Ninua Ekaterina,
Doctor of Law*, associate professor,*
State University of Akaki Tsereteli

GENERAL CHARACTERISTICS OF FAMILY LAW INSTITUTIONS OF GEORGIA

Summary

Georgian family law institutions are generally discussed in this paper. Only spouses from the legally registered marriage are incapable of producing non-property and property rights and obligations. Personal non-property rights determine choice of the spouse's place of residence, the choice of the surname, the issues of children's upbringing and their care. Also, in this paper we tried to define spouse's property relationship, which may be determined by law and also by a marriage contract. Legal Regime of spouses' individual and common property. The author's opinions and judicial practice are related to the subject of the study.

The spouse's matrimonial non-property and property rights and obligations are only arisen by llegal marriage (GC article 1106). Religious and customary marriages do not arise any legal consequences. Actual cohabitation of man and woman, without valid marriage, also does not generate non property and property obligation. Although we should mention that, they might be part of familial law, when they have certain duties and responsibilities toward their children.

The basic element of familial relationship is non–property relation, where as property relation has subordinate value.

Spouses have to bring up children, respect and help each other, express their care and love toward aged and disabled family members. These are obligations which define the contents of spouse's non-property relations.

Matrimonial non-property rights of spouse are the extension of their constitutional rights, which content does not change by marriage. Therefore it is prohibited for a spouse to another one, as well as for any person of civil law, to violate these rights.

Personal matrimonial non-property rights differ with personal matrimonial property rights in certain peculiarities. In particular, these legal relations do not have property, valuable nature. The main goals of these rights are equality, independence of spouses and implementation of non-material benefit in familial relations.

Personal matrimonial non-property rights (GC article 18), as a personal family rights are inviolable. In those relations, objects are some intangible things, such as dignity, pride, business reputation, choice of name and surname and etc. In all circumstances, main objects of these relations are the behavior of participants that satisfies their interest. Thus, I reckon that, in family law personal matrimonial non-property rights of family members are more specific than in general civil law relationships. (For instance: personal non-property rights of spouses are: choice of name, surname and residence).

At the time of marriage, spouses choose one of the spouses surname based on their will, or each of them retain their surnames, or combines his surname with wife's surname. Combining of surnames is prohibited if either spouse or one of them has a double surname. The surname chosen by spouses is recorded in act and marriage certificate. Spouses have the ability to choose surname before marriage registration. Further amendment to the surname is not allowed, because the right to choose a surname is given only once to marriageable person, at the moment of marriage registration. Further correction of the surname is only admissible on the general grounds envisaged by the legislation. Change of the surname by one of the spouse does not result the change of the name of the second spouse, since choosing surname is the spouse's personal right and can only done by his will.

A person chooses profession according to his interests and creative capability. Work must provide an individual with income and bring him spiritual and moral satisfaction. Because of that, spouses do not have any right to decide what profession his/her spouse should take. Citizen's rights to choose his/her profession, which is not prohibited by the law, is approved by Georgian Constitution articles 29–32 (24 August 1995). Based on this, spouses have the right to make decisions independently.

Specific characteristic of personal matrimonial non-property rights is that each spouse can choose the place of residence, which is also strengthened by Constitution of Georgia. Changing the place of residence by one of the spouse does not automatically obligates the another spouse to change his/her residence, i.e. the law does not obligate spouses to live together. These rights of spouses are closely linked to their personality. That is why we cannot force spouses to live together, but separately living can generate legal results. Separately living of spouses is one of the evidence of factious marriage.

Personal matrimonial non-property rights of spouses during solving family issues include all side of family life: Raising children, choosing a school, disposing of family budget, choosing a vacation spot, and more.

All family issues are drawn together according to the spouses' equality principle, which means taking into account wishes of both spouses during solving any family issue. The main thing is that one of the spouses does not solve the problem of family relationships against the will of the other spouse, which will cause a violation of the principle of equality of spouses.

The upbringing of children is a joint right and duty of parents. Every other person is obliged to abstain him/her from the violation of this right, except for special cases provided by law. Parents are obliged to raise their children physically, mentally and morally. All the issues related to the upbringing of children should be decided by the mutual agreement of the spouses in the interest of the child; it is also important to consider the child's opinion. I believe that if spouses have exercised their rights properly provided by law, at the same time, the fulfillment of the obligations will surely contribute to the upbringing healthy generation and strengthen family relationships.

Familial legislation beside matrimonial non-property rights also strengthens spouses' commitment to establish mutual respect in familial relationship promotes family welfare, takes care of children's well-being and development. This obligation is a moral imperative and not a legal norm. The lawmaker indicates preferred model of familial relationship, but does not provide any "sanctions" for their failure. However, abuse of personal rights and disrespect of family interests by one of the spouses, may cause marriage termination or reduction of his/her share from familial mutual property.

Content of personal matrimonial non-property rights, according to the participant of family relation are different. Matrimonial non-property rights and duties are different from those rights and obligations, which arise between parents and children, between brothers and sisters, among other relatives.

