

**INSTRUMENTALISM OF MATRIMONIAL LAW  
OF MODERN UKRAINE AND ITS SOURCES**

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**Introduction.** Over the last 5 years in Ukraine the discussions concerning the phenomenon of homosexuality, gender policy and family protection from the destructive influence sharpened (it is worth to say that in the Ukrainian consciousness these phenomena are interdependent). It is worth to underline that these discussions arise out in connection with the political reasonability. The discussion of piquant themes or (putting the question concerning) family protection in the majority of cases has primarily medical-populist character and has for the purpose to draw away from the most urgent today's issues. However the declarations about European choice of Ukraine require following in a definite measure the norms and the liberties, which were declared in the all-European law. Therewith the Ukrainian law directly acknowledges the superiority of international legal documents over the national law on condition of ratification of the last ones. Therefore if the Ukrainian society and the authorities are interested in the extension of individual liberties of its citizens, it is worth to underline the inadmissibility of legal stigmatization of certain groups under sexual character. So far as the Law of Ukraine «About making amendments to certain legal acts concerning the protection of children's rights for the safe information space» No. 8711 of 20.06.2011, adopted by the Supreme Council in the first reading and criticized by the society and the world community, has for the purpose not so much the family protection as the pre-election populism, then it is not worth to begin the family support from stigmatization through the separation of a certain group of people. Simultaneously the discussion of these legal changes, as it is mentioned in the expert conclusion, the existing laws of Ukraine already guarantee the protection of family and children: «Administration proceeds from the fact that the current legislation of Ukraine already contains the legal pre-conditions of opposition to the propaganda (that is the distribution of a certain information for the purpose of influence of public opinion) of homosexuality. In the judgment of the administration any product, which propagandizes the homosexuality, falls under more general concept – the «product of pornographic character» or the «product of sexual character». According to the Article 2 of the Law of Ukraine

«About the protection of social moral» the «production and the turnover in any form of the products of pornographic character in Ukraine are prohibited»». [1]

**Analysis of recent research and publications.** By another words, in the opinion of the Senior Expert Administration of the Supreme Council the modern Ukrainian law is already on guard of family and patriarchal values, which are to the taste of the Ukrainian. Taking into account this fact, it is worth to examine in more details the history of forming and development of matrimonial law of Ukraine. So far as in Ukraine the scandals of sexual character happened several times, and then it is necessary to understand whether the Ukrainian society is patriarchal or rather postmodern. **Objective.** Whether the Ukrainian law defends the traditional values or is rather liberal? What character has the development of matrimonial law?

Speaking about the history of matrimonial-family law in the territory of modern Ukraine, it is worth to separate several stages of its development and to characterize them, on the basis of the (following) classification: liberal – entertainment and regulation of family relations have a private character, and the state intervenes only at the request of somebody of the family members; conservative – the state is the family guardian and in every way supports it in connection with procreation.

In the first case we deal with the family, which aims to build the community, which acts in the interests of its own comfort and gas the value of its existence, on the basis of the concept of free will. Historically this form of relationships in the family (relatively actually acted in the time of the Imperial Rome, and declaratively was consolidated in the canonical law already in the time of the Pope Gregorius IV), however the legal acknowledgement of sexual equality in marriage took place only after the French Revolution [7]. The actual acknowledgement of the parties' equality in marriage and every possible support of this equality act only within the last 30 years.

The conservative vision of family values has the procreative-biological root. The value of family consists in the children's birth, because only family may guarantee the birth, and accordingly the increase of the citizens' number (if the family will bring up the children to be loyal citizens, the value of such family will be greater). However for the conservative point of view the procreation is not the end in itself, it is rather a duty, a natural consequence of marriage. But if we speak about the procreation as the unique family function, then we deal with the vulgar interpretation of the conservative point of view to the family, which may be classified as the extreme manifestation of patriarchal point of view or instrumental interpretation of the family.

