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PROPERTY RELATIONS OF SPOUSES

Abstract

The common property of the spouses is created under the conditions and in the manner determined by law. The common property of the spouses is considered the property that the spouses acquire during the duration of the marital union and from the moment of marriage, each of the spouses contributes to meet the common needs of the marital union and the children.

The legal norms that regulate the property relations of the married couple are called the matrimonial property regime where this property regime must be in accordance with these legal norms

Property created in marriage is considered common property if two conditions are met: property that is earned through work, and property that is earned during the duration of the marital union.

The main characteristic of the legal nature of the common property of the spouses is that all the items and rights that make up the property in the marital community belong jointly to both spouses.

The spouses, are authorized to manage their common property jointly and by agreement, they can also contract the way of management of their property, in whole or in part of it.

Keywords: property, common property of spouses, separate property of spouses

INTRODUCTION

This paper focuses on the property relations of spouses by analyzing the laws in force in national and comparative countries as well as international human rights instruments.

The central aim of this paper is to dissect the property relations of the spouses, such as the common property of the spouses, as well as the individual property of the spouses.

The common property of the spouses is considered the property that the spouses acquire during the duration of the marital union and from the moment of the stipulation of the marriage, each of the spouses contributes to meeting the common needs of the marital union and the children. Common property is considered the property that is acquired during the duration of the marital union and the main characteristic of the legal nature of the joint property of the spouses is that all the items and rights that make up the property in the marital union belong jointly to both spouses and that by agreement and manage and dispose of the common property.

In this regard, based on Article 19 of the European Charter for the equality of Women and Men in local life, equal rights of women and men to rent, own, or any other form of ownership are ensured and promoted their housing and also, to this end, use their powers and influence to ensure that women have equal access to mortgage loans and other forms of financial assistance and credit for housing purposes.

Different methods were used for the preparation of this paper, such as; the historical method, comparative method, normative method, statistical method, etc. Of all the above-mentioned methods, the comparative method is mostly used, since through this method it is possible to get a greater knowledge of the legal property relations between spouses in the positive rights of different countries, such as regional states, as well as more broadly.

The comparison between the positive legislation of our country and other states of the region or EU states has helped us to gain a wider legal knowledge of the property relations of spouses.

1. THE HISTORICAL ASPECT OF THE REGULATION OF LEGAL PROPERTY RELATIONS

The complexity of property relations that are created between subjects in family law takes a very important place in the corpus of relations in general (Ristov, 2020).

The history of humanity shows that changes in economic-social relations have always caused changes in property relations, degrees, and intensity with which these relations have changed, respectively the change that has occurred in property relations, is a reflection of the corresponding changes in economic-social relations of a certain society (Statovci, 1983).

In the sphere of family and marital relations, the relics of primitive society have been preserved for a long time, marriage was monogamous and related to the expressed consent of the future spouses and their parents (Sejdiu, 2000).

The family could freely dispose of the acquired property, while the inherited property could not be alienated without the consent of the wider kinship community. Parallel to these forms of land ownership, there is also individual private ownership (Sejdiu, 2000).

Marriage in Roman law was monogamous, the permanent life union of a man and a woman. Men could marry at the age of 14 and women at the age of 12. The condition for the marriage was the consent of the spouses and their heads of the family (for personsalieniiuris) (Mickovic, 2007). It was forbidden to tie marriages between relatives in the first line and the side line up to the fourth degree. The degree of kinship as an obstacle to marriage is one of the characteristics of Roman law, which significantly differentiates it from canon law (Mickovic, 2007).

Sharia law considered marriage as a contract that belongs to legal-binding contracts, the marriage contract was concluded in written form in the presence of two qualified witnesses to give evidence in written form before the official body, most often the evidence was given before the qadi (Muslim judge) (Popovska, 2007).

In marriage, each of the spouses retained the right of ownership of his/her property, as well as the right to manage it (Popovska, 2007). The husband paid for the household expenses himself and had the obligation to maintain the wife, otherwise, the wife had the right to ask for a divorce. On the other hand, the husband had the right to ask the wife to fulfil her marital obligations and obedience, otherwise, he had the right to even punish her (Popovska, 2007).

In Yugoslavia, the form of common property that is not co-property was provided by the Law on Marriage of April 9, 1946 (Gams, 1978). According to Article 10 of this Law, there is a rule which states that the property acquired by the spouses through work during the marriage is their common property. This provision is complemented by the provisions of the Law on the Property Relations of Spouses of the Criminal Code of Serbia dated February 18, 1950, where in Article 4 of this law it is seen that the spouse cannot dispose of his or her share of the indivisible joint property nor encumber it with legal action among the living. It can be seen that this is not co-ownership, the spouse's shares are not determined and divided in advance, and ownership is therefore indivisible, the spouses have the right under special conditions only to ask for the division, and only then will their shares be determined.

