

LEGAL BASIS OF MATRIMONIAL PROPERTY FOUNDATIONS

The object of our research is the property relations meaning the property gained during the matrimony period, the real estate and its separation in case of divorce when the registration of the property that is under appeal is made on the name of one mate in the civil register.

One of the main subjects of the family law is couple and the basis of the legal relations between them is a matrimony. The main part in the legislation takes the property regulation taking into consideration the concept of determination in the matrimonial relations. The matrimonial registration must be fulfilled in the civil register territorial service of the ministry of Justice of Georgia. The mentioned registration causes the legal results between the mates. The definite rule regulates both public and social interests and the protection of the property rights of mates and their children.

Key words: matrimonial property, legislation, matrimonial relations, matrimonial rights and obligations.

Family care is well described by the supreme Georgian legislation and is supported by the constitution, based on which the state is obliged to take care of the family.

The matrimonial relation regulation is fulfilled both by the family law norms and moral norms, customs and traditions.

Based on the civil code the public and private relations are founded on the persons' gender balance and personal property. The family law is a branch of civil law consisting of particular family law institutions and regulates such relations which are based on the matrimonial and family relations. The sphere of its regulations is not the family itself but the matrimonial relations among the family members. Thus including such matters as marriage, divorce, matrimonial property, their rights and obligations and commitments before each other and children, etc. The matrimonial relations based on the legal nature can be viewed as personal and private.

Georgian civil legislation as well as other supreme state law is connected to the matrimonial private and property legal relations' basis the registration of the matrimony established by the law.

Private (non-property) relations are based on the matrimonial, divorce, choosing the surname by the husband or wife, establishment of certainty, children bringing up, education, location and other matters' solution. The property relations include the matrimonial rights and commitments in the family, the right upon the mutual and individual property, the obligation to support the matrimonial or extramatrimonial relations and also the other family members' alimony commitments.

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them is a matrimony. The main part in the legislation takes the property regulation taking into consideration the concept of determination in the matrimonial relations. The matrimonial registration must be fulfilled in the civil register territorial service of the ministry of Justice of Georgia. The mentioned registration causes the legal results between the mates. The definite rule regulates both public and social interests and the protection of the property rights of mates and their children.

The mates in the family have equal rights and commitments. According to the Georgian Constitution, its 14th article states that all the humans are equal before the law despite the gender and at the same time it's noted in the 36th article: «matrimony is based on the rights equality». Based on the 1152 article of the civil law the mates in the matrimonial relations have the equal rights, both personal and property, and have the equal commitments as well. The personal and property equality is an important condition for every stage of the matrimonial relations guaranteed by the law.

Matrimonial property rights and commitments, the relations can be divided into two groups:

Relations connected to the matrimonial co-property;

The relations connected to the alimony relations.

The object of our research is the property relations meaning the property gained during the matrimony period, the real estate and its separation in case of divorce when the registration of the property registration that is under appeal is made in the civil register on the name of the one mate.

The matrimonial property can be individual property, meaning the property that belonged to each of the mates before marriage and the property that is

gained during the mutual living by ancestors or as a present, or the property bought together by the mates if it is intended to meet one of the mate's demands and co-property that is gained during the mutual living. Based to the Georgian civil code the article 1163, the property of each mate may be considered as the matrimonial co-property, if it is determined that the amount of this property has increased greatly based to the corresponding purchases (planning, construction ending, alteration, etc.). The mentioned rule is not fulfilled if based on the matrimonial agreement; some other aspects will be taken into account. Therefore it must be mentioned that one of the case was defined by the Supreme Court in the following way: the current repair of that property that belongs to one of the mates and investment of insignificant sum of money that will not cause the significant increase of this property cannot become the basis for recognition as mutual property. The property repair or money investment may become a basis for recognition of the co-property if the amount of the property will increase greatly (see.: case as-33-489-06. 08.09.2006).

As for the legal right of the present, in case of the court appeal, the court guide, the presumption exists that the thing is of the family and not of the individual property if the contrary is not proved, it must be considered as a present for both mates and the regime of the mutual co-property must be spread on it.

The law regulates the matrimonial relations based on the matrimonial agreement that is a novelty in the Georgian legislation. The agreement is a reveal of the parties' will that can cause or change or terminate the legal relations. The parties can easily make agreement and define the content of this agreement. The agreement may be made both before the marriage registration and after it, but the legal results for the parties may be achieved after the registration in the matrimonial registration organ. The imperative demand of the legislator is to make an agreement in the written form and testified by the notary. The matrimonial property relations can be subordinated to both contractual and legal regimes. The choice of the regime in Georgian family law as well as in the majority of the foreign countries depends on the free will of the mates. Contractual regime is based on the matrimonial agreement and the legal fate of the property is defined according to the parties' will. Towards the other kinds of the matrimonial property the law is particularly cautious in order not to breach the interests of the other members of the family.

The mates can take into consideration such matters as to make the property co-property before the marriage or to spread the individual regime and so on, the property gained during the matrimonial relations.