Before 1917 and exactly before the October Revolution the matrimonial law of the Russian Imperia was extremely regressive. Marriages were allowed exclusively between the persons of the same religion. Often this law acted only in one side, orthodox people was not allowed to transfer in the religion of its chosen ones, but the transfer of one newlywed in the orthodoxy was on the contrary welcome. It is worth to mention that all matrimonial affairs resolved exclusively by the religious courts, no secular mechanisms of family influence existed. The Article 107 of the Code of Laws of the Russian Imperia obliged the wife to submit to the husband, to

show toward him «all kinds of please and favour». This Article was starting in the issues of regulation of family-matrimonial relations. The subordinating position of the wife in the Russian Imperia left traces on the resolution of the issues about the conjoints' place of residence. «The wife shall follow the husband», – obliged the Article 103 of the Code, and when she had the courage to leave the husband through the impossibility of the further cohabitation, then she may (at his request) be returned with the police help under escort. The execution by the wife of the civil legal capacity also depended on the husband's will, without whose permission for example she had no right to get a job. The extremely difficult was the wife's situation in the fences of the Russian Imperia, where she was the object of trade, the family slave. Formally the pre-revolutionary law defended the property separateness. In the Article 109, v. X, p. 1 of the Code of Law it was mentioned that being in marriage was not the ground for the establishment of the community of conjoints' property, that everyone may have and acquire again his/her separate property, and according to the Article 114 the conjoints were allowed to sell, to pledge or otherwise dispose of his/her own property on his/her own behalf notwithstanding the other's will. That's why we may name the family policy of the Russian Imperia as the extreme manifestation of patriarchal character, but with the simultaneous permission for the sexual permissiveness for nobility. May texts were written about the incredible number of lovers of the count Lev Tolstoy, we may read about the phenomenon of kept women not only in the autobiographic literature of XIX century, but in the novels of Fedor Dostoevsky and Lev Tolstoy.

Taking into account the oppressive laws and simultaneous permissiveness of the elite, the one of the first decrees after the October Revolution of 1917 was the proclamation of the secular bases of marriages conclusion all over the territory controlled by the Bolsheviks. On December 18 and 19, 1917 All-Russian Central Executive Committee (Всероссийский Центральный Исполнительный Комитет or ВЦИК, or, romanized, VTsIK )and The Government of the Russian Soviet Federative Socialist Republic was known officially as the Council of People's Commissars (Совет народных комиссаров РСФСР (Совнарком РСФСР, СНК РСФСР)) issue the decrees «About civil marriage, children and about the introduction of books of civil status acts» and «About divorce», by which the legislation of a new type was begun, where the wife and the husband have the equal rights upon the marriage conclusion and cancellation. More liberal, but in the conditions of the historical realities of that time actually revolutionary and anarchic law imprinted itself in the folklore of that time in the following way:

Soviet power –

I am not afraid of my husband.

If we live badly –

I will divorce. [3 p.196].

Nevertheless the revolutionary practice of 1918 came further: thus in Vladimir the decree was issued, according to which women were liable to nationalization. «Upon the achievement of 18-years old every girl becomes the state property. Every woman, who achieved 18-years old and was not married, under the drastic punishment is obliged to register in the bureau of «free love» under the

commissariat of control. Every registered in the bureau of «free love» woman at the age from 19 up to 50 years old has the right to choose the comrade-husband. . . . The men have the right of choice among the women at the age of 18 years old. The men's or the women's choice may take place once a month. . . the men at the age from 19 up to 50 years old have the right to choose the women registered in the bureau even without the consent of the lasts, taking into account the state interests. The children, who derive from these relationships, shall be transferred into the republic ownership.» [ibid, p.68] It is worth to mention that this decree nationalizes not only the women, but the children, who will be born from such women. According to this decree the men become the privilege group: they are not obliged to ask the consent from the potential partners of the bureau of «free love». The women between the age of 18 and 19 years old are generally deprived of any possibility to influence their lives: in this period of life they serve only for the men's needs satisfaction. The Vladimirsky draft has first of all procreation character, because it makes impossible the transfer of the genetic material to different partners, as well as guarantees the cohabitation during all phases of women's monthly cycle. Accordingly for the purpose of procreation increase it is not reasonable to ask the women's consent in the most favorable for procreation period (the age between 18 and 19 years old).

