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FEATURES OF FAMILY DISPUTE RESOLUTION UNDER ENGLISH LAW

The right for the family is both enshrined by the national regulations and recognized internationally. The area of human rights recognizes the right of every person to respect for his/her family life. A state should implement protection of family, childhood, maternity, paternity, implement policies in creating conditions for strengthening a family. Ukraine continues to establish democratic and social future for the citizens. Therefore, we will apply more than once to the practice of international experience. One of the striking examples thereof is certainly the legal system of England.

Should one consider English law, firstly attention is paid to the rules of English Common Law, which is a series of Acts of Parliament regulating family relationship. English legal system is certainly based on precedent, but the norms of family law do exist. England, as well as Ukraine is a party to many international conventions and treaties. It should be noted that international rules, by nature, have priority over the national law.

While characterizing the norms of English family law attention should be paid to such legislation as the Act of Parliament on civil partnership (Civil Partnership Act) 2004, Act of Parliament that governs divorce (Matrimonial Causes Act) 1973, which defines the legal basis to terminate the marriage. The Family Law Act, 1966 and the Children Act, 1989, determining the legal status of children, pay special attention to the fight against domestic violence. The Human Rights Act, 1998 covers the issue of parental responsibility.

England, being a case-law country, has a number of features at trial that have very significant impact in all areas of law, in particular in the field of family law, taking into account the sensitivity and peculiarity of the family relationships. However, along with a significant number of existing court decisions, models of similar disputes to consider (precedents), English family law provides regulations governing the area of family law and the dispute between the parties to family relations. In contrast

to the Ukrainian legislation, the English one focuses on judicial divorce, division of marital property and affairs that affect the direct interest of a child. Along with the precedents and the national legislation, practice of the international community is widely used. England is a party to a number of international conventions, treaties and organizations that regulate family law and protection of family interests.

Nowadays the judiciary of England and Wales consists of several legal units, which address family disputes. There are special public institutions, whose competence is regulation of disputes between parties to family relations. This is due to the high level of judiciary workload in family proceedings. Since the state fully understands the nature of family disputes, and in most cases takes care of the interests of a child, a series of strong actions were taken to create the conditions for an out of court solution to problems. The Ministry of Justice currently provides a policy of simplification and greater efficiency of the judicial system on consideration of family disputes. The Ministry states that the system should work better and put the interests of a child as a priority in any case.

By their nature, family disputes are similar to the disputes arising out of civil relations, but there is a clear distinction between a dispute governed by the civil law, and the family law. According to data received by the national statistics office, civil law governs legal relations concerning torts, contracts, insolvency, relationships that arise from the law on racial relationship, and the will contest. While family law governs disputes between parents over parenting, issues about marriage, financial security of children after the divorce of their parents, issues related to family violence and disputes over adoption. Most civil disputes are considered in the County Courts, the most serious – in the High Court. Family issues are addressed at the department of the High Court (Family Division of the High Court), in the county courts (except in cases of divorce), in the Magistrates' courts of family jurisdiction (Family Proceedings Courts, Magistrates courts).

Family law disputes in England are regulated by Case Law and the so-called Statutory instruments. Black's Law Dictionary defines «precedent» as a «rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases». Statutory instruments as a form of delegated legislation, in turn, set the procedural rules applicable during family proceedings.

Since 1991, a number of procedural rules and codes were adopted (The Family Proceedings Rules, The Family Proceedings Courts), which were later revised and amended. Changes have taken place even in the title of proceedings rules – it was changed to procedural. Today there exists the so-called Family Internal Regulations «code», adopted in 2010 and entered into force on 6 April 2011. Courts Act, 2003 specifies that the Family Procedural Rules shall be developed by specialists of the Committee on Family procedural rules and can be modified if necessary. These rules are intended to modernize the practice of family disputes in the High Court, the County Courts and the Magistrates' Courts.

In the judiciary of England and Wales there is no special court specializing exclusively on family disputes. Disputes arising between the parties to family relations are addressed in such institutions as County courts; Magistrates' courts; High Court (Family Division).

County courts consider family cases under the administrative allocation procedure and in the first instance. The boundaries of the area where the relevant County court operates are determined by the Lord Chancellor, who has the right to establish, combine and cancel the courts within the county. A claim can be filed to the court in person, by mail or over the Internet. Most family disputes are resolved by a single judge.

Under the mentioned jurisdiction, County courts deal with the divorce cases as well as the issues of domestic violence. County courts have jurisdiction to address property claims and cases of adoption. The family law cases such as divorce are regulated at the level and with the cases considered within public law, where state agencies such as the guardianship, care or urgent protection are involved except the court.

Magistrates' courts are first instance courts as well. The family dispute cases can be considered exclusively by judges with the special knowledge. Unlike Ukraine, in England the juvenile justice system is widespread. The juvenile cases are considered in Magistrates' courts. In England the national juvenile justice legislation applies to young offenders who are ripe age of criminal responsibility (10 years), but not yet adults.