Civil marriage was foreseen in all socialist countries (Mladenovic, 1984). In the Soviet Union after the revolution of 1917, civil marriage was compulsory, the creation of which required registration with the competent authorities. However, with the reform of 1926, in addition to registered marriages, de facto marriage was also foreseen, which was abolished in the Soviet Union with the reforms of 1944 (Mladenovic, 1984).

2. SEPARATE PROPERTY OF SPOUSES

The property that one spouse owned at the time of marriage is his separate property, also, the property that the spouse will receive based on inheritance, gifts, and items acquired in marriage and which exclusively serve to supplement the personal needs of one of the spouses will be considered separate property (Права, 2002). Each of the spouses manages

and disposes of the separate property independently unless the spouses decide otherwise in a written form. The property and the right that the spouses will acquire through inheritance, gifts, and items acquired in the marriage that exclusively serve to meet the personal needs of one of the spouses if they do not present a disproportionately large value in comparison to the value of the common property will be considered as a separate property (Права, 2002).

The matrimonial property regime by law in the RNM consists of a combination of the regime of common ownership and the regime of separate ownership of the spouses. The common ownership of the spouses includes the ownership of movable (money, furniture, motor vehicles, etc.) and immovable (land, buildings, etc.) things that were acquired during the duration of the common marital life and serve to supplement the needs of spouses and family life (Stojanova, 2019). The separate property of the spouses is considered the property that was brought into the marriage and the property that was not acquired by work during the marriage, but according to other legal bases, e.g. by inheritance, gift, legacy, etc. Spouses manage and dispose of their separate property independently, however, the principle of solidarity, the community of life and work, as well as the joint obligation to maintain and educate children, obliges the spouses to engage the separate property, when the means from common ownership are not enough to achieve these goals (Stojanova, 2019).

The spouse with separate ownership has the right to conclude all contracts and other legal affairs with which the owner can be used, exploited, and disposed of, but the possibility of allowing the administration of the separate ownership to the other spouse is not excluded, but for this, an agreement between the spouses must be reached (Aliu, 2004). If by chance the separate property is mixed with the common property, then the part of the separate property will be divided as the spouses have agreed, but the possibility is not excluded that this property value of the common property is also considered a special contribution of one of the spouses of joint ownership (Aliu, 2004). In this regard, the decision of the Supreme Court of Macedonia C.880/76, ZB, II/74, that states: *even though the joint property acquired during the marriage between the parties has the same legal treatment, which means that in each part of it, the same aliquot share must be accepted in harmony with the contribution of the spouses, in the case when for the acquisition of certain items one of the spouses also participated with means that were not acquired during the marriage, then the aliquot share in the ownership of those items may be different from the aliquot share of the parties in other items that were acquired during the marriage*.

3. THE COMMON PROPERTY OF SPOUSES IN THE MACEDONIAN LEGISLATURE

The issue related to the property relations of married spouses, respectively the way of regulating these relations has been and is present in the theory of family law and law-making practice (Ristov, 2020).

The specifics of the spouses' property relations are closely related to the legal nature of the institution of marriage within which they are created (Ristov, 2020). In the provisions of the Family Law of the Republic of North Macedonia (1992), the institution of marriage

is defined as "marriage is a living community of a man and a woman regulated by law, by which the interests of the spouses, the family and, the society is being realized".

Personal-property rights and obligations are of a property nature, but related to the specific subject. These rights and duties are closely related to the personality of each spouse and therefore cannot be transferred to any other person by any legal action, neither for the life of the subjects (inter vivos) nor in case of death (mortis causa) (Aliu, 2007).

According to the positive legislation, the common property of spouses is considered that property, which the spouses acquire through work in the course of the marriage.

According to the Law on ownership and other real rights (Article 67): the property which spouses acquire during marriage represents their joint property, respectively to the common marriage life (Prava, 2002). According to the Law on ownership and other real rights, for the property created in marriage to be considered the common property of the spouses, two conditions must be met: the property must be earned through work, as well as the property must be earned throughout the duration of the marriage. According to the Law on ownership and other real rights "Joint property of spouses is the property which spouses acquire during the marriage" (Prava, 2002). Both spouses can work together in the same activity, or work in different jobs (e.g. the husband is in a working relationship, while the wife is a housewife, etc.).

Until the issuance of the Law on ownership and other real rights (2001), the property relations of marital and extramarital spouses, as well as their relations with third parties in the positive right of the RNM, are regulated by the provisions of the Law on Family of 1992, while these relationships in 2001 were regulated by the law on property and other real rights. (Angel, 2020). The law on ownership and property rights is based on the imperative character of the legal property regime and in this dispute, the property regime of the spouses defined by this law is a legal regime and cannot be changed based on the will of the spouses, so their relationships are obliged to regulate them based on the law and they cannot regulate them by contract. (Angel, 2020,).

Regarding the common property of spouses, the law on ownership and other property rights proclaims indeterminacy as a general principle, so that the common property of spouses still maintains the character of a joint property - the right of ownership over parts that determined neither realistically nor ideally, but definable.

