

Ukraine

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A: JURISDICTION AND CONFLICT OF LAW

1. SOURCES OF LAW

- *What is the primary source of law in relation to the breakdown of marriage and the welfare of children within the jurisdiction?*

The provisions on the breakdown of marriage and welfare of children are mostly detailed in the chapters II-IV of the Family Code of Ukraine 2002. A child protection law in the Ukraine is based on the Constitution of Ukraine and on the Convention on the Rights of the Child. Some provisions on welfare in the Convention on the Rights of the Child have been codified in the Family Code of Ukraine and in the law on the Protection of Children. The Ukraine ratified the Convention on the Rights of the Child in 1991. International conventions (treaties) that have been ratified by the Verhovna Rada of Ukraine are a substantial part of the Ukrainian legislation and, therefore, the Convention is a part of the Ukrainian law. In fact, if the Ukrainian law on the Protection of Children conflicts with the Convention, the international law will apply.

- *Which are the main statutes governing matrimonial law in the jurisdiction?*

The Ukraine is a civil law jurisdiction. The overarching code of Ukrainian civil law is the Civil Code of Ukraine 2003, which is supplemented by the Family Code of Ukraine 2002. The Ukrainian courts rely upon the codes, and there is no formally recognised doctrine of precedent.

The Family Code of Ukraine 2002, determines the principles of marriage, personal non-property and property rights, the duties of the married couple, the content of personal non-property and property rights, and the duties of parents and children, foster parents and adopted children and relatives.

Pursuant to Article 1 of the Civil Code of Ukraine 2003, civil legislation regulates personal non-property and property relations (civil relations) based on judicial equality, free will expression and property independence of their participants. The matrimonial relationship is a substantial part of civil legislation.

2. JURISDICTION

- *What are the main jurisdictional requirements for the institution of proceedings in relation to divorce, property and children?*

The Civil Procedural Code of Ukraine 2005 aims at the just and timely consideration and settlement of family cases in the courts of Ukraine for the protection of rights and the freedom and interests of the persons involved. The courts consider cases on the protection of violated, non-recognised or disputed civil rights and freedom or interests.

A separate chapter in the Civil Procedure Code defines the procedure for cases involving the participation of foreigners. Pursuant to family disputes, they have procedural rights and duties equally with natural persons of the Ukraine.

The representative of parties to civil proceedings may be an attorney or another person who is over eighteen years of age and has civil procedural capability with certified

authorities, and will be representative in court, except in cases where personal participation required.

The choice of jurisdiction, according to Ukrainian legislation, has some peculiarities where one of the spouses is not a Ukrainian national. In this instance, the Ukrainian citizen living in the Ukraine or abroad may apply to a Ukrainian court only in specific cases, namely:

- if the spouses indicated the jurisdiction of the Ukrainian courts in their agreement;
- if the defendant spouse has their residence, immovable or movable property, in the territory of Ukraine;
- if the ground for the claim took place in the territory of the Ukraine (eg, the pre-nuptial agreement was concluded in the territory of the Ukraine; the spouses got married in the territory of the Ukraine);
- in other cases foreseen by the international agreements and laws of the Ukraine.

A Ukrainian citizen is also obliged to apply to a Ukrainian court if the dispute concerns real estate located in the territory of the Ukraine. In the case where both spouses are nationals of the Ukraine, they may apply to a Ukrainian court irrespective of their habitual residence.

3. DOMICILE AND HABITUAL RESIDENCE

- *Explain the concepts of domicile and habitual residence as they apply to the jurisdiction.*

The civil jurisdiction regime in the Ukraine is formally based on the principle of conclusiveness and does not affect habitual residence.

Freedom of movement and choice of the place of residence in the territory of the Ukraine shall be guaranteed to the citizens of the Ukraine, foreigners and stateless persons who stay in the Ukraine legally. Registration of the place of residence or temporary address of the person or the absence of such shall not be a condition or grounds for exercising the rights and freedoms provided for by the Constitution, laws or international agreements of the Ukraine.

