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Masters' thesis:

Marriage license – local and foreign spouse

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ABSTRACT

In today's reality the problem of marriage registration and getting marriage license is becoming more and more actual. The paper includes the researched cases and interviews with some specialists of the field. It undermines the main laws and regulations, which deal with this issue, and shows the ways to solve problems arising. This paper presents the analyses of the main inconsistencies between laws of different legal systems existing in this sphere. The paper covers also the procedure of reforms and the ways of improvements to satisfy the demands of developed countries.

INTRODUCTION

Families are created on the basis of official registration of marriage. Only a registered marriage can create legal consequences for the marrying couple. In today's reality, however, more and more families are created without such registration. There are many reasons why people avoid or otherwise fail to register it. One is the existence of difficulties in obtaining a marriage license, especially when one or both spouses are not citizens of the country where they want to marry. It is very difficult to deal with matters of foreign marriages. For example, the laws of different countries may vary with their respective consequences. But in order to have a legal protection with its corresponding consequences, the marriage should be registered, and generally by the public bodies by simply giving a marriage license to the couple. The purpose why we should take this matter into consideration very seriously is that in order to get that legal protection the registered marriage should meet some requirements embodied in the law regulating this matter. The issue of registering the marriage and getting marriage license is very important if not crucial for the people who marry because the right of each person (both man and woman) to marry, embodied in different legal acts and international conventions or agreements, can only be protected if the law is aware of the fact of the marriage in order to legally provide ways for protection.

In the process of obtaining a marriage license the main actors are the two persons who want to marry, a man and a woman. And for that reason it does not matter whether one of them or they both are foreign citizens in that country or not. In the literature of law a marriage is the free, volunteer and legally equal and as a rule lifelong unity between man and woman, which is concluded in the publicly stated order, creates reciprocal rights and responsibilities for marrying couple and which creates a family¹. They both have the same interests from registering their marriage and by getting a marriage license, which is enjoying benefits from the marriage and getting safety protection by the law regulating the matter. Man and woman have equal rights and responsibilities in the marriage and both can apply to law with the protection. Legal regulation of family relations is realized in accordance with the principles of free will of a man's and woman's marital union, the equality of spouses' rights in family, solution of family issues by mutual consent, taking care about mutual well-being, primary provision of the rights and best interests of minor and incapable family members².

As the family is considered to be nucleus of every society, the latter is interested in providing every family with sufficient means and guarantees of enjoyment of their rights and freedoms. But the public sector can monitor such guarantees only when it is aware of the existence of a certain family itself, which means that the fact of an existence of a family should be registered. Importance of registering a marriage arises when we deal with foreign marriages, as different countries have different rules and procedures. For example, marriage conclusion includes the investigation of some positive and negative (or barrier) conditions, and in this mentioned sphere a very serious problem occurs by which country to decide those conditions when they have different approaches³. That's why the society or the environment where the marriage is going to be concluded should have knowledge about families which, again, is provided through marriage registration.

¹ Gegham Gharakhanyan. *Family Law of the Republic of Armenia. Yerevan: Tigran Mets*, 2005, page 94

² Family Code of the Republic of Armenia, 09.11.2004, Article 1, part 4

³ Haykyants A. M. *International Private Law. Yerevan: Yerevan State University Press*, 2003, page 227

Though there are many families that do not register their marriage and do not see the need of obtaining a marriage license, there is a real necessity in today's society that each family should have a legal basis registered by public authorities. One of such main issues as was already mentioned above is a public awareness of the fact of marriage. When there is more and more such information, it creates a precedent to subsequent couples and, why not, generations. Besides, it helps to find out lacks or some misconduct in the existing legislation regulating the matter discussed. Registration of marriages also play another important role, it affects also one very vulnerable part of the society who are children of those couples. As the fact of registration gives families many rights and guarantees, children in such families, therefore, enjoy more rights and protections guaranteed by law than those born in families not registered and not having a marriage license. For example, the fact of determination of a child's origin generally is done by reference to the parents who are in a registered marriage. But if the child is born from the married persons, the husband of the child's mother is recognized the child's father if nothing else is proven. The paternity of the husband of the child's mother is determined by the state registration of their marriage⁴.

So, in an ordinary society where families are created based on the fact of marriage, such marriage should be registered for both enjoying legal protection and benefits and providing the family with certain specific position.

