



Regimes of Property Relations between Spouses according to the Bulgarian Family Law

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Abstract: The present paper discusses the three existing regimes of property relations between spouses according to Bulgarian family law. The prerequisites for the establishment (occurrence) of each of the regimes, their nature, legal effects and termination are examined. Some studies of Bulgarian and foreign authors in relation to property arrangements between spouses are cited. The objects of the matrimonial property are discussed in details. The author offers a definition of the term "object" and compares the regulation of matrimonial property relations in the framework of previous family codes. The author also makes references to some Russian, German and Austrian legislation. **Objectives:** The purpose of this paper is to explain the nature of the three existing regimes of property relations between spouses according to Bulgarian family law. **Prior work:** This paper is based on the author's research in the matrimonial property law and more specifically on a part of the Ph.D. thesis, which deals precisely with the regime of the joint matrimonial property. **Approach:** The following methods were used: observation, comparison and analysis of the case law. **Results:** An analysis is made of the main characteristics of the three property regimes between spouses according to Bulgarian family law. The author provides a definition of the term "object" under Bulgarian real law. **Implications:** The marriage and its consequences for the spouses is a topic that engaged the society since the beginning of its existence. Since the dawn of humanity to present day the settlement of family relations was based on the idea that the most important part of a person's life is realized in a marriage. Normally, during the marriage each spouse accumulates different amounts of property. The matrimonial property law determines the distribution of this property between the spouses after the termination of the marriage or the joint matrimonial property. This paper contributes to a better understanding and realizations of the rights of each spouse. **Value:** The recent adoption of a new Family Code, the lack of case law and the decisive reform in the Bulgarian family law stress on the importance of the findings in this paper. It covers in-depth the objects of the joint matrimonial property and offers a definition of "object" according to the family law.

Keywords: property relations between spouses; joint matrimonial property; object; severability of acquisitions; marriage contract

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1. Introduction

Since 2009, Bulgaria has adopted a new Family Code. The previous Family code was adopted in 1985. The development of social and economic relations has led to the updating of the legislation. As a result of that, the new Family code presently defines three regimes of property relations between spouses as follows:

Article 18: *“(1) The regimes of property relations between spouses are:*

- 1. Legal regime of joint matrimonial property;*
- 2. Legal regime of severability;*
- 3. Contractual regime.”*

2. Regime of Joint Matrimonial Property

2.1. Nature of the Joint Matrimonial Property. Establishment and Termination

Joint matrimonial property has been pioneered by the Family code of 1968, which determined that joint matrimonial property arises between spouses over objects (things) and property rights. The principle of joint matrimonial property was further extended by the Family code of 1985, which added bank deposits to the existing objects of joint matrimonial property. With respect to the objects of joint matrimonial property, the current Family code determines the following:

Article 21:

- “(1) Real rights acquired during marriage as a result of joint contributions, should be joint matrimonial property, regardless of in whose name they were acquired.*
- (2) Joint contribution may be the deployment of funds or work, childcare and household work.*
- (3) A joint contribution is presumed until proven otherwise.”*

Joint matrimonial property is a special integral property, which differs from common ownership. The objects of joint matrimonial property are real rights. This means that joint matrimonial property will be established as regards real rights and limited real rights acquired during the marriage.

The legal regime of joint matrimonial property applies when the newly married ones have not chosen any regime of property relations, and also in the case where they are minors or individuals with limited interdiction.

In these cases, the presence of a valid marriage is sufficient, in order to give a person the status of “spouse”. Therefore, the joint matrimonial property arises from the marriage and includes the real rights acquired until its termination.

In order that an object falls in the matrimonial regime of joint property, its acquisition must be a result of joint contributions of the spouses. Joint contribution is a legal concept that was introduced for the first time by the Family code of 1985. Examples of forms of joint contributions are such as: deployment of funds or work, childcare and household work. The text of article 21, paragraph 2 of the Family code establishes a legal presumption of joint contribution, which may be challenged by each of the spouses through an action before the district court both during marriage and after its termination.

