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ANCORA MATILDE PROJECT

INFORMATION FOR THE FIRST PHASE OF ANCORA MATILDE PROJECT

SOS Families in Risk Association Team

Reasons for joining the project

The aim of Ancora Matilde Project is to insure the welfare of minors and to prevent violence towards women and/or children in cases of family disintegration. It will develop and spread the researches and conclusions reached in the previous Matilde Project. This subject is relevant to the specific field of work of SOS Families in Risk Association and is the most important reason for joining the project. Violence is a major problem in our country. In our everyday work we are witnessing an increasing number of family conflicts where the “right of the might” present.

On second place the family mediation method, on which research is concentrated, is a new and effective tool for solving family problems. The current practices in Bulgaria are more conflict orientated – two opposing parties struggling for their rights. The idea of mediation - solution with the help third independent party and achievement of mutual agreement - together with the specific techniques use by the mediator are something which our society need to keep under control the rising wave of violence.

Ancora Matilde Project offers a new for our society point of view – children’s right in case of family disintegration and divorce. Despite the adopted laws and the newly created institutions, in the process of diversion children are not accepted as participant but rather as subject – in a typical divorce process their opinion is not taken under consideration. On

the other hand family mediation ensures a specific place for them – they are part of the decision-making process.

Another reason for joining the project is the emphasis which it makes on joint work of social services and non-governmental sector on promoting and conducting the family mediation. Family problems, divorce, violence within family and impact they have on children is an issue concerning the whole society. Therefore the joint effort of state, local authorities and volunteer sector are required. We hope that the models for intervention developed by Matilde Project will improve the services in our community.

Another motive for being partner in Ancora Matilde Project is the growing interest for comparative and cooperative studies of the family problems. We need to build out civil society and joint ventures with organization from European Union are good basis for this. The project is considered as an excellent opportunity for acquiring of international experience and expanding our field of work.

Family evolution in Bulgaria

There are several periods in the evolution of Bulgarian family in the last century. The first one is up to adoption of first Family Code. The period is characterized with inequality of the partners, both economical and legal. Prevailing role in the family has the husband. He had almost full control over his wife and children. All matrimonial questions are controlled by the Church.

After World War Two and the integration of Bulgaria in the “communist block” there are drastic changes in the status of Bulgarian family. Important legal rights concerning the family were proclaimed – equality of sexes, right of divorce, equality of both parent in exercising the parental rights, right of adoption and being adopted, equal status of children born in and out marriage. The state began to get involved in social life by the social services.

The relations between sexes, between the partners, between parents and children, the social status of women and children have passed to another stage. But there is very important notice that should be made. Bulgaria was totalitarian state and exercised full control over every aspect of the lives of its population, included even personal matters like marriage and family. Among most important and in concern to family kinds of control are – restrictions in people movement; strict control of residence, place and kind of work; control over age of marriage; control of children’s name; restriction of property; divorce control. These are just few examples which had direct influence on family life. Of course there were a lot of positive changes – protection of maternity and children, a lot of social services concerning family, minors and marginal groups of the society.

In the late 70’s and early 80’s Bulgarian family reached a climax of its development so far. Men and women were equal both in social and family life and this equality was enacted and protected by the state with all its institutions. There were a lot of family

social services – special laws protecting pregnant women and young mothers, families with more than two children; social services for children, orphans and children living in difficult conditions; free education system; financial support by the state, facilitated adoption, etc. in the society there was no discrimination for orphans, children born out of the marriage or divorced parents.

There were several major family problems. On the first place it was the unfinished process of emancipation – most of the women did not understand, used or seek defense and help in exercising their rights. Another problem was domestic violence. Because of the cultural specifics and social habits it was not sanctioned by the state or by the society. And at least, but not at last the third big group of problems were determined by the jurisdiction and laws in Bulgaria – increasing number of divorces – in late 80's over 50 %; harsh conflicts during divorce process and lack of legal norms for non-formal families.

In the late 90's the political and economical changes in Eastern Europe effected the Bulgarian family. The first change is reversal of the role of the state. From major participant in social life it became more like observer. Most of the social service programs are altered and the remained are insufficient, ineffective and out-dated.

The family is left in the status of the early 80's but without state financial and social support and, because of bad economic conditions, without opportunity for further development. All the problems, which existed in the past, became more obvious. The bad economic conditions of the family members led to new conflicts.

Among the most important recent problems of Bulgarian family are – domestic violence, alienation between partners and between parents and children, unemployment, drug abuses (this is something new for our society), alcoholism and all problems of modern Bulgarian society (starting from crime and ending with total sense of hopelessness).

In the past five years the state is trying to make a new regulation of social relations by adoption of new laws – Children Protection Act, few amendments in Family Code, new organization of social services. Unfortunately, most of those efforts are not very well planned and implemented. The newly established non-governmental sector is trying to compensate this, but without broad support and engagement of the state and change in its social policy the effects are insufficient.

This brief article on family evolution in Bulgaria is not a profound analysis of the complex phenomena concerning Bulgarian family. Only few aspects were examined, most of them were just mentioned. Unfortunately our society has deep and big problems, but we are trying to make the difference.

Family services in Bulgaria

The role of the institutions and the specialized services for the solution of domestic conflicts, separation or divorce in Bulgaria

The family mediation as a form of solving domestic conflicts is a comparatively new and not so well known service in Bulgaria. As a rule there is no law of mediation and these activities are not institutionalized. The development of similar programs is realized mainly in the third sector. There is a lack of specialized centers of family mediation and the out-of-court solution of domestic conflicts is an aspect of the activities of centers, offering intermediacy in conflict at the working place, in neighbors' disagreements, in on-the-job and business arguments, in school arguments etc.

The period of transition characterizing the countries of Central and Eastern Europe is critical regarding domestic conflicts. The increasing number of divorces and factual separations of partnering couples, the escalation of domestic violence and the high risks to which children of families at risk are exposed made necessary the establishment of centers that take care of the families at risk. The beginning of developing a mechanism of interaction between various institutions for the identification of the risky domestic situations has been set. Special attention is paid to the cases in which the domestic conflict threatens the life, health and personal integrity of the child. This is the reason why organizations working in the sphere of psychological, social and social and legal support turn to target groups like single mothers, youths at risk, domestic violence cases etc.

