

Socio-legal problems of division of jointly acquired property of spouses

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Abstract. To identify gaps in legislation when regulating the relations of spouses on the division of common property in court, as well as to formulate proposals for the modernization of legislation in the field of property relations of spouses. The following methods were used in the work: system, dialectical, comparative legal, analysis, and synthesis. Based on the identified gaps in the legislation, it is important to introduce the most expanded concept of "spouse's noteworthy interest" when departing from the equality of shares and the division of the common property of spouses. And we also suggest that the courts, when resolving such a category of cases, be guided not only by the fundamental principle of "equality of shares", but also apply the principle of "justice", which is most widely used in foreign countries with the Anglo-Saxon legal family. The study not only identified existing gaps in legislation but also conducted a comparative analysis with foreign regulation of the issue. It cannot be argued that family law is outdated. However, relations in society are subject to development, which should be considered by the legislator when reforming the regulatory framework. The article has a high value because it is an attempt to introduce recommendations on reforming family legislation in Russia based on comparison with foreign experience and will create the possibility of an individual approach to resolving cases in the sphere of property relations of spouses.

Keywords: division of property, common property, marital relations, dispute

1 Introduction

According to Russian law, property and income that spouses have after marriage – are considered common property. When a marriage is dissolved, the question of how to divide this property arises, which can cause significant issues in resolving. In this case, the spouses have two main options: either come to an agreement voluntarily or take legal action.

The division of marital property is regulated by civil and matrimonial law. This raises the question of the relationship between these norms in resolving disputes between spouses. Practice shows a variety of decisions in cases of this category. The division of marital property is characterized as a complex process, which can be sensitive and, at times, dramatic for each spouse during the divorce process. The spouses have the option of dividing property while married and by mutual consent. G.F. Shershenevich, in his research, points out: "Common property is extremely embarrassing for co-partners, and it is natural for each of them to want to get out of such dependence" [1]. The civil legislation contains provisions on the joint property of spouses, which should not contradict the norms of the Family Code of the Russian Federation (hereinafter –the Family Code). Russian law provides two ways of dividing jointly acquired property: by voluntary consent or legal

action. Voluntary partition is consensual and poses no problems for the spouses, whereas forced partition puts the spouses in a situation where they have to go to court.

2 Problem Statement

The main problem in resolving disputes arising from marital property relationships is expressed in the lack of compromise between spouses (ex-spouses). A low level of legal awareness among divorcing spouses leads to a massive reliance on judicial remedy while ignoring alternative means of dispute resolution. Mediation is one of the alternative ways of resolving disputes, which can save the spouses time and money. So far, private legal procedures for mediated dispute resolution are well-developed in several constituent entities of the Russian Federation. According to statistics collected for 2021, the total number of mediation procedures in disputes related to the division of jointly acquired property in Khabarovsk Krai increased by 3 %, compared to the previous period. Despite this, the number of appeals to court compared to alternative dispute resolution is disproportionate. If the spouses do not reach an agreement on the division of jointly acquired property, the general rule is that the division will be based on the principle of equal shares. The exception to this is where a different procedure has been established by the spouses

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based on a prenuptial agreement. Since each case is handled by the court on an individual basis, judges often deviate from the principle of equal shares between spouses.

The inclusion of joint debt obligations of spouses in resolving disputes over the division of jointly acquired property is a problematic issue. There is still no agreement among scholars on a formal or extensive interpretation of the rules, prescribed in Clause 3 of Article 39 of the Family Code.

3 Research Questions

A gap in the Russian legal framework is the proportion of protected rights of spouses whose property is to be divided in court. Currently, there is no objective distinction in family law between property and obligation property.

Current judicial practice questions the relevance of prenuptial agreements to the division between the property of financially strong and financially weak spouses, involved in the factual management of households.

When resolving disputes over the division of jointly acquired property, the issue of deviating from the principle of equal shares and the relevance of applying the principle of equity arises in the Russian legal system.

Spouses may overuse their rights in the process related to the division of jointly acquired property. Actions aimed at concealing interested party transactions that prevent the owner from realizing his or her rights to the property that is part of the share capital of a business entity.