It should note why this document doesn't nationalize all women, but only those at a certain age and why to the state guardianship are liable only children, who were born from the relationships, which took place thanks to the work of the bureaus of «free love». It is probably that this decree provided for the gradual transfer to the so-called free love of free individuals in a new society and provided for the resistance, which one could face in the enough patriarchal society, which was built on the monogamous multi-generation family. Upon the successful activity of this bureau, possibly, the authors tried to carry out the further nationalization of married women, that's why this process progressed not revolutionary, but by reformatory methods, because the patriarchal character of the society didn't allow to make it quickly (and the children born in marriage, were not nationalized, because their parents executed their obligations before the state).

It is worth to look at this document also from the point of view of the rights, which are given to both sexes. Thus, the men are not registered in the bureau of «free love», and only use it, besides all men without restrictions receive this right. The women have the right to choose the partners only among those, who are registered in the «bureau». The married women are fully excluded, but the married man has the right (for any woman) from the «bureau», as well as for his wife, besides he is not personally responsible for the children, which will be born from the relationships, which took place thanks to the «bureau».

It is difficult to find another interpretation of this decree — the men's chauvinism. So far as the protection of his own wife from any encroachment was guaranteed, and simultaneously any unmarried woman was degraded to the machine, which shall bring pleasure and give birth to children. Also the man deliberated himself from the guardianship over these children, because they were transferred into the state ownership, and had to bring up the children, born in marriage.

However, besides Vladimirsky case were others. Thus, the newspaper «Vilna Rossya» (Free Russia) communicates about the decree proclamation by Saratov anarchists about nationalization of the women at the age from 17 up to 32 years old, and on condition of working origin, each man had the right to use these women by paying the contribution to the social fund. It should say that all women without exclusion were liable to nationalization, and the women were paid by the monthly salary for being used.

Notwithstanding this fact, one more document was signed by the anarchists, they both are consonant with the ideas of the Bolshevik feminist A. Kollontay: at her opinion in the future communist society the family will simply disappear as a phenomenon, because it will be unnecessary from the point of view of reduction of its economical and educational functions. Equal in rights man and woman will conclude the free friendly unions [2 p.87].

Official propaganda in PR of liberal practices of marriages and divorces doesn't drop behind: according to the scenario of the film of 1939 the young teacher S. Gerasimov after having kissed with the adult pupil-kolkhozer Grunya on the same day proposes her:

Stepan: Let's go, Grunya, the night is young . . .

Grunya: But where, Stepan Vassilyovych?

Stepan: Quickly to the village council and have done with it

Grunya: But what for to the village council?

Stepan: To be married, that's why!

M, Zoschenko in the short story «Marriage» (1927) describes the process of marriage as follows: «Met. Walked together. And thus so quickly it was at them, without any troubles, that on the second day Volodya Zavitushkin made a declaration of love.

And she agreed at sight, well, on the third day they came and married.

On the second day Volodka Zavitushkin came after work at the Civilian registry office and divorced. There nobody even was surprised

– There is no harm in doing that, – said, – it happens sometimes!

And then the divorce»

These literature descriptions lively describe there the everyday reality, which prevailed in the society. The family, which was the society base not only from the point of view of economical factors and primary socialization, but from the point of view of the strong influence of orthodox church for a small number of years turned into a fully secular contractual union called to satisfy only sexual needs (of the majority of men).

On October 22, 1918 the first civil code was issued:

«The Code of laws about the acts of civil status, matrimonial, family and guardianship law of Russian Soviet Federative Socialist Republic RSFSR». This Code was actually duplicated by other union republics as far as the soviet power was established there. The consolidation of liberty of conclusion and divorce made marriage from one side more variable, but actually took out the woman from the husband's shadow and made from her the real subject of legal proceeding in the matrimonial law.