The lack of specialized units of family mediation is compensated to a certain extent by the intermediary role of the social care services, the NGOs, the school specialists and the personal GPs in the cases of divorce, separation or domestic conflict.

The Role of the Social Care Worker

The Law for Child Protection passed in 2000, as well as the UN Convention on the rights of the child, is the foundation of the social care activities connected with children of families in divorce.

At all Municipality Social Care Services /MSCS/ in 2001 Departments for Child Protection /DCP/ were founded, whose main function is the protection of child interests and rights.

In case of contentious divorce cases, the court informs ex officio DPC. A social care worker, representing the Department visits the family home to study the actual family situation, listening consecutively to the aspirations and arguments of both parents and the child. After concluding his study, the social care worker presents to the court in written or

spoken from his standpoint. The main aim of the procedure is to reach an agreement between the two spouses without having a hearing of the children in court. In this way the social care worker aims at preventing the traumatic for the child mentality event – giving testimony in court.

The social care workers, representatives of DCP have the rights to plead a court decision on behalf of the child when the parental rights are given to the parent who is not preferred by the child itself. Here again the agreement between the two spouses regarding parental rights and visiting hours is emphasized. According to data obtained from DPC in the town of Varna, in 2001 social care workers presented to the court their standpoint on 249 cases for parental rights and 10 cases of child support.

If the rights are delegated to a parent who does not take good care of the child or neglects it, the social care worker has the right to start proceedings for depriving the parent of parental rights and granting them to the other parent. During the procedure efforts are made for an agreement between the parents to be reached in order to avoid the child's appearance and hearing in court.

The Role of the School System

The presence of domestic conflicts can become known to the school psychologist or a teacher. These specialists do not participate directly in the solution of the conflict between the two parents, but they can initiate a conversation with each of them (together or separately) during which they can clarify the negative consequences on the child development and adequate participation in the educational process. The most beneficial consequence of this consultation is the outlining of concrete measures neutralizing the destructive influence of the domestic conflict on the child. In such cases the school psychologist or the teacher practically “intermediates” between the two parties for the interests of a third, observing the norms established by the school system.

A significant aspect of the work of the school specialists is the directing to services and centers, offering family or individual consultations. In this way they intermediate between the participants in the conflict and the specialized service, providing adequate assistance and support.

The Role of the Personal GP

In July 2000 the Health Reform in Pre-hospitalization Care was carried out in Bulgaria. The functions of the personal GP – a position non-existent up that time - were regulated.

It is difficult to say that the personal GP has a role in the family life of his patients. The common ground of his professional obligations with the conflicts and family crisis are expressed in the following two directions:

1. Issuing a medical certification in cases of domestic violence or directing the patient to a forensic physician. Upon the identification of a severe domestic conflict /most often connected with violence/, the family GP directs the patient to a NGO dealing with the respective problem or issues a recommendation for an examination by another specialist when necessary. Unfortunately, due to the delicate issue, the lack of specific training and sometimes of sensitivity towards the problem, such cases often remain unidentified.
2. The issuing a medical certification, which is to be used in court when determining the amount of child support in case of divorced parents. Most often this concerns chronic diseases which require long-term and expensive treatment of the child.

The Role of the NGO

There are NGOs in the country whose main object of activity is connected with family planning, consultation of partnering couples, family and individual psychotherapy. At this stage most effective is the activity of the organizations dealing with the issue of domestic violence. The main forms of assistance rendered are psychological and social counseling, psychiatric and psychotherapeutic assistance, directed to overcoming the heavy crisis in which families with domestic violence function.

In 5 organizations programs of free legal defense for women and children victims of domestic violence are developed. The users of these programs are most often women subjected to physical abuse and emotional pressure for years who have chosen the divorce as a possible way out of the violent relationship. Before the beginning of the divorce procedure the clients are counseled by a psychologist or psychiatrists who study the motives for the divorce and the chances of agreement between the two parties. When both parties are motivated to overcome the family crisis without separation or divorce family counseling is offered, whose main objectives are the following:

1. Studying techniques of preventing and dealing with family conflicts.
2. Examining alternative behavioral strategies in the partner interrelations.
3. Mobilizing the resource of the partners for dealing with the family situation.
4. Developing skills for adequate response in a risky family situation.
5. Developing skills for expressing understanding, respect and tolerance towards the standpoint of the other etc.

The agreement, as a result of the counseling or psychotherapeutic process is usually achieved only in cases where violence is not so drastic and alternative forms of communication between the partners still exist.

Development of Mediation Services in Bulgaria

Development of a mediation program has been realized by Partners-Bulgaria Foundation in the town of Sofia since its foundation in 1998. This program is carried out in Bulgaria with the help of the American Agency of International Development. It is being developed in six countries in Central and Eastern Europe –Slovakia, Hungary, Poland, Bulgaria, Kosovo and Albania and is being coordinated by Partners for Democratic Change International.

The mediatory team at the center includes experts qualified in this field. They are trained to monitor the mediation process in a neutral and confidential way. The first session in mediation is planned one to two weeks after the request made by the parties in the conflict. The discussions during sessions can be neither broadcast nor used as an argument in court.

The center of mediation solves above all arguments between groups and communities, labor, school and business arguments, misunderstandings between lodgers and landlords and, to a lesser extent, family misunderstandings. The development of the family mediation services will be realized in the present 2002 with the financial support of Open Society Foundation, Program COLPI.

In October 2001 Partners-Bulgaria Foundation began work on a three-year program for preventive work with children and families at risk from the towns of Lom, Kiustendil and Samokov. The program is called Together Tomorrow Again and is being carried out with the support of King Bodwain Foundation, Belgium and Open Society Foundation – Sofia. The program is intended for helping local civil organizations, governmental institutions and professional communities with the development of preventive models of social care work with children and families at risk, as well as for helping their social re-integration. In each town representatives of NGOs, social care workers, teachers, members of the local committees for fighting antisocial offences of minors and under-age children, and parents will be trained - through interactive methods - skills of effective co-operation, mutual planning, facilitation of meetings, conflict solution and project management, which will improve the situation of the children in need. As a result of the application of the new methods, initiation of local projects will be achieved, that will offer models of prevention and re-integration of children and families at risk.

