

THE NEW FAMILY CODE OF THE PSR OF ALBANIA

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The family legislation of the PSRA is aimed at influencing the creation of the soundest family possible and the defence and ceaseless strengthening of family relations in the spirit of the norms of communist morality. Its duty is to ensure complete equality between consorts, broadening and deepening of democracy in the family and to combat manifestations of the alien ideology in family relations

IN JUNE THIS YEAR THE PEOPLE'S ASSEMBLY OF THE PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA UNANIMOUSLY APPROVED THE NEW FAMILY CODE OF THE PSRA WHICH CAME INTO FORCE ON SEPTEMBER 1, 1982. THE APPROVAL OF THIS IMPORTANT DOCUMENT OF A POLITICAL, IDEOLOGICAL AND JURIDICAL CHARACTER CONTRIBUTES TO THE FURTHER STRENGTHENING OF THE ALBANIAN FAMILY AND OF OUR SOCIALIST SOCIETY AS A WHOLE. THE FAMILY CODE WAS DRAFTED IN KEEPING WITH THE CONDITIONS OF THE PRESENT-DAY DEVELOPMENT AND THE REQUIREMENTS AND PRINCIPLES OF THE NEW CONSTITUTION OF 1976 AND CONSTITUTES ANOTHER VICTORY IN THE FIELD OF ALBANIAN SOCIALIST LAW.

Before its approval, this new Code, like any other fundamental document, was submitted to a broad popular discussion. The broad working masses in city and country took an active part in the discussion of the draft-code and expressed very valuable opinions which served to improve it and make it more complete. At the same time, they fully endorsed the contents of this document.

The radical changes that have taken place in Albania in the political, economic, cultural and social fields brought about a real revolution in the Albanian family as well.

Profound inequality between husband and wife and the submissiveness of woman in the family were characteristic of the Albanian family before Liberation. The patriarchal family, which was the dominant family pat-

tern, had the relations of oppression and exploitation of the wife by the husband and of the children by the parents and the rule of the husband as the head of the family, at its basis.

The transitional period from capitalism to socialism is also characterized by the all-round development of matrimonial and family relations. The Albanian family is transformed from a patriarchal family into a family with socialist features, and the process still continues. Many factors, such as the construction of the economic base of socialism, the elimination of the exploiting classes, the decomposition of the patriarchal family in the countryside, the participation of woman in social production, the raising of the educational level of the family members and of the woman in particular, etc had an influence in this direction.

Our socialist legislation, which immediately after Liberation sanctioned by law the new socialist principles of the family, has also played an important auxiliary role in the creation of the socialist family in the PSRA.

The new family legislation of the PSRA, just as the family legislation in force hitherto, is aimed at influencing the creation of the soundest family possible and the defence and ceaseless strengthening of family relations in the spirit of the norms of communist morality. Its duty is to ensure complete equality between consorts, broadening and deepening of democracy in the family and to combat manifestations of the alien ideology in family relations.

In PSRA the family has always been seen as an important cell of society, and its problems are considered as questions of major political and social importance. The Marxist concept that the new socialist society cannot be built without establishing socialist relations in the family predominates in our socialist country. In the conditions of present-day development, the Albanian family in general distinguishes itself for its sound moral-political situation and a high and ever rising cultural and educational level, for equal rights between consorts and bet-

ween them and the other family members, for mutual love, assistance and respect among the members of the family. The revolution that has taken place in the family is the fruit of the correct policy the Party of Labour of Albania has carried out in this field of social relations as well.

The new family legislation reaffirms the principle of the Constitution that «Marriage and family are under the care and protection of the State and society.» Under the new Family Code the state organs and social organizations are charged with the duty of helping the creation of correct concepts about marriage as the premise for the formation of a sound family, of concerning themselves about the strengthening of the socialist family and the education of its members with the Marxist-Leninist outlook and in struggle against alien manifestations.

The new Family Code reaffirms the principle that the only lawful form of marriage recognized in our country is monogamous marriage. It is against any violation of this principle and against any manifestation of the submission of the woman.

The Family Code like the previous legislation recognizes and supports only the marriage concluded before the competent state organ, which is the people's council. The views about «free cohabitation without family obligations» are alien to our socialist order and our proletarian morality.

In our society marriage as the lawful basis for the creation of the family is characterized by the principle of the freedom of the person to choose his or her life companion. Article 13 of the new Family Code reads, «Marriage is concluded by the will of the future consorts on the basis of acquaintance and love.» This requirement is of particular importance, because only such a marriage created the conditions for a sound family.

The new Code also lays down some conditions for the conclusion of marriage, which are intended to protect both the interests of those who are linked in marriage and the children, as well as society as a whole. Thus, the age foreseen by the previous legislation: 16 years for the wife and 18 years for the husband, is maintained as the minimal marriagable age limit.

One of the fundamental principles that goes through all the new Family Code is that of complete equality between husband and wife. «Family

members have equal rights and duties in the family. The woman, liberated of political oppression and economic exploitation, as a great force of the revolution, enjoys equal rights with man in the family,» says Article 6 of the Code.

