Several Key Features of Marriage in Kosovo

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Abstract

In this paper titled "Several key features of marriage in Kosovo", I have made efforts to address the matrimony, as an important societal and legal concept, in the light of positive law in Kosovo. In short terms, I have addressed the historical development of marriage in general, from the period of promiscuity until today, and I have emphasized key features of marriage in various time periods, only to comprehend better the ways of development of marriage in time and space.

A special emphasis is put on the essential (material) conditions of marital union. The paper provides sufficient reasons for which the positive law in Kosovo has provided on the free expression of will of spouses; opposite sexes; the age threshold; entry into matrimony before a competent state authority, and under a procedure provided by law, as substantial conditions for entering a valid matrimony. Sufficient room is allowed also for the treatment of consequences and responsibilities of various entities if marriage is developed without obeying substantial conditions as provided by law. Due to the nature of the paper, formal conditions for entering matrimony are not addressed.

The right to enter marriage and establish a family under provided legal conditions is guaranteed to every Kosovo citizen, as a substantial right. The marriage is a basic cell of the family, and as such, it is protected by the state and society.

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Apart from normative and sociological methods, I have also used the historical method in developing this paper. The purpose was to discover several marriage features, which used to exist, and do not anymore, and also underline some new features, which nowadays form the pillars of the marriage.

Key Words: Features, Marriage, Regulations, Spouses, Authority, Entities, Methods.

1. Historical development of marriage in general

In the first primitive union, marriage was not more than a social relation, without any bounds by legal provisions. In the period of promiscuity, where sexual relations were unregulated, there were no obstacles or boundaries of marriage, which today exist between men and women in marital union. These were relations where within a tribe, any woman pertained to any man, and vice versa.[1] This period of unregulated sexual relations dominated the whole middle ages of savagery, while in the legal doctrine, it is called the period of promiscuity.[2] There is no doubt that this period represents the lowest conceivable stage of human development.

In consanguine families, certain sexual intercourses were regulated, in the middle degree of savagery[3], in the transition from promiscuity to consanguinity. A whole group of men and a whole group of women were mutually in marital relations.[4] Such group marriages represent the first form of the so-called group marriages.[5] Here, the bloodline was delineated by the mother tree. In group marriages, it was impossible to render the fatherhood, and therefore all males of the group were considered to be fathers. For the first time, the prohibition of sexual intercourse between different generations appeared, or clearly stated, between ancestors and successors. In this way, grandparents are prohibited from having sexual

[1] Bakić, Vojislav: Porodićno pravo (Family Law) "Savremena Administracija", Belgrade, 1980, p. 36.

[2] Podvorica, Hamdi: E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 31.

[3] Спировић Љиљана - Трповска: Семејно право (Family Law), NJIP "Studentski Zbor", 1997, Skopje, p. 40.

[4] Bakić, Vojislav: Porodićno pravo (Family Law) "Savremena Administracija", Belgrade, 1980, p. 37.

[5] Bakić, Vojislav: Ibid., p. 37.

intercourse with their successors, and also intercourse with their offspring. This prohibition though did not apply to siblings, because they pertained to the same generation, and they could be simultaneously siblings and spouses.[6] The prohibition of sexual intercourse between members of different generations represents the first scale of family development.

Due to the poor development degree of productive relations, population movements to places for better food and living conditions, the large blood-related group family resisted time. The fragmentation of first consanguine unions occurred with the division of families into two or more exogamous groups (groups in marital relationships with other members of consanguine family with whom they were not in marital union).[7] In such a way, a new form of group family appeared, known as the Punaluan family.[8] For the first time, this family appeared in Havana, and got the name Punalua, due to the fact that both women and men in a group had relations with women or men of another group, and called each other Punalua, which in Hawaiian meant a mate, friend, or something similar to a partner. The Punaluan family existed for quite some time in Havana, until the first part of the 19th century.[9] There are two main features of the Punaluan family. The first, in the Punaluan family, a whole group of men gets married to a whole group of women of another tribe. In this way, marriages of men with the women within the same blood-related tribe are

[6] Podvorica, Hamdi: E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 31.