According to the law of the Ukraine on Freedom of Movement and Free Choice of Place of Residence in Ukraine 2004, habitual residence is normally understood as the place of permanent residence or, in case of absence, the place where the person resides for over six months of the year.

A claim to the Ukrainian court may be initiated in respect of the habitual residence of respondent or the habitual residence of the plaintiff in alimony, paternity and/or divorce cases.

Foreigners and stateless persons are eligible to apply to the courts of the Ukraine for the protection of their rights, freedom or interests. The procedural capacity and capability for foreigners in Ukraine are equal to Ukrainian citizens and determined according to Ukrainian legislation.

4. CONFLICT OF LAW/APPLICABLE LAW TO BE APPLIED

- *What happens when one party applies to stay proceedings in favour of a foreign jurisdiction? What factors will the local court take into account when determining forum issues?*

In the case where one of the parties during a Ukrainian court proceeding applies in favour of foreign jurisdiction, it is for the court only to decide whether it is in position to have jurisdiction over the dispute.

According to the law of Ukraine on International Public Law 2005, parties may independently choose the law that shall apply to legal relations. The choice of law shall be clear follow directly from the actions of the parties to legal proceeding.

Application of a norm of a foreign state shall not be limited, by reason of the fact that this norm is part of public law. While determining the applicable law, the court shall be guided by the interpretation of norms and notions according to the law of the Ukraine, unless 6533440/1

otherwise is envisaged by law. If the content of the legal norms of a foreign state has not been established in reasonable time, the law of the Ukraine shall apply.

The court shall apply foreign law regardless of whether the law of the Ukraine is applicable to similar legal relations in the respective foreign state, except for cases where the application of the law of a foreign state on a mutual basis is envisaged by a law of the Ukraine or an international agreement of the Ukraine.

In the absence of a pre-nuptial agreement on applicable law, it is for the court to initially seek to apply the following:

- the shared national law of the spouses (if both are foreign nationals); or in the absence of this;
- the law of the state where the spouses had their last common place of residence, provided that one spouse remains there and is a national; or in the absence of this;
- the law of the state most closely connected with the spouses.

B: PRE AND POST-NUPTIAL AGREEMENTS

5. VALIDITY OF PRE AND POST NUPTIAL AGREEMENTS

- *To what extent are pre and post-nups binding within the jurisdiction? Could you provide a brief discussion of the most significant recent case law on this issue?*

Pre-Nuptial agreements are valid and enforceable under Ukrainian legislation. Spouses may indicate the jurisdiction of the Ukrainian courts in their agreement.

A Ukrainian pre-nuptial agreement is described as a carriage contract and dealt with in chapter 10 of the Family Code of Ukraine. The nub of any agreement will be a clause to misapply or vary Article 60 of the Family Code, which creates the common joint property regime for spouses.

Therefore, there are three primary purposes of a marriage agreement:

- to regulate the division of common joint property arising from the marriage;
- to regulate or exclude the division of common joint property arising from any pre-marital cohabitation;
- to anchor governing jurisdiction and law.

The Family Code of Ukraine states that a marriage agreement may be concluded between the persons who applied for the registration of marriage, as well as between married couples. If it has been concluded before the registration of marriage, it shall come into effect from the date of the state registration of marriage. It shall not regulate the personal relations of a married couple, or personal relations between the married couple and children. A marriage contract is dealt only with privity (property relationships) and specifies the rights and duties of the spouses. A marriage contract may be cancelled on the demand of one of the parties only on the basis of a judicial decision or by mutual consent of both spouses.

There is undoubtedly an incentive for the higher net worth divorcing spouse to seek a watertight pre-nuptial agreement to reduce the impact of the law, whilst still allowing them to enjoy its comparative benefits. The comparative harshness of the jurisdiction to the lower net worth spouse is important to consider, as it is against this subjective standard that a pre-nuptial agreement will be judged for whether it places a lower net worth spouse in 'an extremely disadvantageous material situation'. If the metaphorical bar is low, a marriage agreement that appears objectively unfair may still survive, to the benefit of the higher net worth client.