The administration and disposal of joint property of the spouses depend on the property legal regime to which they are subject (Ristov, 2020). Spouses, as owners of the common property, jointly and by agreement undertake the actions of administration (regular) and disposition (extraordinary administration) of the common property. This stems from the legal nature of the joint property, where the spouses' shares are neither realistically nor ideally defined.

The set of legal norms that regulate the property relations of spouses is called the property regime (Podvorica, 2006). By the property regime of the property of cohabiting spouses, we understand the whole of legal norms that regulate on one hand the property relations between the spouses and on the other hand the property relations of the spouses with other persons.

Property relations represent an essential part of family relations, they are closely connected and intertwined with personal relations that occur between family members

themselves (Trpenovska, 2013). Property relations of a family nature, unlike other property relations, arise only between family members: married spouses, extramarital spouses, and between parents and children.

The legal-family theory and legislation from comparative law recognize several models of regulating the regime of marital property relations (Trpenovska, 2013). In certain legislations dominate systems such as:

- legal regulation of property relations of spouses as well as
- the property regime with contract (Trpenovska, 2013), (spouses agree with a contract to regulate marital property relations).

3.1. Liability of spouses

According to Article 185 of the Family Law of the RNM, the spouse who does not have enough means of subsistence and is incapable of work or does not have work without his/her fault is entitled to subsistence by his/her spouse proportional to his/her abilities. The court, taking into consideration all the circumstances of the case, may reject the request for sustenance if the spouse, who maliciously or without justified reasons has left his/her spouse, is requesting the sustenance.

Meanwhile, in Article 216 of the Family Law of the RNM, it is foreseen that the other spouse is not accountable for the responsibilities that one of the spouses had before stipulating the marriage, as well as the responsibilities that he/she will take after stipulating the marriage. The spouses are untidily accountable for the responsibilities that one spouse has taken towards the third person for sustaining the current needs of the marriage community, as well as the responsibilities, which according to the general provisions charge both spouses.

4. PROPERTY RELATIONS IN THE COMPARATIVE PLAN

In comparative law, there are different solutions regarding the regulation of property relations of spouses.

Property relations in marriage are specific, due to the special ties that exist between the spouses (Trpenovska, 2013). In all European countries, there is a legal property regime and property relations are regulated by law, but in contemporary legislation, the marriage contract (which can also be presented as a prenuptial contract if it is concluded before marriage) increasingly (gains) meaning with which the marital partners individually and independently regulate the property relations between them (Trpenovska, 2013).

The legal property regimes that regulate property relations in marriage are not identical in all European countries, but on the contrary, there are differences between them that are regulated by certain historical, legal, economic, and cultural conditions as well as other characteristics for certain countries (Trpenovska, 2013).

The legal property regime can be; a) Common and b) specific, the first is characteristic of countries such as the countries of the former Yugoslavia as well as the countries of Eastern and Central Europe such as Russia, Bulgaria, the Czech Republic, Slovakia, Hungary, but also in Western European countries, such as France, Belgium, and Italy, while the special property regime is characteristic of the law of Great Britain (Trpenovska, 2013).

Italian legislation allows spouses to change the legal regime, which is that of co-ownership of material goods through the marriage agreement, which allows them to choose the regime of separate material goods or "spouses can also apply non-typical property regimes, which do not are provided by law.

In the field of matrimonial property relations, the French law was significantly changed only in 1965, when a major reform was carried out that is also based on the idea of family solidarity and the legislator decided to define the property acquired in the community as a legal regime.

Marriage is a social and legal institution present in all cultures, although understandings of what constitutes a marriage and its legal and social consequences vary from country to country (Gashi, 2022).

In the French law, the marriage contract must be in written form and notarized KovačekStanić, 2002). The specificity of French law is that the contract must be approved by the competent state body - the court (tribunal de grande instance).

According to the Croatian legislation, marital property is the property that the spouses have acquired during the marriage or derived from this property. The Croatian legislation also foresees the marriage contract which can be concluded both during the marriage and before the marriage, but in the latter case its legal effects arise only from the day of the marriage and if the marriage was actually concluded (Majstorovic, 2005).

CONCLUSIONS AND RECOMMENDATIONS

Property legal relations are regulated by special laws and provisions. The division of the common property can be done by agreement and by court decision at the request of one of the spouses.

The condition for the existence of the joint ownership of the spouses is the marital union, and in cases of separation of the marriage, the joint ownership of the spouses also ceases to exist.

The joint property of the spouses is considered the joint contribution of both spouses, whether through continuous income, i.e. through work, but also through other forms of earning wealth or even by giving help to the other spouse, such as by guiding housework, taking care of children, etc.

The recommendation would be that in the case of legal divorce proceedings, the common property of the spouses should be properly identified in the court, the common property of the spouses should be divided properly, and above all the contributions of the spouses in the increase of the common property should be correctly assessed.

The property of the spouses can be both shared and separate. The property that one of the spouses owns at the time of marriage, the property that the spouse will receive based on inheritance, in the form of a gift, etc. is considered a separate property. As for the gifts that the spouses gave to each other before the marriage or during the marriage, they are not returned, except for gifts of great value.