⁴ Family Code of the Republic of Armenia, 09.11.2004, Article 35, part 2

ARMENIAN LEGAL FRAMEWORK AND IMPLICATIONS

Marriage requirements and registration process in Armenia are regulated by different legal acts. The main legal act in this respect is the Family Code of the Republic of Armenia (further FA) adopted on 09.11.2004, which contains different provisions about the procedure and conditions for marriage conclusion,⁵ application of the Code to family relations with foreign citizens and stateless persons⁶. As the Family Code contains only general provisions and conditions, further regulation of the process is embodied in the RA Law on the Civic Status Acts, adopted on 08.12.2004, particularly the questions of the basis and place of state registration of marriages and registration application⁷. As international agreements are a constituent part of the legal system of the Republic of Armenia⁸, there are several international agreements signed and ratified by Armenia as part of its legislation. One of them is the Convention on Celebration and Recognition of the Validity of Marriages, signed in Hague in 1978. The Convention involves the regulation of celebration and recognition of the validity of marriages, particularly, when a marriage valid under the law of the State of celebration can be considered as such in all Contracting States⁹. Another international agreement as part of Armenian national legislation is the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (CIS Convention), signed in Minsk on 1993. It determines “marriage conditions of those countries whose citizens are the marrying persons” and the laws that should apply in such cases¹⁰.

A related international agreement is the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, signed in Hague in 1961, regulating the cases of

⁵ Family Code of the Republic of Armenia, 09.11.2004, Articles 9-12

⁶ Id. Articles 141-143

⁷ RA Law on the Civic Status Acts, 08.12.2004, Articles 24-30

⁸ RA Constitution, 05.07.1995, Article 6

⁹ Convention on Celebration and Recognition of the Validity of Marriages, Hague, 1978, Article 9, part 1

¹⁰ Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, Minsk, 1993, Article 26

“legalization of public documents executed in the territory of one Contracting State which have to be produced in the territory of another Contracting State”¹¹.

The legislation implementing the registration of marriages and the procedure of obtaining marriage licenses, however, is followed with different problems in real life. There are many cases when legal requirements are not satisfied which, therefore, creates difficulties. In *Civic Status Registration Erebuni Department v. Harutyunyan & Harutyunyan* case the court held the respondents’ marriage invalid as the couple had registered their marriage in breach of the provisions of barrier conditions (one of the respondents was in another registered marriage)¹². The Civic Status Registration Department had registered their marriage by mistake but when the violation was discovered, the Department filled an application for annulling the marriage. There are also problems with foreign marriages as here the regulation is much more difficult and the mechanisms for control are weaker. In *Mehrabyan & Yeganian v. Civic Status Registration Central Department* the court had met difficulties in deciding which law it should apply to the case where one of the applicants was an Armenian citizen, the other a citizen of the USA¹³. The problem actually was that the Central Department had used Armenian laws and regulations in registering the marriage but the couple wanted to apply American ones.

The problems existing in this sphere were discovered also during interviews with people dealing particularly with those issues. Gevorg Gyozyan, a lawyer from Armenian Young Lawyers Association presented those problems that he had met personally and which were mainly the outcomes of public unawareness of the laws, regulations and procedure of registering a marriage. He especially mentioned the problem concerning foreign marriages which is more difficult to make public. Other interviews, especially those with public officers

¹¹ Convention Abolishing the Requirement of Legalization for Foreign Public Documents, Hague, 1961, Article 2

¹² CSRED v. Harutyunyan & Harutyunyan, C-3021, page 3, 2003

¹³ Mehrabyan & Yeganian v. CSRCD, C-2651, page 2, 2004

working in different sections of the Civic Status Registration Department showed the problem of the existence of lack of aware.

As it was already mentioned, a marriage is the free, voluntary, legally equal and, as a rule, lifelong unity between man and woman, which is concluded in the publicly stated order¹⁴. The conditions of concluding marriage are defined by RA Family Code and by RA Law on the Civic Status Acts. The latter clearly mentions the steps that a marrying couple should pass through to become spouses in a legal sense.

