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DOI: 10.25108/2304-1730-1749.iolr.2019.59.167-190

Some issues of legal regulation of property relations between spouses

Abstract: In the current Family Code of the Republic of Azerbaijan, the number of norms regulating property relations compared to the regulation of private relations between spouses is much higher. This is not casual. Property relations are, by nature, uncertainty, but on the contrary, require accurate definition. On the other hand, property rights are not always voluntary, but are mandatory in certain circumstances. Moreover, property relations in the family depend not only on the husband and wife, but also on the interests of children, heirs, and creditors. However, it should be borne in mind that property relations in the family are not entirely regulated by legal norms. For example, it is common for couples to take care of everyday households, household troubles (repairing a refrigerator, TV set, washing machine, etc.) or relaxation, treatment, etc. solve their problems with each other verbally. On the other hand, property relations between husband and wife are regulated not only by the Family Code, but also by the Civil Code.

Thus, the joint ownership of the spouses is regulated both by civil and family law. The general rules of the Civil Code on property may apply to those relations. However, the rules of family law regarding the spouses' property should not be contrary to the Civil Code, but must be completed or detailed. At the same time, the provisions of the constitutional law of 21 December 2010 of the Republic of Azerbaijan "On normative legal acts" should be considered. According to Article 2.5 of this Law, the Civil Code of the Republic of Azerbaijan applies to the Civil

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Code of the Republic of Azerbaijan in contravention of other codes and laws reflecting civil law norms. Family law should also define certain exceptions arising from the general rules and specificity of family relationships. The norms of civil and family law regulating property relations of spouses may be characterized as general and specific norms. The norms regulating property relations between husband and wife have undergone substantial changes in the Family Code and the principle that regulates these relations has essentially changed. Thus, although the previous legislation presupposes that the legal regime of the property of the spouses cannot be violated in any way by their consent, then in the new legislation those relations have been defined not in the imperative order, but in the dispositive content. The legal regime of the spouses' property is that when the parties do not want the material relationship between them to be regulated by a marriage contract, the marriage contract has been canceled or invalidated.

Keywords: family; marriage; property; public relations; common property; legal regime; marriage contract.

From the point of view of family law, the following are taken into account as circumstances that are of particular importance for the inclusion of one or another property in the common property of the spouses:

1) acquisition of property at the expense of their common assets during the joint marriage by the spouses;

2) the transfer of property by the property of both parties (marriage);

3) allocation of funds (capital repair, reconstruction, equipment replacement, etc.) that significantly increases the value of the property of each of the spouses at the expense of the common property of each other or the property of each other or the spouse's labor [5].

In the legislation, it is shown that the existence of marriages between the parties is, as a matter of fact, the sole indication of a marriage. Nevertheless, the

recognition of the marriages established on religious ceremonies until September 8, 1923, when the first Civil Code was adopted in Azerbaijan, as well as the adoption of the Decree of the Presidium of the Supreme Soviet of the USSR on July 8, 1944, they were able to formalize their marriage time [6, p. 45].

Although the legislation recognizes only the marital status established in the relevant executive authority, the practice of the Code of Conduct applies to the parties involved in actual marriages. Let's take the example. The parties have lived as an actual couple in a home from August 12, 2015 to February 23, 2016. On 23 February 2016, the plaintiff (woman) left the house and went to her parents' home. She was pregnant at that time, and after the separation she was born of a genuine relationship. The petition contained a golden necklace, bracelet, earring and ring set with a diamond bracelet with a value of 3000 manats, with a diamond-shaped golden ring with a value of 1,500 manats, with eight golden diamond bracelets with a value of 2,000 manats asked for the gold earrings from the defendant and given it to him. Court of First Instance satisfied the claim.

