the divorce. Kosovo as well as many of the undeveloped states during the ancient times didn't have concrete laws that have regulated in a proper way their family relationships, but only a few laws have existed, that are more relevant to the laws that patronize the patriarchal societies through which the rights and obligations inherent in family relations are regulated. Most of the laws that belong to the family relations in Kosovo have been wild and discriminatory, especially laws for women, what is quite different nowadays. Today Kosovo legislation regarding the scope of family relations has a modern law and is similar with other laws of the developed countries. It is often said that there are no individuals in this world, only fragments of families (Segrin, 2011, p. 3). It is obvious that people are born in families and they live and die in the family. Therefore, the family has such a great importance and it is the main pillar of the society. Family relationships are based on several principles such as the principle of equality in family relations, the principle of regulating family relationships through legal provisions, and the principle of child protection (Aliu & Gashi, 2007, pp. 26-27). The legal system of a country includes the legal provisions which regulate social relations. A very important part of social relations constitute family relationships that are regulated by the norms of family law. During the earliest days of the Republic, images of the family were central, organizational features of political, religious and economic understandings throughout the nation (Chused, 1994, p. 4). Modification of the marital property rules throughout the nation, during the first decades of the nineteenth century, like changes in political and religious structures, left the essential features of the patriarchal family in tact. Family formation rituals changed after the Revolutionary War. Arranged marriages virtually disappeared (Chused, 1994, p. 5). During the 20 century alimony and other family disputes began to develop more than in ancient. The end of the 20th century was the century of financial support for the spouse without income. Although Kosovo in that period was in a regime and was not Republic, it had several laws regulating family and marital affairs. In the Albanian tradition, marriage was meant as something sacred and very important. As part of the central traditional structure of Albanian customs, the wedding represents a moment of particular importance in the life of an Albanian, whether it is in the sense of organizing the composition and structure of family life, or in the sense of historical values of the family and society, as part of human civilization (Kosovar Wedding, European Heritage days 2005, CHWB). Based on this in the ancient times of Kosovo history of family matters divorce was meant as something unlawful and shy. A woman cannot be divorced If her father doesn't give her permission to do it. Nowadays, this is totally different because Kosovo has a lot of democratic laws that regulate the position of a spouse without

incomes, such as women and children's position, as a very important and sensitive issue after the end of marriage, as well as other aspects of what it will be elaborated during this paper.

Alimony during the Ancient Time

The initial rationale of alimony or support had its origins in the English Common Law system (Kisthard, Vol. 21, 2008, p. 65). According to Kosovo's legislation, regarding alimony it is important to take a look at the ancient times, when there are no concrete modern laws in the territory of Kosovo that have regulated the issue of giving alimony. In Kosovo's territory, before the establishment of legislative institutions that have taken democratic decisions there have been various councils in different parts of Kosovo that have created concrete acts or rules applicable within a tribe or territorial space, and through which concrete relations and mainly family relations were arranged, because to Albanians family was considered as sacred and untouchable thing. Concrete example is the Canon of Lekë Dukagjini, which has been a form of code consisting of many provisions that regulate different areas or social aspects. In Lekë Dukagjini's canon, specifically in the part where the marriage and family are included the divorced woman did not receive any financial means but only the gifts she had brought home at the time she was married. Because according to this canon, family was patriarchal and the house owner was always the man who was obliged to manage the house and members of the family. Woman's importance was small. The woman was obliged to do house work and care for the children and she didn't receive any reward if the marriage was broken because the breakup blame was always kept by the wife and not by the husband. Divorce between spouses did not occur through legal but through family and tribal ways, where daughter's father responded to her requests. It is also important to look at other acts which during the ancient times have regulated the alimony issues. For instance, Hammurabi's Law on Family Relationships was developed in order to protect every member in the family, including the husbands, wives, and the entire family system. Husbands and the wives were given these laws to protect them in every aspect of the marriage from adultery to having a love less marriage. The Hammurabi Law gave husband marital rights to his wife and also protected him when she was at fault in the marriage. On the other hand The Hammurabi Law gave women less rights in the marriage but it also tried to protect them for extreme harsh punishments in the marriage. The family unit was also protected in the Hammurabi's Law (Freiburger, 2006, p. 1). Alimony has also been discussed in the Code of Justinian and other acts that during the ancient times have regulated the alimony and other family matters. The period of major changes in

