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RIGHT TO ECONOMIC COMPENSATION IN DIVORCE TRIAL, OF THE ONE DEMANDING THE DIVORCE (WIFE OR HUSBAND), FOR HAVING DEDICATED TO THE HOME. In accordance with the Civil Code of Guanajuato

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Jesús Alfonso Mosqueda Juárez
Presidente del Consejo Directivo IIJAC

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**RIGHT TO ECONOMIC COMPENSATION IN DIVORCE TRIAL, OF
THE ONE DEMANDING THE DIVORCE (WIFE OR HUSBAND), FOR
HAVING DEDICATED TO THE HOME.**

In accordance with the Civil Code of Guanajuato.

One of the scenarios that are constant in contemporary times, within the theme of the Family, are divorces, which is the act that is carried out before the courts to terminate the civil marriage contract.

In past years or decades, achieving success in a divorce trial was very difficult, since the cause for which the wife or husband requested the necessary divorce had to be proven. For this, the judges were very special in ruling on divorce in favor of those who requested it.

This happened because the State had the obligation to look after families in Mexico, and they considered that one way to destroy the family was through divorce. That is why the divorce cases were rigorous and also very complex to demonstrate before the Court. There were more divorce trials that were lost than those that were won.

Nowadays, only a decade was enough to relax this mission of the State, completely changing all views on the subject, to the extreme; It is very easy for spouses to divorce, since even the causes of divorce regulated by the Civil Codes are considered unconstitutional, because they threaten the free development of people (spouse who wishes to divorce); in such a way that the person requesting the divorce only needs to express his desire to end the marriage, without even existing any cause, for the judge to order the dissolution of the marriage bond.

And not only has this issue of divorce evolved in terms of its practical development, but also the issue of “money”, that is, the right to payment that the wife has when she decides to divorce.

The Civil Code of the State of Guanajuato establishes that when a husband or wife (spouses) demands a divorce, any of them may also demand economic compensation which may be up to 50% calculated on the assets that were acquired during marriage.

But this may be possible, as long as the spouses are married under the separation of property regime; and furthermore, the person suing has always been especially dedicated to the home (performance of household work such as administration, management and care tasks or care of the family, etc.).

It should be noted that the Judge, when resolving the claim, will take into account the length of time the marriage lasted, as well as the assets that the spouses have; and logically it will take into account the custody of the children and the other special circumstances of each case.

That is, the more years the marriage has lasted, the more compensation the person suing will receive. But those assets that the defendant spouse has acquired through an inheritance trial or will cannot be affected, as well as those acquired by donation.

Regarding the validity of this topic, the First Chamber of the Supreme Court of Justice of the Nation grants Constitutional validity to this topic and to the article that regulates this topic, through a Thesis that we transcribe below:

Epoch: Tenth Epoch

Registration: 2018651

Instance: First Chamber

Thesis Type: Isolated

Source: Gazette of the Judicial Weekly of the Federation

Book 61, December 2018, Volume I

Subject(s): Civil

Thesis: 1a. CCCXXV/2018 (10th)

Page: 313

DIVORCE. ECONOMIC COMPENSATION PROVIDED FOR IN ARTICLE 342-A OF THE CIVIL CODE FOR THE STATE OF GUANAJUATO.

The cited article provides for the right of the spouse who has dedicated himself to domestic work and childcare to request before the judge the distribution of up to 50% of the assets acquired during a marriage celebrated under the separation regime. goods as compensation, without distinction based on gender or other condition. What is legally relevant is that the applicant spouse has assumed the burden of household work and/or childcare to a greater extent than the other, to the detriment of his or her possibilities of developing with equal time, intensity and diligence in the conventional labor market. , without this compensatory mechanism being able to extend, based on the right to equality, to other cases in which there is an economic imbalance between the couple caused by a different reason, since its purpose is not to equalize the assets, but to compensate for the cost derived from the weakening of the links of the spouse who dedicated himself to the home with the labor market, such as lost employment options, few hours of paid work, jobs exclusively in the informal sector of the economy and lower wages.

Direct protection under review 4906/2017. March 7, 2018. Five votes from Ministers Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo, Alfredo Gutiérrez Ortiz Mena and Norma Lucía Piña Hernández. Speaker: José Ramón Cossío Díaz. Secretary: Luz Helena Orozco y Villa.