- a) Free will of the couple should be expressed by presenting a mutually written application from the marrying persons to the Civic Status Registration Department at the place of residence of one of them¹⁵. Besides, a person himself/herself must express the will to enter into a marriage with someone else, which is why conclusion of marriages through a representative is prohibited¹⁶.
- b) Another condition is the minimum age required for both man and woman. The FC of RA provides that “the mutual voluntary consent of a man and a woman and the marital age of them (17 for women and 18 for men) are necessary for marriage conclusion”¹⁷. A person who wants to marry must satisfy the age requirement at the moment of state registration but not at the day of filling the application for registration. It should be also mentioned that “in the case when a statute allows entry into marriage before attaining the age of eighteen, a citizen, who has not attained the age of eighteen, acquires dispositive capacity in full from the time of entry into marriage”¹⁸.
- c) There should not exist negative conditions for marriage embodied in the Family Code of RA, Article 11 which can create barriers for its conclusion and/or registration. The **first** condition is when at least one of the persons is in a marriage, registered by the procedure

¹⁴ Gegham Gharakhanyan. *Family Law of the Republic of Armenia, Yerevan, Tigran Mets, 2005*, page 94

¹⁵ RA Law on the Civic Status Acts, 08.12.2004, Article 26, part 1

¹⁶ Gegham Gharakhanyan. *Family Law of the Republic of Armenia*, page 96

¹⁷ Family Code of the Republic of Armenia, 09.11.2004, Article 10

¹⁸ Civil Code of RA, 10.08.1998, Article 24, part 3

established by the law¹⁹. When one of the persons has been in a registered marriage *before*, he/she should provide documentation that the previous marriage has already been terminated²⁰. The **second** barrier is a marriage between close relatives (direct relatives: parents and children, grandparents and grandchildren, as well as siblings and siblings with common mother or common father, aunts, uncles and cousins). This barrier condition has not only moral but also physiological importance, as children born to such couples are in danger of hereditary illnesses and other genetic defects²¹. The **third** condition is a marriage between the adopters and adopted. The prohibition of marriage between them pursues exclusively moral purpose. We should also agree with the opinion known in the literature of law that the marriage between the children of the adopter and adopted must also be impossible. Finally, the **forth** condition for prohibition of marriages is marriage between the persons, at least one of who is recognized incapable by court. This relates only to those situations when those people can not realize the meaning and consequences of their actions. In such cases a person is recognized incapable by court procedure²².

- d) In the application for marriage registration the applicants should provide all necessary information about themselves prescribed by FC of RA and RA Law on the Civic Status Acts such as their full name, date of birth, citizenship, places of residence and work and other data²³.
- e) In cases of marriages between people who are not citizens of Armenia or Armenian citizens permanently living in a foreign country and between Armenian citizens the applications should be presented to and the marriage permission received from the Ministry of Justice of the Republic of Armenia²⁴.

¹⁹ Family Code of the Republic of Armenia, Article 11, part 1

²⁰ Gegham Gharakhanyan. *Family Law of the Republic of Armenia*, page 103

²¹ *Id.*

²² Civil Code of RA, 10.08.1998, Article 31

²³ RA Law on the Civic Status Acts, Article 26, part 3

²⁴ RA Law on the Civic Status Acts, Article 26, part 6

- f) The state registration of marriages can be completed after one month from the day of filling an application to the Civic Status Registration Department but within three months.
- g) If the couple wants the state registration of marriage can be made through a marriage ceremony²⁵.
- h) The next stage of marriage legalization is the marriage act registration. It contains such information about the couple as their family name (before and after marriage), first name, nationality, citizenship, places of residence and work, other necessary data²⁶.
- i) Finally, the marrying couple gets a marriage license or certificate which contains personal information mentioned above about the couple, the date and time of marriage act registration, the place of state registration of marriage and the date and time of receiving the certificate²⁷.

In case when the marriage procedure deals with the laws of different countries, i.e. one of the marrying couple is a non-citizen, or both are Armenian citizens but marry in the territory of other country, or both are non-citizens but conclude a marriage in the territory of Armenia, there arises a question of deciding the application of an appropriate law. There are different principles in private international law regarding this issue which are: *lex loci celebrationis* (locus regit actum) embodied in Hague Convention (1978). It allows the use of laws of the place/country where the marriage was performed. According to the Convention a marriage shall be celebrated where the future spouses meet the substantive requirements of the internal law of the State of celebration and one of them has the nationality of that State or habitually resides there²⁸. The other principle is *lex personalis*, i.e. use of personal laws of the marrying people, which is regulated by CIS Convention (1993). It consists of two sub principles: *lex patrie*, i.e. use of laws of the country whose citizens are the marrying persons, and *lex domicil*, i.e. use of laws of the country where the couple permanently lives. CIS