Her Majesty's High Court of Justice in England hears cases of high complexity, such as those in

which one party is a foreign element. The High Court has three divisions: the Queen's Bench Division, the Chancery Division and the Family Division.

The Family justice system exists to help families avoid disputes as much as possible, and in case the dispute has arisen, to help solve the problem as soon as possible and not causing trouble to the parties to the dispute. If at all possible, participants in family relations may be suggested to settle their dispute out of court, such as through negotiation or mediation as a means of alternative dispute resolution.

Family disputes are divided into two categories: private and public. Private disputes involve parents and their children, for example in cases of divorce, division of property, the issues concerning place of residence of a child or school to attend, or even the possibility to move abroad to live with one parent. Public disputes include cases where state authorities have to take immediate action to resolve family relations, such as removal of children from their parents that they offend.

Typically, judges receive all the documents in the case the day before the trial. Parties tend to act through representatives and lawyers who have the required knowledge of family law. In both public and private cases involving children, the children's representative participation is mandatory. In both cases, the judge is obliged to invite the court expert who shall have a conversation with a child, and if possible, get his/her testimony or requests. During the court hearings involving children, the so-called «voice of the child» practice is quite common. It puts the interests of a child and his/her well-being as a priority goal in any case. The «voice of the child» practice establishes a friendly atmosphere and gives a child the opportunity to directly address the court. Participation of children in the trial changed the position of complete non-interference to the present situation where the court is concerned about the welfare of the child when involving to the process. This is a significant change and development of the judicial procedures when children are no longer passive victims of the family decline, but are given the status of actors in the family law judicial system. As a result, the court became obliged to take into consideration the views and wishes of the child while exercising the case and deciding on the merits. On the other hand, there is a reason to investigate and determine the ratio of children to the judicial system in general.

An example of a child participation in the trial, which follows the family law is the adoption procedure. Under the Children Act adopted in 1989 there is the right of the child for adoption are one of the conditions for his/her welfare, which the judgments should exercise. International experience of involving

children in the trials stated in the United Nations Convention «On the Rights of the Child» 1989, who participants are both Ukraine and England. Article 12 obliges the member states that joined the Convention «to provide a child capable of forming his/her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity». For this purpose the child, in particular, is given the opportunity to be heard in any judicial and administrative proceeding affecting him/her, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of the national law.

In contrast to the Ukrainian legislation, where judges have the right to consider disputes arising from different branches of law, English law defines special correspondence of judges to conduct family proceedings. Family proceedings should bring together a diverse range of experts and professionals who can and shall want to work closely together to understand the individuality of each, in order to enhance their role: «skills and relations of people, at least, are as important as legislation and proceedings».

Therefore English legal system is formed in a manner where it is of paramount importance to consider family law as a regulator of specific kinds of social relations. When resolving family disputes emphasis is put on the possibility to settle the dispute by the parties themselves or through alternative ways of solving. Hence are put forward important criteria for judges who may consider the dispute arising between the parties to family relations. Several reforms have been accomplished that led to direct participation of children in the trial and freedom of expression. To realize this possibility, special bodies were created that contribute to more comfortable bringing a child to the trial.

Consequently, management and resolution of family disputes is possible by alternative, out of court means, such as negotiation and mediation. Today, mediation has become widespread, while going through some criticism and public rejection.

When in 1989, at the initiative of several lawyers mediation began to be used in England and Wales, this was quite critically recognized both by public and professional lawyers. Thus the idea of the alternative method of resolving conflicts and disputes between the parties required the recognition and promotion among the public and in terms of professionals. To this end the Center for Effective Dispute Resolution (CEDR) was founded. As a non-profit organization it was engaged in the development and dissemination of the idea of using mediation to resolve disputes. The Centre for Effective Dispute Resolution trained and accredited mediators, offered a number of procedures

for resolving disputes, such as expert decision, prior neutral evaluation, an independent intervention.

On this basis another organization was founded – the Civil Mediation Council, which united prominent public figures, lawyers, judges in retirement. The main purpose of this organization was spreading mediation among lawyers to dispel doubts about the effectiveness of alternative methods of dispute resolution in respect of the British legal practice. However, the British lawyers objected, stating that in their opinion for the parties who argue mediator hardly can be more respectful than judge. For that reason, the retired judges who had considerable experience and required knowledge of dispute resolution were engaged as mediators. At this stage the mediation process is still voluntary.

In 2011, the law «On the family», 1996 was amended. It defined mediation as a necessary procedure for dissolution of marriage, and resolution of other disputes arising from family relationships. According to these amendments parties to the dissolution of marriage, must first apply to the mediator, who should help them resolve the conflict without going to court. If the parties insist on trial, they must submit evidence to the court that they were trying to solve family conflicts themselves. As one of the means of drawing attention to mediation the financial issue of judicial and alternative dispute resolution was covered in public. Statistical data provided concluded that the process of dispute resolution through mediation is less expensive and takes less time than a trial. Dispute resolution services by a mediator take an average of 110 days and cost 535 pounds, whereas the dispute resolution in the court takes 435 days and costs 2,823 pounds. Therefore, the difference is quite significant. The mentioned length of the family disputes trial is caused by two related factors. On the one hand during the trial parties often might not reach an agreement for the first time, as a result, the process is delayed. On the other hand, the courts not always cope with a number of cases that they have.

