



**Mustafayeva A.A.\***

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**Some issues of the division of property between husband and wife  
under the family legislation of the Republic of Azerbaijan**

**Abstract:** When relationships between family members are based on love, mutual respect, care and attention, their spouse's rights and responsibilities, including property, are almost not subject to dispute or debate. Under these circumstances, spouses use not only their common property, but even their own property as their own property. However, when the marriage does not go through the normal routine, there is a need for interference in the relationship when marriages and disputes between the husband and wife become commonplace and, in general, it is impossible to continue the marriage. It is in these controversial situations that the importance of establishing the right of spouses to have equal rights in family life, including in the sphere of property relations, is reflected in the law.

If the Marriage and Family Code, which entered into force before June 1, 2000, distinguishes the types of property acquired during marriage and marriage, the existing Family Code of December 28, 1999, allows the spouses to determine their property rights. Giving. In addition to the legal regime of the spouses' property, a contractual regime is established through the conclusion of a marriage contract. Thus, imperative legal regulation of spouses' property relations was replaced by dispositive legal regulation.

The use of a contractual form in regulating family relationships allows the independent selection of property regimes that are the subjects of this right, and the consideration of the many requirements that they may face in family life. The

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\* **Mustafayeva Asmar Anvar qizi** - Doctorate student of the Institute of Law and Human Rights of the National Academy of Sciences of Azerbaijan (Azerbaijan). E-mail: Asmer79@gmail.com



marriage contract also allows the parties to determine and apply their terms in the settlement of family legal disputes. Property relations between spouses can also affect their existing non-property relationships and the effective development of these relationships. From this point of view, proper legal regulation of property relations between spouses is important for the stability of each family's life.

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

The legislation of the Republic of Azerbaijan regulates joint property relations between spouses, both civil and family. The norms of civil and family legislation regulating spouses' property relations act as general and special norms in relation to each other. The division of property between spouses may also be made at the request of the creditor. As such, civil law stipulates that a person bears responsibility for his obligations with the property he owns.

According to M.Dirchieva, the creditor's demand for the division of the common property is related to the insufficient value of the personal property to pay the obligations of one of the spouses. According to the author, these obligations may arise from various grounds (alimony, compensation for damages, etc.) [3, p. 214]. In the case of a spouse who has taken civil-law obligations for personal gain or marriage, not for the benefit of the family, the creditor's right is, of course, to his or her own property, but not the common property of the spouse. It is, in essence, a division of the common interests of the spouses. Apart from Article 41 of the Family Code, entitled "Payment of Property to Spouses", this issue is found in Article 224 of the Civil Code "Directing Shares in Common Property". According to this article, if the owner of a share or joint property has insufficient other property, his creditor may require that the creditor allocate that share to the holder's share in the common property. If it is impracticable to dispose of the shares, or the other participants of the joint or joint ownership object to it, the creditor has the



right to demand that the debtor sell its share at the market price to the remaining participants of the common property and repay the proceeds from the sale. If the rest of the owners of the common property refuse to take the share of the debtor, the creditor has the right to demand the court to direct the deduction to the debtor's share in the common property by selling it out of the auction. Family needs and obligations arising out of solidarity are considered joint commitments and in this case, the deduction requirement is addressed to the common property of the spouses. If the common property is insufficient to satisfy the creditor's claims, then the real estate may include the separate property of each spouse. If it is impossible to repay the debt by the separate property of one of the spouses, the right of claim shall apply to the other property of the other.

Civil law specifies that spouses are responsible for the harm inflicted by minors. According to Article 41.4 of the Family Code, in this case, the payment request is primarily directed to the spouses' common property, and in the event of insufficiency, each spouse's personal property. A differential approach is needed to address the harm caused by underage children. Thus, it is necessary to distinguish between minors under the age of 14 and those between the ages of 14 and 18. Under civil law, minors under the age of 7 and minors under 14 are considered minor (Articles 28.3 and 1103.1 of the Civil Code). Minors under the age of 7 are considered disabled, and those between the ages of 7 and 18 are considered disabled.