²⁵ Id. Article 27, part 4

²⁶ Id. Article 29

²⁷ Id. Article 30

²⁸ Convention on Celebration and Recognition of the Validity of Marriages, Hague, 1978, Article 3

Convention states that marriage conditions for each person are determined by laws of the country whose citizens they are, and for people who do not have citizenship, by laws of the country where the couple permanently lives²⁹. In RA the regulation of foreign marriages is determined by RA FC. Marriage between foreign citizens and stateless persons in the RA territory is concluded in accordance with the procedure established by the RA Legislation³⁰. Marriage of the RA citizens residing out of the RA territory is concluded in the RA consulates. Marriages of foreign citizens concluded in the foreign consulates in the Republic of Armenia are valid on reciprocal basis³¹.

As the case studies showed, the current legislation concerning the registration process of the marriages and obtaining licenses is not properly controlled in order to avoid problems of implementation or misuse of rules. As it was already pointed, the reality differs from what the law states. In fact, the problems occur due to different circumstances. One such reason is that many people still believe that matters can be solved in their favor if using corrupt means. As the cases above showed, there are still situations when the marrying couple wants to illegally “fulfill” any condition of the law by simply circumventing it³². Another reason for misuse or evasion of laws is that people still, in fact, do not know the laws and their provisions, that’s why they simply think they are not breaching the law. It also became obvious from the case studies that the problem of implementing laws incorrectly is huge when dealing with foreign marriages where laws of two (or more) countries should be applied but is not clear which one. So, all the discussion above makes clear the point that the reality in registering a marriage and getting a marriage license, in fact, does not fit the desired provisions of existing legislation.

²⁹ Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, 1993, Article 26

³⁰ Family Code of the Republic of Armenia, Article 141

³¹ Id. Article 142

³² CSRED v. Harutyunyan & Harutyunyan, page 3

INTERNATIONAL BEST PRACTICE

In this paper in comparison with best practices in the world the US was chosen to be an indicator. In considering International Best Practice the US is an example of a country where the laws can accommodate a wide range of applications and requirements and can be harmonized between the states. Generally every state in the United States issues marriage licenses with a particular procedure which does not differ much from one state to another and the differences are not so essential. That's why the paper will discuss only two state practices: New York and California. In the US a marriage between a man and a woman performed in one state must be recognized by every other state under the Full Faith and Credit Clause of the United States Constitution³³. In the US a couple must satisfy the following requirements to get a marriage license:

1. Minimum age. In the US the law states that in order to conclude a marriage both man and woman should be 18 or older, or have the consent of a parent or a judge if younger³⁴. In New York State "if either applicant is under 14 years of age, a marriage license cannot be issued. If either applicant is 14 or 15 years of age, such applicant(s) must present the written consent of both parents and a justice of the Supreme Court or a judge of the Family Court having jurisdiction. If either applicant is 16 or 17 years of age, such applicant(s) must present the written consent of both parents. If both applicants are 18 years of age or older, no consent is required³⁵". In California if either bride or groom is under 18, at least one of the minor's parents, or legal guardian, must appear with the couple. The couple must also schedule an appointment with a counselor and then appear before a superior court judge³⁶.
2. Capacity to consent. Marriage requires two consenting people. If either person cannot or does not understand what it means to be married (due to mental illness, drugs, alcohol, or

³³ US Constitution, First Amendment

³⁴ http://usmarriagelaws.com/search/united_states/teen_marriage_laws/index.shtml

³⁵ http://usmarriagelaws.com/search/united_states/new_york/index.shtml#counties#counties

³⁶ http://usmarriagelaws.com/search/united_states/california/index.shtml#counties#counties

other factors affecting judgment), then that person does not have the capacity to consent and the marriage is not valid³⁷.

3. Opposite sexes. In all states of US couples must be of different sexes to form a valid marriage. The Family Code of RA also states that a marriage is ... the mutual voluntary consent of a *man* and a *woman*³⁸.