family law began in the late 1950s and early 1960s. The latter decade and the one of the following might be considered the most important era in the last half of the twentieth century for family practice and scholarship (Katz, 2014, p. 2). So at the earliest times, the family and other family related aspects didn't have the importance that have nowadays. As the availability of divorce increased, marriage could no longer be seen as a life time union, many people choose not to marry at all, and many others cohabit for some considerable time before deciding to marry (Herring, 2001, p. 8). The legislative movement to recodify state family law, particularly divorce law began in mid-century (Katz, 2014, p. 2). Nowadays all developed countries have a large number of laws that regulate family law issues. Kosovo as a new state with a new history of state-building after a transitory period has managed to build democratic institutions that have a big impact on making modern laws and adapting them with the laws of other democratic countries. This also applies to the family law that regulates alimony issues.

Regulating of Divorce and Alimony According to Kosovo Family Law

The Kosovo Family Law is a very important law that regulates family and marital relationships. Family relations according to Kosovo legislation are regulated by domestic acts because Kosovo is part of the Eurocontinental Right System. The main sources of family relationships regulation are the written acts such as the Constitution, Kosovo Family Law, Law on Protection Against Domestic Violence, Law on Gender Equality, and the Law on Social and Family Services, as well as other international acts and conventions. "Family Law", of Kosovo number 2004/32, is an act that controls family relations in general. It includes all the rights and obligations according to Kosovo legislation. This Law regulates engagement, marriage, relations between parents and children, adoption, custody, protection of children without parental care, family property relations and special court procedures for disputes of family relations. Family relationships arise as a result of blood relation, adoption and the affinity relationships between family members during the family reunion and after its ending. According to the article 15, paragraph 1,2,3 of the Family Law of Kosovo, a marriage is lawful when persons reach the age of 18, or with emancipation over the age of 16. If the marriage takes place before the age of 16 it should be announced as absolutely invalid. The marriage before the age of 18 is allowed in all cases when the court gives a decision that the marriage is permissible, but only if the persons who want to marry have reached the age of 16. Based on this, marriage appears as a very important connection in regulating family relationships because through it concrete rights and obligations are created, so the maturity of

people who want to marry is an element that must be met in order to consider the marriage legally valid. Marriage, except it is a relationship that creates rights and obligations between persons who are crowned and live together, it also presents rights and obligations even after divorce or marriage disengagement. One of the rights and obligations that arise after marriage, is the provision of alimony for the other spouse without incomes and the children as well. The obligation to give alimony after the marriage is intended to protect the position of the other spouse without incomes in order to offer him the minimum living conditions. The obligation to ensure good living conditions is compulsory throughout the entire married life. Under Kosovo legislation, alimony is presented as a legal and personal obligation, given for the future, and the alimony that is given can not be returned (Gashi & Aliu, 2013, p. 303). When talking about alimony as a legal obligation under Kosovo legislation it is important to underline that the obligation to provide alimony is not an obligation arising from the contract or from causing harm (Gashi & Aliu, 2013, p. 302). Thus, it is understood that the alimony doesn't arise as a result of any violation that may be caused by another person and is also not considered as a contracted obligation. Alimony is presented as a separate legal obligation which flows and is defined by legal provisions. Alimony can be granted only when the conditions provided by law are fulfilled (Zaqe, 1999, p. 106). It is important to mention that it can not be waived from the alimony, if a person has the right to receive alimony under Kosovo legislation he can not give up because resignation does not produce legal effect. According to Kosovo's legislation, alimony is also presented as a personal obligation that is directly related to the personality of the person who according to the law has the right to require financial holding. So, the alimentation is directly related to the personal nature of the individual who has the right to receive the alimony and as such can not be transferred or inherited to other persons (Gashi & Aliu, 2013, p. 302). The alimony can not be compensated by the other requirements. According to law, the alimentation can only be transferred if the person obliged to give the alimony, has no financial means of providing the alimentation. It is important to note that alimony is given for the future since the moment when the alimony request has been made (Gashi & Aliu, 2013, p. 303). In all cases where the court finds that the conditions for granting the alimony are met, then the legal rights and obligations between parties for giving and receiving the alimony begin. Another characteristic of the alimony is that it is not prescribed but exists in the legal conditions under which the alimony is established. Kosovo legislation foresees that the alimony cannot be returned because it is not provided in the form of any loan or obligation to return, also the judicial decision on granting the