[7] Bakić, Vojislav: Porodićno pravo (Family Law) "Savremena Administracija", Belgrade, 1980, p. 37.
The study of the family history started in 1861, when the work of Bachofen came out titled "Mother Right". The author raises the following thesis: 1. In ancient times, people lived in unlimited sexual relationships, which he inappropriately termed the "hetaerism"; 2. These relations exclude any possibility of safely determining the blood line, and therefore, the origin could only be determined by the mother's blood line – as per "mother right" – as was the case with all ancient peoples; 3. For this reason, women, the mothers, as the only safely determined parents of a new generation, enjoyed a high degree of respect and consideration, which according to Bachofen, brought to the full reign of women (gynaecocracy); 4. The transition to monogamy, where a woman only belonged to one man, was a breach of an ancient religious message (in fact a violation of the ancient right of other men over such woman), a breach that would be paid or rewarded by giving the women to other men for a certain period.
See: Engels, Friedrich: The origin of the family, private property and the state, Rilindja, Prishtina, 1980, p. 12.

[8] Bakić, Vojislav: Porodićno pravo (Family Law) "Savremena Administracija", Belgrade, 1980, p. 37.

[9] Bakić, Vojislav: Ibid., p. 37.

prohibited. Second, the Punaluan marriage prohibited also the marriages and sexual intercourse between siblings from the same mother's bloodline, because in group marriages, there was no possibility of knowing the father of the child.

The three prohibitions in consanguine family marriage and the Punaluan family paved the way for the transition from endogamous to exogamous marriages. Marriages and sexual intercourse were prohibited between groups in bloodline relations from the mother's tree. In this way, the gentum was born, and it was counted by the mother line.[10] Men came to the woman's family from another tribe, and the women had absolute power over all men of the family. For this reason, in legal theory, the matriarchate is the term used for the era of the rule of women over men.

With the transition of humanity from savagery to barbarism, the couples appeared, or the symbiosis family. The main feature of this family was that for the first time, marital relationship gathered two persons: one man and one woman. The appearance of couples' marriages marks the dissolution of group marriages. Although there were dominations of a form of families in certain times, it never existed as a sole occurrence, and it has been proven that they coexisted with other forms of family. Even in marriages of couples, men was considered to be a polygamous being, meaning that the men were entitled to entering sexual intercourse with other women outside marriage, without any repercussion. In his own free will, the man can expulse the woman and take another, says Morgan, without offending her, while women also enjoyed the right to divide from her husband and take another, on the condition that she does not breach the customs of her own gentum.[11] There cannot be any discussion over the equality of women and men in marriages of couples, because women were severely discriminated against: while marriage existed, the woman was bound to respect marital loyalty, and in case of adultery, she was severely punished. In the syndiosmic family, the origin of the child was again derived according to the maternal line.

The appearance of the patriarchal family marked the transition from the matriarchate to the patriarchate, from the maternal to the paternal right, a transition bearing large consequences to the human development.[12] The

[10] Podvorica, Hamdi: E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 32.

[11] Bakić, Vojislav: Porodićno pravo (Family Law) "Savremena Administracija", Belgrade, 1980, p. 38.

[12] Laurasi, Aleks: Marrëdhëniet familjare, Shtëpia botuese "Laurasi", Tiranë, 2001, fq. 12.

overturn of maternal law, and its replacement with the paternal law, came as a result of a higher degree of development of productive forces and working tools: domestication of animals and their trade with other goods; division of agriculture and stockbreeding; discovery of fire and creation of better conditions for hunting. Being a stronger being than a woman, the role of the man grew in economy, and he gradually extended his power onto women and children of the family. Women, as a consequence of major economic, societal, historical, demographic and ethno-psychological changes, not only lost their rule of the matriarchate, but also fell into a slavery position, and served only as means of biological reproduction for the family.[13]