An intermediary office for conflict solving was founded at the Educational and Consultation Center in the town of Varna. Among the activities of priority is the solving of domestic, labor and other worldly conflicts.

In conclusion, it can be said that services in family mediation in Bulgaria are not completely absent, but they are extremely underdeveloped. At the same time family mediation is necessary as an alternative form to court decisions in the cases of separation and/or divorce and a real necessity exists for its expansion in the various sectors too. This form of intermediacy in domestic conflicts would contribute to the protection of children's interests, the minimization of the negative consequences of heavy domestic

conflicts and the reduction of the economic and social consequences arising from the separation or divorce for the family members.

1. The factors that hinder the development of the family mediation services are probably complex. Such are supposed to be:
2. The lack of involvement on behalf of the state institutions and the lack of a law of mediation.
3. The lack of sufficient experience and skills among the specialists in the professional management of the mediation processes.
4. The ever more difficult-to-realize interaction among the sectors.
5. The insufficient information provided to the people about the availability, nature and results of the application of alternative methods of conflict solution.
6. The availability of psychological disposition rejecting the extraction of the domestic conflicts out of the range of the family system.

Family normative framework¹

The historical development of legislatures and the legal theory reveal various and principally different definitions of marriage.

The Bulgarian legislature does not contain a legal definition. The following variant of a widely spread definition in literature could be considered the most suitable one: "Marriage is a voluntary and equal union between a man and a woman, contracted for the creation of a family by observing the conditions and rules, established by the law, and bringing forth mutual rights and responsibilities for the spouses". In its legal sense, marriage is not a contract. In this sense the contracting of marriage /the wedding/ should be qualified as a legal act, and the marriage as a social institution.

Under art. 6, par. 1 of the Family Code "Only the civil marriage, contracted according to the form established by this code, bears the consequences which laws associate with marriage.

(2) The religious ceremony can be performed only after a civil marriage. This ceremony has no legal force".

¹ Bibliography: Liliana Nenova, Family Law of the Republic of Bulgaria, second revised edition

Under "form of marriage" is understood the way of its conclusion established by the law. The form of the civil marriage is the valid form of the act.

The rule of civil marriage was established in 1945, valid only for the future. The legislator, though, acknowledged and did not annul the marriages contracted before that in religious form, which had been valid up to then.

DISSOLUTION OF MARRIAGE

The dissolution of marriage is the legal termination of the marriage union. It could be the result of the physical elimination of one of the spouses or the legal dissolution of their marriage bond.

The dissolution of marriage is settled by Chapter Nine of the Family Code – art. 94 – 108 of the FC/ Family Code/. The matter encompasses two big groups of issues: I /Grounds for the marriage dissolution and II /consequences of the marriage dissolution.

The grounds for the dissolution of the marriage are stated in detail under art. 94 and art. 95 of the FC. They are the following: 1/death of the spouse, 2/declared death of the spouse, 3/annulment of marriage, 4/divorce.

The object of the present presentation is the “divorce” as a ground for dissolution.

DIVORCE – CHARACTERISTICS and FORMS

The divorce is stated as a reason under art. 94, par. 3 of the FC and arranged in detail under art. 99 – 108 of the FC. The divorce is the dissolution of marriage before one of the spouses dies on the grounds of circumstances that have occurred after it has been contracted. The latter characteristic distinguishes the divorce from the annulment. The latter is also legal dissolution of marriage while the spouses are still alive but it is due to irregularities in its conclusion.

The circumstances established by law on the grounds of which the court dissolves a marriage are called grounds for divorce. According to the Bulgarian law in force they are two: deep and incorrigible disruption of marriage and mutual agreement of the spouses.

In accordance with these two forms of divorce exist:

1. Bringing a divorce suit on the grounds of deep and incorrigible disruption of marriage and
2. Divorce by mutual agreement.

The history of these forms of our legislature is interesting and significant. The exarchic regulations recognized a divorce suit before the ecclesiastic court on the grounds of "absolute divorce grounds". These are precisely defined facts which, when proved before the court, make it dissolve the marriage without examining the relations (e.g. adultery, homicide attempt, absence, disease, judicial sentence etc.). The Decree of Marriage dated 1945 preserved some absolute grounds, established the notion "deep disruption of marriage" in divorce suits, and included divorce by mutual agreement. These regulations passed in 1949 in the Law of the Persons and the Family, but with its alterations of 1952 and 1953 the divorce by mutual agreement and the absolute divorce grounds were abolished. What remained was only the divorce suit on the grounds of deep disruption of the marriage. The Family Code of 1968 accepted this divorce but also reestablished the divorce by mutual agreement. These two forms passed into the Family Code of 1985 which is still in force, as with these legal developments the grounds and forms of the same name underwent significant changes in their concrete legal settlement.

DIVORCE PROCEEDINGS DUE TO DISRUPTION OF MARRIAGE

Deep and incorrigible disruption of marriage – Characteristics

Art. 99, par.1 FC states that "Each of the spouses can file for divorce when the marriage is *deeply and incorrigibly disrupted*". This ground for divorce has existed at all stages of the Family Law. It has major importance for allowing divorce.

The notion "deep and incorrigible disruption of marriage" is not defined in the Code. Various pictures of family relations can be referred to it. Generally speaking, it is a negative state of the marriage bond. The disruption of marriage is "deep" when the marriage bond is totally emptied of its due content. It is "incorrigible" when that state is beyond reform. Under Decree № 10 of 3rd November 1971, Plenary Session of the Supreme Court "The only grounds for divorce under the Family Code is the deep and incorrigible disruption of marriage.

Deep is a disruption that has led to the destruction of the family union, to the lack of reciprocity, respect, trust and friendly relations between the spouses, and the marriage bond is only a formality and does not correspond to the law.

Incorrigible is the disruption beyond reform when normal marriage relations cannot be restored."

The deep and incorrigible disruption of marriage is an *objective state*. It has to be established by the court in every single case.