4. Blood test and/or exam. Some states in US still require couples to have blood tests before they can receive a marriage license. Such tests may check for many types of venereal or other communicable diseases³⁹. However, no premarital examination or blood test is required to obtain a marriage license in New York. In Armenia the medical examination of the persons concluding marriage ... is conducted by medical institutions with the consent of the persons concluding marriage within the framework of the annual health care programs guaranteed by the state⁴⁰. If the married person at the moment of state registration of the marriage in the Civic Status Registration Department concealed the fact of communicable disease (including HIV/AIDS), as well as the fact of drug and toxic addiction from his/her spouse, the spouse has the right to apply to court for the recognition of the marriage invalid⁴¹.

5. Close relationship barrier. Close blood relatives cannot marry, although in some states, as in California, first cousins can marry. But in New York a marriage may not take place between an ancestor and descendant, a brother and sister (full or half blood), an uncle and niece or an aunt and nephew, regardless of whether or not these persons are legitimate or illegitimate offspring⁴². In Armenia also there is a restriction in this regard: marriage is prohibited if concluded between direct relatives: parents and children; grandparents and grandchildren; siblings and siblings with a common mother or common father; aunts; uncles and cousins⁴³.

³⁷ http://usmarriagelaws.com/search/alternative_lifestyles/solemnization/

³⁸ Family Code of the Republic of Armenia, 09.11.2004, Article 9

³⁹ http://usmarriagelaws.com/search/united_states/blood_test_requirements/index.shtml

⁴⁰ Family Code of the Republic of Armenia, Article 12, part 1

⁴¹ Id. part 3

⁴² <http://www.cuddleinternational.org/laws/law-index.html>

⁴³ Family Code of the Republic of Armenia, Article 11, part 2

6. *Change of name.* Every person has the right to adopt any name by which he or she wishes to be known simply by using that name consistently and without intent to defraud⁴⁴. A person's last name (surname) does not automatically change upon marriage, and neither party to the marriage is required to change his or her last name. Generally there is no requirement for a man or woman to change names upon marriage either in the US or in Armenia.

7. *Waiting period.* Most, but not all, US states require a waiting period, generally one to five days, between the time the license is issued and the time of the marriage ceremony. The purpose of the waiting period is to give a short time during which the parties can change their minds if they wish. In New York State “although the marriage license is issued immediately, the marriage ceremony may not take place within 24 hours from the exact time that the license was issued. When both applicants are 16 years of age or older, the 24-hour waiting period may be waived. If either person is under 16 years of age, the order must be from the Family Court judge of the county in which the person under 16 years of age resides⁴⁵”. But in California there is no waiting period. In Armenia the state registration of marriages is made after one month from the day of the filling an application to the Civic Status Registration Department but within three months⁴⁶.

8. *Types of licenses.* In Armenia there is no special requirement for a type of license given to a married couple, but only some special provisions that must be fully identified in the license, including family name (before and after marriage), first name, nationality, citizenship, places of residence and work of the couple, the date and time of marriage act registration, the place of state registration of marriage and the date and time of receiving the certificate⁴⁷. But in US there are different types of licenses. Generally, a regular marriage license is a public record. But sometimes besides traditional types of marriage licenses there are also other types. In California, for example, there are also “confidential” licenses which include personal

⁴⁴ http://usmarriagelaws.com/search/united_states/bride_name_change_/index.shtml

⁴⁵ http://usmarriagelaws.com/search/united_states/new_york/index.shtml#counties#counties

⁴⁶ RA Law on the Civic Status Acts, 08.12.2004, Article 27, part 4

⁴⁷ RA Law on the Civic Status Acts, Article 30

information about a married couple which is somehow confidential and can not be viewed publicly. "A license and Certificate of Confidential Marriage is only accessible by the husband, wife, or by decree signed by a superior court judge. At least one witness is required to observe the solemnization for a regular ceremony. However, the confidential license may only be used in the county of issue"⁴⁸ meaning that the marriage is valid only in that county.