[13] Podvorica, Hamdi: E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 33.
To express the relations of generations from the father, the Cannon of Leke Dukagjini uses the term "blood tree", while the mother's line he calls the "Milk Tree".
The Cannon of Lekë Dukagjini, Kuvendi, Shkoder, 2001, p. 26.
To express the generations deriving from the father, the Cannon of Leke Dukagjini uses the term "blood tree", a monumental formulation, as called by Ismail Kadare, while the mother's line he calls the "milk tree". These are two elegant formulations, which figuratively express the genealogic tree, dividedly between father and mother.
See: Laurasi, Aleks: Family relations (Marrëdhëniet familjare), Laurasi, Tirana, 2001, fq. 19.
According to Bachofen, it is not the development of real conditions of human livelihood, but the religious reflection of such conditions of livelihood in the heads of the same people, which caused historical changes in societal statuses of men and women. According to such a view, Bachofen interprets the "Orestes" of Aeschylus to be a dramatic presentation of the combat for maternal right, which was born and triumphed in a heroic era. For her lover Aegisthus, Clytemnestra killed her own husband, Agamemnon, who had returned from the war of Troy; but Orestes, her and Agamemnon's son, took revenge of his father and killed his own mother. For this, Erinyes haunt him, the demonic protectors of maternal right, for whom the matricide is a very severe crime that cannot be repaid. But, Apollo, who used his oracle to compel Orestes to such an act, and Athena, whom they call as judge – both goddesses, representing already the new order, the paternal law – defend Orestes; Athena hears both parties; the whole subject of quarrel is formulated shortly in debates between Orestes and Erinyes. Orestes says that Clytemnestra committed double crime, killing her husband and simultaneously his own father. Why would Erinyes haunt Orestes, and not Clytemnestra who was guilty? The reply is surprising: "The man she killed was not blood-related to her",
Killing a man, who was not related by blood, even when such man is the husband of the killing woman, can be repaid. This does not pertain to the Erinyes; their job is to haunt the murder only between blood siblings, and here, according to maternal law, matricide is a very severe crime, which cannot be repaid. Here, Apollo jumps to the defence of Orestes; Athena opens the case for vote of the members of the Aeropagus – Athens Jury; votes are divided between exculpation and inculpation; Athena, presiding, gives her vote in favour of Orestes, and exculpates him. Therefore, the paternal right triumphed over the maternal

In the patriarchal family, children belonged to the paternal line. The Albanian customary law termed the belonging of children in a rather substantial manner: "The father is the seed, and the mother is the land", which means that the origin of children is derived by a paternal line.[14]

The monogamous family represents a higher degree of development of the family when compared to its antecedent forms, and it appears with the transition from barbarism to civilization.

The monogamous family is the marriage between a man and a woman, with a purpose of giving birth to children with undisputable fatherhood. Monogamy appeared due to the concentration of assets to the hands of the men, and the need to inherit such assets and endowments to their own children, and not to others.[15] Despite the fact that the monogamous family is associated with other occurrences such as homosexuality, immorality and others, it is still considered to be a historical progress for humanity, and the origin of children is derived by the father's line. Monogamy does not imply only the monogamy of the woman, but also of the man. The woman is discriminated against, and not equal to the man. Nevertheless, this paves the way for an egalitarian family, in which husband and wife shall be fully equal in terms of rights and obligations.

The major codification exercises in the 19th century, such as the Austrian Civil Code (1811), the German Civil Code (1896), the Napoleon Civil Code (France, 1804), the Albanian Civil Code (1929) etc., brought important changes to the sphere of marriage and marital relations. The greatest advantage brought by the aforementioned codes is the extension of the state power into legal marital and family relations, thereby excluding cannon and customary law applied to that time. Another merit of such codes consists in the fact that dissolution of marriages and marital disputes are not resolved by holy religious courts, but the courts, the society and the state all protect the marriage.

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right, and the "deities of the new generation" as called by Erinyes triumphed over the Erinyes themselves, and ultimately, the latter agree to take a new place to the service of the new order.

See: Friedrich Engels: The origin of the family, private property and the state, Rilindja, Prishtina, 1980, p. 12.

[14] Podvorica, Hamdi: E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 33.

[15] Santhipi Begeja: Family law of the SPR of Albania, University Book Publishing House (E drejta familjare e RPS të Shqipërisë, Shtëpia botuese e Librit Universitar), Tirana, 1985, p. 73.

2. The meaning and features of marital law

Marital law consists of a plenitude of legal norms providing on marriage and marital relations, positive right, and an important remedy of family law. Marriage was initially only a social construct, and in time, it was provided by legal norms, and now represents a specific instrument of family law.[16] Most of the rights of spouses are regulated by peremptory norms, such as: joint livelihood of spouses; marital loyalty; mutual assistance of spouses; independence of spouses in choosing work and trade. These rights, regulated by peremptory (*ius cogens*) legal norms are non-negotiable, and spouses cannot provide otherwise. There are several legal presumptions related to entering marriage, dissolution, property relations, and consequences of dissolution, either by annulment or divorce, are also provided by peremptory norms.