alimony can not be changed. When the court decides on the alimony, that decision is pending until parties by agreement seek a new decision to change the alimony conditions.

Court Procedure for Seeking Alimony

The court procedure for seeking financial custody in cases of granting the alimony after divorce is usually initiated by a trial. When the spouses decide to end their marriage, the plaintiff spouse with his or her claim, after divorce, may address the request to take alimony. If the plaintiff spouse didn't demand law-suit for giving alimony, he or she can do this in another procedure. According to the Law on Contested Procedure, in the settlement of disputes related to alimentation, if the claimant is the person demanding alimentation, the competency is with the court of general territorial jurisdiction, and the court in whose territory the claimant has a permanent or temporary residence.¹ The court after receiving the divorce law-suit with the demand of giving alimony, analysis if the terms to give alimony are fulfilled. The court also takes care to confirm whether it is competent the reviewing of the law-suit. Immediately after receiving the law-suit, the court by its official duty shall determine whether it has the jurisdiction to proceed with the suit.² If the court verifies that is not competent to review the law-suit, cancels the taken procedural actions and forwards the indcment to the other competent court. For the court it is very important that immediately after receiving the law-suit to verify whether the procedural conditions that are very important for the subsequent review of the law-suit are met. Based on the article 262, paragraph 262.3 of the Law on Contested Procedure of Kosovo it is shown that for the court is very important to know the existence of **Litispence** which is created at the moment when the opposing party is informed about the claim of lawsuit and should send an answer on it. During the existence of litispence for the same claim a new trial between the same parties can not be initiated. And in case it happens than the court will reject the lawsuit. The court also takes care to see that the matter which is the subject of the law-suit is a matter which is raised for the first time or is a matter previously judged. It is considered that a matter raised by an law-suit is a judged matter if there is a final court decision and in latin is recognized as **res judicata**. But If the parties had similar claim for alimony while now with the new law-suit want to change the conditions to reduce or increase their claims, this is not considered a judged issue but new requests are submitted and they may be the same or different from the first one. Therefore the

¹ (See Law on Contested Procedure of Kosovo, nr. 03/L-006, article 46).

²(See Law on Contested Procedure of Kosovo, nr. 03/L-006 article 17).

procedure starts in some cases with law-suit, but the parties can also do an agreement which contains some rights and obligations between parties.

First instance Court Procedure

The procedure to decide on alimon near the relevant court is conducted by three judges, where one person is the professional judge and two other make the jury. The first procedure is led by the individual professional judge, while the verdict should be taken by the trial. After both sides have presented their arguments and their financial issues, the trial may ask both sides regarding the arguments of opposing side. During the judicial procedure, the court's obligation is to seek from both sides to present their incomes and their financial expenditures. All the decisions taken by the first court are decisions taken ex-officio.