The joint matrimonial property is terminated by the entry into force of the decision ordering the divorce or annulment of the marriage and upon the death or declaration of death of either or both spouses. Real rights acquired during the actual separation or during the pending trial for termination of marriage by divorce or annulment, are also included in the joint matrimonial property.

The joint matrimonial property is terminated during the marriage in the presence of important reasons. At present there is no legal definition for the term “important reasons”. This means that the courts should consider in each case whether there are “important reasons” that “require” termination of the joint matrimonial property during the marriage. Joint matrimonial property is terminated during the marriage by enforcement proceedings on the joint property for personal debt of one of the spouses. In both cases the termination is carried out by the courts. Article 27, paragraph 3 of the Family code introduced two new grounds for termination of the joint matrimonial property during the marriage - the choice by the spouses of the regime of severability or the conclusion of a marriage contract. That means that real rights acquired before the establishment of the regime of severability or before signing the marriage contract, are also included in the joint matrimonial property.

Upon termination of joint property the spouses' shares are equal. Upon termination of the joint matrimonial property due to divorce the court may set a larger share of the total assets of the spouse who has been granted custody to underage children, if this creates particular difficulties for him (under article 29, paragraph 1 of the

Family Code). A husband, who was granted custody to underage children, in addition to his/her share should receive the chattels for the upbringing of the children (under article 29, paragraph 2 of the Family Code). Upon termination of the joint property because of divorce or of article 27 paragraph 2 of the Family Code the court may determine greater share of the total assets of one of the spouses if its contribution in the acquisition significantly exceeds the contribution of the other spouse (under article 29, paragraph 2 of the Family Code).

2.1.1. Legal Concept of "Object"

As mentioned above, the joint matrimonial property will arise over real rights. In turn, real rights arise on objects (things). Therefore, it is important to define the legal nature of the term "object"("thing") in order to thoroughly clarify the establishment of joint matrimonial property.

The legislation currently in force does not contain a legal definition of "object" (Boyanov, 2004, p. 25). The Ownership Act in its article 110, paragraph 1 only defines immovable property by combining the enlisting method with the descriptive method by stating that: "*Land, plants, buildings and other structures and everything that naturally or by human action is firmly fixed to the land or building*" constitute immovable property. By derogation chattels are all other objects (things). Paragraph 2 of the Ownership Act determines that "*all other objects, including energy, are chattels*". This method has been adopted by the Municipal Property Act and the State Property Act where they determine the objects of public municipal and public state property. All other objects (things) are private municipal, respectively state property.

Article 110 of the Property Act is a rule that contains the legal definition of a legal concept. That is why it may be determined as constituting a definition-providing rule. (Pavlova, 2002, p. 114).

According to Prof. Pavlova norms that contain legal definition of legal concept is a subset of adjective norms. (Radev, 1995, p. 178). He calls these rules "definitive" and subjects them to self-classification (Markov & Tasev, 2004). They accept the classification of prof. Pavlova and call these norms "defining" (Alexeev, 1985, p. 6), such rules are special ones and they express definitions or legal principles. Professor R. Tashev considers that such provision is not a rule, but a text of the law because the rule of law is a specific rule of conduct (Tashev, 2002).

The descriptive method has been adopted by the Russian legislation. According to article 130, par. 1 of the Civil Code of the Russian Federation, immovable property is: "Earth stations and sections of the earth, separate water bodies and everything that is permanently connected with land, i.e. objects whose removal would cause harm to their intended use (forests, perennial plantings, buildings and equipment). ABGB (§ 285) takes another approach and determines that an object (thing) in a legal sense is all that is different from person and that is used by him.

The first two chapters of the Act on assets, property and servitudes of 1904 (repealed) enlist in considerably greater details immovable property and chattels. Article 1 of the Act on assets, property and servitudes of 1904 (repealed) provides a definition of the term "object", that is "all objects that may be subject to public or private property are immovable or chattels."