According to Article 1103 of the Civil Code, the parents (spouses - MA) are responsible for the harm caused to a minor under the age of 14 unless they prove that the harm was caused by their fault. According to Article 1104 of the Civil Code, minors between the ages of 14 and 18 bear overall responsibility for the harm they inflict. However, if they do not have sufficient income or other property to pay the damages, they must pay all or part of the loss, unless their parents



(spouses, MA) prove that the damage was caused by their fault. In this case the subsidiary responsibility of the parents arises.

If the parents fail to comply with the responsibility for the harm inflicted by their underage children, their financial liability shall not be terminated, even if they have already acquired sufficient property to cover the damage at that age. There is a direct indication of this in Article 1103.4 of the Civil Code. Generally, parents' liability for the harm inflicted by minors is terminated if the following conditions exist:

- adolescence;
- children have sufficient income or other property to pay damages before reaching adulthood;
- achievement of full functional capacity of children before adulthood (marriage, emancipation) [5, p. 48].

When considering a case involving division of common property, it is to the extent that the court considers this loss of interest of the opposing party when it is determined that the alienation, concealment or disposal of any part of the joint property, without the consent of the other spouse and contrary to the common interest of the family. In cases where disputes with family relationships are actually terminated, the court resolves the issue of the distribution of property until joint management of the common jurisdiction.

Family law takes into account the interests of underage children in all cases. The legislation establishes that the items (clothing, clothes, school and sports supplies, libraries, etc.) obtained to meet their needs in the family are not the subject of a spouse's disputes. According to Article 36.6 of the Family Code, things to meet the needs of underage children are given to a parent living with his / her children at the time of division. Deposits made by both spouses on behalf of common minor children are not taken into account in the division of property. This deposit is considered to belong only to the named child (Article 36.7 of the Family



Code). If juveniles are underage during the division of the property, the court will not be justified in increasing this proportion of spouses whose children remain together.

Unless otherwise provided by the contract, the common property of the spouse is evenly distributed (Article 37.1 of the Family Code). This norm corresponds to Article 223.3 of the Civil Code of the Republic of Azerbaijan. According to that norm, when separating and dividing a common item, the proprietors' shares are considered equal unless otherwise agreed upon by their agreement. Marriage agreements and the agreement on the division of property voluntarily include the agreement that spouses do not share equitably. It is the subject of the property that not only exists in fact but is also in the possession of third parties (for example, under a lease agreement).

The legislation also established cases of alienation of the property between spouses, which include: 1) Interests of minors; 2) remarkable interests of the husband (wife); 3) failure of one of the spouses to earn income for no good reason; 4) misappropriation of the joint property of one of the spouses, contrary to the interests of the family (Article 37.2 of the Family Code). Considerable interests of a husband or wife, for example, can be attributed to their professional interests (for example, a musical instrument is given to the party involved). It is entirely possible that the husband or wife may not be able to earn income due to illness, old age, inability to find work, or any other excuse, and therefore have little share in the formation of common property. A wife may not have an independent income during her marriage, because she is busy with housekeeping, caring for children, or because her husband does not allow her to work.

Certainly, it is also possible that a spouse or wife intentionally violates family interests, drunkenness, alcohol or drugs, gambling, and so on. to waste such cases. The key point here is not to spend too much on the petition (for example, the money may be spent on an expensive collection, which is a hobby for one of your



spouses). Without a valid excuse, one spouse may not make any income for the benefit of the family for a long time. As it is known, no one can be forced to work under the law. The right to be involved in labor activity is the right of every person to wish. However, it should be noted that such cases are not taken into account in the resolution of disputes related to the division of property between spouses. Undoubtedly, the relationship between the spouse and the spouse is crucial in this case.