In New York generally there are "componential" types of licenses as they consist of three components which are the *Affidavit*, the *License* and the *Certificate of Marriage*⁴⁹. The Affidavit portion is a written declaration made under oath before a town or city clerk attesting to the truth of the information provided. It reads, "*I, being duly sworn, depose and say, that to the best of my knowledge and belief that the information I provided is true and that I declare that no legal impediment exists as to my right to enter into the marriage state.*" The License portion authorizes the marriage ceremony to be performed by any person authorized to do so in New York Domestic Relations Law. This person is generically referred to as the Officiant. The Certificate portion is filled in by the Officiant. It states, "*I certify that I solemnized the marriage of the persons named above on the date and at the time and place indicated.*" The Officiant of a marriage ceremony is required by law to return the completed Affidavit, License and Certificate of Marriage to the couple⁵⁰.

The above discussed criteria are in cases when US citizens marry US citizens, but not foreigners. The picture is slightly different in foreign marriages, i.e. between US citizens and foreigners. Some questions thereby arise about documentation and authentication, foreign laws and procedures or the question of nationality. Most countries require that during marriages between a US citizen and a foreigner a valid U.S. passport be presented⁵¹. Some countries require that for the marriage of US citizens and foreigners documents presented to the marriage registrar should be translated into the native language of that country and/or first

⁴⁸ http://usmarriagelaws.com/search/united_states/new_york/index.shtml#counties#counties

⁴⁹ http://usmarriagelaws.com/search/united_states/wedding_laws/index.shtml#Other#Other

⁵⁰ Id.

⁵¹ <http://www.shusterman.com/toc-sc.html>

be authenticated in the United States by a consular official of that country⁵². Marriages abroad are also subject to the residency requirements of the country in which the marriage is to be performed, and there is usually a lengthy waiting period. All civil law countries (including Armenia) require proof of legal capacity to enter into a marriage contract in the form of certification by a competent authority that no impediment exists to the marriage. Unless the foreign authorities will allow such a statement to be executed before one of their consular officials in the United States, it will be necessary for the parties to a prospective marriage abroad to execute an affidavit at the American embassy or consulate in the country in which the marriage will occur stating that they are free to marry⁵³. In general, marriages which are legally performed abroad are also legally valid in the United States. As a rule, “the validity of marriages abroad is not dependent upon the presence of an American diplomatic or consular officer, but upon adherence to the laws of the country where the marriage is performed. Inquiries regarding the validity of a marriage abroad should be directed to the attorney general of the state in the United States where the parties to the marriage live. Documents issued or obtained such as a certified copy of the birth certificate must be authenticated with an *apostille* certificate”⁵⁴.

As mentioned above, there are different principles in private international law regarding the issue of foreign laws and procedures to distinguish which law can be implemented: *lex loci celebrationis (locus regit actum)* allowing the use of laws of the place/country where the marriage was performed⁵⁵; *lex personalis*, i.e. use of personal laws of the marrying people with two sub principles: *lex patrie*, i.e. use of laws of the country whose citizens are the marrying persons, and *lex domicil*, i.e. use of laws of the country where the couple permanently lives. These conditions also apply to cases when US citizens marry citizens of countries member to the Hague Conventions mentioned above in this paper.

⁵² http://www.foreignborn.com/visas_imm/start_here/7us_consulate_embassy.htm

⁵³ http://usmarriagelaws.com/search/united_states/wedding_laws/index.shtml#Other#Other

⁵⁴ Id.

⁵⁵ Convention on Celebration and Recognition of the Validity of Marriages, Hague, 1978, Article 3

In some countries, marriage to a national of that country will automatically make the spouse either a citizen of that country or eligible to become naturalized in that country expeditiously. The automatic acquisition of a second nationality will not affect U.S. citizenship. However, naturalization in a foreign country on one's own application or the application of a duly authorized agent may cause the loss of American citizenship⁵⁶. In Armenia marriage to a national of that country automatically makes the spouse either a citizen of that country or eligible to become naturalized in that country expeditiously⁵⁷.

But besides traditional marriages between foreigners based on love and need to create a family, there are cases when people marry having some specific “profitable” interests. In the US, many people wish to bring their alien spouses to the U.S. and live together. Many aliens, with legal status or out of status, get married in the United States with U.S. citizens, or permanent residents, or aliens with valid non-immigration status, or aliens out of status. All of them, absolutely, are concerned about their own and their spouses’ immigration benefit or status very much unless they don't want to stay here any longer⁵⁸. Generally speaking, a U.S. citizen is able to confer immigration benefits to his alien spouse when the spouse is already in the U.S. Similarly a U.S. permanent resident may confer immigration benefits for his alien spouse. If an individual marries a US citizen, he or she may apply for permanent residence (green card) and obtain a work permit. In most situations, a marriage is valid for immigration purpose if it is recognized by the law of the state where it occurs. However, a marriage that is legally valid may still be disregarded if it is found to be a marriage entered into by the parties to obtain immigration benefits and without any intention to live together as husband and wife⁵⁹. Often people marry for reasons other than love. In the case of US citizens the incentive can be to gain the citizenship (or residency status) of a developed country offering many opportunities for economic and social advancement⁶⁰.

