

ABOLITION OF MARRIAGE ON LEGISLATION OF GERMANY: MODERN VIEW ON DOCTRINE OF FAMILY LAW

I.V. Avkhadeev

Expert of the Ministry of Justice of the Russian Federation, Professional Mediator,
Member of Association of Lawyers of Russia, Member of American Bar Association,
Member of International Nuclear Law Association

Abstract. Present article devoted to research institute annulment of marriage under the laws the leading economies of the European Union - Germany. Distinctive feature this work stands lighting unknown Russian family law, grounds for invalidity (canceled) marital relationship.

Keywords: Invalidity (annulment) of the marriage; misconception persons entering into marriage; disagreement with the principles of conjugal life, a person does not realize act of registration of marriage.

Family legislation legal orders of the continental legal family includes provisions for invalid marriage (annulment of marriage) with the graduations of absolute and conditional invalidity (nullity and voidable). At the same time a genuine interest legislation leading European Union countries - Germany, containing innovative systems for the Russian family law principles legality of marriage.

Modern German law unknown institute invalidity of marriage, but the German Civil Code has provisions on the abolition of marriage. Marriage can be abolished only by court decision which imposed at the request of the presence of certain facts. The main difference between the institute the abolition from the institution of invalidity of marriage is the abolition of the legal relationship of marriage ceases after the court decision comes into force, as a rule, for the future, although they may have the opposite effect.

As grounds for the abolition of marriage under Art. 1314 of the German Civil Code is act: a) violation of the conditions of the marriage age. In this case, the age of consent is set at 18 years. At the same time lowering the age of consent may be subject to the achievement by persons the marrying age of 16; b) incapacity of the person that signed the marriage; c) the marriage, at the time of which one of the spouses was already married or in a civil partnership; d) marriage between relatives in direct line, full and half brothers and sisters, as well as between the trustees and guardians; e) violation of the conditions of mutual and simultaneous consent to the marriage in person; f) presence of one of the parties to the marriage unconscious or state of temporary psychiatric disorder; g) absence of information from one of the parties entering into a marriage of the fact of the marriage in his presence; h) misrepresentation of one of the parties entering into a marriage in respect of the essential facts, knowing that deluded husband would have refrained from entering into marriage. In this case, the object of error cannot be financial circumstances or actions of third parties that take place without the consent of the other spouse; i) the

marriage because of threats, as well as to compel; j) disagreement of persons entering into a marriage with the principles of marriage (Article 1353 German civil Code), namely the indefinite marriage, with the emergence of mutual responsibility and liability for each other.

Annulment of marriage not allowed: a) if the condition of the marriage age - in the case of actual family formation minor spouse, and after reaching the age of majority in the intention to keep a marriage; b) in marriage incapable person - in the case of the latter acquisition of capacity if you intend to keep the last marriage; c) when picked up one of the parties entering into a marriage in an unconscious state or a state of temporary psychiatric disorder - in the event of a subsequent intention to save the marriage this person; d) In the absence of information from one of the parties entering into a marriage of the fact of the marriage in his presence, misrepresentation of one of the parties entering into a marriage, as well as forced marriages - in the case bona fide intentions subsequent spouse keep a marriage; e) in case of disagreement of persons entering into a marriage with the principles of married life - in the event of an actual family formation as a result of shared residence; f) married, at the time of which one of the spouses was already married or in a civil partnership - if the marriage until a new one of the expressed will of the spouses to terminate or cancel a previous marriage partnership; g) when the condition of mutual and simultaneous consent to the marriage in person - if the spouses have lived together for five years (in the case of the death of one of them until the said period, but not less than three years, spouses have lived together) and a statement any cancellation of marriage filed after the expiration of five years or the death of a spouse.

According to Art. 1318 of the German Civil Code is the consequences of the abolition of marriage are defined by the rules of divorce. In this case, these rules shall apply only to the bona fide spouse. Application shall be subject to the provisions of the joint property of the spouses, the provisions on domestic matters, mutual spousal, child alimony content, establishing the law of succession in respect of the spouses.

Review of International Law enforcement the country in continental legal family institution in respect of invalidity of marriage (annulment of marriage) suggests the majority of the similarity of their positions with the Institute of invalidity of marriages in Russia.

At the same cause additional interest, unknown Russian family law grounds of invalidity (canceled) marital relations in the German legislation, such as the absence of information from one of the parties to the marriage of the fact of the marriage in his presence; misrepresentation of one of the parties entering into a marriage with respect to the essential facts, knowing that deluded husband would have abstained from entering into marriage, disagreement persons entering into a marriage with the principles of married life.