4 Purpose of the Study

The purpose of work is to find solutions to problems related to the division of property and liability assets in family law by applying the judicial method of protecting the interests of spouses, as well as foreign experience, based on the application of the principle of equity, which implies the evaluation of not only the financial contributions of the spouses.

5 Research Methods

The methodological basis of research, first of all, is characterized by systematic and dialectical approaches. The work also used general and specific scientific methods of cognition, including formal-logical; historical-legal; system-structural analysis; structural-functional analysis; statistical; sociological; comparative-legal, formal-legal; methods of description and analysis of specific political-legal situations, as well as various expert methods [2].

6 Findings

During the marriage, each spouse contributes to an increase in the jointly acquired property. Sometimes one

spouse is responsible for the income from his or her work and business activities while the other spouse is responsible for the maintenance of the household and raising the underage children. The main contributions of the spouses usually are not equal, so this is a sensitive issue when it comes to the division of jointly acquired property. The general rule when dealing with them is to apply the principle of equal shares, but often the parties do not agree. In such a case, the spouses (former spouses) have the right to appeal to a court, which has the power to deviate from the equality of shares under the law. The most comprehensive list of interests that deserve consideration and do not allow for the application of the principle of equality of spouses is set out in Article 39 (2) of the Family Code. This includes embezzlement of jointly acquired property by one spouse at the expense of the other's financial resources, and failure to receive income without a valid reason. A special condition is a health problem that prevents the spouse from continuing to work during the marriage. Due to the small list of grounds established by the Family Code, other cases allowing for a deviation from the equality of shares are left to the discretion of the courts. For example, education and advanced training at the expense of one spouse by the other. It is precise because of these monetary investments that the other spouse may have increased income from employment, entrepreneurial and intellectual activity [3]. Taking such investments into account when departing from the principle of equality would allow one spouse to recover alimony or return the invested money upon dissolution of the marriage. To satisfy his or her claims, a court can depart from the principle of equal shares. This problem can only be solved by expanding the boundaries of the term: "spousal interest worthy of attention" and introducing these cases into the legislation of the Russian Federation [4].

However, the principle of equality of interest is not a fundamental rule in all countries of the world. In Australia, the basic principle of equity is always used by the courts, which state that one spouse has a right to claim the property of the other spouse. The Australian court considers three factors when determining the division of joint property: Spousal financial investment (income from employment or business); Non-financial investment (includes the care of the home, and care of minor children), which has the same status and importance as a financial investment; and the court considers future factors such as future earning capacity of the spouses, whether they have a college degree and with whom the minor children remain. The courts consider all mentioned factors to make a fair decision. Apart from Australia, the above principles of division of community property are applied in the nine states of the United States of America: Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin, and Puerto Rico. Fairness is the overriding principle in divorce and subsequent property division. In dealing with these issues, US courts consider a huge number of factors: from the age of the spouses and the length of the marriage to the ability of each spouse to earn money after the divorce [5].

In other states, however, due to the diversity of the law, the principle of equal shares is applied following a model similar to Russian law. It indicates, that there is no uniform court practice in the United States in dividing joint property between spouses [6].

In addition to the property, spouses also share debts incurred during their life together [7]. Spouses, either separately or together, may enter into civil relations with third parties, including entering into civil law contracts. Since the liability for their non-fulfillment is of a property nature, the question arises as to whether the spouses' property (both joint and personal) can be enforced. When debt obligations are recognized as common by Article 45 of the Family Code, the subject of proof includes the fact that the funds received were used for the family's needs. If the plaintiff succeeds in proving this fact, the debts of the spouses are recognized as common. The regulatory framework enshrined in the family and civil law in terms of regulating the spouse's joint property becomes particularly important in bankruptcy proceedings. According to the 2015 amendments to the bankruptcy law, individuals who are unable to satisfy their creditors can participate in bankruptcy proceedings. The jurisprudence of the higher courts is moving towards consolidation of the entire estate of spouses as a single set of rights. As a result, the rights of bona fide spouses, whose share in the jointly accumulated property may be reduced in real property equivalent, are restricted. The bankruptcy trustee, as the official representative of the debtor in bankruptcy proceedings, is authorised to organise an auction of the debtor's property. In practice, this leads to the fact that the courts, treating all property of spouses as common property, allow even those property complexes, to which spouses have the right of joint shared ownership, to be sold at auction. The only way to protect the rights of a bona fide non-debtor spouse is to petition to participate in arbitration proceedings as a third party asserting independent claims [8]. To protect his or her rights, the spouse must apply to the courts of general jurisdiction for the division of the joint property [9]. This initiative is the only way to affect a division of property. Considering the personal interests of the spouses, they can sell their property above the minimum market value. The spouse's share may also be compensated in cash [10].