The formalities for executing the agreement are minimal. Both parties must attend before a Ukrainian notary public official and sign the agreement in front of them. If required by the circumstances, an agreement in Ukrainian and an official translation into the other language of any party must be signed in front of notary public official. No lawyers, translators or witnesses are required to be present or to sign the agreement. There is no obligation for legal advice or full and frank disclosure of assets or liabilities.

There is also no obligation to show that either side has taken legal advice and no obligation at this point to show that no undue pressure has been put on either party. There is no assessment at this point of whether the agreement is arguably fair. It is possible under the Family Code to include children expenses in the main text of an agreement. This arrangement would make these expenses enforceable in most other jurisdictions which allow provision for children's maintenance within the body of such agreements.

The Ukrainian courts do not recognise the doctrine of precedent and rely only upon Ukrainian legislation (codes, laws). The judge deciding a case may take into account interpretations of law stated by the Supreme Court of Ukraine.

A Ukrainian pre-nuptial agreement can be challenged by the court on the basis that it places one spouse in an 'extremely unfavourable material position', under Article 93 Family Code of Ukraine. However, the question for the court is whether the spouse has, as a result of a pre-nuptial, been placed in a position significantly less favourable than the position they would have been in under the Family Code.

C: Divorce, Nullity and Judicial SEPARATION

6. RECOGNITION OF FOREIGN MARRIAGES/DIVORCES

- Summarise the position in your jurisdiction.

The Law of Ukraine on Private International Law 2005 sets the procedure for the regulation of private legal relations which are related through at least one of their elements to one or some legal orders different from the Ukrainian legal order and includes the material aspects of foreign marriages/divorces recognition.

Article 58 on The Law of Ukraine on Private International Law states that marriage recognised by the law of foreign state, regardless of the nationality of spouses, is valid and enforceable in the Ukraine.

The applicable law of the spouses specifies the procedure of divorce/annulment of marriage(Article 63 of the law of the Ukraine of Private International Law)

Documents issued by the authorised bodies of foreign states according to the set form shall be valid in the Ukraine in the case of their legalisation, unless it is otherwise envisaged by a law or an international agreement of the Ukraine.

7. DIVORCE

- *Give an explanation of grounds for divorce within the jurisdiction (please also deal with nullity and judicial separation if appropriate).*

Under the law of the Ukraine of Private International Law, the divorce matters of spouses shall be regulated by personal joint law or, in the case of its absence, by the law of the state where the spouses had their last place of residence, provided at least one spouse resides in that state, or in case of that absence, by the law of the state most closely connected with the spouses. In any case, the choice of law during the divorce procedure is restricted by the personal law of one spouse.

The Ukraine follows the regional trend of offering considerable advantages to a higher net worth spouse seeking to guard against the possibility of future divorce. The breakdown of marriage is the only formal ground for divorce. Even without a pre-nuptial agreement, the jurisdiction demands strictly limited obligations for maintenance and a refusal to consider assets invested in offshore trusts or companies.

The Family Code of Ukraine envisages that, for breaking marriage relations, the interested party shall apply to the body of state civil state acts registration and, in some cases, to the court. While settling a family dispute the court, on the application of the interested party, may take into account local custom as well as the customs of the national minority that either parties or one of them refers to, if the customs do not contradict the requirements mentioned in the Family Code, other laws of the Ukraine and public moral.

The court is not obliged to enquire about the reason(s) for divorce and the spouses can 6533440/1

apply for divorce on the ground of mutual consent. In a case where one of the spouses does not give their consent to the dissolution of the marriage, the court will give a reconciliation period. After this period of time has elapsed, the court will establish irretrievable breakdown and grant a decree. The marriage is finally dissolved on registration of the divorce in the state civil state acts registration.

