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**Moral principles in the legal regulation of marriage and family relations in
the Russian Federation**

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ANNOTATION

Relevance of the research topic. Key issues of the application of moral principles in the regulation of marriage and family relations in the Russian Federation are of great importance both for the family legal doctrine and for law enforcement, because it is moral norms, along with legal, are the most important, and sometimes effective regulators of family relations. This is the specificity of family legal regulation, which is impossible to imagine without the application of the principle of morality in the regulation of relations in the family.

The acquisition of legal significance only to the legal relations resulting from the marriage in Agency of Civil Acts Registration Bureau and the lack of legal regulation of de facto relationships have impact on the actualization of the claimed subject. In the modern legal regulation of marriage and family relations, it is necessary to take into account the existing actual marital relations, organized with the implementation of the principle of morality.

All this indicates the need for further theoretical analysis of the peculiarities of the application of moral principles to regulate marriage and family relations in the Russian Federation, as well as the development of appropriate evidence-based recommendations for improving the effectiveness of the mechanism of legal regulation of marriage and family relations in the context of improving family law and the preservation of moral and legal principles of the family lifestyle.

Goal and targets of the thesis research. The goal of the thesis research is development and reasoning of of the system of theoretical provisions on legal and non-legal (moral) influence, the application of moral principles in the legal regulation of marriage and family relations in Russia, including securing the actual marital relations, their legal nature and enforcement, the formation of the author's views on these issues, development of recommendations to improve the effective

application of moral principles to regulate marriage and family relations in Russia at the present stage of development.

To achieve these goals there were determined the following handling of the targets:

- to identify the main directions of legal and non-legal regulation of family and marriage relations: historical and modern aspects;
- to discover the features of the application of moral principles in the regulation of marriage and family relations in the Russian Federation;
- to evaluate from the point of view of efficiency the mechanism of legal regulation of marriage and family relations in the context of improvement of the family legislation and preservation of moral and legal principles of a family way of life;
- to define and and reveal the legal essence of marriage in Russian family law as a multidimensional legal phenomenon acting on the basis of moral and legal principles, the implementation of the principles of morality, to analyze the definitions of this legal phenomenon available in the science of family law;
- - to concretize the content of the concepts "family", "right to family", "marriage", "actual marriage relations" in the field of marriage and family relations in relation to the subject of this study;
- - to reveal the content and legal nature of the right to family, the family as a multifaceted, legal phenomenon, taking into account the peculiarities of legal and non-legal regulation;
- - to correlate marriage and actual marriage relations as one-order categories on the basis of legal and moral regulation;
- - to define features of regulation, both legal, and non-legal and application of the actual marriage relations as alternatives to marriage in the Russian Federation;

- - to develop practical recommendations for improving the current legislation of the Russian Federation in the studied area and law enforcement activities to ensure effective legal and non-legal regulation of marriage and family relations, the implementation of the principle of morality in Russia.

Scientific novelty of the thesis research is presented in the following points: in the thesis, based on a comprehensive understanding of the legal and non-legal (moral) regulation of marriage and family relations in Russia, there are theoretical and particular practical situation, developed on the basis of modern concepts of family and marriage, together representing the conceptual ideas of the formation of the dualist model of legal and non-legal (moral) regulation of marriage and family relations in Russia, relying on the preservation of the moral and legal fundamentals of family relations.

The concept of effective and efficient application of the principles of morality in the regulation of marriage and family relations on the basis of a two-level system, including legal and non-legal mechanisms of influence on marital relations, is proposed.

A new approach to the model of family and marriage on the basis of the application of moral principles as an important regulator of marriage and family relations is made up in this paper, it is determined that the "transformation of the family" often has a negative impact on the traditional institution of the family, which ultimately leads to legal deformation of this socio-legal category.

It is proposed to formulate the "right to family" and to give the concept to such categories as "family", "marriage", while emphasizing their inherent moral and legal principles, which are established as a result of the increasing inclusion of the principle of morality in the regulation of marriage and family relations in the Russian Federation.

The scientific novelty of the study in a concentrated form is expressed in the following main arguments of a dissertation to be defended:

1. Family relations, by their nature have a very different, multi-faceted, inter-sectoral nature, are amenable to almost all types of regulation: legal, individual and non-legal-moral impact.

The uniform system model of regulation of marriage and family relations includes two interconnected systems: legal and non-legal (moral) regulation which are in inseparable unity, which is caused by features of a subject of legal regulation. Legal and individual, contractual regulation of family relations is impossible without moral influence on this sphere, which proves the organization of family relations on the basis of the implementation of moral principles.