Deep and incorrigible disruption of marriage - reasons

Art. 99, par.1 FC does not contain any instruction about the reasons for a deep and incorrigible disruption of marriage. Therefore of importance is only the availability of such a state. However, the determining the reasons for the disruption of the marriage by the court is very important. It is significant for several reasons:

- For making a well founded and just decision;
- For solving justly the question of blame;
- For settling expediently the arrangements for the children

Blame for the marriage disruption

The marriage blame is a subjective attitude of the spouse towards his/her marriage transgressions and their result – deep and incorrigible disruption of marriage.

The question of the importance of marriage blame is one of the most difficult legal problems. It refers to the relation between the blame and the marriage dissolution: should the marriage dissolution be connected with blame, or should it be determined only by the objective state of the marriage bond? The decision of the Family Code in force is preceded by an interesting past.

According to the exarchic regulations the absolute grounds, representing blameful conduct, were granted in favor of the blameless spouse against the guilty one. The Decree of 1945 always allowed a divorce when a deep disruption of marriage was available notwithstanding the blame for it. Therefore a divorce was granted even by the request of the guilty spouse. The regime reflected a greater freedom of divorce during the period in question. The Code of Civil Procedure of 1952, though, categorically rejected the divorce when the marriage disruption was caused by the exclusive blame of the plaintiff if the non-guilty spouse insisted on preserving the marriage. After the alteration of the Law of Persons and Family of 1953, this interdiction was corrected: as an exception divorce was allowed despite the exclusive blame of the plaintiff and the disagreement of the defendant if important public motives made it necessary. However, the interdiction in principle remained. Parallel to this there was the obligation of the court to state ex officio its decision on the question of blame.

The Family Code of 1968 left the interdiction for divorce on the grounds of the plaintiff's blame and disagreement of the defendant. The divorce became always possible if the marriage was objectively deeply and incorrigibly disrupted. The main idea was the undesirability of the dead marriage. Parallel to this the obligation of the court to state ex officio its decision on the question of blame was abandoned. The ruling of the court was facultative and depended on the will of the spouses.

The Family Code of 1985 again expanded the meaning of divorce blame. It linked it to the allowance of divorce and established the obligation of the court to state its decision *ex officio*. The established settlement of blame reflects the objective of the Family Code to strengthen its shielding of the marriage and the family and the protecting the children against the contemporary tendency of the increasing number of divorces. This regulation reflects the idea that it is not permissible to extract rights from one's own guilty conduct.

The present regulation for divorce blame as a whole is a new regime, which is notable for its greater flexibility and more original decisions. According to art.9, par.2 FC "Through its decision of marriage dissolution the court declares *ex officio* also the blame for the divorce..." This rule requires the court to declare the blame by its own initiative without the necessity of having a request by the spouses.

The Family Code allows two exceptions to this rule:

1. Not stating the blame for objective reasons – e.g. grave disease, infertility, forced long absence etc.
2. Not stating the blame by request of the spouses

The spouses have the opportunity to ask the court not to state the blame. However, in order to respect their will, an agreement has to be reached on all the consequences of the divorce: "The court does not rule the blame for the disruption of the marriage if the spouses declare that request and present their agreement about parental rights, personal relations and child support, as well as their property relations, the use of the family home, the support between them and the use of the family name." art.99, par.3 FC. The declaration, i.e. the request for not stating, has to come from both spouses. It does not matter who is to blame for the marriage disruption: - both spouses or just one of them. A special form and content of the request for no court ruling is not provided. The request could be in the form of a written statement as well in spoken form before the court, at any time, before the end of the debate in the court at first instance.

It has to be emphasized that the consent of the spouses for no ruling on the question of blame and their agreement on the consequences of the divorce do not change the character of the proceedings and the form of the divorce. The latter cannot be transformed into a divorce of mutual agreement.

Agreement of the spouses

The 'price' of no ruling on the question of blame, as is seen under art.99, par.3 FC, is an agreement of the spouses on all the consequences of the divorce. It should make arrangements for the relations both between the parents and between the parents and the children. The content of this agreement coincides entirely with the necessary agreement for allowing a divorce on mutual agreement /art.101 FC/. It is true that with the divorce on mutual agreement the agreement is a condition for the actual permission of the

divorce, and under art.99, par.3 FC it is a condition for no ruling on the question of blame. However, in both cases the agreement settles completely the consequences of the divorce. If the agreement under art.99, par.3 FC has been confirmed, the rules of resettlement after the divorce of the questions of parental rights and child support of the agreement are applied.

The significance of blame for the consequences of the divorce

The blame is of importance not only for granting of the divorce but also for its consequences. This importance can be manifested when the court has ruled the blame. If the divorce is granted without ruling on the question of blame, the consequences are settled as with a divorce without blame. The effect of the blame will be manifested when the divorce becomes an accomplished fact. This happens with the coming in force of the divorcement. It is necessary to know that “divorce decision does not come into force, although it is appealed against only in its part about the blame”/art.265 of the Civil Procedure Code/. Generally, in connection with the consequences of the divorce, the blame has the following significance:

1. The right of *alimony* has only the blameless spouse /art.83/FC/. The guilty one has no such right.
2. The blame has an indirect significance in case of *renouncement of donations* /art.105/FC/. Renouncement is not allowed if it contradicts morality. Such judgment depends also on the blame or blamelessness of the spouses.
3. The blame has significance also for the *exercising of parental rights*. The latter may not be granted to the spouse who is to blame for the divorce if this will reflect negatively on the upbringing and raising of the children /art.106, par.2/FC/.
4. The blame has significance also for the granting of *the use of the family home*. It is one of the criteria for the resolution of this question /art.107, par.1 and 2/FC/.
5. The blame of the surviving spouse is also a *condition for the continuation of the divorce proceedings* if after filing the claim the plaintiff dies. /art.102/FC/.
6. The blame has a significance also for covering the *expenses* for the proceedings/art.270/Civil Procedure Code (CPC)/.

DIVORCE BY MUTUAL AGREEMENT

In essence the mutual agreement is the second of the grounds for divorce in our law together with the deep and incorrigible disruption of the marriage.

The divorce by mutual agreement was established in our legislature in 1945 as an expression of the expanded freedom of divorce. It was renounced in 1952 in accordance with the increased strictness towards divorce, directed towards the strengthening of the marriage and family. It was reestablished in 1968 by the first Family Code and adopted in 1985 by the Family Code that is still in force.