Legal Custody and Guardianship Body

When we speak about child custody, we always speak for a support or safety that means legal custody and control over a child without parents custody. In all cases in which the child is not represented by the parents he/she has the right to be presented or to have his or her guardian. The guardian has the right to protect and control the child that is not adult yet. In all cases when parents have decided to be divorced, the court should take care to secure custody for the child or children if there is more than one. Also the court always decides according to the official duty or as known in latin "ex officio" on child's financial support. Guardianship is a special form of social protection of young persons whose parents do not take care of them, or legally mature persons who are not capable of looking after their rights and benefits themselves.¹

Trial Verdict

As mentioned above in the civil procedure of family issues, the court decides at the panel or the trial. The trial will declare the decision which is known as a court verdict and that is a formal decision taken by the jury during the procedure based on lawsuit presented by the plaintiff when all legal conditions are met. Initially, the court examines the demand of the lawsuit, then sends it to the opposite party for response, after responding, the court sets up the preparatory hearing session and then the main hearing session (Brestovci & Qehaja, 2006, p. 197).

¹(Law on Marriage and Family Relations of Slovenia, Official Gazette SRS, no. 15/76, article 9).

Spousal Support

When people decide to get married, they will always have some rights and obligations to each other during the marriage. Marriage seems such a central part of modern society that it is almost impossible to imagine what life would be like without it. It is a social institution as well as a legal concept (Herring, 2001, p. 13). Married couples harmonize their family relations in order to realize daily obligations, for instance, taking care of kids and other things that are important for the family. They have the obligation to secure material things that are essential for the family, such as food, clothing, health care, education and other things that are necessary for the family members. Spouses also have the obligation to take care of each other in financial and family aspects as well. These obligations will be very well fulfilled when spouses are not divorced, but the difficult situation appears when the spouses decide to be divorced. The obligation of spouses regarding financial support between each other and family members is an obligation during marriage, but also after the marriage has ended on securing food and financial support of the ex-spouse or for spares in case the marriage has not ended legally, and this according to the 297 article of Kosovo Family Law. Mostly, the alimony is known as a sort of rehabilitation for the spouse without incomes. Based on this concept, alimony should be given to the spouse becomes independent to secure financial conditions for her or himself. In case it is not specified by a court verdict how long the financial support will last, the payment aims to last until the moment when the court takes another decision which could amend the previous decision. It is known that alimony will end after one of the spouses decides to get married or to have a new relationship. In case of death of the giver spouse, this does not mean that the alimony ends at the same time, because they can continue even further in case the spouse doesn't possess financial means or conditions to live independently and as a result, it can be made by the wealth of giver, or by incomes, in most of cases by testament, which should include the necessary heirs where the wife is also involved, because the obligation to take care of wife is traditionally known, aiming to secure welfare of wife (Leslie & Teitelbaum, 2005, p. 483). There are a lot of cases when the other spouse refuses to give alimony due to their marriage relations. Therefore, the spouse who needs alimony should not be guilty for marriage relations and should not disorder the marriage relations (Aliu & Gashi, 2007, p. 306). For example, if one of the spouses in one way or another causes problems during marriage relations by making pressure to the other spouse or other family members and this leads to disordering familiar relations, he or she is not allowed to seek alimony because it is considered that by his fault, the marriage has found troubles. Hence, to oblige the other innocent spouse