The Court of Appeal, which considers the appeal of the parties to this judgment of the Court, has considered that in the court every person must prove the cases when they refer to their claims and objections. Therefore, the plaintiff must prove that the items are in the possession of the defendant, and the defendant should ensure that the plaintiff takes the goods with him. If the evidence of the Court of Cassation fails to provide evidence that evidence has been taken from the place of detention, it shall be deemed to have been valid at the place of detention. There was no argument about keeping gold jewelry in the defendant’s home. The plaintiff said that the items were kept in the red box inside the cabin of the defendant's residence. The respondent acknowledged this. The case indicated that the plaintiff had taken his belongings four months after leaving the house. In controversial circumstances, it is unlikely that the claimant collects all jewelry and that the respondent will allow it. The items were donated by the respondent to the

plaintiff. It is not convincing that the parties allow the claimant to take these gifts with him because they live together as an unofficial couple in a short space of time. The difference between the 2 items of gold and jewelry (golden wristwatch and chain necklace on the cross necklace) is that they did not give them the respondent's gift, which belonged to the plaintiff before the family relationship. The applicant did not deny the fact that these two items were in the same place as the other five items - in the cabin of the defendant, in the box, and even blamed the claimant for carrying a necklace in a cross-shaped form. If the claimant had the intention of making a groundless claim about gold ornaments, he could have claimed that these two possessions were also held responsible. The plaintiff said, on the contrary, that he had taken two things with him while leaving the house. Thus, according to the evidence presented by the Baku Court of Appeals, the gold jewelry was in the possession of the defendant and did not alter the resolution of the Court of First Instance by the decision of 11 October 2017 and upheld it [2].

Apparently, courts have settled a dispute over the property acquired by the parties in the actual marriage relationship as a gift, in accordance with Article 34 of the Family Code.

M.D. Demirchiyeva divides her property relationships into two groups: a) property relations derived from the common property of husband and wife (ie property earned during marriage); b) Mutual benefit (alimony obligations) [3, p. 197]. We, in turn, divide property relationships into two groups: husband and wife relationships and relationships of lawful relationships. In our view, the property relationships between husband and wife include the norm that determines the legal regime of the spouse's property, the contractual regime of the spouses' property, and the responsibilities of the spouses.

Article VII of the Family Code and Article 225 of the Civil Code are devoted to the legal regulation of the common joint property of spouses. According to Article 31.1 of the Family Code, the joint property of the spouses is the legal

regime of their property. Article 32.1 of the Family Code states that the property acquired by the spouses during their marriage is their common property. It is possible to draw the following conclusions from this provision: 1) The person who demands the property acquired during the marriage period to the common property does not provide any evidence for that; 2) all types of property acquired during the marriage period, regardless of whether the property is included in the common property list of that property, shall be considered as common property.

Article 32.2 of the Family Code stipulates the following types of property in the joint ownership of spouses:

1) income received by their spouses as a result of their labor, entrepreneurship and intellectual activity, their pensions and allowances as well as other non-specific payments (disability, disability, loss of ability to work due to breach of this or that kind of health, amount of assistance, etc.);

2) movable and immovable property, securities, credit bureaus, etc. received from the gross income of the spouses; any other property earned by the spouses during marriage, irrespective of the name, the person's name, or the person's name, the amount of shares placed on the commercial organizations, the shares, the capital shares and the property of the spouses.

In our national legislation, two legal regimes of property relations between family members - 2 possible ways of regulating family property relations are distinguished: 1) general property regime and 2) separate property regime. The general regime of property implies that the owners of common (joint and joint) property are the co-owners of the same property and, upon mutual agreement, exercise, dispose of, and dispose of it. Separate personal property of family members implies ownership, use and disposal of spouses, parents and children in accordance with their own wishes on the personal property of each one. The share of participants in joint ownership is not known in advance, this share is determined during the division or allocation of the property. A distinctive sign of the common

shared ownership relationships is that they are based on more personal and trustworthy relationships. Uncertainty about the share of this type of common property has given rise to the fact that it is impossible for criminalistic scientists to be assassinated by joint owners of such property. In this respect, it has been noted in the literature that property owned by the perpetrator on the basis of joint ownership cannot be the subject of crime against property [4, p. 148].