The Decree of the Soviet People's Council of Ukraine «about civil marriage and keeping books of registration of civil status acts» of February 20, 1919 duplicates the Russian provisions and implements the secular principles upon the marriage conclusion in the territory of modern Ukraine. The main conditions of marriage entry were defined. First of all this is a principle of liberty and voluntariness of marriage, the list of grounds for marriage entry, removal of religious restrictions for the marriage conclusion and the procedure of the state marriage registration in the civilian registry offices.

After having given the conclusive importance of the obligatory state registration of marriage the Decree of February 20, 1919 indicated nothing about actual marriage. It is worth to underline that the lawmaking of the Soviet Russia was duplicated with the insignificant nuances by the union republics, that's why the legislation of the Soviet Ukraine was actually identical (in the sequel the adoption of all-union documents and their duplication by the union republics were introduced into practice).

It is necessary to stress that these decrees actually removed the centenary traditions of marriage conclusion and turned the marriage of public character into the private affair. Such practice led to the mass divorces and the increase of number of extramarital children and neglected children (also the Civil War of 1917-1923 influenced the increase of neglected children). The first Family Code of Ukraine of 1919 was not introduced into effect through the civil war, however it has the historical importance as the first legal attempt to emancipate the women.

So far as the Family Code of 1926 is the copy of the laws on marriage, family and guardianship of Russian Soviet Federative Socialist Republic RSFSR, adopted on October 19, 1926 and introduced into effect on January 01, 1927. One of the greatest liberal introductions was the equality in rights of extramarital children with marital ones. In the times of the Russian Imperia to be born as a bastard signified to be excluded from the society. The mother submits the statement about the father to the Civilian registry office, who notified the aforesaid father about the statement receipt and obliged him within one month to communicate his attitude toward the statement. If within one month no response was received, the person named the father was registered as such in the books of the Civilian registry office. Simultaneously the person registered as the father had the right to begin legal proceedings about the record incorrectness. If in the court it was established that the child's mother had relations with several persons, the court acknowledged the father one of them, laying the solidary responsibility on the alimony obligation.

And the factual marriages were acknowledged only the serious and long conjugal relationships, but not occasional and transient. The proofs of such marriage presence for the court were: the fact of cohabitation, the presence with it of joint housekeeping, joint children's upbringing, mutual support etc. Besides the factual marriage could be acknowledged when it corresponded to the necessary conditions (age, level of health, absence of immediate relatives, monogamy etc). Thereby it regulated actually firstly in the history the concubinage as a form of the official marriage. This was one of the most liberal legislation of the world of that time, certain norms advanced their epoch for at least 50 years.

Taking into account the repressions, which led to the significant loss of population, the Central Executive Committee and the Council of Popular Commissariats of June 27, 1936, order «About the prohibition of abortions, increase of material help for the women in childbirth, establishment of the state help for the families having many children, extension of the network of maternity hospitals, daycare centers and kindergartens, enforcement of criminal penalty for nonpayment of alimony and about some changes in the legislation on divorce». It is the first legal act of the USSR, which intervenes in the matrimonial-family sphere taking into account the necessity of population increase. Thereby the like noble aim – the maternity support – indeed is a simple family interpretation as the incubator of future citizens. In October the Supreme Council of the USSR introduced the tax for bachelors, single and citizens having small families for the purpose of earnings increase for the benefit of young families. The Order of the Presidium of the Supreme Council of the USSR of July 08, 1944 «About the increase of state help for pregnant women, women having many children and single mothers, enforcement of protection of maternity and childhood and the foundation of the order «Maternal glory» and «Medal of maternity». Consolidates the strategy on the increase of children's number (read citizens) at any costs, because the long and exhausting war catastrophically decreases the productive population. It is worth say that the like practice on the increase of the number of children's birth was implemented in the national-socialist Germany, by introducing the medals for the mothers having many children and by encouraging giving birth to more children.