2. The concept of applying the principles of morality in the regulation of marriage and family relations is a complex, multivariate system of regulation, which includes taken in unity the whole set of legal and non-legal means that have a regulatory impact on family relations.

The concept of the implementation of moral principles in the regulation of marriage and family relations in the Russian Federation is based on dualism, a system of Federal and regional levels of regulation, which includes legal, and in some cases, legal mechanisms of influence on family relations. It is in such a complex phenomenon as marriage and marital relations that the dualism of regulation is realized: legal and non-legal, the application of the principles of morality in the regulation of marriage and family relations in the Russian Federation.

The concept of implementation of moral principles in the sphere of legal regulation of marriage and family relations should be considered through the prism of natural law and legal regulation based on moral principles. This is the specificity of the mechanism of legal regulation of family-marriage and actual marriage

relations in the Russian Federation at all historical stages of development of family-legal relations.

3. Legal regulation of family relations and the regulation of family relations is based on moral principles aimed at supporting and protecting the "traditional" model of the Russian family, namely: organization of family life in legal and non-legal basis for mandatory application of the principle of morality, which occurs as a result of marriage, other legal facts based on the law and family values, moral and legal basis of the family lifestyle.

It is established that the family as the natural social and legal institution aimed to implement and preserve traditional family values, established on the basis of legal and non-legal regulation, application of moral and legal basis of family life as the basic principle of building a family, and to ensure the personal and property rights of spouses and other family members.

The family-legal model (concept) of the "traditional" Russian family, based on legal, moral and religious principles, which are in close cooperation complement each other, is defined.

4. The convergence of legal and ethical principles governing the family relations, which are directed on realization of the convergence process, the close relationship and integration of legal and non-legal, moral regulation of marriage and family relations, focused on the organization of family legal model of "traditional" Russian families based on legal, moral and religious principles of the construction of family and marriage is justified.

Within the framework of rapprochement, there is mutual enrichment, interpenetration of law and moral and ethical norms, which are combined into single legal entities, into integral legal structures, for the purpose of complex legal regulation of marriage and family relations with the obligatory effective application of moral principles.

5. The right to family resulting from marriage is provided by law the opportunity of the free will of the persons wishing to marry, implemented in accordance with family law based on moral and legal principles and claims of the subjects on mutual respect, mutual help, mutual responsibility, the rights of some family members (e.g. spouse) in relation to other family members and offsetting those rights obligations.

The legal regulation of the realization of the right to a family includes the following elements:

- free expression of will of persons wishing to marry;
- claims of spouses to mutual respect, mutual assistance, mutual responsibility based on the moral and legal principles of family relations;
- establishment of legal guarantees for the realization of the right to family and marriage-the possibility of requiring marriage, including the prohibition of any encroachment by third parties and the state itself on family values, moral and legal principles and rights enshrined in family law;
 - guaranteeing the legal fullness of the object of law: the grounds for the emergence of the family and the definition of legal and non-legal family relationships between its members.

6. Modern legal regulation of the model of the Russian family based on marriage, taking into account the moral principles, performs economic, social, reproductive, educational functions. The thesis proves that the main function of the family in Russian society, implemented at the conclusion of marriage - is the moral, legal, spiritual development of family members and the whole society, the preservation and strengthening of traditional family values based on feelings of love and justice, the birth, education, maintenance and socialization of children.

With the preservation and strengthening of the "traditional" model of the family (registered marriage), the most effective legal regulation of marriage and family relations, the establishment of a clear mechanism for regulating marriage and family relations is possible.

7. Legal regulation contains tools with the help of which it is not only possible, but also necessary to legally consolidate the natural, natural, moral principles and foundations of family and marriage relations. We believe that the legal norms are designed, along with the legal regulation, to implement a protective function, protecting the moral principles of the family lifestyle, natural rights and feelings of the marital community.

The legal regulation of family and marriage relations should be based on the mandatory application of moral principles and be organized on the basis of state-family partnership, with a focus on the moral and legal foundations of the family way of life. At the same time, marriage itself should not be considered as a kind of civil partnership between spouses, it is a special family-legal Union, generating special family-legal ties, organized on moral and legal principles.

8. Registered marriage creates a special moral and legal basis for the preservation of the traditional family lifestyle of spouses and other family members, based on religious values that are protected by the state and law. In this way it differs from the actual marriage relations, which do not have a family-legal legislative consolidation and protection.

