

## LEGAL BASIS FOR MEDICAL EXAMINATION OF PERSONS GETTING MARRIED UNDER THE LAWS OF RUSSIA AND SOME FOREIGN COUNTRIES

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**ABSTRACT:** The article discusses the problems of legal regulation of some aspects of marriage, namely the medical examination of future spouses. Considering that the issues of this requirement are both recommendatory (dispositive) and mandatory (imperative) in the countries, the authors, using the legislation of the Russian Federation and other countries as an example, analyzed the regulatory regulation of this institution and made recommendations on the ways of such problem solution.

**Keywords:** family law, medical examination, spouses, family, reproductive function, diseases.

### INTRODUCTION

Family law of any state is aimed at protection of the rights and legitimate interests arising from marriage and family relations. Each country has developed and operates a certain concept, which has the state status (Bocharov & Tsukanov, 2017; Martins, et al, 2018). The main objective of each such program in the field of family-marriage relations is to solve the problem of marriage union reduction, divorce number increase, and birth rate reduction, which, unfortunately, exists in Russia and in foreign countries. There are

many reasons for this phenomenon. One of the problematic issues that is the main one for many problems is the reproduction of a married couple. Thus, according to the Scientific Center for Obstetrics, Gynecology and Perinatology of the Russian Academy of Medical Sciences, every sixth couple suffers from infertility for various reasons, which, according to WHO criteria, is considered as a threat to the national security of the country. This leads most often to the marriage termination (<https://www.eg-online.ru>).

In order to change these statistics, it is necessary to turn Russian family law into a different direction to resolve the issue of medical examination of persons wishing to register marriage. Only physically, genetically and mentally healthy men and women can create a healthy family without transferring the burden of serious illnesses to their spouse and future children (Kozhabergenova et al, 2018; Tabatabaei, et al, 2014). The methodological basis of the article was represented by general scientific and special methods. The following general scientific methods were used: dialectic, logical, analysis and synthesis, induction and deduction, etc. The following private scientific methods of cognition were used: formal legal, comparative legal, and systemic-structural.

Currently, the Family Code of the Russian Federation includes an article on the medical examination of persons entering into marriage. During this legal norm development, the Russian legislator took into account the existing experience of foreign countries. But problems remain with such a requirement. Most of them are connected with the dispositivity of domestic family legislation norms and insufficient explanatory work on the part of the authorities. For people who marry, it is simply necessary to know about each other's health status, the gaps in which can lead to such consequences as infection with a dangerous disease (HIV, sexually transmitted diseases, hepatitis and others), which can lead to the birth of a sick child or infertility (Godino et al., 2019; Zhatkin, 2018).

After the legislation analysis of various states with different economic, political and social development, we can see a different approach to this problem solution. In some foreign countries, the state of health among the persons entering into marriage is recognized as a necessary condition for its conclusion. For example, in the United States, each state Department of Health approves a list of diseases for which a person who has such or has been ill must report this information in case of marriage. At the same time, a number of diseases prevent marriage. In accordance with US law, "the first thing that is necessary for married people is to get acquainted with the medical certificate and supplement it. A number of diseases prevent marriage" (Zalesky, 2005). So, if a person, upon marriage, hid information from another spouse about the presence of diseases or that he had previously had a disease, which is included in a special register of diseases that must be reported at the time of marriage (these include hepatitis, jaundice and others), information on sexual disorders, infertility, it creates a "situation in which consent given to marriage is considered declared under the influence of delusion, which, in turn, is the basis for invalidating a marriage upon a request of a misled party" (<https://le.utah.gov>; <http://www.ilga.gov>; <https://legis.la.gov>).

Latvian lawmakers have established that, before marriage, future spouses must present a medical certificate from local or state government institutions about his or her health. As can be seen from this provision, Latvian law obliges the persons entering into marriage to undergo a medical examination (<https://web.archive.org>). In 2014, the Azerbaijani parliament adopted the amendments to the Family Code, according to which those wishing to marry must undergo a medical examination. In accordance with the amendments that have entered into force, the Azerbaijani government approved the "List

of diseases for which persons wishing to marry should be examined," the "Rules for passing a medical examination by persons wishing to marry," and the "Certificate form certifying the fact of passing a medical examination by persons wishing to marry" (<https://online.zakon.kz>).

The issues of nation demography and the health also concern the largest state - the People's Republic of China. Thus, the State Committee for Health and Planned Childbearing of the PRC called on all Chinese newlyweds to undergo a medical examination before registering marriage (<https://ria.ru>). Thus, it can be seen from the analysis presented that caring for the family and demography is most important in many countries. The purpose of these measures is to reduce the spread of dangerous diseases, implement the social function of the family team, improve the fertility rate of healthy children, and, thus, reduce the divorce rate.