As it was mentioned above the matrimonial contract gives the parties some definite rights and obligations, but there are some obligations that are not under any change by the mates based on the agreement (CC article 1179). These are the following: the obligation to take care to each other, the rights and obligations of parents upon children, alimony obligations and in case of appeal – the right to appeal in the court. In our estimation it is not necessary to point to the contract according to which the right to appeal to the court cannot be excluded (restricted). The matter is that, according to the Georgian civil law code, article 13, the right to appeal to the court is prohibited. Also, based on the contract such terms cannot be taken into consideration that put into the grave conditions one of the mates.

The matrimonial property definition is presented in the article 1158, based on which the property means the co-property if there is nothing else defined by the agreement.

The property concept definition is presented in the article 147. The property includes all kind of things and non-material wells that are under the use of the physical and juridical persons and they can be bought without any limits if it is not forbidden by the law or moral norms. The mentioned property can be personalty and realties that are in the possessions of the physical and juridical persons.

The property right is guaranteed and provided by the Constitution. Based to the first paragraph, article 21, «the right of property and inheritance is provided. The right of its alienation of the property is prohibited».

The right upon the property depends on the different legal ways – whether they are personalty or realties. Based on the article 183, for the right upon realties it is obligatory to register in the public register as this kind of action gives the legal rights to the property owner. Upon the property can be spread the mutual property regime meaning the rights equally spread between several persons.

The general description of the property was connected to the better research of those problems that take place when the realties gained during the Matrimonial relations is registered in the public register as a personal property on one's name from the mates. The mates may be co-owners partially when they are particularly registered in the

corresponding organ (public register). As it was mentioned the demand upon the realties' registration is imperative without any kind of changes. The mentioned imperativeness is caused by the fact is the public register is the public legal institution where particular private legal rights' registration takeplace, in particular, the right upon realties and other rights. The basic function of the public register is it regulates the civil circulation guarantee function towards which the presumption of certainty is fulfilled until the contrary is proved. The third person has an opinion and trust towards the record that the person listed in the public register is the owner of the material property.

The conception about the matrimonial co-property establishment only after the registration in the public register, at first can be viewed count-?rvalied to such family law issues as the matrimonial co-property principle. Based to that conception that is strengthened in the theory and practice, the matrimonial co-property is the mutual property despite the property is registered on one's name particularly or not. The matrimonial co-property right takes place when one of them made family activities, took care of the children or other sensible reason, had no independent income. At first sight, the mentioned conception is based upon the Georgian Civil Code, article 1158.

Based on the civil code, article 1159, the mates have equal rights upon the matrimonial property. This right use is fulfilled by the mutual agreement of the mates. In connection to the matrimonial co-property deal by one of the mates cannot be viewed invalid by another mate even in case another mate had no idea about this or did not agree with this deal. In this case, the mate has a right to use the profit from the property.

Theoretically the interest of the mate who is under the damage from the other side, but the practical realization of this right is connected to such difficulties as the demand meet in reality as the action realized by the court is difficult to mater-?alized if defendant has no property (personalty or realties) and after that it is possible to put it into materialization and that's why, in most cases the damage recover of the property ruled by the other mate is practically unsolved and is not contented. Based on the law once again must be mentioned the necessity of the property registration gained during the matrimonial relations based first of all on the matrimonial interest – ensuring the family law supreme principle realization. According to the public register certainty and completeness presumption, the third persons having the legal trust towards the given

data cannot be put under damage. Here we come across the damaged mate choice to refuse the right to be co-owner of the property against the own interests. Also, as the matter deals with the property (private, realties) the special norms must be searched in the material law definitions according to which the owner is a person who is registered in such way in the corresponding organ - public register.

During the division of the mutual property two cases may take place: one is when the particular variant is taken by the mates during the property division and on the contrary when there is a dispute between the mates.

Personalty that is not under registration is not kind of difficulty for mate in case of division, as such kind of division does not need any other additional procedure.

For other kinds of property division (personalty or realties) being under registration it is necessary to certify the parties will with the notary way. For example if the property part determination object is the realties the mates should address to the notary to gain the right upon the whole property part certificate. In this case the mutual property is divided into the corresponding parts based on the matrimonial agreement. The contract about division may be signed in the way of agreement in the notary and each mate will be given the certificate upon the right of matrimonial property part and the possibility to deliver the right of the property part is excluded if based to the matrimonial agreement there is any kind of differentiation of the regime in comparison with the standard one.