⁵⁶ http://www.foreignborn.com/visas_imm/immigrant_visas/2dual_nationality.htm

⁵⁷ Id.

⁵⁸ <http://www.immigrationfridays.com/podcasts/06302006>

⁵⁹ <http://www.messersmithlaw.com/visas/work-permit.html>

⁶⁰ <http://www.messersmithlaw.com/green-card/adjustment-of-status.html>

REFORM

As the previous two sections of the paper, Armenian Legal Framework and International Best Practice, showed there are not so many differences between the legal systems of Armenia and America in respect to marriage licenses; but there are several significant points where those two systems vary widely. In many cases the Armenian legal system needs reforms. That's why this paper would suggest the following recommendations:

1. First of all, the *minimum age requirement*. The need to have reached a certain age is necessary in every society as people begin to understand the importance of marriages and their role when they mature. Minors can not fully understand what it means to be married⁶¹. In the US generally the minimum age starting from which people can *get consent to marry* is 14, but *not marry*. In New York state even people who are 16 or 17 years old can not marry without the consent of their parents or legal representatives. In Armenia “in the case when a statute allows entry into marriage before attaining the age of eighteen, a citizen, who has not attained the age of eighteen, acquires dispositive capacity in full from the time of entry into marriage⁶²”. The law does not specify whether consent of parents or other legal representatives should be attained, but only makes some general statements. This part of Armenian law would rather conform to the American by making some clarifications, as the latter is more precise. For example, it should be specified when the consent of parents is important for marrying before the age of 18 which is considered the age of adulthood.
2. The next point for reform is the *waiting period* requirement. In the US this period usually several days, but in Armenia up to three months which is much longer than should be. On the other hand, several days can be deemed a little bit short, because a marriage procedure contains many steps and, therefore, needs some time to be completed. The Armenian legal

⁶¹ Gegham Gharakhanyan. *Family Law of the Republic of Armenia, Yerevan, Tigran Mets*, 2005, page 96

⁶² Civil Code of RA, 10.08.1998, Article 24, part 3

requirement in this respect should be changed, and the waiting period made shorter than “from one to three months⁶³”, because during that period the marrying couple may want to conduct any activity which will ask presentation of the fact of their registered marriage but which can not be given before one month, or the couple may even start any family business but there will not be any evidence of their marriage.

3. The next point is the *license type*. US laws mostly have specific types of licenses depending on the societal need. As it was mentioned above, in the US there are “confidential” licenses including personal information about a married couple which can not be viewed publicly⁶⁴. In Armenia there is no special type for a marriage license. It must be taken into consideration that there can be situations when a marrying couple would want to keep secret any information about their marriage such as their marriage age, place of residence or work, but can not according to law. Besides, in the US the licenses generally consist of some cumulative parts, the combination of which can only create a basis for a marriage license. In Armenian laws again there is no such requirement. These changes also should be made in Armenian laws.

All the recommendations mentioned above contain conventional but not procedural steps for reform, that’s why the latter also should be discussed. In order for a change in a law to be made, the following information must be provided:

a) First of all, the public bodies that are concerned with the improvements and changes in the laws should provide information on how the process should be conducted. This is a very important step because if the whole process of reforms will not be clear and transparent for the public bodies and for the ordinary society, it can lead to mistakes and more complications.