A smaller number of personal rights of spouses are regulated by legal norms of an enacting nature. Article 44.1 of the Kosovo Family Law provides that spouses may agree themselves on some rights. These personal rights of spouses are: determining the surname; determining the place of residence; common household economy; determining citizenship. The freedom of will of spouses in agreeing on such rights is an opportunity for the spouses to find the most appropriate and best possible ways of regulating on such rights.

In a marital union, women and men also need to engage in other relations which cannot be provided by legal norms, such as sexual intercourse, because these are spontaneous, and are not relations which can be regulated by legal norm.

In legal theory, there are two main concepts to explicate the legal nature of marriage: the first concept talks about a contract, rooted in Roman law, and sanctioned explicitly by religious legislation (Codex turis kanonici, canon).[17] According to such a concept, marriage is a civil contract of a specific nature, entered into by a man and a woman to live together. Nevertheless, the peremptory nature of legal norms providing on entry and dissolution of marriage, norms which cannot be changed by agreement and free will, which give the marital contract a more specific nature when

[16] Alinčić Mira - Ana Bakarić Abramović- Dubravka Hrabar-Dijana Jakovac- Lazić-Aleksandra Korać: Family Law (Obiteljsko pravo), Narodne novine, Zagreb, 2001, p. 40.

[17] Podvorica, Hamdi: quote, E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 67.

compared to sale/purchase contracts or others.[18] Later, in French legal theory, the definition appeared based on a concept that marriage is a contract, which means that marriage is a contract by which the man and the woman establish a common union as sanctioned by law, and which they cannot dissolve by their own will.[19]

In the second concept, marriage is a legal instrument. We consider that this concept is fairer and in compliance with the requirements of the modern marriage, since marriage creates a legal marital status for the spouses: it creates a family union between the man and the woman; subjects of marital relations may only be a man and a woman; the state has taken the marriage under its protection and social care. Two more arguments favour the latter concept: two or more persons may appear as parties in entering into a contract, while a marriage can only be entered into by one man and one woman; entering a contract between two same sex persons does not cause invalidity, while marriage between persons of same sex causes absolute invalidity of marriage; contracts are entered into for a certain time, while marriages are entered into for all life; for a contract, there are no legal hindrances, while for a marriage, there are explicit norms providing on prohibitions in cases of marriage, and their eventual presence shall cause nullity of marriage.

3. Definition of marriage

Marriage cannot be defined with a sentence that could integrate all general features of marriage, for all times and for all human societies.[20] The causes of such incapacity to define marriage for all times and all areas consist of the fact that the marriage is not a static or unchanging being, but with the development of humanity, it has taken various features and forms.

Various definitions of marriage have come as a product of development degree of productive relations in time and space, and of archaic understandings of marriage and marital relations.[21] In old times, when the influence of religion and church was larger in regulating marriage and

[18] Podvorica, Hamdi: Ibid., p. 67.

[19] Mira Alinčić- Dubravka Hrabar-Dijana Jakovac- Lazić-Aleksandra Korać-Graovac: Obiteljsko pravo, (Family Law), Narodne novine, Zagreb, 2007, p. 40.

[20] Alinčić Mira - Dubravka Hrabar-Dijana Jakovac- Lazić-Aleksandra Korać-Graovac: ibid, p.

[21] Podvorica, Hamdi: E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 69.

marital relations, marriage was considered to be divine and unbreakable. Madestini, a Roman lawyer of the 4th century AC, defines marriage as "a bond between a man and a woman, union for life, and a union of divine and human right" (*Nuptae sund coniuctio maris et feminae consortiom omnis vitae, divini et humani iuris comunication*). A feature of marriage, which existed in almost all people and all times, is that the woman went to the husband's family. An exception is found in the Albanian people. When there were no male heirs in the bride's family, the man went to the wife's house, and became member of the family with equal rights, and even had right to inherit.