The circumstances where a marriage may be nullified by the Ukrainian court are:

the marriage was concluded with a person under the age of consent and legally not allowed to marry;

- the marriage was registered with a previously married person;
- the marriage exists as a result of mental or physical violence;
- the marriage was registered between an adopter and the adopted;
- the marriage is with person who has concealed a serious disease to the other spouse;
- the marriage is without the free consent of the spouses (a person during the marriage did not fully realise their actions and were unable to control it).

Article 119 of the Family Code of Ukraine provides the court with the option for both or one of the spouses, on their demand, to assign a judicial separation of habitual residence. The court also has the power to reverse a judgment. Before a court grants a judicial separation, there are many factors to be taken into account. These will include the current and future financial situations of both of the spouses, accommodation and property and dependent children and their future needs and welfare.

The judicial separation of spouses has some peculiarities. Property acquired by one of the spouses during the time of the judicial separation is considered to be separate personal property. A child born after the expiration of 10 months from the day of the judicial separation will not be considered to be from the husband.

8. FINANCES/CAPITAL, PROPERTY

- *What powers does the court have to allocate financial resources and property on the breakdown of marriage?*

The Family Code of the Ukraine determines the procedure for the division of property acquired before, as well as during the marriage, between the married couple after divorce.

A 'common joint property' regime is the default position for the property of spouses within the Ukraine, established by Article 60 of the Family Code. The court is in a position to have full power to allocate property and financial resources on the territory of the Ukraine. The court is likely to find that assets placed offshore in foreign companies or trusts are beyond its jurisdiction.

'Separate personal property', by contrast, are assets acquired prior to the marriage, or by gift or for personal money (Article 57). If separate personal property produces income during the marriage, that income will also be separate personal property.

However, if an increase in the value of one spouse's separate personal property has been due to the efforts or contribution of the other, that separate personal property may be held as common joint property by the court and the other spouse will be entitled to a share of it.

It is stipulated that the property acquired by a man and a woman who live together as a family, but who are not married (cohabitation regime), will be common considered joint property, if it is not otherwise set by a written agreement (marriage contract) between them.

The spouses may wish to vary this default regime in their agreement, re-designating present and future separate personal property and common joint property.

- *Explain and illustrate with reference to recent cases the court's thinking on division of assets.*

On 21 of December 2007, the Supreme Court of the Ukraine interpreted the provisions of the Family and Civil Code of the Ukraine on the division of assets and stated that divorce

itself does not effect a regime of the common joint property of the spouses. Divorce may effect a regime of the joint property in following cases only:

- where the spouses dispose their property;
- where the spouse after divorce evaluate the sum of the common joint property;
- where the court determines the actual value of the joint property of the spouses;
- where the court considers the family debts of the spouses during the procedure of division of property of the spouses.

9. FINANCES/MAINTENANCE

- *Explain the operation of maintenance for spouses on an ongoing basis after the breakdown of marriage.*

Article 76 of the Family Code of Ukraine determines that divorce does not make spouses free from maintenance obligations that originated during marriage. A former spouse is obliged to support the other in certain cases described in Article 75 of the Family Code of Ukraine if that spouse became disabled (ie, unable to work) during the marriage or within a year from the day of the marriage breakdown; if the spouse is pregnant; raising a child under the age of three or caring for a disabled child; is set to reach pension age within five years; or in other certain cases listed in the Family Code.

- *Is it common for maintenance to be awarded?*

Spouses are obliged to support each other materially during marriage, as well as after divorce. Article 77 of the Family Code of Ukraine provides that spouses are free to decide the manner of maintenance. The provision of maintenance is also possible through an agreement of a fixed sum of money or in natural (material) form. The family code assigns spouses support (alimonies) that are imposed by the court with a certain percentage of the total net income and to be fixed in money. Alimonies are to be paid on monthly basis. The court has the discretion to increase or decrease these sums to reflect other relevant circumstances. In certain circumstances, where the spouse responsible for the alimony leaves the territory of the Ukraine, they may be obliged to pay alimonies in advance.