This thesis was published on Friday, December 7, 2018 at 10:19 a.m. in the Judicial Weekly of the Federation.

And by analogy, the following Jurisprudence that was also issued by the First Chamber of the Supreme Court of Justice of the Nation can be applied, since it is the same topic that is studied:

Epoch: Tenth Epoch

Registration: 2004222

Instance: First Chamber

Thesis Type: Jurisprudence

Source: Judicial Weekly of the Federation and its Gazette

Book XXIII, August 2013, Volume 1

Subject(s): Civil

Thesis: 1a./J. 50/2013 (10th)

Page: 492

DIVORCE. THE ECONOMIC COMPENSATION FOR WORK REASON ESTABLISHED BY ARTICLE 277 OF THE FAMILY CODE FOR THE STATE OF MICHOACÁN ALLOWS YOU TO CLAIM UP TO 50% OF THE VALUE OF THE PROPERTY ACQUIRED DURING THE MARRIAGE AND NOT ONLY THOSE ACHIEVED WHILE THE COHABITATION SUBSISTED.

Marriage, as a legal act, has various effects in relation to the people who celebrate it, which generate certain correlative legal rights and duties between the spouses. One of them is related to the support of family responsibilities, which is generally satisfied with the economic contribution made by the spouses to the support of the home; However, there are times when one of the partners decides to dedicate themselves to performing domestic work and, where appropriate, taking care of the children, thus sacrificing the possibility of receiving remuneration for not spending that time in the workplace, which generates an inequality between the assets acquired by the spouses. For this reason, the legislator tried to equalize this situation by equating household work as an economic contribution as provided in article 153 of the Family Code for the State of Michoacán. Thus, in the event that one of the spouses wants to dissolve the marriage and files for divorce, he or she will not be unprotected, since the legislator contemplated the work carried out at home and provided in article 277 of family legislation in I mention, the so-called economic compensation for work reasons, which gives the right to any of the spouses who are in a disadvantaged state to balance the aforementioned situation of inequality, granting them the possibility of claiming up to fifty percent of the value of the assets. acquired during the time that the marriage lasted, and not those achieved only during the time in which they cohabited, since the right-duty to contribute to the support of family responsibilities exists due to the marriage and is extinguished together with it.

Derived from the above, it is clear that the fact that the spouses stop cohabiting does not extinguish the right-duty to contribute to the support of the home, since it is an independent and non-correlated right-duty, as can be seen from the interpretation of article 263 of the State's family codification. Therefore, if one of the spouses contributed to it with work at home and, where appropriate, taking care of the children, these are activities that he or she should have carried out during the duration of the marriage and not only during the time in which they cohabited. since living together is an independent right-duty and not correlative to contributing to the support of family responsibilities, so the fact that they do not live together is not an obstacle for one of them to predominantly dedicate themselves to the home and care. of the children and the other continues to contribute money to it. Furthermore, these activities should not necessarily be the only ones you do, but you should do them to a greater extent.

Contradiction of thesis 541/2012. Arised between the Collegiate Court in Civil Matters of the Eleventh Circuit and the Third Collegiate Circuit Court of the Auxiliary Center of the Tenth Region. April 17, 2013. The vote was divided into two parts: majority of four votes regarding competence. Dissident: José Ramón Cossío Díaz. Majority of four votes on substance. Dissident: Arturo Zaldívar Lelo de Larrea, who reserved his right to cast a private vote. Speaker: Olga Sánchez Cordero de García Villegas. Secretary: Jorge Roberto Ordóñez Escobar.

Jurisprudence thesis 50/2013 (10th). Approved by the First Chamber of this High Court, in a session dated May 8, two thousand and thirteen.

Under all this context, we dare to say that "*... it is cheaper to get married than to get divorced ...* ", because this is only the compensation in favor of the spouse who demands the divorce, but we still need to comment on alimony, etc.

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Institución de Investigaciones Jurídicas, AC
Corporate Office in
Paseo de las Fuentes No. 1645,
Villas de Irapuato Subdivision;
Irapuato, Guanajuato; Mexico.