In modern family law, we find definitions that contain new elements and features of marital relations and marriage. Federicue Eudier says: "Marriage is a legal act, but simultaneously a solemn act, a union of livelihood, and for its validity there must be substantial and formal conditions.[22] On the other hand, Sonila Omari says: Marriage represents a legal communion between two people of different sexes, who aim for a common livelihood and realization of personal and property interests, thereby creating a union towards contributing to the welfare of the family.[23]

Based on codification and new reforms of family law, one can conclude that marriage is a free community of livelihood of a man and a woman, entered into before a competent authority by expressing free consent pursuant to procedures provided by law, a solemn act based on moral and legal equality, the feeling of love, respect, mutual understanding,[24] by meeting substantial and formal legal conditions, with a view of ensuring joint livelihood.

4. Basic conditions for entering marriage

By entering marriage, spouses create a new legal relationship. The Kosovo Family Law has provided four main conditions to be met for entering marriage. They are:

- Free expressed will by future spouses;
- Opposite sexes;

[22] Federicue Eudier: Druit de la famille, Armand Colin, Paris, 1999 fq. 18.

[23] Omari, Sonila: Family Law (E drejta familjare), Faculty of Law, University of Tirana, 2010, p. 45.

[24] Podvorica, Hamdi: E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 69.

- Adult age and capacity of act:
- Entering marriage before a competent authority and under procedure provided by law. No marriage outside these basic conditions can be considered valid.

5. Free expressed will

A basic condition for establishing a valid marriage is the free expression of will of the future spouses. According to Article 18 of the Kosovo Law on Marriage, marriage cannot be valid and final if such consent is obtained by coercion, threat or deceit, or any other lack of free will of the future spouses. For marriage to be valid, the expressed will must consist of the following features: a) be realistic and not simulated (declared for another purpose and not for marriage); b) be serious and not expressed in mockery; c) both statements of will must be made simultaneously and successively at the moment of entering marriage.[25] The Kosovo Family Law does not recognize the free will expressed by another person authorized by proxy. This implies that both future spouses must be present in the act of marriage, and the free will expressed must be affirmative, beyond any doubt in terms of the purpose of entering marriage and common livelihood. Spouses express the free will simultaneously, because an eventual time gap provides a possibility of revoking such statement by one of the spouses, which renders impossible the entry into a valid marriage. The expression of will to enter into marriage represents the essential condition for giving consent to marriage, while the purpose for which this will is stated represents the cause of marriage.[26] According to the Article 28.2 of the Kosovo Family Law, the expression of will cannot be conditioned. The marriage is nullified if one of the spouses has conditioned such will with the realization of any material interest or enjoyment of any other claim in contradiction with the law.

[25] Janić-Komar, Mira, Korać Radoje, Panjović" Family Law (Porodično pravo), Nomoc, doo Belgrade, p. 90.

[26] Omari, Sonila: Family Law (E drejta familjare), Faculty of Law, University of Tirana, 2010, p. 53.

6. Opposite sexes

The Article 37.1 of the Constitution of the Republic of Kosovo provides that based on free will, anyone enjoys the right to marry and the right to create a family in compliance with the law. This provision, formulated without mentioning the element of opposite sexes of people expressing free will as a mandatory condition for marriage, caused a debate and dilemmas in the wider public, whether the Constitution of Kosovo allows or not the marriage between same sex people. This dilemma and such uncertainty is adequately addressed by the Kosovo Family law, Article 14.1, which defines the marriage as: *Marriage is a legally registered community of two people of different sexes, through which they freely decide to live together with the goal of creating a family*. This provision clearly provides that to enter into a valid marriage, future spouses must meet the essential condition: opposite sexes. Opposite sexes represent the biological, cultural and civilizing components of marriage.[27]

The Recommendation of the Council of Europe 1474/2000 and the Resolution of the Parliament require the modification of domestic legislation in member countries towards the recognition of homosexual persons' rights to enter marriage. In relation to the allowance of same sex marriages, the Albanian doctrine is divided. There are also opinions that same sex marriages should be allowed by law. In this regard, Sonila Omari says: This political/legal requirement aims to eliminate any difference in national legislation enabling discriminatory legal treatment of individuals based on sexual orientation.[28] Without dwelling on "pro et contra" arguments in the debate over gay marriages, which exceed the subject matter of family law, in our judgment, although the recognition of a legal instrument similar to marriage, would be a welcome solution.[29]