- *Explain and illustrate with reference to recent cases the court's thinking on maintenance.*

The Supreme Court of Ukraine interpreted the provisions of the Family and Civil code of Ukraine on the maintenance of spouses and stated that divorce does not make a former spouse free from the obligations of maintenance and a cohabitant spouse has the right to maintenance where they are unable to work during joint habitation.

10. CHILD MAINTENANCE

- *On what basis is child maintenance calculated within the jurisdiction?*

According to the Family Code of Ukraine, after the breakdown of the marriage, the parent is required to pay child support (alimonies). Maintenance is also possible through a support agreement. The Family Code of Ukraine states that child support is to be imposed by the court allowing a certain percentage of the total net income for one child or it could

be fixed in money.

Pursuant to Article 182 of the Family Code of Ukraine, the court has the discretion to increase or decrease the sum of alimonies to reflect other relevant circumstances, such as the health and welfare of a child; the health and welfare of the spouse responsible for paying the alimonies; the availability of other family members, children, availability of legally incapable wife(husband) and/or children from new marriage and other circumstances which may be relevant for the court.

The Family Code of Ukraine provides that alimonies should not be decreased lower than 30% of the minimum level of wage for one child. The minimum level of wage will be revised every year according to the law of the Ukraine upon the establishment of a living wage and a minimum wage.

11. RECIPROCAL ENFORCEMENT OF FINANCIAL ORDERS:

- *Summarise the position in your jurisdiction.*

A variety of international bilateral and multilateral treaties exist between the Ukraine and other countries, which provide the enforcement of maintenance orders made in the Ukraine and vice-versa. Maintenance is defined as periodical payments. Sometimes it may include capital lump sums. The reciprocal enforcement proceedings available in each case depend on the terms of the treaty or other arrangements that are in place between the Ukraine and the other country concerned. Ratification of such treaty by Verhovna Rada of the Ukraine is a mandatory requirement.

The Civil Procedure Code of Ukraine 2005 defines two different procedures for the recognition and execution of a decision of the foreign court. The first establishes the order of execution with force and second on a voluntary basis.

In the Ukraine, the judgment of the international court is fully transportable only during a period of three years. An exclusion to this rule is periodical payments, which may be collected during a period of sanction (Articles. 390, 391 of the Civil Procedure Code of Ukraine). Due to the civil legislation of the Ukraine, it is necessary to commence a civil petition action in the local court of a general jurisdiction of the Ukraine to seek enforcement of a foreign judgment. Enforcement by this method is generally limited to the enforcement of a lump sum or costs orders.

12. FINANCIAL RELIEF AFTER FOREIGN DIVORCE PROCEEDINGS

- *What powers are available to make orders following a foreign divorce?*

According to Article 398 of the Civil Procedure Code of Ukraine, after granting a positive decision, the court issues a writ on execution. The writ should be forwarded by the applicant to the execution authority of Ukraine, according to the law of the Ukraine on the Execution Procedure 1999. This law defines conditions and procedures for the execution of decisions of the courts, including divorce which, according to the law, shall be subject to forced execution in the case of their voluntary non-fulfilment.

The execution authority has powers which are strictly limited by the content of the Ukrainian court decision and which may also be granted solely on foreign court orders.

Generally, the following legal measures for the forced execution of decisions are envisaged by the Ukrainian court as follows:

- the imposition of a penalty on the debtor's property;
- the imposition of a penalty on the debtor's salary (earnings), incomes, pensions, grants;
- a seizure from the debtor, and transmission to the beneficiary, of some of the things indicated in the decision;
- other measures stipulated by the decision.

D: CHILDREN

13. INTERNATIONAL ABDUCTION

- *Summarise the position in your jurisdiction.*

The Ukraine follows a global trend of child protection. Firstly, the Ukraine ratified UN Convention on the Rights of a Child since 1991.

In 2006, Verhovna Rada of Ukraine passed the Act of Ukraine on Accession of Ukraine to Convention on the Civil Aspects of International Child Abduction.