The Order canceled any legal relation of extramarital child with the father, preserving it only on the maternal side, as well as firstly drawing a line between marital and extramarital children, canceling the rule, which existed earlier, that the single mother may go to the law concerning the paternity establishment and the bastardy for extramarital child. The order established that upon the registration of the extramarital child's birth in the Civilian registry office, he/she is registered under the mother's surname with the attribution of patronymic under the mother's order. By making such decision concerning the legal status of extramarital children the Order resolved with it the issue about the upbringing and the state alimony of these children instead of the private one, which existed earlier. Also the Order of 1944 resolved the most disputable issue – about the marriage form:

«Only the registered marriage causes the conjoints' rights and obligations». The marriage cancellation could take place only in the court order.

The soviet researchers, in particular G. Matveev, consider that the equality in the rights of extramarital children with marital ones very often shakes the marriages, which have already existed, and doesn't contribute to the family strengthening, and this means that, at his opinion, the cancellation of any legal relationship of the extramarital child with his/her father was correct [4 p. 38]. However it is worth to remember that the 2<sup>nd</sup> World War also caused a great number of new informal relationships at the front, behind the front line and at the rearward. The rupture of the relationships with the family and the long war led to the creation of new, in the majority of cases, informal relationships (concubinages). For the purpose of resolving of the conflict of the paternity (alimony) and non legalized cohabitation it was

resolved to acknowledge only those marriages, which were officially registered, and withdraw from the norm about factual marriage (concubinage). Simultaneously the prohibition of marriage with non citizens of the USSR was issued – this measure had to ensure the obligatory return of the citizens to the USSR and to make impossible to legally remain in the other countries or leave the USSR on the pretext of marriage with foreigners.

The Order provision about cancellation of legal relationships between the extramarital child and his/her father was a step backward in the development of matrimonial-family law, because actually extramarital children were put in the semi-lawlessness and humiliating position as compared with marital children and simultaneously guaranteed the safety for the great number of officers and soldiers, at whom during the war actions appeared the extramarital children.

The symbolic was also the complication of the divorce process. In the Order of 1936 save the notes about divorce in passport, the fees were introduced: for the first marriage cancellation – 50 roubles, for the second one – 150 roubles, for the third one and for each next 300 roubles. The Order of 1944 introduces the divorce procedure in two stages: the court of the first instance had to reconcile the couple, if the reconciliation didn't take place, the court of the second instance could divorce the couple. It is understood that the process separation in two instances complicated the divorce process. The communication between villages and district centers is complicated and long, the divorce process requires significant expenditures of time and money. The obligatory newspaper publication about the divorce was provided for. Only in 1965 the obligation of newspaper publications was canceled. As it is seen from the aforesaid procedures, already less than in 20 years after the emancipated and supermodern legislation in the sphere of family law the USSR degraded to the authoritarian machine, which began to regulate the personal life and in every way to motivate the citizens for the cohabitation in the legal marriage and childbirth. If the postulates of F. Engels and C. Marx were aimed at the woman's liberation from the repressive paws of the bourgeois family [4], then the Marxism practitioners such as Lev Trotsky directly declared: «The human being . . . defines the goal to bring in the activity of his own organs during their work, march or rest the highest perfection, rationality, economy and, accordingly the beauty. The human being wants to dominate over the unconscious, and then over the processes fully unconscious for his organism: breathing, blood circulation, digestion, fecundation, and accordingly subordinates these processes to the will of mind. The life even per se physiologically will be collective-experimental . . . Not for the human race stops to squat down before the gods, the king and the capital, that to be in subjugation before the dark forces of the heredity and the blindness of sexual welfare». [6 с. 196]

Thereby the epoch of women's emancipation and marriage as the citizens' private affair ends. Already in 1968 were adopted the Principles of legislation of the USSR and the union republics about marriage and family (the Principles), which in a new way resolved a whole raw of issues of the family law. Thus, the family was declared as the primary nucleus on upbringing of the loyal citizen, which would be faithful to the party ideals and personifies the regulated by the state honesties.

On the basis of the Principles the Code about marriage and family of Ukraine was adopted and approved by the Law of the USSR on June 20, 1969, which came into effect on January 01, 1970.

The Article 1 directly indicates that the building (the creation) of a new family shall be based on the communist moral. The upbringing of the future children occurs first of all in the interest of building of the communist society. And this notwithstanding the fact that in the same law is written the voluntariness upon the marriage conclusion and guarantees of the happy childhood for each child. That is, from the one side, the family is concluded on disinterested and voluntary bases, but, from the other side, from the very beginning for each family the aforesaid set of moral rules is defined in advance.