It is clear that no one can be discriminated against their own sexual orientation, but considering the fact that "homosexual marriages" are

[27] Podvorica, Hamdi: E drejta familjare (Family Law), Trend, Prishtina, 2011, p. 73. Hermafrodisimi si dukuri ndahet në: *quasi hermafrodisëm*, i cili ndeshet në rastet e personave tek të cilët megjithëse konstatohet ekzistenca e të dy sekseve, njëri nga sekset është ai që mbizotëron: *dhe verus hermafrodisëm,* tek të cilët mbizotërojnë të dy sekset duke e bërë thuajse të pamundur përcaktimin e seksit të individit. Shih: Sonila Omari, E drejta familjare, fq. 55.

[28] Omari, Sonila: Family Law (E drejta familjare), Faculty of Law, University of Tirana, 2010, p. 47.

[29] Omari, Sonila: ibid., p. 53.

infertile, and sexual relations within a homosexual couple are unnatural, the author of this paper believes that before modifying internal legislation and allowing same sex marriages, one must evaluate the details of benefits and consequences brought by such marriages. The fact that within such marriages, there are no natural sexual relations and no children are born, the marriage cannot complete its biological and natural function, the rejuvenation of population, which is essential, and without which the humanity would be jeopardized. The consequences of such marriages would be felt already in the first days of allowing such marriages in states with small population, such as Kosovo.

Amongst the matters requiring attention is the allowance or not of the marriages of bisexual people. The sex of a person is verified by vision at the moment of birth, and therefore, the people who do not engage in sexual intercourse before marriage cannot be verified for their bisexuality. If the other spouse does not file for dissolution of marriage, despite the fact that the spouse is bisexual, such marriages remain in force. Such marriages may remain valid even if verified by forensic expertise in judicial procedure that the bisexual spouse has a dominating opposite sex of the other spouse, otherwise the marriage would be absolutely null. The phenomenon of hermaphroditism is found in the cases when genital organs of an individual, sexual chromosomes and sexual features, be they primary or secondary, cannot define his/her gender, female or male.

With the medical and technological advances, the change of sex by medical surgical intervention is made possible for adult people. The right of people to self-determine sex and sexual status justifies this. In legal theory, there are opinions that do not recognize the marriage of a transsexual person, based on the argument that "in the biological sense, the same sexual organ as before will continue to exist".[30] In terms of chromosomes, nothing can be changed by surgery.[31] Another problem

[30] Omari, Sonila: Family Law (E drejta familjare), ibid., p. 56.
In countries which have regulated such matter (e.g. Switzerland, Italy, Germany, etc.), the right to surgical intervention for sex change by medical methods is provided, thereby assigning legal rights and obligations of such change, such as registering new data and name. Attention is required also on the fact that persons undergoing sex change surgery do not waive their other subjective rights, but one must have in mind possible consequences in terms of family law and rights.
See: Mira Alinčić- Dubravka Hrabar-Dijana Jakovac- Lazić-Aleksandra Korać-Graovac: Family Law (Obiteljsko pravo), Narodne novine, Zagreb, 2007, p. 48.

[31] Podvorica, Hamdi: Family Law (E drejta familjare), Trend, Prishtina, 2011, p.75.

arises with the sex change after marriage, since such change may be ground for marriage dissolution, because sexual heterogeneity is a condition for a valid marriage.[32]

7. Adult age and capacity to act

The legal age of marriage is an important and absolute condition for obtaining capacity of marriage,[33] since minor persons do not have the necessary physical and psychological maturity to understand the rights and obligations of marriage. According to Article 15.1 of the Kosovo Family Law, The capacity to enter into wedlock is obtained with full capacity to act, while Article 15.2 of the same law provides that maturity is obtained upon the completion of the eighteenth year of age. An analysis of such provisions shows that to obtain capacity to enter wedlock, a person must cumulatively be 18 years of age and be fully capable of acting. Therefore, a person may not have the capacity to enter wedlock even if he is 18 years of age, if he/she is mentally ill and has no capacity of acting. Legal development has taken the path of increasing the age threshold for wedlock, thereby leaving aside the purpose of previous legislation, which only considered the requirement of puberty, at least for women.[34]

While the law has provided on the age threshold under which minors cannot enter wedlock, the 18-year threshold for obtaining capacity to enter wedlock may be lowered for boys and girls, by a permit of a competent court, down to 16 years of age. No minor under 16 can enter wedlock, not even by permit of a competent court, because they are considered to be incapable of rendering free will, or comprehending marital rights and obligations, and the consequences and responsibilities deriving from marriage.