The objectives of the present Convention are to secure the prompt return of children wrongfully removed to or retained in any contracting state and to ensure that the rights of custody and access under the law of one contracting state are effectively respected in the other contracting states.

Contracting states, including the Ukraine, shall take all of the appropriate measures to secure within their territories the implementation of the objectives of the Convention. For this purpose they shall use the most expeditious procedures available.

14. LEAVE TO REMOVE/APPLICATIONS TO TAKE A CHILD OUT OF THE JURISDICTION.

- *Summarise the position in your jurisdiction.*

Pursuant to Article 66 of the law of the Ukraine on International Private Law, the rights and duties of a child and their parents are determined by the personal law of a child and the parents or according to that law which is closest to the relevant relationships and is favourable for the child.

The private law of a child shall be the law of the state in which they are a citizen. If it is impossible to determine the applicable law, the law that is closest to the private legal relations of child shall apply. The law applicable to the private legal relations on the basis of conflict rule shall not be determined if an international agreement of the Ukraine envisages the application to the respective relations of material legal norms.

In cases envisaged by the law, the participant(s) of legal relations may independently choose the law that shall apply to their legal relations. The choice of the law shall be clear or follow directly from the actions of parties to the legal proceeding, the conditions of legal the proceedings or the circumstances of the case that are considered as a unity, unless otherwise is envisaged by law.

The choice of law, or a change from the previously chosen law, conducted after the commitment of legal proceedings have a reverse action and are valid from the moment of conducting the legal proceeding.

- *Under what circumstances may a parent apply to remove their child from the jurisdiction against the wishes of the other parent?*

The court is in a position to decide whether it has jurisdiction to decide family disputes between the parents and the law of a child that is to be applied. The court relies upon article 66 of the law of the Ukraine on International Private Law and determines the most favourable and closest law for the child.

Exclusively, the courts of the Ukraine shall consider the cases with the participation of foreigners, provided that both parties to the case with regard to the legal relations between the parents and the children reside in Ukraine.

E: COHABITATION

15. COHABITATION

- *What legislation (if any) governs division of property for unmarried couples on the breakdown of the relationship?*

The main source of law on cohabitation in the Ukraine is the Family and Civil Code of Ukraine. The Ukraine has moved away from the most former Soviet states in its law on cohabitation. Under Article 74 of the Family Code, property acquired during any joint cohabitation within the Ukraine belongs to the parties by right of common joint property, unless otherwise provided for in an agreement. The effect of this, for parties who subsequently marry, is to widen the bracket of common joint property beyond assets acquired within the marriage to include those acquired while cohabiting.

In practice the Family Code has created a situation where, in the absence of a pre-nuptial agreement, the divorcing spouses apply for division of their assets (including assets arising from cohabitation) to a notary public officer. However, the notary lacks the power to rule on the status of any property that is not officially registered as being held in joint names. The notary must, therefore request a court decision. The court will then attempt to determine when any cohabitation began. This is not aided by the lack of either a formal Family Code test or a settled precedent. In practice this is settled evidentially on the basis of demonstrable joint property purchases while cohabiting or by witness testimony. The relevant period of cohabitation may be found to have begun abroad.

There must also be consideration for all property against Article 57, which defines 'separate personal property'.

The cumulative effect of this is to introduce delay and uncertainty as to what will be held personal and what will be commonly shared. This makes it all the more important that the parties follow the suggested alternative of Article 74, and designate separate personal property and common joint property in an agreement.

F: OTHER

16. CIVIL PARTNERSHIP/SAME SEX MARRIAGE

- *What is the status of civil partnership/same sex marriage within the jurisdiction?*

According to Article 21 of the Family Code of the Ukraine, the family is defined as solely between a man and a woman who live together, who are connected by common everyday life and who have mutual rights and duties. Legislation for same-sex marriages in the Ukraine will probably not happen in the near future, due to a current legislative ban on same-sex marriage.

- *What legislation governs civil partnership/same sex marriage?*

There is no provision for gay marriage/civil partnership in Ukrainian legislation.