The method of mutual agreement has several advantages to the divorce by claim. It saves the spouses the proving of facts that have led to the marriage disruption and the public exposure of their intimate family life. The divorce by mutual agreement is the most painless and most proper form of marriage dissolution. This form is in the interest of the children as the least of all evils.

The divorce by mutual agreement contributes to the decrease of legal debates and proceedings because it is necessarily accompanied by an agreement between the spouses on all consequences of the divorce, which are potential arguments with the divorce by claim.

In its essence the divorce by mutual agreement is not a contract, confirmed by court. The mutual agreement is grounds on which the court dissolves the marriage. The divorce is a direct judicial effect not of the agreement but of the court decision.

Agreement

The first condition is the availability of "a serious and unwavering agreement" /art.100/FC/.

It is necessary that the agreement be expressed thrice: when filing a divorce suit, at the conciliation hearing, at a court session.

The power of the court is exhausted with the ascertainment of the character of the agreement. The court does not have the right to examine and judge the motives of their will to dissolve their marriage /art.101, par.1 /FC/. When the court ascertains that the agreement of the parties is serious and unwavering, it does not have the right to refuse to dissolve the marriage on the grounds of groundlessness of the motives. It is obliged to dissolve the marriage.

Terms

The allowance of the divorce by mutual agreement is determined by a term.

The first of them refers to the length of the marriage after which a request for divorce can be filed. It is established by art. 100, par.2 FC: "The request for divorce by mutual agreement cannot be filed before three years since the contracting of the marriage have elapsed."

Agreement

A necessary prerequisite for the divorce by mutual agreement is the agreement between the spouses regarding the consequences of the divorce: "In case of divorce by mutual agreement the spouses have to state their agreement regarding the exercising of parental rights, their personal relations and the child support, as well as regarding their property relations, the use of the family home, the spouses alimony and the family name. The agreement is endorsed by the court, after checking if the interests of the children have been protected." /art. 101, par.1 FC/

An obligatory element of the agreement is two types of questions:

1. The relations between parents and children and
2. The relations between the spouses themselves.

The agreement is endorsed by the court only after it ascertains that it is complete; that the interests are well protected; the agreement does not contradict the law and the rules of morality.

Content

1. Each element of the necessary content of the agreement has its own problematic.
2. The spouses have to settle the "exercising of the parental rights and their personal relations". At the same time they can settle also "the measures regarding the exercising of the parental rights and regarding the personal relations between children and parents". In fact they can settle all those questions concerning the exercising of parental functions, which are in the competency of the court with a divorce by claim.
3. The child support has to be settled. Its total amount cannot be less than that granted to the children by law.
4. The property relations between the spouses can be settled freely. The agreement has to encompass all sides of these relations in a way that excludes future arguments: division of common real estate, questions of share in personal real estate because of co-operation etc. It is possible the property to be divided in unequal shares or even granted to just one of the spouses.
5. The agreement about the alimony of spouses is to be considered uncommitted by the legal prerequisites and regime. Alimony can be agreed on even in favor of an able-bodied or guilty spouse.

6. The use of the family home is a question that concerns both the spouses and the children. The spouses are free to determine the way of their solution as long as the interests of the children are preserved.
7. The FC requires explicit agreement about the family name as well.

Re-decision of the questions

The questions concerning the relations between the spouses are not to be re-decided.

Such an opportunity is provided for the questions concerning the children: "The claims regarding the exercising of parental rights and child support after dissolution of marriage by mutual agreement are allowed in case of change of circumstances" /art.101, par.3 FC/.

CONSEQUENCES of DIVORCE – settlement and types

The consequences of divorce could be divided into two types:

1. Consequences between the spouses
 - a. consequences of personal character

With the divorce the personal responsibilities between the spouses are made invalid. The obligation of mutual living arrangement is no longer in force. The marriage dissolution gives the opportunity of contracting a new marriage and many more.

- b. consequences to property relations

Art. 104 of the FC provides: "After the divorce the ex-spouses are no longer legal heirs to each other and lose all the benefits, resulting from the regulations in case of death, concluded before that..."

- Canceling of the mutual inheritability. The divorce annuls the inheritance rights of the spouses and excludes the latter from the circle of legal heirs.
- Canceling of the arrangements in case of death. The most characteristic "settlements in case of death" are those by will, made by one of the spouse in favor of the other. They are annulled by the force of the law with the very fact of the divorce.

The divorce cancels the benefits, resulting from life insurance contracts.

Art. 105 of the FC provides the opportunity of canceling of donations connected with the marriage after the divorce. "After the divorce the donations of real property of considerable value, done in connection with or during the marriage to one of the spouses by the other or by his/her relatives, can be canceled unless the annulment contradicts morality."

- Use of the family home

"Art. 107. (1) When granting the divorce, the court grants the use of the family home to one of the spouses - when it cannot be used separately by the two of them - having in mind the interests of the children, the blame, the health conditions and other circumstances.

(2) When there are no under-age children by the marriage and the family house is property of the guilty spouse, the court may grant the use of the family home to the blameless spouse only for a certain period of time.

(3) When there are under-age children by the marriage and the family house is property of one of the spouses, the court may grant the use of the family home to the other spouse who was granted the exercising of parental rights for the period of their exercising.

(4) When there are under-age children by the marriage and the family house is property of relatives of one of the spouses, the court may grant the use of the family home for a certain period to the other spouse who was granted the exercising of parental rights.

(5) The use of the family home under art. 2-4 is terminated even before the expiration of the period if the spouse who uses it contracts a new marriage.

(6) When there are under-age children by the marriage, the court states ex officio the right of the use of the family home."

The use of the family home is one of the most difficult consequences of the divorce.

Above all, if it is possible, the court divides the use between the two spouses. In order this to be done the home has to be divisible.

In any case, though, the interests of the children are a priority. It results also from the obligation of both parents to provide home for their children. Under the term "children" the legislature has in mind "children by the marriage", that are under full legal age". The following have to be added to them: common children of the spouses before the marriage; children adopted by both spouses; the child of one of the spouses adopted by the other.