The need to introduce into the legal sphere of provisions on the actual marital relations becomes an objective vital need of the whole society, as well as individuals.

However, only those relationships need to be defended, that are based on moral principles of family life: before marriage, they can be correlated with a certain probationary period, during which it checks the pair to a future life living

together, it is a kind of analogue of "betrothal" in case of intention to marry soon; they are associated with the expectation of resolving certain social, material and other life situations (completion of the educational process, stable employment, determination of housing conditions, acquisition of a certain status, etc.) after which it is possible to enter into a legal marriage, etc.

Thus, in the modern legal and non-legal regulation of marriage and family relations, it is necessary to take into account the existing actual marital relations, organized also taking into account the implementation of the principle of morality. Judicial protection, as one of the elements of the mechanism of legal regulation of persons, consisting in actual marital relations, should more effectively ensure the possibility of exercising the rights and obligations of these subjects.

The main conclusions and proposals are presented by the author in publications and speeches at scientific conferences. The most important statements of the thesis were brought to the attention of scientific and practical workers at international and Russian conferences, international congresses and forums: "Formation and consolidation of the concept of marriage and the interpretation of its essence" (Krasnodar, Krasnodar University of the Ministry of internal Affairs of Russia, February 2017); "Some features of marriage with foreign citizens: problems of theory and practice" (Moscow, (Kutafin Moscow State Law University (MSAL), February 27, 2017), "On the concept of marriage and the need for its legislative consolidation" (Moscow, RSUH, April 20, 2017); "On the concept, legal nature and order of marriage" (Kazan, Russian state University of justice, April 21, 2017); "The history of family and marriage development in Russia and its influence on the modern model of marriage and family relations" (Irkutsk, Baikal state University, September 21-22, 2017);

"The right to found a family and the "traditional" model of Russian families: legal issues" (Perm, Perm state University, Perm Eighth Congress of legal scholars: materials of Russian scientific-practical conference on October 20-21,

2017); «Moral and legal foundations questions of marriage and family relations in the Russian Federation" (Irkutsk, Irkutsk Institute (RPA Ministry of justice of Russia), October 5, 2018); Key concepts and contemporary trends of practice of consideration by courts of disputes about division of property of spouses after divorce (Legal fate of business in divorce and inheritance: monograph / Rev. edited by I. V. Ershova, A. N. Lewushkin. - Moscow: Prospect, 2019. 480 p.) and others.

The most fundamental and basic conclusions of this research are reflected in 23 scientific articles (total volume of 8.2 p. s.), nine of which are published in leading peer-reviewed journals and publications recommended by the HAC at the Ministry of education and science of Russia for the publication of the results of dissertation research for the degree of candidate of Sciences.

Content of the thesis. Thesis research consists of introduction, three chapters, including six paragraphs, conclusion and bibliography.

To the topic of the dissertation the following main works are published:

Articles in peer-reviewed scientific publications, recommended by the Ministry of education and science of the Russian Federation for the publication of the results of dissertations

1. Smyshlyayeva O.V. The concept and the legal nature of marriage: a theory of legal consciousness // Bulletin of the Russian law Academy. 2017. № 1. P. 49-54.

2. Smyshlyayeva O.V. The concept, legal nature and signs of marriage in the family legal doctrine Bulletin of Tver state University. A Series Of «Right» 2017. № 2. P. 151-160.

3. Smyshlyayeva O.V. Extramarital cohabitation as a threat to traditional family values in Russia / Legal Advisor 2017. №10. P. 51-55.

4. Smyshlyayeva O.V. The history of family and marriage in Russia and its impact on the traditional model of the family in Russian society // Notarial Bulletin. 2017. № 11. P. 35-40.

5. Smyshlyayeva O.V. Family and the right to create it in the Russian Federation: family and marriage regulation and constitutional and judicial protection // Russian justice 2017. №12 (140). P. 56-61.

6. Smyshlyayeva O.V. Moral and legal basis of family and marriage relations // Legal Advisor. 2018. № 2. P. 37-42.

7. Smyshlyayeva O.V. Moral and legal bases of inheritance in the context of marriage and family relations in Russia: theory and practice of application // Inheritance law. 2018. N 4. P. 16 - 21.

8. Smyshlyayeva O.V. Some questions of division of property of spouses: civil-legal aspect // Civil law. 2019. No. 4. Pp. 42-45.

9. Smyshlyayeva O.V. Actual marriage relations as an alternative to marriage in the Russian Federation: theory and practice of application // Family and housing law. 2019. No. 4. Pp. 23-27.