In the legal science is assumed that from the perspective of law, the object (thing) is tangible, physical object that exists separate and independent¹.

The quality "autonomy" can be achieved by placing the inseparable substance in a suitable container (e.g. mineral water in a bottle, electric energy in battery or fragrance in a container, etc.). Energy is also a chattel under article 110, paragraph 2 of the Ownership Act. Because it does not specify explicitly the types of energy, it should be assumed that all types of energy are included- electricity, nuclear, thermal, solar energy, energy from the movement of water or air masses and others.

There are such things that are tangible, separate and distinct, but that are not assets in terms of the law because they cannot be objects of economic exchange between individuals, because they are beyond the possession of man. Such objects are for example the Sun, the Moon, the celestial bodies, individual countries, the Earth as a planet and others. Prof. Vitali Tadjer wrote that "*according to the civil law, objects are only those bodies that are in the power of people and that can be legally regulated*". According to Professor Alexander Djerov, the object "*must be available for use, be in factual and legal possession*". According to the Russian lawyer Professor C.A. Belov, to be in the actual power of the person, an object (thing) must have a spatial characteristics, it must exist in relatively stable and independent manner and can be perceived by the senses of a person.

¹ For details, see: Tadjer, 1973, p. 150; Vasilev, 2001, pp. 18-19; Venedikov, 1991, p. 1; Boyanov, 2001, p. 25; Djerov, 2001, p. 22; Pavlova, 2002, p. 391; Belov, 2003, p. 435; Baur & Stürner, 1992, p. 10; Captain, 1920, p. 169).

Some jurists accept that an object must have another quality, namely economic value. According to Professor Pavlova, the object must “*have a consumer and economic value*”. Professor Belov has determined that the object should have “*any natural or social characteristics that allow its use to meet human needs and interests, i.e. consumer and (or) exchange value*”.

It seems to me that the requirement that an object (thing) has to be in the actual power of a person is linked to its consumer value. Every object that is in the actual power of a person can obtain all of the relevant consumer value, if there is such willingness of individuals and if the law does not prohibit this. (E.g. laws forbid the transaction with objects (things) which are public state or municipal property. Although outside the civil turnover (*res extra commercium*), they are measured in money and have a book value. But book value is not a consumer-value.) If the object is not available, it may not be incorporated into the civil turnover and cannot obtain any consumer value. Even if its price could be determined and even if there could be a will for a legal transaction to be concluded, the object still could not be subject to the law because it is not in possession and cannot be delivered to the buyer. An important clarification should be made in this regard. The lack of an actual possession over the subject should exist not only at the time of assessing whether it is an object (thing) in legal terms but in a future indefinite and continuous period of time.

This clarification is necessary so as not to confuse the “impossible subject of a transaction” with a “delayed transfer of possession”. Therefore, if a thing is in possession of a legal entity, in most of the cases it may have consumer value. (According to Professor Belov, natural inaccessibility of material objects (clouds, stars, planets etc.) does not exclude them from the list of the objects (things). He believes that this would mean e.g. that neither the spacecraft in space nor the ship in the ocean is objects (things) because they are generally inaccessible to the holder of real rights. The author maintains that legal relations of such objects could be exercised in full, e.g. U.S. sales of parts of the lunar surface. This satisfied the interests of non-material nature that have nothing to do with the actual exercise of power over a thing – e.g. someone’s feeling of satisfaction to be an owner of a part of the Moon’s surface. (Belov, 2003, p. 437). I wouldn’t accept that view. If a transaction satisfies non-material interests, the seller has no obligation to deliver the object and the buyer is not in full exercise of his rights in rem. The deal is no longer under the rules of the Real law.

The following definition may be inferred from the above reasoning: an object in terms of law is any material, separate and distinct object that is created by nature or human activity, that serves to satisfy legitimate interests and is in the civil turnover.