If there is any kind of matrimonial dispute the property part determination and division will be fulfilled in the legal way in the court. Taking into account that based on the law the matrimonial property division is possible both during the matrimonial relations and after the divorce according to any party's demand the judge has no right not to take an appeal only because of marriage. There are lots of cases when the parties address to the court in connection to the divorce and the mutual property division gained during the matrimonial relations. There is a concept that the mentioned demand must not be met by the court as based on the civil process code, article 102, each party must prove the circumstances showing the demands. Based on the same article, part 3, the case circumstances which based on the law must be proved some definite kinds of testimonies and must not be proved by others. In such case, in order to prove the matrimonial co-property only the matrimonial certificate is not enough (proving that

the particular property is gained during the matrimonial relations), the notice from the public register must be present as this notice can prove the co-property in this case it is possible to demand the property division. This conception is not defined as it is not based on the deep analysis of the legal nature of the mutual property. Particularly, as it is known there are two kinds of the mutual property (fractional and sociable). The Georgian legislation takes into consideration only two cases of sociable property – one of them is the matrimonial sociable property and the second one is “about the rural land property” based on the Georgian legislation sociable property. If we ask the mate to pass the registration in order to be the owner of the realties in the public register together with the mate it will so happen that the mates have not the sociable but fractional property of the thing. On the fractional property the partial not fractional rights regime is spread. As for the matrimonial sociable property, its plot is that the thing is registered as a property of one mate in the public register and the second mate has a legal right to demand the part of the mentioned property or on the base of legal deal. From the mentioned mutual property kinds the fractional property arises both based on the law and deal and as for the sociable property is based only on the law. And if we take into account that the other mate must also be registered as an owner then we come across the fact that there is some kind of an agreement between the mates, the matter is that the matter deals with the fractional property mentioned in the law based on the law.

We have already mentioned the right given by the legislation connected to the public register registration of the matrimonial property gained during the marriage. As we know the parties, in order to restore their broken rights often address the court. The right to appeal in the court is a right of any person. The court has no right to reject the justice implementation. When the property right registration gained during the matrimonial relations is made upon one of the mates and the other wants to pass the registration as a co-owner and use the right given to him by the article 1158 and this time he comes across the difficulties from the side of the mate both during the matrimony and divorce (though such disputes are more frequent during the divorce procedures) he can claim to the court and demand the right of being the co-owner when the corresponding testimonies are present (marriage certificate to confirm that the property was gained during the matrimony, etc.). To address the public register from one of the mate’s side in order to pass the regis-

tration as a co-owner upon the realties as the property is gained during the matrimony and as a testimony the presentation of the marriage certificate will be useless as the matrimony is not the basis of being registered as co-owner for the public register as the contracts like buying, giving as a present and so on. In this case the confirming by the court the co-ownership must be met and the demand of passing the corresponding changes in the public register as the party, in order to correct the dispute case forcefully address the justice implementation organ.

The decision made upon the mutual matrimonial division by the court must be the legal, grounded and full and must not be confused during its implementation and it must be giving the full answer to every risen claim.

Based on the civil code, during the division of the mutual property the court defines what particular property must be given to each mate. During the solution of the given problem the main point must be the interests of the parties, in particular: the under age child growing on the mate’s expense, the health condition and the fact that the mate needs the particular property and so on.

When the court makes the decision upon the demand of the property use definition in case of its division impossibility it takes into consideration the already existed rule of its use that may not exactly correspond the shares of the mates of the mutual property and also takes into consideration concretely what property fits each owner and the real possibility of the mutual use of this property.

The court decision resolution part must contain the exact description of the thing, concretely: name, destination (of the realties) amount, color, other individual signs. Otherwise, the final decision must be explained during its implementation (GCC, article 262).

It is inadmissible to ignore the law about the value indication gained by the law in the decision (GCC, article 253), as during the force implementation of the decision this or that property may not exist.

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Д. Лобжанидзе

Правові засади власності подружжя

Об'єктом нашого дослідження є майнові відносини, зокрема з приводу майна набутого за час шлюбу, нерухомості та її поділу у випадку розлучення, якщо її реєстрація була здійснена на ім'я одного з подружжя.

Одними з головних суб'єктів сімейного права є чоловік і жінка (пара), і в якості основи їх законних відносин слугує шлюб. Значна частина правових норм спрямована на регулювання відносин з приводу власності, враховуючи особливості її визначення у шлюбі. Реєстрація шлюбу має здійснюватися у територіальному відділенні органу реєстрації актів цивільного стану Міністерства Юстиції Грузії. Саме зазначена реєстрація спричиняє правові наслідки для подружжя. Вказана норма регулює публічні і соціальні інтереси, також стосується захисту майнових прав подружжя та їх дітей.

Ключові слова: власність подружжя, законодавство, шлюбні відносини, права та обов'язки подружжя.

Д. Лобжанидзе

Правовые основы собственности супругов

Объектом нашего исследования являются имущественные отношения. В том числе касательно имущества, приобретенного в период пребывания в браке, недвижимости и ее деления в случае развода, если ее регистрация была осуществлена на имя одного из супругов.

Одними из главных субъектов семейного права являются мужчина и женщина (пара), и в качестве их законных отношений выступает брак. Значительное количество правовых норм направлено на регулирование имущественных отношений, учитывая особенности определения собственности в браке.

Регистрация брака должна осуществляться в территориальном отделении органа регистрации актов гражданского состояния Министерства Юстиции Грузии. Указанная регистрация и ведет к возникновению правовых последствий для супругов. Данная норма регулирует публичные и социальные интересы, также касается защиты имущественных прав супругов и их детей.

Ключевые слова: супружеская собственность, законодательство, брачные отношения, права и обязанности супругов.