would be unfair. According to a 298 article, paragraph 2 of Kosovo Family Law, after reviewing the request for custody the court can reject this request in case it is proved that the spouse seeking for custody has caused the divorce. Custody, except that it is obliged to be given during the marriage, it is also an obligation even after marriage (Oruçi, 1994, p. 104). Custody after marriage appears to be more necessary and mandatory comparing to the custody which is given during the marriage, because the individual life might be more difficult than the joint one when two or more members have revenues and take care in a proportional way when it comes to housework. Divorce might be a huge challenge, especially when two persons go through difficult periods, such as divorce. Regarding experiences which might appear after divorce, the sociologist Willard Waller wrote an influenced book during 1930s related to psychological effects of divorce, as he had also experienced a painful marriage (Celello, 2012, p. 6). It is well known that marriage ends according to some reasons which can be of natural or legal circumstances, for instance if the marriage ends with the death of one of the spouses this can also be called a natural circumstance and also if court ensures divorce for spouses, that can be called a legal reason. When the court ensures divorce, it should take care to secure maintenance for children as well as for the spouse and other family members without incomes. In some cases, marriage can be annulled from the court if it has been made without fulfilling the conditions foreseen by law, such as maturity, monogamous marriage and some other legal conditions that are necessary to be met. However, in any situation of ending the marriage even if the marriage can be cancelled or the court grants divorce to both sides with or without agreement, the financial situation of both sides should be taken into account. The court should find the best way to conclude the case. In case spouses have children, the court should seek the opinion of a sociologist or social worker that exists in each city of Kosovo, and also the court should seek the child's opinion as well other parent's opinion. According to Family Law of Kosovo, article 304, the spouse who has better financial conditions should not ask for incomes from his spouse. According to LFK, it is assessed that the spouse doesn't have a good financial situation if he has no incomes or in case those incomes are not sufficient for him to continue life independently. It is important to note that alimony or payments of alimony are temporary within a certain period of time. During this period, the spouse without incomes should manage to find a form to employ himself and to create a new life. If the spouse doesn't manage to find a job due to health or other reasons, he should submit a written evidence or other documents that prove that he or she could never be able to work.

Form of Alimony

According to the Family Law of Kosovo, alimony shall be given by money, but the person who is obliged to provide alimony may ask from the court or the Custodian Body to be allowed to provide maintenance in another form. In some cases alimony can be provided in different forms, it may be called maintenance even if a person provides clothing, good living conditions and qualitative education for the other spouse. It's important to note that if both parties agree to give this type of alimony in other material forms and not by money, it also may be called alimony. Looking it from many perspectives, alimony is of a particular importance and differs from other civil rights as it is a right and obligation by which sides cannot possess easily comparing to other civil rights. What needs to be mentioned is that the alimony cannot be under execution according to Kosovo Legislation, because it is a right essential to someone's life. Based on researches is of a binding nature and as such is given when all the conditions foreseen by law are met.

End of Alimony

The spousal support can end because of some reasons that can be grouped as natural and legal circumstances. There are some reasons that at the time they end will also cause the end of alimony. As mentioned above, these reasons can be natural and legal circumstances. Natural circumstances are defined as biological processes related to human life. It is known that the physical person is the human who can be a subject of rights and obligations. The legal capacity exists since the moment of birth and ends with the death. Also the obligations of the person ends with the death. Death is defined as a natural process which affects the rights and obligation between parties. In all cases where the spouse who has granted the alimony dies, the obligation to give alimony will end as well. If the person who is obliged to give alimony, gives it from his wealth, he will not continue to give alimony if this wealth will disappear as a result of nature or human behavior. Hence, losing the goods can be grouped as a natural circumstance that affects the end of alimony. If a person provides alimony by his property, he should declare at the court that he has lost his property, so the court must release him from this obligation. For example, if the bad weather destroys all flora and fauna through which the spouse has provided alimony, he/she should state that he/she is not able to ensure the alimony anymore, then the court can release it from the obligation of providing alimony and will find a better solution for both parties. These are some of the reasons why the alimony ends, but also there are some other reasons that might affect it.

Conclusions

Alimony as a right and obligation in family-law relations is a sensitive institution and a very important one to secure living conditions for people in need. Alimony or custody is always necessary to be given when it is sought by the financial need of relevant people. In daily life, it happens often to occur to people who after marriage cannot manage to be self-sufficient, therefore giving assistance and financial need appears to be very necessary. The positive legislation of our country as well as any other legislation of other contemporary countries is led by the principles of equality, non-discrimination, neutrality of the judge and confidentiality in any procedure are the requests that belong to relevant familiar relations. As a new state with a short past of establishing laws and acts in the field of family law have made a significant progress in improving the lives of divorced people in order to give the needed financial support through legislation, so they can live independently.

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