However, given the availability of recommendations, or dispositive norms, in the law on medical examination of the bride and groom, the conditions for the presentation of information about the state of health of one future spouse to the other, we can talk about the existence of conflicts in law enforcement practice. And not only about conflicts, but also about the insolvency of norms aimed at right protection of one of the spouses. Of course, in accordance with the norms of RF family law, concealment the first HIV infection or sexually transmitted disease by one of the future spouses from another is considered as a basis for invalidating the marriage, if they underwent a medical examination, and he/she did not report the detection of the disease. And the legislation does not cover such cases as the case of a severe form of pathology that entails the birth of children with birth defects, the inability to perform reproductive functions, the presence of diseases such as tuberculosis, epilepsy and other dangerous diseases (Bocharov & Tsukanov, 2017).

Another issue is the provision of information to the persons entering into marriage about their ability to undergo a medical examination. First of all, the legislator does not define an entity that would be obliged to inform potential spouses. Such an entity could be civil registry offices, the employees of municipalities, churches (depending on the method of marriage registration established in the state), since the people who wish to enter into marriage apply to these institutions for marriage registration. It is also necessary to increase the level of educational work at educational institutions for the promotion and targeted dissemination of scientific knowledge and other socially significant information regarding the health of future spouses, as well as their ability to undergo a medical examination (Kuznetsova & Eliseikina-Los, 2018).

## CONCLUSION

The adoption of the requirements for a compulsory medical examination of future spouses, as well as the obligation to inform each of them of each other's health status at the legislative level, will solve many problems that face each particular state in particular, and humanity as a whole. There is a number of international legal acts aimed at the non-proliferation and prevention of dangerous diseases (<https://undocs.org>; <https://undocs.org>). So, the data on each other's health status will allow future spouses to accept or reconsider marriage, establish each other's health status in order to fulfill the reproductive function, but most importantly, prevent dangerous diseases, both for themselves and their future offspring.

## REFERENCES

1. Infertility has reached the level of national security in Russia / <https://www.eg-online.ru/article/317486/>.
2. Family law of the Russian Federation and foreign states. Major Institutions / Ed. by Zalessky V.V. - M., Yurinformtsentr. 2005.
3. Utah Code // <https://le.utah.gov/xcode/code.html>.
4. Illinois Marriage and Dissolution of Marriage Act /<http://www.ilga.gov/legislation/ilcs/>.
5. RevisedStatutesofLouisiana [https://legis.la.gov/Legis/Laws\\_Toc.aspx?folder=75&](https://legis.la.gov/Legis/Laws_Toc.aspx?folder=75&).
6. Latvijas Republikas Civillikums (THE CIVIL LAW OF LATVIA) /[https://web.archive.org/web/20150724021734/http://www.tiesas.lv/files/ties\\_darb\\_reg\\_norm\\_akti/civillikums.pdf](https://web.archive.org/web/20150724021734/http://www.tiesas.lv/files/ties_darb_reg_norm_akti/civillikums.pdf).
7. FamilyCodeofAzerbaijan [https://online.zakon.kz/Document/?doc\\_id=30420386](https://online.zakon.kz/Document/?doc_id=30420386)
8. <https://ria.ru/20020809/205350.html>.
9. Declaration of Commitment on HIV/AIDS /<https://undocs.org/ru/A/RES/S-26/2>.
10. Political declaration of the high-level meeting of the General Assembly on the fight against tuberculosis // <https://undocs.org/en/A/RES/73/3>.
11. Bocharov V.A., Tsukanov O.V. State policy in the field of child's right protection. // All-Russian scientific-practical conference (with international participation) "Fifth legal readings", Syktyvkar, December 07-08, 2017. FSBEI HE "Syktyvkar State University named after Pitirim Sorokin".
12. Kuznetsova N.V., Eliseikina-Los E.S. (2018) Medical examination of persons entering into marriage. Scientific forum: Jurisprudence, history, sociology, political science and philosophy: Collection of Art. based on the materials of the XVI-th Int. Scientific-Practical Conf, 3(16). - M., MTSNO publishing house.
13. Kozhabergenova, G. E., Taubaeva, S., Bulatbayeva, A. A., Kabakova, M. P., & Asanov, N. A. (2018). The Stewardship of School Counselor Education in Higher Educational Establishments. *Opción*, 34(85-2), 386-414.
14. Godino, J. D., Rivas, H., Burgos, M., & Wilhelmi, M. R. (2019). Analysis of Didactical Trajectories in Teaching and Learning Mathematics: Overcoming Extreme Objectivist and Constructivist Positions. *International Electronic Journal of Mathematics Education*, 14(1), 147-161. <https://doi.org/10.12973/iejme/3983>.
15. Zhatkin, D. (2018). Russian literary-critical reception of Burns at turning of the XIX-XX centuries. *Opción*, 34(85-2), 277-300.
16. Tabatabaei, F., Karahroudi, M. M., & Bagheri, M. (2014). Monitoring and zoning sultry phenomena in the southern provinces of Iran, *UCT Journal of Social Sciences and Humanities Research*, 2(3): 1-8.
17. Martins, V. F., Sampaio, P. N. M., Cordeiro, A. J. A., & Viana, B. F. (2018). Implementing a Data Network Infrastructure Course using a Problem-based Learning Methodology. *Journal of Information Systems Engineering & Management*, 3(2), 10.