The definition of the age threshold under which minors cannot enter wedlock, not even by court ruling, is a better choice, because it instills stronger legal certainty, when compared to the situation in which the courts would determine the threshold in individual cases. For this reason,

[32] Podvorica, Hamdi: Ibid., p. 75.

[33] Mandro-Balili Arta Arta, Meçaj Vjollca, Zaka Tefta, Fullani Ajrana: Family Law (E drejta familjare), Kristalina KH, Tirana, 2006, p. 100.

[34] Omari, Sonila: Family Law (E drejta familjare), Faculty of Law, University of Tirana, 2010, p. 57.

some authors, such as Bakić[35], believe that age is a marital hindrance, and not an essential condition to enter wedlock. The 1974 Kosovo Marriage Law defined the age of persons in the group of marital hindrances, Chapter I, Articles 2-20, and not in the group of essential conditions for entering wedlock.

By issuing permit to enter wedlock for minors, the court shall legalize a relationship, which existed even before issuance of such permit. In such case, the court shall consider the physical and psychological maturity of the person applying for a permit to marry, which should be validated not only on statements, but on evaluations of professional experts and forensic expertise. The truthful motive to enter wedlock is an important matter to be taken into consideration by the court when addressing the permit for wedlock to a minor. The motive must be addressed in terms of the requirement for entering wedlock before proper time. Courts only allow marriages to minors for reasonable cause. Such cause may be the pregnancy of the female partner or birth of a child, since any upraising, provision, education and protection of children is better if the child lives with both parents.

It has been proven that marriages in young are detrimental both for the health of spouses and due to the fact that they grow older faster. It has been scientifically proven that children brought to life in such marriages are weaker than children born in adult wedlock, and they may even be born with health problems.

8. Entering wedlock before a competent authority

To have a valid marriage, the will must be expressed before a competent authority. According to Article 28.3 of the Kosovo Family Law, in expressing the free will, participating parties during the wedlock bond are the future spouses and two adult and fully capable witnesses. The civil registrar is bound to allow the wedlock bond if there are no marital bans or prohibitions. According to the Article 29 of the Kosovo Family Law, the registrar is obliged to refuse cooperation in the wedlock procedure, if any prohibition or ban exists. When it is found that there are no such hindrances or bans, the registrar should notify the future spouses of their

[35] Bakić, Vojisllav: Porodićno pravo (Family Law) "Savremena Administracija", Belgrade, 1980, p. 105.

rights and obligations in wedlock. For such notification to be clear and objective, the registrar shall read aloud the legal provisions on such rights and obligations.

Also, marriage must be entered into in compliance with the legal procedure. According to Article 27.1 of the Kosovo Family Law, Wedlock is solemnly entered into in specifically designated premises[36]. A problem arises: how could a person enter into wedlock if he/she is hospitalized or serving sentence in a prison. In such cases, when one spouse cannot appear in specifically designated premises for reasonable cause, the Article 27.2 of the same law allows for entry into wedlock in other premises, and such occurrence is allowed by the registrar provided that spouses provide reasonable justification.

9. Conclusion

After research and study of the topic of "features of marriage in Kosovo", I have reached the following conclusions:

1. In the families of the promiscuity period, sexual relations were unregulated. In the medium degree of savagery, in consanguine families, for the first time in humanity, the prohibition of sexual relations between different generations – ancestors and successors – appeared. Groups entered into marriages, and the origin of the child was derived by the mother's line, since in group marriages, no