The criterion health condition acquires a specific significance when the spouses have no under age children and when the marriage is dissolved for objective reasons.

The criterion blame can be used only with a divorce when blame is ruled.

PARENTAL RIGHTS AFTER THE DIVORCE

The dissolution of the marriage between the parents reflects significantly on the situation of the children.

The court rules the measures determined by law *ex officio* only when the divorce is settled by claim. Before ruling the measures concerning the children, the divorce court has to and can listen to certain people – these are the parents, a social worker from the Municipality Social Care Service; and under the Law of Child protection, when the rights or interests of a child are violated in court or administrative proceedings, the child has to be heard if it is 10 years old, and if it is not, the child might be heard. The court, though, is not bound by the opinion or judgments of the people in question. The criterion that is leading to the court is the interest of the children.

The content of the measures settles a complex of questions:

1. To which of the spouses is granted the exercising of parental rights, as indisputably the parental obligations are included as well, which together with the rights form the unified content of parental functions.
2. The preferred parent has to be able-bodied and not deprived of parental rights.
3. The parent who is not trusted with the child does not lose either his parental quality or the titularity of parental rights and responsibilities. He is not deprived of parental rights in the sense of art. 75 /FC.

The parent has the right to maintain personal relations with the child, which are nothing else but an expression of parental rights. He could be responsible for damages caused by the child. He could be deprived of parental rights on an equal footing. His agreement is necessary for the adoption of the child. He owes support. He may request the ruled measures to be amended and the child to be entrusted to him.

Support

The support is ruled at two stages of the divorce proceedings.

1. The court, before which the request for divorce is filed, can determine “temporary measures” regarding the child support. It is valid only within the period of the proceedings and is in force until their settlement.
2. If the marriage is dissolved, the court rules another type of support. It refers to children of divorced parents. It is the so-called “official support”, i.e. permanent support ruled by the court *ex officio*.

Entrusting the child to a third person or in an institution

Entrusting the child to a third person or in an institution is a more peculiar measure, which the divorce court may rule. It is ruled only as an exception under exceptional circumstances like: absence of the required qualities in both parents, objective difficulties of theirs, lack of housing conditions etc.

Principally, the third person, respectively the institution, does not become bearer of parental rights and responsibilities to the child. They are assigned only the immediate care for raising and upbringing the child.

Amendment of the measures

The measures ruled by the divorce court for the children can be amended in case of change of the circumstances, i.e. when a new environment is available in which the interests of the children require a revision of the ruled measures. Only the court is competent to amend the measures.

Voluntary services in Bulgaria

Legal Frame

The overall state of the NGO sector, within which volunteer practices are created and maintained, shows that the volunteerism in Bulgaria faces numerous challenges. This fact to a great extent is preconditioned by the legislature in our country. Traditionally, in Bulgaria, the notion of volunteerism or a volunteer is associated with free provision of services and labor. For the time being, though, regulations for the correct provision and application of this work force are missing.

Within the existing legal frame there are several problems with the definition of voluntary activities, volunteer or *free labour* and there is a lack of regulations for the *voluntary labour* in the taxation, insurance and social security rules. On the other hand, there are numerous terms in Bulgarian legislature, which are close to the basic idea of these notions. For example, the term voluntary labor, which is used in the Law of Struggle Against the Anti-Social Offences of Juveniles and Minors, is used more like a synonym of corrective labor. The Law states that the fine as a sanction can be replaced by the Mayor, upon the request of the offender, with the performance of voluntary labor for a certain number of hours. Voluntary labor is also practiced by residents during various arranged campaigns for the improvement and sanitation of buildings etc.

The question of provision and compensation for the work of volunteers is partly solved. In the Law of the Bulgarian Red Cross additional paid leave is provided to volunteers for the campaigns of the Bulgarian Red Cross – up to 5 working days for activities and up to 3 working days for training sessions. This is one of the few exceptions in finding ways for compensating volunteers.

The problems, connected with the social security of persons involved in voluntary activities, are dealt with in Directions № ГY – 05 – 201 dated 29th December, 1993 r. for applying the Regulations of Social Security for persons, practising free-lance professions or trade or employees without labour contracts, under which the persons under art. I of the Regulations are not to have their social security deducted when they serve their time as soldiers or are volunteers in the army or when they participate in military training camps.

In some interstate agreements attention is paid to voluntary activities and volunteers. An example of this can be the Agreement between the government of Bulgaria and the government of Japan for the activities of the Japanese volunteers with the aim of assisting the economic and social development of Bulgaria. A similar agreement exists with the government of the USA under which privileges are given to the volunteers, members of the Peace Corps of the USA.

Nature and types of voluntary activities Characteristics

The right of voluntary activity is an inseparable part of the freedom of speech and the freedom of assembling and associating of citizens, provided in *the International Convention of Civil and Political Rights* and included in *The Constitution of the Republic of Bulgaria*. The semantic basis of the word “voluntary” shows a free choice of action, which a volunteer accepts to perform. Generally, a “volunteer” can be an active-bodied person who by his own choice provides his time for the realization of voluntary action, without expecting payment for his labor.

The present conditions of social development in Bulgaria require the necessity of reaching an agreement for an updated (practically oriented) definition of the notion volunteer:

A volunteer is a person whose lifestyle is guaranteed and who can afford to give time and money for the benefit of others. *Sociological study “Conditions for Volunteerism in Bulgaria”, 2001*

A member of a NGO, in particular, can be defined as a volunteer as well, as he accepts and shares the values and mission of the organization, and is ready to donate his skills, labour and free time in the name of the ideal objectives of the organization and their realization. In this sense the notion of a member of an organization overlaps the one of a volunteer. *Results from focus-workshops, held in Gabrovo and Tryavna, August, 2001*

Three are the main characteristics of the notion voluntary action:

Limited expectations of financial or any other reimbursement

The voluntary action cannot be regarded as a completely altruistic action because of the elements of reciprocity in it. The voluntary action differs from the paid work due to the circumstance that the volunteer does not give his knowledge, skills and experience aiming at financial repayment for his labour and his payment has to be lower than the market value of the work, which he has done. A general rule is that volunteers should be paid for all justified expenses during their voluntary activity.

