

УДК 347.62(410)

**Hlyniiana Kateryna Mykhailivna,**

PhD in Law, Associate Professor of Civil Law of  
National university «Odessa academy of Law»

## FEATURES OF FAMILY DISPUTE RESOLUTION UNDER ENGLISH LAW

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

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

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

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

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

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

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





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

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

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

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

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

**Нlyniiana Kateryna Mykhailivna**

#### **FEATURES OF FAMILY DISPUTES UNDER ENGLISH LAW**

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

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

**Глиняна Катерина Михайлівна**

#### **ОСОБЛИВОСТІ СІМЕЙНИХ СПОРІВ ЗА АНГЛІЙСЬКИМ ПРАВОМ**

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

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

**Глиняная Екатерина Михайловна**

#### **ОСОБЕННОСТИ СЕМЕЙНЫХ СПОРОВ В АНГЛИЙСКОМ ПРАВЕ**

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

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