The procedure for dividing the common debts of the spouses is set out in Clause 3 of Article 39 of the Family Code, which states that when determining the marital interest in the property, their shares are considered equal [11]. Based on this rule, one may get the impression that the debts of spouses are not a separate subject of division and become an "appendix" to the shares in other property [12]. Currently, there is no consensus in the civil law doctrine on the issue of including spouses' obligations as part of common property [13]. Some scholars take a position based on the formalistic interpretation of the rules of the legislator [14]. For example, according to Ryasentseva V.A., it is incorrect to include debts as part of the property of the spouses, as the law refers to the legal status of the common property of the spouses [15]. Thus, we can conclude that this author adheres to a

formal interpretation of the law [16]. He is opposed by a different point of view of scholars of civil law. Such as E. A. Chefranova, which believes that the practice of the Supreme Court of the Russian Federation has long departed from a literal interpretation of the law in considering the disputed aspects of this issue. Consequently, it is necessary to include not only a property asset but also a liability passive in the structure of the property. Despite the polarity of the opinion of scholars, the analysis of judicial practice allows us to conclude that common debts of spouses and the application of an expansive interpretation of the rules of law are included in the jointly acquired property [17].

There is no uniform practice around the world on the issue of the division of joint debt obligations between spouses. In Australia, for example, the issue is handled differently. As a general rule, to determine the amount of joint property to be divided in a divorce (property pull) it is necessary to determine the totality of the property at the time of the division (divorce), excluding all types of debt acquired during the marriage [18]. This means that the subject of property division in the courts is only the property regime, i.e. common property, income from all kinds of activities. Debt obligations of the spouses are not included in the subject of division. This means that the category of debt division cases is moved to a different court proceeding.

7 Conclusion

To sum up, firstly, we can conclude that there are often situations in life where one of the spouses, for certain objective reasons, cannot contribute to the common property due to lack of their sources of income, or the contribution to the common property of the spouses differs significantly. In this case, in practice, there is a situation where the courts side with the financially stronger spouse. The current Russian legislation does not fully regulate this issue. It refers the enforcer to the two grounds specified in the Family Code, under which there is an opportunity to depart from the principle of equal shares [19]. At the same time, many of the grounds for derogating from the principle of equality of shares remain unnoticed by the legislator and do not act as a "spouse's interest worthy of attention" [20]. We consider, that there is a need to expand Article 39 (2) of the Family Code which would allow the courts to be guided not only by their convictions when resolving disputes on the division of joint property, but also by the law [21].

The basic principle of equal shares is not always in the interests of the spouses. International experience shows, that in the process of dividing common property, it is necessary to be more guided by the principle of equity to consider the interests of both parties [22]. It allows for an assessment not only of the property contribution of the spouse but also of the informal component of each party, as well as the ability of the spouses to pursue their professional lives after the dissolution of the marriage [23]. When spouses decide to go through divorce proceedings, there is the problem of the parties not always agreeing to divide not only the

material assets of the joint property but also a liability aspect [24]. If it is proven that debts owed by the spouses are common and were incurred by agreement between the parties, money spent on family needs will be counted and divided equally between them [25]. The general rules on the division of joint debts include their inclusion in the subject of division upon dissolution of the marriage [26]. Some legal scholars continue to maintain the official interpretation of Article 39(3) of the Family Code and argue that it is not necessary to divide property and the liability regime in the dissolution of marriage in one process [27]. Until the legislature has developed an expanded regulatory framework and uniform jurisprudence on such cases, the only reliable way to eliminate or prevent injustice is to seek compromise in the division of matrimonial debts [28].

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