Free Will

The decision about performing a voluntary action should not be the result of compulsion or obligation, but an expression of personal motivation for the realization of the voluntary activities. The volunteer should have the opportunity of determining his aim, the beginning and end of his activity freely without any negative consequences.

Community Work

The activities performed by the volunteer have to provide benefit for other people, not for himself, his family or friends. This determines the difference between the voluntary activity (object of regulation and protection) and the activities, performed in one's leisure time for personal satisfaction and for the benefit of a close circle of friends.

The following types of voluntary work exist in Bulgaria:

According to the form of voluntary participation:

Informal volunteerism: Some people prefer to remain anonymous in their donations or voluntary work realization. They fund a given idea or cause without searching for a formal reason or an intermediary. This social practice is known as informal, anonymous volunteerism.

Formal volunteerism: The formal volunteerism (known also as purposeful and publicly recognized volunteerism) is a process in which a person seeks a formal intermediary, who institutionalizes the form of interrelation between the volunteer and the target group/organization towards which the voluntary action is directed.

According to the period of engagement of the volunteer

Onetime volunteerism: The volunteer is engaged one-time in the preparation and/or realization of a single event, without taking additional responsibility for further participation.

Short-term volunteerism: The volunteer is engaged for a certain short period notwithstanding if this participation is part of a sequence of activities or initiatives, or an event within a short time (a week up to two months).

Long-term volunteerism: The engagement for voluntary participation is for a period of 6 months and up to one or more years.

According to the subject performing the voluntary activity:

Individual volunteerism: The person himself decides when, how and what his voluntary participation will be and he himself reaches his target group or seeks an intermediary organization.

Corporate volunteerism: The employees of a corporation make a decision as to when, how and what their voluntary participation will be and together they seek an intermediary organization to approach their target group, the cause or the initiative they want to volunteer for.

According to the aims which volunteerism sets:

Services for others: This type of voluntary activity is done mainly by the NGOs and other intermediaries and aims at benefiting society as a whole or clearly outlined target groups with specific needs.

Campaigns for interest protection: The main aim of this type of activity is the achievement of a social change and social justice for certain target groups or in concrete spheres of community life (campaigns of legal defence organizations or environmental organizations).

Participation and self-organization: The main objective of this type of volunteerism is the participation of the volunteers in projects and initiatives of state and NGOs, and their self-organizing in informal and formal groups for the achievement of specific aims.

The results of the sociological study “Conditions for the development of volunteerism in Bulgaria” show that three main motivating factors for voluntary participation can be formulated in our country. Most often they act in a complex way, varying according to the age group of the volunteers and at a given stage of their work these factors undergo changes. To the organizations that work with volunteers it is especially important to perceive the dynamic shift of the motivating factors for the volunteers with whom they work. Few are the organizations that maintain a serious system of management and control of their volunteers and that record the dynamics of the motivating factors.

The main motivating factors for voluntary participation are:

Personal factors

1. personal engagement with a concrete issue
2. opportunity for expanding social contact
3. necessity of secure and friendly environment
4. necessity of expression and recognition
5. necessity of opportunities for realization

Social factors:

1. The solution of key issues, connected with the common priorities of the local community
2. The actual existence of a concrete cause
3. Prospects of the expected results of the volunteerism

Institutional factor

The reasons which motivate an institution to gather and accept volunteers in its midst contain a certain degree of risk that the organization which uses volunteers may not have the capacity to manage volunteers qualitatively or its paid personnel may feel threatened by replacement or in a state of competitiveness

Organizations, which work with volunteers

The practice of adaptation, popularization and first steps in the presentation of new professional systems of volunteer management is observed among comparatively few – usually founded in the last two-three years- organizations in Bulgaria, whose main programs are adapted on the basis of the experience of the American centres for volunteer work. An example of such a type of organization is The National Alliance of Volunteer Work, an organization successor of the international program of Open Society – New York Institute and Open Society Foundation – Sofia, directed towards the professionalization of volunteer work. The program included 15 countries in Central and Eastern Europe and the former Soviet Union, as in the latter centres of volunteer work were founded, functioning as intermediaries between people, willing to work as

volunteers and the institutions which accept them. One of the main services that the centres of volunteer work provide to their clients is motivation training to people willing to perform voluntary work and volunteer management training to organizations accepting volunteers.

The organization preparedness to accept volunteers is a process during which the organization or institution, and its management team respectively, is getting ready for the time when volunteers will join its team for the realization of concrete activities. The practice of NGOs that realize programs for volunteer work in Bulgaria shows that in most cases the decision itself for accepting volunteers is made quite easily. The practical formulation of the concrete tasks for the eventual volunteers, their timetable, working space, the choice of a team member, who will manage the voluntary work program, is a difficult and time-consuming process. At present a comparatively large number of organizations working with volunteers' share that they already have a volunteer coordinator position or they plan to have such a position very soon.

At present few are the organizations in Bulgaria (The National Alliance of Voluntary Work, the Peace Corps, OMKA - Gabrovo), which make serious assessment and formulate in written form the position requirements, the necessary skills and most important assignments of the volunteers, as well as the time and the funds necessary for the realization of the concrete assignment. Bigger is the group of organizations, which formulate their expectations for the potential volunteers in spoken form. In this case there is a lack of good communication channels between volunteer-accepting organizations, for the exchange of information about the expectations of the volunteer from the organization and those of the organization from the volunteer. This practice does not help the volunteers to clarify the expectations towards them and they might lose interest or accept unsuitable propositions, which do not correspond to their skills, experience and standpoint.

As for the process of recruiting volunteers, the practice of public announcements of the opportunities of volunteer work and the creation of adequate systems of seeking and choosing volunteers have begun to develop.

The organizations working with volunteers in Bulgaria have certain good practice in connection with the formulation of clear criteria. Up to now the most important criteria in the choice of volunteers for NGOs and the other successor-organizations is the desire to do voluntary work. Criteria in the choice of volunteers - that turn out to be much less important - are their professional skills, public engagement, communicability, team-work skills, integrity, helpfulness, sense of responsibility, positive attitude towards the target group or the issue, the desire to develop.

The practice in Bulgaria reveals that the process of formal acceptance of volunteers and the orientation process are familiar and the organizations apply them in their work.