A set of items (library books, an exhibition of paintings, a collection of coins etc.) is not an object. The objects of copyright and patent law are not things because they have no physical characteristics. For example, a disk objectifies a musical work, but its purchase does not lead to the acquisition of any copyrights.

Animals are considered to be objects under Bulgarian legislation; however, the Property Act has no explicit rule that declared them as such. Since they are living creatures with regard to animals were created special provisions in the Act on Veterinary Activity. Chapter VII of the Act on Veterinary Activity contains rules for the protection and welfare, e.g. ban on inflicting pain and suffering, abandonment, for training in a manner as to cause them suffering, and others. In the absence of any mandatory rules, the law has provided for administrative liability. On their part, cash and shares are specific chattels. Family law does not include them within the scope of joint matrimonial property.

2.1.2. Limited Real Rights

The occurrence of the joint matrimonial property on limited real rights does not cause problems because they are provided for as *numerus clausus*. Under the appropriate statutory prerequisites, joint matrimonial property will occur on building tenancy and its subtypes. It will also occur on the right of use and servitudes.

3. Legal Regime of Severability

3.1. The principal

The Family Code establishes a dispositive principle in the regulation of property relations between spouses. Real rights acquired by each spouse during the marriage remain his or her personal property.

3.2. Obtaining of a part of the personal property

However, upon termination of the marriage by a civil action each spouse is entitled to receive a part of the value of the other spouse during the marriage. This is possible, if the spouse has contributed to the acquisitions by work, funds, care for

the children, household work or otherwise. This rule is an expression of the principle of unjust enrichment. The Family Code does not define the size of the part. It should be assumed that the size will be determined in each case by the court in proportion to the contributions.

4. Contractual Regime

4.1. Signing a Marriage Contract. Content of the Contract

Future spouses may regulate their property relations with regard to each of them by signing a marriage contract. Only active persons may enter into a marriage contract. Such contract may also be concluded by the spouses during the marriage. The marriage contract contains clauses only as concerns property relations between the parties such as: the rights of the parties on property that is acquired during the marriage; the rights of parties over their possessions before marriage; the methods of management and disposition of property, including the family home; the parties' participation in the family costs and obligations; the property consequences of an eventual divorce; the alimony of spouses during marriage and at divorce; the alimony of children born during the marriage; any other property relations, to the extent which is not contrary to the relevant provisions of the Family Code.

The marriage contract should be signed personally by the parties in writing with notarized signatures and content. A marriage contract, which transfers ownership or establishes or transfers other real right on immovable property, shall be certified by a notary, in whose area the property is located. When the marriage contract is signed during marriage, its conclusion shall be notified in the Marriage Act and the contract should be registered (under article 39 of the Family code).

4.2. Effect of the Marriage Contract

Marriage contract takes effect from the initial point of the marriage and, when entered during the marriage - from the day of the signing of the agreement or from another date specified therein. The treaty can not affect any rights acquired by third parties before its conclusion.

4.3. Termination of the Marriage Contract

Marriage contract may be terminated:

- by mutual agreement of the parties. In such case they may choose a legal regime or may sign a new contract. If they do so, applicable is the legal regime of joint matrimonial property;
- by bringing an action in court by one of the spouses where there is substantial change of circumstances or if the contract seriously jeopardizes the interests of the spouse of the underage children or family;
- by termination of the marriage, except for the provisions governing the consequences of termination and those designed to have an *ex nunc* effect.

5. Conclusion

With the new Family Code a decisive reform of the matrimonial property law has been made in Bulgaria. For the first time the intending spouses were allowed to choose the system of property relations in marriage. Such an opportunity was also given to spouses in existing marriages. A number of former controversial rules were repealed, but some of the newly created dispositions undoubtedly raise new issues. The relevant case law will reveal in the future whether the reform has been carried out properly. No doubt, the change in the regulation was indispensable moreover that it has previously been unduly delayed for a long period.

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