In general, the structure and content of Article 32 of the Family Code, "Joint Property of Spouses" is normal. However, there are two points we have not agreed to in the article, so we want to bring them to the attention. Our first note is related to Article 32.2.1 of the AM. According to that article, income derived from their labor, entrepreneurial and intellectual activities, their pensions and allowances, and other non-specific benefits, are part of their common property. From the content of the article, it is understood that these types of property that the spouses have acquired during marriage, both before marriage and marriage, are their common property. However, according to Article 225.2 of the Criminal Code, property belonging to each of the spouses before entering into marriage shall be deemed its property. It is no coincidence that in article 32.2.2, which stipulates the joint co-ownership of the AM, the property has been earned during the marriage period. At first glance, it can look at the effects of small, insignificant details. In fact, however, this can lead to serious confusion in law enforcement. Of course, the question cannot be asked, why has not this serious confusion been so far? Because in the practice of the court the same norm was applied in the general context of the rules of family and civil law of the republic. However, it would not be right to expect the formalized experience to be made and to avoid the need for legislation in the legislation. Therefore, we propose to add the words “during marriage” after the words “each of them” that appear at the beginning of Article 32.2.1 of the Family Code.

The other point we disagree with in this section is related to Article 32.3 of the Family Code. According to that article, a husband (wife) who does not have an independent income for a marriage during a marriage, child care, or other valid reasons has the right to common property. According to M.D. Demirchiyeva, this norm is primarily aimed at the protection of women's rights. Women's work in the family is combined with the work of the husband (husband) who works according to the principle of the equality of the husband and wife [3, p. 202]. In our view, if the legal basis of family life is considered a marriage, the economic basis is the property of the spouses. But family ownership is a means to ensure that business is not a place of earning, but a family life. In other words, the family is collective but not a labor collective, there is no worker and employer, entrepreneur, and employee under his supervision. Along with property relations, family is primarily an alliance based on personal and personal non-property relationships, such as love and affection. Here not only love and affection for the couple, but also the desire to be a father, a son, to have children, to look after their grandchildren, and so on. there is an environment based on such spiritual relationships. Thus, the specificity of family life does not necessarily work on both of the spouses to earn a living. Sometimes there is no need (for example, one of the spouses is asking for the earnings of the family to be fully sufficient for the family's livelihood and the other for home care, etc.), and sometimes the current conditions (household, husband, being ill, being ill, being in actual service, being a student, etc.) does not give an opportunity to work for one of the spouses and earn an independent income.

But all this does not mean that the husband (wife) who is unable to participate in the formation of common property does not have a right of ownership on that property. This position also comes from the constitutional provision. Thus, according to Article 29 (1) of the Constitution of the Republic of Azerbaijan, everyone has the right of ownership. Under Part III of this article, everyone may have movable and immovable property. In accordance with the said paragraph, the

right of ownership is the right of the proprietor or other person to own, to use and dispose of the property. In fact, Article 32.3 of the Family Code does not deny this, and the right of the spouses to possess the common property is recognized. However, the same principle does not apply to the principle that the husband and wife have equal legal equality in the family. However, Article 34 (4) of the Constitution of the Republic of Azerbaijan stipulates that the rights of spouses are equal. Thus Article 29.1 of the Family Code stipulates that, in accordance with the equality of rights of a woman and a person, established in the Constitution of the Republic of Azerbaijan, both husband and wife have equal and personal rights in family relations. Article 37.1 of the Family Code also stipulates that the proportion of property in that property is equal to the division of their common property unless otherwise stipulated in the agreement between the spouses. According to Article 32.3 of the Family Code, it is expedient to find out that the unmarried couples should have equal rights over common property for good reasons. For this purpose, we propose to add the word “equal” before the word “has the right” at the end of that article.

As it is seen in Article 32.2 of the Family Code, the circle of common property owned by husband and wife is broad enough. Thus, all the property earned during the period of their marriage is commonly considered as their common property. This property includes accommodation, house, other real estate types, automobiles, furniture, household items, wages, pensions, money-thing lottery prizes, marriages married couples, etc. it applies. The property acquired during the marriage period shall be deemed to be the sole common property of the spouses so that the property is intended to meet the material and cultural needs of both of them according to their designation [6, p. 70].