17. CONTROVERSIAL AREAS/RAPIDLY DEVELOPING AREAS OF LAW

- *Is there a particular area of the law within the jurisdiction that is currently undergoing major change?*

The government recently initiated changes to the Civil Code of Ukraine to ensure the effective and efficient handling of cases by the courts of the Ukraine on international child abduction.

The aims and objectives of the draft law is to facilitate the use by the Ukrainian courts of the Convention on the Civil Aspects of International Child Abduction, and to ensure an effective and efficient review of the relevant categories of cases in the interests of a child. The document particularly establishes rules of jurisdiction and determines the content of the statements, especially the cases for the return of a child who has not reached the age of sixteen under the Convention on the Civil Aspects of International Child Abduction. The bill also defines a list of issues which the court decides and the grounds for refusal to return the child, as well as the timing of cases at the courts of first instance and appellate

courts.

The draft law is intended to create legislative conditions for the effective implementation of the Ukraine's international commitments under the Hague Convention on the Civil Aspects of International Child Abduction 1980.

- *Which areas of law are most out-of-step? Which areas would you most like to see reformed/changed?*

Ukrainian family law is one of most innovative and advanced within Europe and, as mentioned in the Ljubljana family law conference in 2007: 'the Ukraine creates European family Law'. Nevertheless, there are some areas which need to be reformed within Ukrainian family Law.

Gender equality in family law is one sphere which is expected to be reformed in the near future. In general, the Ukraine's legislation upholds the rights of women and guarantees their protection. It establishes equality with men in their rights and duties. The Family Code of Ukraine, in general, protects women relatively well within the family context, but gender stereotyping is still pervasive.

The legal minimum age for marriage is 17 years of age for women and 18 years of age for men. The courts can authorise marriage from the age of 14 years if it is clear that 'the marriage is in the person's interests'. The incidence of early marriage is quite high for a European country. It is estimated that 10% of girls between 15 and 19 years of age are married, divorced or widowed. (UN report 2004).

Parental authority in the Ukraine is shared by the mother and the father and parents have equal rights and responsibilities regarding their children's development and education. However, social stereotypes within the family remain strong. It is not uncommon for men to divorce and then refuse to fulfill their parental obligations, which leaves mothers and their children with limited material resources.

Obviously, such women have legal options to pursue action against their ex-husbands, but the execution of such orders still needs to be reformed and innovated as the servicing of court alimony orders are at a very low level.

The other area of family law which needs to be reformed is surrogacy, which is more commonly used by couples to resolve problems arising from different reproductive dysfunctions which lead to the impossibility of conceiving and giving birth to a child in a natural way.

The legal framework in the Ukraine is far less developed than in most European countries and needs to be improved. This includes the rights and obligations of genetic parents, the legal relations between the parents and the surrogate mother and between the parents and the medical institution carrying out the procedure, defining parental rights for the future of the child, and the rights of all involved parties in terms of the confidentiality of the child's origin.

The primary legislative act in this sphere is the Family Code of Ukraine, which guarantees, according to Article 123, the unimpeded realisation of the rights of all citizens to motherhood and fatherhood. General procedure is provided by the Order on Approval of Conditions and Order of Employment of Artificial Insemination and Implantation of Embryo and Methods of their Performance, established by the Ministry of Health Care. An order outlines the detailed medical procedure of artificial insemination and embryo implantation.

Nevertheless, areas regarding the regulation of relationships between the involved parties still have omissions in their legal background supporting surrogate motherhood. The most common gaps in legislation, which are an open field and need change, include:

- the responsibility for the blackmailing of future parents with abortion;
- or the potential refusal to hand the child over to parents after the birth of the child;
- the disclosure of information regarding the fact that the parents are using a surrogate mother's services in order to substantially increase the price for the services;
- providing a pregnant women who has been dissuaded from aborting their pregnancy as a potential surrogate mother and the couple receive another child

instead of one that is genetically related.

However, Ukrainian legislation does still leave some advantages to its citizens to resolve important issues on a contractual basis.