According to Article 37.3 of the Family Code, when dividing property between spouses, their total debt is determined according to their share. The division of property between spouses is carried out in a natural manner and the court determines which property should be transferred to the spouses. In this case, the nature of the property (whether divisible or unknown, the value, etc.) and the willingness of the parties are taken into account, but if no agreement is reached between them, the dispute shall be settled by the court. The Court, of course, considers it appropriate to give each spouse what she needs, and takes into account their professional activities. Residential housing is usually provided to the juvenile. However, it is not possible to distribute all items in kind. If the shared house does not have two separate entrances, the apartments do not have separate bedrooms, kitchens, or bathrooms for each of the parties, or it is not possible to create them, then the natural division of the dwelling house or apartment is not made. Therefore, in the case of division of property between spouses, it is possible to transfer property to one of them, exceeding the value of the share. In this case, the court will decide instead to give the other person an appropriate amount of money or other compensation. Article 36.4 of the Family Code addresses this issue. According to this article, if one of the spouses is given property that exceeds the value of the share, then the other may be given cash or other compensation. In the theory of law, the word "compensation" is usually used in the sense of compensation for damages. Obviously, the subject here is the husband or wife to



whom the subject has to pay the cash or other compensation in excess of the value of the share. However, the law does not explicitly state this, and it is understood that the appropriate amount of money or other compensation may be paid at the expense of any person, not even the state. Therefore, it is advisable to add the expression "at the expense of the other party" after the word "other" in the second sentence to further enhance the content of Article 36.4 of the Family Code.

Property types related to spouses' professional activities (such as sewing machines, computer sets, musical instruments, etc.) are not their exclusive property. This is usually due to the fact that these types of property do not have a significant stake in the formation of common property, and the significant costs of acquiring and disposing of such property can seriously affect the interests of the other party. However, it should be noted that the Family Code of the Republic of Azerbaijan does not directly indicate that all types of property related to the spouses' occupation are related to common property. Some countries have a different norm. For example, Article 25 of the Marriage and Family Code of the Republic of Belarus, dated July 9, 1999, is entitled "Spouses' Professionals." According to this article, occupational items (musical instruments, special libraries, medical supplies, medical equipment, etc.) acquired by spouses during marriage are considered to be their joint property unless otherwise stated in the marriage contract. In the division of property, the court may grant the objects of professional employment to the spouses who use it, with the obligation to reduce their share in the common property or to compensate the other party for its value [4]. Paragraph 4 of Article 61 of the Family Code of the Republic of Ukraine dated January 10, 2002 also refers to the items acquired by the spouses for their professional activities during their marriage [6].

It should be noted that Articles 32 and 37 of the Family Code of the Republic regulate the division of common property of both spouses, and the division of common property of spouses. there is no indication of the occupation of the



couple. We rightly consider the position of occupational property acquired by spouses during their marriage as their common property. Let us explain simple ideas. Wife is a seamstress master, is engaged in self-employment, finishes her family by sewing clothes at her home sewing workshop. Or the man has acquired the medical equipment needed to operate as a dentist in the home and is able to pay for his family. Or the piano player and the piano player teach the students to play these instruments individually at home. This list can be extended significantly. We support the recognition of this type of occupation acquired during marriage as a common property, even though these items are personal use and do not serve the same person as clothing and footwear as provided in Article 34.2 of the Family Code. Therefore, we consider it expedient to establish relevant provisions in the Family Code of the Republic. As we attribute the spouses' occupation to common property, we correctly consider the provision in Article 32 of the Family Code.

Based on the above, we propose to add Article 32.4 to the Family Code as follows: “32.4. Unless otherwise provided in the marriage contract, the occupation items (musical instruments, medical equipment, sewing machines, etc.) acquired by the spouses during marriage are considered to be their joint property. In the division of common property of a spouse, the court may transfer those occupational items to one of the spouses who use them, provided they have a duty to reduce their share in common property or to compensate the other party.

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