Other articles

10. Smyshlyayeva O.V. Family and its "traditional" model in Russian society // Culture. The science. Integration. 2016. No. 2 (34). Pp. 45-50.

11. Smyshlyayeva O.V. The concept of marriage in the Russian Federation and the interpretation of its essence // Culture. The science. Integration. 2016. No. 3 (35). Pp. 73-76.

12. Smyshlyayeva O.V. About strengthening of a role of courts of the Russian Federation at protection of the rights of children // the Judge. 2017. No. 6 (78). Pp. 28-30.

13. Smyshlyayeva O.V The right to create a family and the "traditional" model of the Russian family: problems of legal regulation // Perm legal almanac. 2018. No. 1. Pp. 281-286.

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14. Smyshlyayeva O.V Formation and consolidation of the concept of marriage and interpretation of its essence // Actual problems of development of civil law and civil process: materials of science-practical Conference, dedicated to the 40th anniversary of the University (February 16, 2017). / editors.: A.V. Gerasimov, D. B. Danilov, M. V. Jabotinsky, I. K. Kharitonov, N. V. Zhukova, A. I. Makarenko. Krasnodar: Krasnodar University of the Ministry of internal Affairs of Russia, 2017. 514 pp. 481-485.

15. Smyshlyayeva O.V Concept question of marriage and the need for its legislative consolidation // Public and private law: prospects of development in the Russian Federation and in foreign countries: Muromtsev's readings: Proceedings of the international scientific conference. Moscow, April 20, 2017 / edited by N. I. Arkhipova, S. V. Timofeev, E. Y. Knyazeva. Moscow: RSUH, 2017. 444 pp. 297-300.

16. Smyshlyayeva O.V The concept, legal nature and order of marriage question // Modern trends in the development of civil and civil procedural legislation and practice of its application: materials of the IV Russian scientific and practical conference, April 21, 2017 Kazan: Otechestvo, 2017. 461 PP 180-184.

17. Smyshlyaeva O.V The right to create a family and the "traditional" model of the Russian family: problems of legal regulation // The eighth Perm Congress of legal scholars: materials of science- practical conference (Perm, Perm, Russia, 20-21 October 2017.) / edited by V. G. Golubtsov, and O. A. Kuznetsova, PSNRU, 2017. 318 pp. 147-149.

18. Smyshlyaeva O.V History of family and marriage in Russia and its influence on the modern model of marriage and family relations // Protection of private rights: problems of theory and practice: materials of the 6th annual. international. science- practice conference in the framework of the Baikal legal forum (Irkutsk, 21-22 Sept. 2017) / edited by Y. V. Vinichenko, A. p. Ushakova. Irkutsk: Publisher of BSU, 2017. 249 pp. 81-87.

19. Smyshlyaeva O.V Moral and legal foundations questions of marriage and family relations in the Russian Federation // Problems of modern legislation of Russia and foreign countries: mater. VII. Science – practical Conference (Irkutsk, October 5, 2018) / ed. Irkutsk: Irkutsk Institute of PSU., 2018. 341 S. S. 190-194.

20. Smyshlyaeva O.V Protection of the family as a moral and legal basis for the preservation and strengthening of traditional family values // Protection of private rights: problems of theory and practice: materials of the 7th edition. international. scientific-practical conference (Irkutsk, December 3, 2018) / ed. N. P. Aslanyan, Y. V. Vinichenko. Irkutsk: BSU Publisher, 2019. 152 pp. 98-102.

21. Smyshlyaeva O.V Concept and essence questions of actual marriage relations in the context of traditional family values // Advocacy in the system of civil society institutions of Russia Russian legislation: Collection of materials of the International scientific and practical conference. Moscow 24 January 2019 / team of authors. Moscow: RAAN Publisher, 2019. 107 pp. 98-102.

Monographs

22. Smyshlyaeva O.V Key concepts and contemporary trends of practice of consideration by courts of disputes about division of property of spouses after divorce // Legal Fate of business in the dissolution of marriage and inheritance. // Editor: Ershova I.V. Levushkin A. N. Moscow: Prospect, 2019. 480. pp. 103-114.

23. Smyshlyaeva O.V Key issues of consideration by courts of disputes on the division of business and other property of spouses // Family business in the legal space of Russia: monograph / Rev. edited by Ershova I. V., Levushkin. A. N Moscow: Prospect, 2020. 624 pp. 557-569.