The Code returned again to the equality of extramarital children with marital ones, allowed the paternity establishment in the voluntary court order, but provided for the acknowledgement of only those marriages, which were registered by the state. Simultaneously the divorce practice of childless couples in the civilian registry offices was introduced, and the couples having children have to divorce in the court order. In the case of the husband's or the wife's deprivation of liberty for the term not less than 3 years, the divorce may take place through the authorities of registration of citizens' civil status. Thereby the Code of 1969 consolidated the instrumental interpretation of family in the USSR. The stable family was necessary only for the procreation and the upbringing of loyal citizens. Taking into account all this the state applied the forces for the family preservation. If the young family didn't give birth to children, it was not supported. It is worth to underline that the bastardy in a new Code was established on a par: if the parents didn't pay alimony for the children or didn't maintain them, the children in the adult age were deliberated from their parents' maintenance (Art. 80 - 81). After having defined the family with children as the value as such, the matrimonial-family rituals were consolidated at the level of Code, which were refused so quickly in the past. The Article 12 h. 2 «... the marriage shall occur in a grand. The Civilian registry offices ensure the solemn atmosphere upon the marriage registration and with the consent of the persons, who entry into marriage», and the Article 165 describes already nonexistent in the 70s years tradition of the early 30<sup>th</sup> «oktyabrinas» — the solemn giving name to the newborn child («the registration of the newborn child may occur in a grand at the parents' will»<sup>#</sup>.) Thus the families hated by the first communists, where the people married in church and baptized the children, and all this was blessed by the Church, in the 70s years is reborn in the communist patriarchal traditions. An interesting nuance is the fact that the soviet lawyers considered the changes in the matrimonial-family law evolutional and directed for the consolidation of the first revolutionary achievements. The quality of sexes in rights has already occurred and now it was important to support and to cultivate the communist moral and happy image of its builder, that's why the accents were shifted to the family support as the primary unit of socialist society, where the obligation, but not the liberty, dominates.

Indeed, the matrimonial law of the USSR degraded from the liberal-progressive of the times of 1917 and 1926 to the instrumental-patriarchal of the times of

the advanced socialism. It is worth to underline that the anti-abortion policy was dictated not by the humanistic ideals, but the simple lack of human resources. The like situation took place in the 80s years of 20 century, when during the Afghan war tried to prohibit the abortions.

The Family Code of already independent Ukraine of 2002 in the majority is the almost exact copy of the Soviet Code on marriage and family of 1969. Like in the Soviet Code the modern Code of the European country allows the divorce of childless couples in the Civilian registry offices, the divorce through the court upon the children's presence. An interesting introduction is the outright instrumentalism of the Articles 49 and 50, which was called the right for paternity and maternity «the husband's disability or unwillingness to have children may be the reason for marriage cancellation», «the wife's unwillingness or disability to have child may be ....». The state doesn't admit the Church (which has the greatest rating of trust among the citizens of Ukraine) to any influence on the matrimonial-family sphere.

By other words, the state is the unique authority, which regulates the marriage and the family, and by declaring the allegedly family value, indeed declares the perversion-instrumental will to increase the number of its citizens. On the one side, in Ukraine the constant population decrease takes place, and the state tries to stimulate the procreation. And on the other side, the Civil Code of Ukraine allows the abortion at the woman's will till the 12<sup>th</sup> week, and under the medical prescriptions till the 22<sup>nd</sup> week. Only the official statistics indicates the extreme great number of abortions (see table No. 1), which but gradually decrease, could not be characteristic for the patriarchal outlook. Simultaneously with it in Ukraine are allowed the surrogate maternity and the artificial fertilization in vitro, that is obstacle by the Orthodox and the Catholic Church. That is in Ukraine, which is afraid of homosexuality are allowed the means of fertilization, which are prohibited in the majority of countries with the liberal right concerning the family and the procreation.