In 2004 the National Mediation Helpline was launched, which later in 2011 was renamed the «Civil catalogue of mediators». The purpose of the hotline was to create opportunities to resolve the dispute between the parties that do not want to compromise or meet in person to resolve the dispute. In addition, the practice of mediation on the phone is spread; there is even a website with the information on application the mediation procedure and the list of mediators. Those interested may obtain information and professional advice.

In 2006-2007, the Royal Judicial Service held two events in the «mediation weeks» to support the development of mediation. These activities

are conducted to an increasing interest for such alternative dispute resolution. The greatest part of disputes are resolved through mediation, derived from civil and family relationships. Therefore, involvement of society in the review process of mediation is one of the areas of development and functioning of the institution as a whole and mediation as a method of alternative dispute resolution.

Compared to Ukraine mediation in England imparts greater value. This is due to the impact of totally different legal systems and mentality. Moreover the legal system of England is influenced by the European Union, where the United Kingdom is a party. Under the European Parliament Directive «On certain aspects of mediation in civil and commercial matters» mediation is defined as a voluntary instrument, where parties themselves, at their own discretion express wish of mediation and have the right to terminate it at any time. However, the Directive does not prevent EU member states to introduce mediation as compulsory at national level.

Concerning the implementation of decisions taken during a mediation, the EU Directive obliges the states parties to ensure parties the possibility to demand execution of a written agreement, reached by the parties as a result of a mediation. As a result,

failure to perform the agreement gives the parties the indisputable right to apply to the court for protection.

Thus, summing up the abovementioned, we can draw attention to the fact that family disputes in England, as well as in Ukraine, for the most part are subject to regulation in the judiciary as well as disputes arising from the other social relations. County courts and Magistrates' courts adjudicate disputes between parties to family relations as courts of first instance. If the dispute involves a foreign element or a complicated set of circumstances, it can be considered and decided by the High Court, namely Family Division. The judges hearing family disputes are nominated by mandatory requirements according to their skills and professional knowledge in family law. A child and his/her interests are of paramount importance for the court in matters. Involving children in the trial to enable them to clarify their views and attitudes to the current situation is quite common. Along with the judicial resolution of family disputes there is an alternative method of conflict resolution and satisfaction of the interests of parties to family relationships. As for mediation, its use is rational, and will simultaneously let remove the burden of the judiciary, settle the dispute, and satisfy the interests of the parties as much as possible.

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FEATURES OF FAMILY DISPUTES UNDER ENGLISH LAW

The article discusses and analyzes the specifics of legal regulation of family disputes under legislation of England. It was stated that English law pays special attention to the judicial process of divorce, division of marital property and affairs that affect the direct interest of a child. In addition, in the article significant attention is paid to such settlement and resolution of family disputes, which can be carried out in alternative, extra-judicial means, such as negotiation and mediation. It was also considered the regularity and features of special state agencies, whose competence is settlement of disputes between members of family relations.

Keywords: family law, civil law, children's rights, the judicial system, features of the consideration of family disputes, divorce, mediation, juvenile justice.

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ОСОБЛИВОСТІ СІМЕЙНИХ СПОРІВ ЗА АНГЛІЙСЬКИМ ПРАВОМ

У статті розглянуто та проаналізовано особливості правового регулювання сімейних спорів за законодавством Англії. Так, було зазначено що англійське право приділяє особливу увагу судовому процесу розлучення, розподілу сімейного майна та справам, які безпосередньо впливають на інтерес дитини. Крім того, у статті важливу увагу приділено такому регулюванню та вирішенню сімейних спорів, яке може здійснюється альтернативними, позасудовими способами, такими як переговори та медіація. Також було розглянуто порядок та особливості спеціальних державних установ, до компетенції яких входить регулювання спорів між учасниками сімейних правовідносин

Ключові слова: сімейне право, цивільне право, права дитини, судова система, особливості розгляду сімейних спорів, розірвання шлюбу, медіація, ювенальна юстиція.

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ОСОБЕННОСТИ СЕМЕЙНЫХ СПОРОВ В АНГЛИЙСКОМ ПРАВЕ

В статье рассматриваются и анализируются особенности правового регулирования семейных споров Англии. Так, акцентируется внимание на то, что английское право обращает особое внимание судебному процессу расторжения брака, разделу имущества между супругами, который непосредственно затрагивает интересы ребенка. Кроме того, в статье особое внимание уделено такому регулированию рассмотрения семейных споров которое осуществляется альтернативными внесудебными способами, такими как медиация. Так же было рассмотрено порядок и особенности специальных государственных учреждений, в компетенцию которых входит регулирование споров между участниками семейных правоотношений.

Ключевые слова: семейное право, гражданское право, гражданский процесс, права ребенка, судебная система, особенности рассмотрения семейных споров, расторжение брака, медиация, ювенальная юстиция.