In the Family Law textbook issued by P.V. Krasheinnikov, it is shown that the following two conditions are required for the acquisition of spouses' property, including property rights, to their common property: 1) property or rights to be

acquired during the marriage; (2) the common property of the spouses should be derived from their common equity [7, p. 42]. As Russian law regulates these relations with the same national law, we do not agree with the second condition mentioned. Thus, Article 32.2.2 of the Family Code stipulates that the property acquired through the husband and wife's total income is the joint property of the spouses, but Article 32.3 of the Code states that the husband and wife who do not have independent profits have the right to common property. In addition, Article 225.1 of the Civil Code of the Republic of Azerbaijan stipulates that property acquired during the marriage period is their common property.

It's one of the important issues to determine when the husband's income (earnings) are counted as total assets. There are basically three positions on this. According to one position, revenues are converted to common property from the time they are calculated. This position is contrary to the provisions of the labor and pension law that the right to wage, retirement or allowance belongs only to the relevant employee, pensioner or beneficiary. The same situation arises when obtaining entrepreneurial income; the spouses are not entitled to claim their share at this stage. According to the second position, the income of the spouses becomes their common property since they were brought into the family (included). The opposite argument is that in such cases, the income that is not brought to the family will in any case be considered a separate property of the spouse. On the other hand, it is absolutely impossible for the earnings to be brought to the family in all cases, and it is absolutely possible for the husband to transfer his income directly to the bank accounts available. In this case, the same account will be considered a separate property of the spouse. According to the third position, the income of a husband (husband) becomes common joint property after acquisition by any of them.

We consider that the amount of income of each of the family members, in particular the spouses, that does not have a marriage contract, which is based on a

legal relationship, may vary from one family to the other, such as the family's home or household income, may be the person who has the burden. Or one of the spouses can be honest and the other is conscientious. A conscientious person can direct most of the earnings to family interests, and the unscrupulous party to personal gain. The list of such cases can be significantly extended. Even one of the spouses may not participate in the formation and promotion of common property for certain reasons. It is not accidental that Article 32.3 of the Family Code stipulates that the husband (wife), who does not have independent earnings, is entitled to common property in the course of marriage during which he / she is engaged in household, child care, or other valid reasons. It is clear from the content of this article that dealing with households, including children, during marriage, is an excuse for determining that a spouse who does not have an independent income is entitled to common property. However, the legislator maintained a list of excluded reasons which stipulated that the unmarried marital partner had the right over the common property. The reasons for such abusive reasons are that the husband or wife is unable to find a job, get education, and so on. may apply. Therefore, we consider the latter position to be more accurate, considering that the income of the spouses becomes their common property.

The common property of the spouses is all the signs of this type of property. Article 213 of the Civil Code of the Republic of Azerbaijan is devoted to the concept of common ownership and the basis of its formation. According to this article, the property owned by two or more persons belongs to them on the basis of common property right. There is a minimum limit of the subject area of the common property: it must be at least two, and there is no limitation on the number of maximums: it can be three, five, ten, twenty, hundred, or more. In that case, how well is the use of the phrase “several persons” in Article 213 of the Civil Code? It should be noted that the first part of Article 244 of the Civil Code of the Russian Federation, “The Concept of Common Property and Fundamentals of Origin”, is

the same as in Article 212.1 of the Civil Code of our Republic. Here the term “two or more persons” is used. The word “few” is a number according to the speech part, the amount of indefinite quantity, i.e. the exact amount of the item. From an etymological point of view, the word “few” refers to a number that is three or more according to the accepted position, but not many. Because it uses many words (for example, many, dozens, etc.) for a large number of expressions. We agree that the “metric” does not precisely indicate the sign of the “few”, its minimum limit begins with two digits, but it can save the maximum limit to ten digits. It is therefore desirable to replace the word “two” with “two or more” words. Thus, the word “two or more” is the minimum of two, and there is no limitation on the maximum limit. It can be ten, twenty, one hundred and more. According to the above, we propose to replace the word “two or more persons” with the word “two or more persons” in Article 213 of the Civil Code.

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