**Conclusions.** *The patriarchal values* propagate not the duty of *children's birth* at any cost, but the birth taking into account the *will of marriage and the possibility to give birth in the natural way for the sake of the joint good*. The classic example of the law, which supports the patriarchal values (marriage may be registered by the church, and the state, abortion prohibition, restrictions of reproductive medicine taking into account the ethical side) are Ireland, Malta and Poland. However Ukraine by declaring the desire to protect the children against AIDS, prohibits the homosexuality propagation and doesn't provide the AIDS sick for the treatment. Simultaneously with it the Ukrainian law (the Article 51 of the Civil Code of Ukraine) acknowledges the possibility of change (correction) of sex according to medical-biological and social-psychological prescriptions, but tries to prohibit any homosexual manifestations by motivating it by anti-social character.

In conclusion it is worth to underline that the matrimonial-family law of modern Ukraine in the rough form copies the Code of 1969 of the USSR, by declaring the attachment to the family and the children's protection. At the legislative level Ukraine is at the level of authoritarian regimes of the times of late Brezhnev. The particularly striking manifestations of the instrumental interpretation of its own citizens were the draft laws called to tax the childless citizens at the age from

30 years old for 17% from the incomes of physical persons notwithstanding the incomes level. (The Draft Law «About making amendments to the Article 167 of the tax Code of Ukraine concerning the revision of the tax rate for the incomes of physical persons», (reg. No. 10112 of 23.02.2012). The Ukrainian society with many number of abortions and constant increase of extramarital children may be called patriarchal and such, that supports the patriarchal values. It resembles the terrible simulacr of the patriarchal character, which indeed is the instrumental attitude to the person taking into account his/her reproductive value. At the legislative level we declare ourselves as the patriarchal society, which appreciates the traditional family. The real family doesn't give birth to children, even it is paid for it.

The declarative nature of patriarchal values and the liberal outlook in practice cause the crisis of identity, which is shown at the legislative and daily level.

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Table No. 1

Number of abortions and childbirths according to the data of health institutions, which are under the control of Ministry of Health of Ukraine

Source: the official web-site of the Cabinet of Ministers of Ukraine – regime of access: [http://www.kmu.gov.ua/control/publish/article?art\\_id=245036367](http://www.kmu.gov.ua/control/publish/article?art_id=245036367)

Reporting year	Number of abortions Absolute number	Number of childbirths Absolute number
2005	242 343	411 904
2006	229 618	454 813
2007	210 454	468 923
2008	201 087	501 678
2009	181 064	505 145
2010	164 467	491 621
2011	156 193	492 218

**Белоножко Є. Інструменталізм закону про шлюб сучасної України та його джерела**

*В статті розглянуто витоки та процес становлення радянського (українського) шлюбно-родинного законодавства. Охарактеризовано шлюбно-родинне право СРСР на ранньому та пізньому етапі, виявлено суперечливий та інструменталістський підхід на всіх етапах розвитку, а як наслідок ідейно-мериторичні суперечності у сучасному законодавстві України.*

**Ключові слова:** інструменталізм, родинне право, консервативний та ліберальний підхід.

**Белоножко Е. Инструментализм закона супружества современной Украины и его источники**

*В статье рассмотрены истоки и процесс становления советского (украинского) брачно-семейного законодательства. Дано характеристику брачно-семейного права СССР на раннем и позднем этапе, выявлено противоречивый и инструменталистский подход на всех этапах развития, а как следствие идейно-мериторичные противоречия в современном законодательстве Украины.*

**Ключевые слова:** инструментализм, семейное право, консервативный и либеральный подход.

**Bilonozhko Y. Instrumentalism of matrimonial law of modern Ukraine and its sources**

*The article describes the background and process of the formation of the Soviet (Ukrainian) marital and family law. Given characteristic of marriage and family law of the USSR in the early and late stage, revealed contradictory and instrumentalist approach in all stages of development, and as a consequence of ideological substantial contradictions in modern Ukrainian legislation.*

**Keywords:** instrumentalism, family law, conservative and liberal approach.

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