As regards to the process of volunteer training, the results of the study "Conditions for Volunteer Work in Bulgaria" show that "at the moment a comparatively low level of

specific training for the volunteers applying for voluntary work is observed". One of the reasons for that could be the lack of enough information about training opportunities. In most cases the organizations realize that the process of training is one of the most motivating factors for the volunteers. Therefore they prepare and realize workshops directed towards the obtaining of specific skills and knowledge to increase the volunteers' capacity and help them carry out their long-term tasks

If we can say that the above elements of the volunteer management system are well known and to a great extent are successfully applied in volunteer work, the process of the motivation and detainment of volunteers is familiar, but there are not enough good examples of its successful application. Most organizations, which work with volunteers, report initial motivation of the volunteers but they lack a system of tracing the changes in the motivating factors during the work process. This is most often the reason of applying unsuccessful practices of retaining volunteers for a longer period in a given organization.

Regarding the motivation, very often there are discrepancies between the readiness and attitude of the volunteers and the real environment in the organization that hires them. The reasons most often mentioned in the studies of the dissatisfaction among volunteers are the lack of skills for the development of work programs whose results are bad programs; the lack of transparency in the work of the organization; the lack of information about the current work and the needs of the organization; the lack of management skills of the paid personnel.

Regarding the coordination and assessment processes, the organizations working with volunteers have some problems because the spoken form of regulation and coordination of the interrelations between the organizations and volunteers is mainly used, and they have no constructed systems of observation and assessment of the volunteers' work.

The degree of development of the systems of acknowledgement and rewarding of volunteer work is similar. In fact the system of expressing informal acknowledgement of the volunteers' contribution is almost unused as a resource in the process of consecutive motivation and detainment of volunteers. The process of rewarding when public and formal gratitude is expressed towards the volunteer, is well known, but is not flexibly applied. Sometimes the choice of the form of rewarding does not conform to the motivating factors characteristic of a particular volunteer or group, and this decreases the effect. The inability to use effectively the process of rewarding and popularization of the activities of the separate organizations or of the volunteerism as a whole is a valid reason for the lack of public support. This makes necessary the taking of measures for adaptation, popularization and implementation of professional systems for training of the organizations willing to work with volunteers, who have states their desire for voluntary labour.

Intermediary Organizations

At present in Bulgaria there are various types of public organizations – representatives of the local authorities, the business and the media, NGOs - which provide various opportunities for voluntary work. Most of them have constructed various models of working with volunteers in accordance with:

- The length of their engagement to the volunteers – short-term, medium-term and long-term programs
- The specificity of the tasks – programs for assistant volunteers and for expert volunteers
- Age requirements for the volunteers – programs for youth volunteers, middle-age volunteers and pensioners-volunteers
- The specificity of the sphere in which the organization itself works.

Up to now the most serious attempt and successful practice with volunteers in Bulgaria belong to the NGOs. It is they that have the organization structure and flexibility to adjust their strategies to working with volunteers. It is the NGOs that - due to the insufficient funds - comparatively quickly managed to develop the capacity of attracting and managing volunteers in order to achieve their ideas and aims. And last but not least the NGOs realized that volunteers are a valuable resource for every organization and they were the first to mobilize and use it effectively.

In Bulgaria there are a great number of organizations which work with volunteers in various spheres of public life. Most often volunteers are recruited by organizations that realize programs oriented towards care for the children in underprivileged condition, the struggle against drug-addiction and AIDS, sanitation, ecology and youth activities.

The necessity of using voluntary labour in the context of the various fields is different as are different the forms of the concrete engagement of volunteers. A frequent form of volunteer recruitment is the short-term volunteerism within which the intermediary organization recruits volunteers sporadically. During that process the intermediary organizations neglect the orientation of the volunteers, then their training, supervision and assessment. Typical of that form of volunteerism is the wide range of age groups that participate in various onetime or short-term programs and initiatives.

The results of the sociological study “Conditions for the development of volunteerism in Bulgaria” and the results of the held focus-workshops show that “one of the most serious challenges in the process of volunteer recruitment is the problem with the insufficient information for the citizens and the instructions for the needs and opportunities for voluntary participation as well as the conditions for providing voluntary work”. There is a lack of good opportunities for the popularization of volunteerism and voluntary labour and forms of sharing and documenting the good practice with volunteers.

The practice of mobilizing volunteers in Bulgaria reveals that there are various motivating factors for the organizations to accept and work with volunteers. The

volunteers are valuable resource for the development of an organization – they bring new ideas, provide easy and efficient dissemination of information about the organization. They are a source of new information about the condition of the target groups; they can participate in and help the fund-raising and the attraction of local funds.

Unfortunately, there are several obstacles in front of the organizations willing to work with volunteers, as e.g. where (in which circles) potential volunteers can be sought; the lack of skills for their management, misgivings that the process of their coordination will take the organization a long time, and the misgivings about the loyalty of the volunteers to the organization. In addition to NGOs, the state institutions, representatives of the local authorities, the business and the media can use the opportunities of voluntary participation just as effectively and increase their capacity regarding the management of programs for work with volunteers.

Except for the good practices of co-operation of various public, state and private organizations with volunteers of the Peace Corps and some international voluntary organizations as Volunteers of the United Nations and Civic Diplomatic Corps, these institutions still lack the orientation, experience and skills and are not ready to be the active part in the process of recruitment and work with volunteers.

Of course there are various reasons for that. On the one hand, “volunteerism is still out of sight for the state institutions” and they still do not realize entirely the contribution of voluntary labour for the development of the local communities and regions. Topics, connected with volunteerism and the contribution of volunteers are discussed only in the specialized bulletins and other publications of NGOs and much more rarely in the local and national media.

The state institutions, the local authorities and the business have no skills and enough experience in the development of effective systems of voluntary management, as in Bulgaria there is a lack of local capacities of providing professional consultations to voluntary programs. At present there is a lack of state strategy for funding organizations that work with volunteers; there is a lack of financial resources directed towards the development of local capacities for training and consultations, research and adaptation of the modern practice for work with volunteers.

In spite of everything volunteerism in Bulgaria in the last few years has a positive development which is a prerequisite for its successful dissemination.