⁶³ RA Law on the Civic Status Acts, 08.12.2004, Article 27, part 4

⁶⁴ Marriage Laws. *US Marriage Laws*. 2006

<http://usmarriagelaws.com/search/united_states/new_york/index.shtml#counties#counties>

- b) The second step is the improvement of some parts of implementation. In order to improve the existing laws and make them more compatible with the best practices that have been investigated above, this step **first** requires that the existing legislation on the matter should be reviewed. Review is necessary to find out to what extent the law needs to be changed and specify those provisions that should be innovated. **Second**, different kinds of activities, such as public discussions should take place. Public discussions should be held in places accessible to people interested in participating. Besides, every effort should be made to encourage public participation because positions and opinions of different slices of people also play an important role.
- c) Besides creating positive conditions for implementation, the appropriate public bodies should also think about removing those barriers and obstacles that exist or can arise. One such obstacle can be a negative attitude of the society to participate in the discussion process. Especially today less and less people believe that their voice can change anything in the country. Therefore, they avoid or do not feel the result which will satisfy them. In this case the responsibility of those authorities is to show those changes are important for today's society to develop and prosper. Besides, public authorities themselves can not see the need to make such an improvement. This means that they can not really realize that a specific provision in the law should be changed or improved, considering them much more perfect. That's why the collective work of both the society and state authorities is more appreciated. Another obstacle is that those state authorities who have responsibility and initiative to make an improvement in the existing legal system by harmonization of legislation to a "benchmark" country choose a non-appropriate one. This means that as an indicator and a starting point for comparison a non-appropriate state or country practice can be used which will lead to new mistakes and complexity.

In Armenia the main decision-making body is the National Assembly of the Republic of Armenia and, as it is known, legislative power in the Republic of Armenia is vested in the

latter⁶⁵. Therefore, laws in Armenia are changed and improved only by the National Assembly. The implementation of the necessary changes in the legislation by the National Assembly is made through passing new laws which make those changes. The laws and resolutions of the National Assembly, save for cases set forth in the Constitution, shall be adopted by the majority of votes of the Deputies having participated in the voting provided⁶⁶. Besides the National Assembly there are also other bodies with decision-making powers. By virtue of the Constitution, the international treaties, the laws of the Republic of Armenia, or the decrees of the President of the Republic and, to ensure the implementation thereof, the Government shall adopt *decisions*, which shall be subject to observance in the whole territory of the Republic⁶⁷. Decisions are also part of legislation; therefore, Governmental decisions also have an important legislative impact. Those bodies should make amendments in the provisions of existing laws and decisions concerning the points discussed above to provide harmonization with the current societal needs and development.

Implementation of reforms should contain also an examination of different legislations. In order for national laws to be made compatible with international developed standards, first of all, the existing legislation should be examined in detail to find those provisions which need change. Besides examining the differences between legislations, there should also taken into consideration how those legislations can be transferred one into another. This is more important as there can be provisions that can not be changed due to differences between countries representing significantly different legal systems.

The next step for implementing new laws or new changes in existing laws is the influence of public discussions on different types of state or public authorities. Such influence can be performed by the Government on the National Assembly, by the NA on Government, by media, by different types of NGOs and individuals on those legislative bodies. As the Constitution of RA provides, the Government shall ensure maintenance of law and order,

⁶⁵ RA Constitution. 05.07.1995, Article 62

⁶⁶ RA Constitution, Article 71

⁶⁷ Id. Article 85

take measures to strengthen the legal order and ensure rights and freedoms of the citizens⁶⁸.

This means that if the Government finds that any legal sphere needs to be renewed and implemented, it can apply to the National Assembly of RA for such action. National Assembly itself also can influence the Government to reach any decision it seeks, particularly when deciding changes that it wants to make in the laws but collides with the Government.

The influence of public discussions can be made also by mass media and by ordinary people interested in reconstruction and changes in the existing legislation in order to comply with the standards of developing and developed countries⁶⁹.

CONCLUSION

The paper, as was already shown, presents a short overview over some of the main issues of marriage registration and the procedure of obtaining marriage license. The objective is to introduce people the main stages of registration and the main gaps that exist in two legal systems, Armenian and American. For registering a marriage the marrying couple should pass through different steps and procedure mentioned in the paper. The latter also covers the main problems in the sphere and suggests the ways of dealing with them.

Hopefully, this paper will have its substantial input in the illustration of the system of the marriage registration, steps for obtaining marriage license and the enlightening the problems existing in reality.

⁶⁸ Id. Article 89, part 7

⁶⁹ Though *the Law on Lobbyism of the Republic of Armenia* is not adopted yet by the National Assembly, there is a real tendency that it will come into effect soon. The Law regulates the cases when ordinary people can apply to specific public bodies with the offers to amend or adopt any law or provision of law in their favor.

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