In the People's Socialist Republic of Albania a constant struggle has been going on to ensure that equality of women with men is not confined to its proclamation and sanctioning by law, but that it is carried out in practice. To realize this aim, the Albanian state and society create all the conditions and possibilities for the Albanian woman to take an active part in the production of material goods, in the management of economic and state affairs, in education and culture, in the whole political and social life of the country. At the same time, the state and society have taken a number of concrete measures to ease the burden of housework on women, which means the real application of this equality. The broadening of the trade and communal services network, the increasing number of crèches and kindergartens both in city and country, the setting up of messes at working centres, the sale of many confectioins and electrodomestic appliances, etc have positively influenced the achievement of this objective.

Broad educational work is also carried out to ensure effective equality between the woman and the other members of the family by creating correct concepts about the need for all the members of the family to join in housework, considering it part of their task. As a result, our socialist family has opened all the road for the woman to enjoy equality not only in the political and economic life of the country, but in family life as well.

At the 8th Congress of the PLA, the leader of the Albanian people said that «The Party has fought and will go on fighting consistently for the implementation of its program for the complete emancipation of the Albanian woman, without whom socialism cannot be conceived or its construction be carried forward.»

In the implementation of this program, the family legislation is permeated through and through by the principle of the equal rights and duties of consorts in family life, without which there can be no agreeable life in the family. Therefore, Article 24 on

the new Code says expressively, «Consorts have the same rights and duties. They should love and respect each other, be faithful to each other in marriage and help each other in the fulfilment of all family and social obligations and contribute jointly in meeting the material and cultural needs of the family.» «Consorts decide in common about any question which has to do with the relations deriving from marriage,» says Article 25 of the Family Code. Thus, for example, in regard to the name consorts will keep after the conclusion of marriage, the new Code recognizes to them the right to choose as a common family name one of their surnames or to keep each his or her surname. Children take the common family name of their parents. If parents have different family names, children keep the name parents will agree on. Only if no agreement is reached, children are given the surname of the father. Likewise, the problem of the residence of the consorts is resolved proceeding from the principle of equal rights and mutual understanding and interest. In the same manner is regulated the management of the common economy of the family. Both consorts contribute to the maintenance of the family.

In regulating the personal relations between the two consorts and their property relations, our socialist legislation always bases itself on the principle of their complete equality. The property relations of consorts are regulated by the new Civil Code which came into force on January 1, 1982. Under the new Civil Code marriage brings about no change in the property owned by each consort before the conclusion of marriage. This remains property of the consort who owned it previously and he or she has the right to administer it. On the other hand, objects, savings deposits and anything acquired by the consorts after marriage is their common property. The objects of personal use of consorts are not considered common property (Article 86 of the Civil Code of the PSRA).

The part of common property appertaining to each consort is determined on the basis of equality of contribution. However, the part of each of them may increase or decrease according to the income from the work of each consort, the degree of participation in housework, as well as any other work in the management, mainte-

nance and increase of objects of common property.

Other legal provisions regulating the relations of consorts with third parties are another evidence of equal rights between consorts, without distinction between husband and wife. Thus, Article 87 of the Civil Code says that all juridical actions undertaken by either consort in connection with their common property are valid even when carried out without the approval of the other consort. However, alienation of common fixed property is permissible upon common consent of both consorts.

The new family of our socialist order is a sound family, because it is created and built on a new basis. The economic basis of our family is the social ownership of means of production, by which exploitation and enslavement are abolished, equality of rights between husband and wife is established, arbitrariness towards woman and children which was characteristic of the old patriarchal family of the pre-Liberation period is eliminated.

Nevertheless, in our reality there are still cases in which, because of manifestations of conservatism which impedes the introduction of the new in the family, or liberalism which brings about degeneration in the way of life of the family and weakens its educational role, or because of the conclusion of marriage without sufficient mutual acquaintance, relations between consorts may be shaken and their life in common become impossible. In these cases our legislation allows divorce in order to eliminate the grave situation that may be created in the family. This does not represent in the least a departure from the principle of protection of marriage and the family by the state. Our socialist state is interested in protecting sound marriages, those that genuinely fulfil their mission. However, when, in given circumstances, marriage has lost its social mission, divorce is unavoidable and, in certain cases, beneficial.

Our society tries to avoid unjustified divorces, condemns light-minded stands towards the family, because everybody knows that it is children, in the first place, who suffer the consequences of such divorces. Only when marriage loses all meaning and cohabitation becomes unbearable, our le-

gislation allows the dissolution of marriage. Marriage is dissolved always by decision of court and on the demand of one of consorts.

The right of divorce does not in the least infringe on the rights of the Albanian woman. Experience has shown that in all social formations with antagonistic classes divorce has been and remains a means in the service of man alone, has been a means of coercion on the woman. It is true that divorce today is recognized in almost all the countries of the world, but in the class society, although the law recognizes this right to the woman, too, it remains a dead letter. The woman cannot exercise this right as long as she is economically dependent on man.