[36] Kosovo Family Law no. 2004/32, of 20 January 2006.
According to the Albanian Civil Code of 1929, Article 121, the marriage age for girls was 16, and 18 for the boy. This rule though had its exceptions. For reasonable causes, if parents and offspring agreed, the king could allow wedlock of minors even under the threshold as provided by Article 121 of the same Code. The threshold under which no wedlock would be allowed for minors was 15 for boys and 14 for girls. Some laws, approved in the second half of the past century, provide different thresholds for wedlock. E.g. the Swiss law provides that the males obtain capacity to enter wedlock at the age of 20, and females at 18. Polish law provides that males may enter into wedlock at 21, and females at 18. Some laws have even prescribed lower thresholds for wedlock. Great Britain, Norway, New Zealand, Morocco, provide that the capacity to enter wedlock is obtained, for males and females, at 16 years of age. Italy, Mexico, Ceylon, males may enter wedlock at the age of 16, and females at 14. Ireland, Canada, Paraguay, Uruguay, Venezuela, males may enter into wedlock at 14, and females at 12.
See: Bakić, Vojislav: Porodićno pravo (Family Law) "Savremena Administracija", Belgrade, 1980, p. 104.

fatherhood could be derived. In the Punaluan family, for the first time, marriages between women and men of the same tribe, and marriages between siblings, were prohibited. In the matriarchal period, women had absolute power over men and children of the family, while under the patriarchate, the power shifted from women to men. Now, the origin of children is derived by fatherhood line.

2. In the syndiosmic family, for the first time, marital relations involved one man and one woman. A synonym of couple marriages is a monogamous marriage, which is also characterized by one man and one woman in union. Despite changes in history and societal development, monogamous marriage has preserved its features to today, and is considered to be a model of modern marriage.
3. In legal theory, there is no clear definition of marriage, which would involve all features of marriage in time and space, because in a long array of transformations and reforms, different forms were established as per societal changes.
4. Positive law in Kosovo has provided on the expression of free will to enter wedlock; opposite sexes; adult age and capacity to act; entry into wedlock before a competent authority and under procedure provided by law.
5. The Constitution of the Republic of Kosovo, and the Kosovo Family Law guarantee every citizen the right to marry and the right to form family in compliance with the law and their free will.
6. Marriage is an important societal and legal institution, protected by state and society, and spouses are equal on all grounds, without any difference in sex, race or nationality before, during and after marriage.

List of references

Aleks Laurasi: Family Relations (Marrëdhëniet familjare), Laurasi, Tirana, 2001.

Спировик Љиљаа - Трпovcka: Семејо правo (Family Law), NJIP "Studentski Zbor", 1997, Skopje, 1997.

Friedrich Engels: The origin of the family, private property and the state, Rilindja, Prishtina, 1980.

Federique Eudier: Droit de la familje, Armand Colin, Paris, 1999.

Hamdi Podvorica: Family Law (E drejta familjare), Trend, Prishtina, 2011.

Janić-Komar, Mira, Korać Radoje, Panjović: Family Law (Porodično pravo), Nomoc, d. oo Belgrade.
Mandro-Balili Arta Arta, Meçaj Vjollca, Zaka Tefta, Fullani Ajrana: Family Law (E drejta familjare), Kristalina KH, Tirana, 2006.
Mira Alinčić-Ana Bakarić Abramović-Dubravka Hrabar-Dijana Jakovac-Lazić-Aleksandra Korać: Family Law (Obiteljsko pravo), Narodne novine, Zagreb, 2001.
Mira Alinčić- Dubravka Hrabar-Dijana Jakovac- Lazić-Aleksandra Korać-Graovac: Family Law (Obiteljsko pravo), Narodne novine, Zagreb, 2007.
Sonila Omari: Family Law (E drejta familjare), Faculty of Law, University of Tirana, 2010.
Santhipi Begeja: Family Law in the SPR of Albania (E drejta familjare e RPSH të Shqipërisë), University Book House, Tirana, Shtëpia e librit universitar, Tiranë, 1985.
Vojislav Bakić: Family Law (Porodićno pravo): "Savremena Administracija", Belgrade, 1980.

Legal Acts:

Constitution of the Republic of Kosovo, 2008.
Cannon of Lekë Dukagjini, Kuvendi, Shkoder, 2001.
Austrian Civil Code (1811).
German Civil Code (1896).
Napoleon Civil Code (France, 1804).
Albanian Civil Code (1929).
Kosovo Family Law, no. 2004/32 dated 20 January 2006.
Law on Marriage and Family Relations (OG of SAPK, no. 10/84, dated 28 March 1984).