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Albanian Family Code and the Definition of Marriage in Albania
Latest Updates

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Legislation in a historic view

- Civil Code 1929
  - Rules on marriage similar to Code Napoleon and Swiss Civil Code of 1907
    - Importance of the approval of parents of both spouses
  - Recognition only of the Civil marriage
    - Always prior to religious rite otherwise heavy fines and penal offence
  - Regulates also the contract of marriage (article 1325)
    - Definition only ante marriage and not after due to the highest protection of the notion of family
    - Returned in the Albanian legislation only in 2003 as a free will of spouses to regulate their patrimonial issues

- During Communism
  - Law 601/48 On marriage
  - Family Code in 1965 law no. 4020 – Marriage
    - Free will of man and wife – reciprocal love between spouses – principle of equity and reciprocity - Marriage and family are under the special protection of the State
  - Civil Code of 1981

- Civil Code of 1994
  - does not abrogate the part on regimes of property in the Code of 1981

Article 53

- 1. **<u>Everyone</u>** has the right to marry and have a family.
- 2. Marriage and family enjoy the special protection of the state.
- 3. Marriage and ending of marriage are regulated by law.

- Article 54.2
  - Children born out of marriage have the same rights as those born within marriage.

Albanian Family Code structure

- Law no. 9062 of 2003

- Structure
  - General principles (article 1 – 6)
  - Spouses (7 - 164)
    - Marriage
  - Children (165 - 313)

- Marriage
  - Essential conditions for marriage
  - Form for contracting marriage
  - Nullity of marriage

  - Rights and obligation of spouses

  - Marital property regimes
    - Communion of goods default(property acquired since marriage)
    - Communion of goods by contract
    - Separate regime
  - Ending of marriage
    - Solution of marriage (divorce)
  - Cohabitation (unmarried partners)

Notion and regulation of marriage in the AFC

- Marriage, as a **legal cohabitation**, is based on the moral and legal equality of the spouses, on the feeling of mutual love, respect and understanding, as the basis of family unity. <u>Marriage</u> and the <u>family</u> enjoy the **special protection of the state**. (article 1 AFC)
    - Classic definition of marriage in Albania
    - Highest interest of the children/s
    - Included in general principles

- Essential conditions for contracting marriage
    - Marriage can be concluded **between a man and a woman** who have reached the age of 18. The court of the country where the marriage takes place, for important reasons, may allow the marriage even before this age. (article 7 – Age of contracting marriage)
    - The marriage is concluded in front of the official of the Civil Registry, with the **free consent** of the two future spouses. (article 8 – consent of the spouses).

- Rights and obligation of spouses
  - The child takes the **joint surname** of the parents. When the parents have different surnames, all children bear **one surname**, the one that the parents decide by agreement. When <u>the agreement is not reached, the children bear their father's surname</u>. (Article 52 – Surname of child)
  - If the spouses' contribution to the obligations arising from the marriage is not regulated by the marriage contract, they will contribute to the needs of the family **in accordance with their conditions and abilities.** (article 54 – Contribution of spouses)

  - The application of the provisions of this chapter derives from the marriage and **is applied regardless of the matrimonial property regime of the spouses**. (article 65 – Prevalence of obligation deriving from marriage)
    - Prevalence in the application of the principle of the notion of highest interest of family and the highest interest of the child
    - Marriage as a juridical institute with mandatory duties and obligations despite regulation of patrimonial regimes between spouses

- Marital property regimes
  - The matrimonial property regime of the spouses is **regulated by law**, in the absence of a separate agreement, where the spouses provide for the regime they want, which **must not contradict the provisions of this Code** and the relevant legislation. (article 66)
  - The matrimonial property regime of the **legal communion** applies when the spouses have not entered into a contract for another matrimonial property regime. (article 73 – default

- Title VI – Cohabitation
  - Cohabitation is a **de facto union** between *a man* and a *woman* living **as a couple**, characterized by a common life, which presents a character of stability and continuity. (article 163 – Notion of Cohabitation)

  - Cohabiting persons can conclude **an agreement before a notary**, where they *determine the consequences* arising from cohabitation regarding **children** and **property** during cohabitation. (article 164)

  - Unification of cohabitation with marriage only regarding CONSEQUENCES regarding
    - Children
    - Property
  - Civil law unification of effects
  - Maintains the notion of family only linked to marriage

- Several attempts under the process of integration
  - Governmental promise in 2009 after the adoption of Association and Stabilisation Agreement with EU countries
  - Adoption of the Law that forbids discrimination in 2010 in order to fulfill some of the Obligation under Integration process of Albania in EU
  - 2013 – Ombudsman promises to draft an act for proposing changes to the Albanian Code of Family

  - At least recognition of civil union for persons of the same sex is now under evaluation in Albania but no formal draft was submitted for discussion in Parliament and with stakeholders

Contacts:

Thank you for your attention!
Any question ?

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