In the People's Socialist Republic of Albania the state organs and the mass organizations which ensure the leading role of the Party in city quarters, villages, work centres, carry out large-scale educational work to do away with backward customs in family relations and to build these relations on new bases acceptable by the new socialist morality and sanctioned by the existing legislation.

In protection of the rights of woman and child, the new Code of Procedure, which came into force on January 1, 1982, gives the court the right to decide on the suspension of action for divorce upon request of the pregnant woman. This suspension remains in force until the child is one year of age and is intended to spare the pregnant woman such commotions as would harm herself and her child. This provision is adopted on account of the fact that suspension of action for divorce until the child is one year of age may serve, in certain cases, as a means for the reconciliation of consorts.

The principle of equality between father and mother in their parental rights is another expression of the equality of rights between man and woman.

According to the new Family Code, parental right, that is the rights and duties of the parents to take care of the rearing and education of their under-aged children, as well as to protect their children's rights and interests, belongs to both parents. This right is exercised only in the interest of under-aged children and upon agreement of both parents. Article 7 of

the Code says, «The parents are responsible for the rearing and communist education of their children with revolutionary feelings and lofty virtues to serve the socialist Homeland everywhere and always. Children are duty bound to respect their parents and to take care of them, especially when the latter are disabled and without sufficient means of livelihood.»

In defining the obligations of the members of the family to assist each other and to take part, according to their abilities and possibilities, in improving the material well-being and raising the cultural level of the family, the new Code marks a step forward compared with the previous one. It stipulates that parents should provide for the living of their children until the latter reach the age of 25 years, when they attend the middle or higher school. In the previous law this obligation was enforced until the child was 18 years of age. This change is intended to enable the children to finish medium and higher education when their parents have all the conditions to meet this obligation.

Besides, in the new Family Code the brothers and sisters of age who are incapable of work and have no sufficient means of livelihood are included in the category of persons entitled to means of livelihood from the members of their family. The previous Code in force ensured these rights only to brothers and sisters under age.

A new provision of a pronounced humanitarian character is that which recognizes to grandfathers and grandmothers the right to maintain personal relations with their grandchildren, even when their parents or another person caring for them prohibits them from doing so.

The new Code reaffirms and further develops the constitutional principle that «mother and child enjoy special protection.» In our socialist society a series of socio-economic conditions have been created in order to ensure as complete harmonization as possible of the function of the woman as mother and her function as participant in socially useful production work.

The special care of our state and society shown for children is another feature of the new family legislation which stands out in all the provisions of this Code.

This care and protection is extended to children born both in and out of wedlock. The latter have the same rights and duties as the children born in wedlock. Our legislation enables these children to have their father. The new Code defines the way of the voluntary recognition of the paternity of these children. If the parent does not do so voluntarily, the mother and child, when the latter comes of age, are given the legal means to demand the recognition of paternity. With their recognition of paternity in the voluntary or legal way those children enjoy all the rights in the family of their father the same as the other children of the latter, if any. Besides, these children enjoy the right to be sheltered in infant's or children's homes when the mother does not want to keep the child herself. The children that are under the care of these institutions may be adopted by other persons only upon their parents' consent.

Socialist humanism, which permeates the new Family Code, is also expressed in the regulation of relations between parents and children deriving from adoption. Unlike the former Family Code which allowed the adoption of a full-aged person when it was proved that he had been maintained by the adoptor during a long time of his minority, the new Code permits only the adoption of children under 18. Like-

wise, the new Code allows in no case and for no reason whatsoever the cessation of adoption, as adoption is intended to create relations similar to those existing between parents and children. The rights and duties that emerge through adoption between the adoptor and his relatives, on the one hand, and the adopted child and his eventual children, on the other hand, are the same as those existing between relatives of the same blood. The new Albanian legislation now recognizes only complete adoption.

The new Code brings important changes in the state and social care for under-aged children who, for various reasons, have remained without parents or without parental care because the latter are dead or unknown, or have been deprived of the capacity of acting as such or have lost their parental rights. Article 11 of the new Family Code stipulates, «The children that have remained without parents or support are reared and educated by the state. The state creates suitable conditions for their living, education, instruction and all-round development by appointing the relative tutors and sending them, according to the case, to special institutions for children — boarding schools, health or other institutions.»

The new Family Code charges the protection of these children to the

councils of tutors that operate at every district executive committee. These councils are comprised of a people's council member, the heads of the education and health sections, a judge of the district court of justice as well as representatives of social organizations (the Labour Youth Union of Albania, Women's Union of Albania and the Democratic Front). These councils are assisted in their activity by the state organs and social organizations.

The great successes achieved in the People's Socialist Republic of Albania in the strengthening of the family and the emancipation of the woman are not accidental. They have been prepared by the whole historical development of our Homeland under the leadership of the Party of Labour of Albania, by the ceaseless and systematic work carried out in this direction over the four decades of the existence of the people's power. They are the result of the correct Marxist-Leninist line implemented by the Party in this important field of social relations.

The rights guaranteed to the Albanian woman in marriage and family relations are realizable, not only because they are built on sound political and economic bases, but also because they are sanctioned by law and accompanied with the relative material conditions which constitute a distinctive feature of the social order established in the PSRA.