As I have mentioned above, only legal marriage provides not only personal but also property relations between spouses, which are specifically regulated unlike private relations by the Civil Code of Georgia. Property Relations — This is property-related relationships, but- it is not just a relationship between owners. Property relations are characteristic and are related to regulating the property relations

of spouses in family law, as well as regulating personal relationships, the rights of equality of spouses and builds mutual support. Property relations have a subordinate meaning in the family, but as far as the family has important functions, the issue of property relations between the spouses is a matter of legislative regulation.

Property relations between spouses are mainly related to legal regulation of property acquired after marriage, but field of matrimonial property relations of spouses does not ends here.

Family property relations are generally different from civil property relations with certain peculiarities, in particular, property relations between spouses arise from property, which belonged to each of spouse before marriage and was acquired during marriage, as well as payment of alimony by one of the spouse to another and etc.

The content of family property relations consists of the property rights and obligations of spouses, which are also the main content of family legal relations. Family property rights are divided into valuable interest and obligatory rights.

Spouses can have any valuable interest right toward each other which is regulated by civil code. At the same time, family legislation is completely regulated by the rightful right, such as the right of mutual property, which is the basis for the legitimacy of the spouses' property.

Spouses may also have individual ownership together with their shared property. Therefore, we can say that according to family legislation, spouses can have quite a variety of exclusive rights, especially well off couples.

Spouses, as any subjects of civil law, can conclude all kinds of property transactions permitted by law.

The norms of the Civil Code, which regulates the family property relations of the spouses, have been substantially modified compared to the earlier legislation. Specifically, the acting civil code enables the spouses to define the content of their property relations through the commitment of a marriage contract (contractual property relations of the spouses) or in favor of one of the spouses in the settlement of the payment of the payment. In the absence of an agreement on payment of a wedding contract or payment of the alimony, the relationship between spouses and their relationships will be covered by the imperative standards established by the Civil Code on the condition of the spouse's property or appropriate norms on the duties of spouses.

Existing legislation does not include an exhaustive list of the property that may be in mutual or individual (separated) ownership of spouses. Therefore, when analyzing the family-property relations of spouses, it is necessary to express the general criteria, on which one can decide whether the property should belong to the individual (separated) property of the spouses, and which are their mutual properties. I think it is necessary to establish the main purpose of the property, ways of its purchase and character.

The current legislation does not determine the legal status of the property which is gifted to spouses, but the courts have made a single position on the cases of this category, in particular if the property is given to one of the spouses, it is considered to be the individual property of that spouse.

In case of dispute the courts are guided by presumption, that the goods intended for the general use of the family and not only the satisfaction of the personal need of one of the spouses shall be considered as the gift for both spouses and co-ownership regime should extend on them.

Under the concept of property acquired during marriage is assumed property which is acquired during marriage by spouses, any property (real and moving) acquired during marriage is purchased by joint labor and funds of both spouses, which was purchased by joint work and funds of both spouses. In addition, the joint work of spouses in this case implies any socially beneficial and necessary work, which the spouses perform both in and outside of the family.

In legal literature it is always arguable; from what moment should the salaries and other monetary incomes be considered as common ownership of spouses. According to some authors, salary and other monetary incomes will be considered as a mutual property from the moment when the spouse got the right on it. In my opinion this view lacks reality. The right arising out of the wages is a personal right of liability, which can be implemented only by a spouse who worked for it. Until one of the spouses will not receive the salary, the other one does not have the right.

There is a different opinion, in which salaries and other monetary income will be considered as common property from the moment, when the spouses make their own income in the family budget.

I believe that this view is not relevant with the constitutional principle of family legislation, according to which the property acquired

during marriage by spouses is their common property. The common ownership between the spouses is a legitimate result of marriage and it is not depend on their wishes — whether to deposit a salary in the common-family budget.

I also do not agree the opinion which is spread in legal literature, that the spouse has the right to spend the salary (and other labor income) for the ongoing need and only the savings will be transferred on mutual ownership.

Spouses are disposing of their property, benefits and possessions by mutual agreement. None of them has the right to dispose it against the will of the other spouse. The spouse, who exercises the owner's authority within the common cohesion, implies that he/she acts with the consent of another spouse. Therefore, the third party does not need to accept the consent of the spouse to manage the property. Such consent comes from the spouses' relationships, which is based on the mutual respect of their spouses, their personal and property interests. In case of one of the spouses' disposal of the property, the presumption of the consent of the other spouse may not be true in the circumstances of the situation. In such a case, the spouse, the agreement was made without her/his consent cannot require annulment on the basis that: a) He/she does not know about agreement; b) He/she does not agree with the agreement. Based on the above, the spouse whose interests have been broken by the disposal of the common property is entitled to appeal to the Court to protect his/her rights and to claim the benefit received by the disposal of the property (GC article 1160).

According to Article 1167 of the Civil Code of Georgia, if the division of property is done during marriage, then the part of the property which has not been spitted and the property they acquire in the future will be considered as the spouses' common property unless otherwise provided by the wedding contract. This article points out that the dispute may exist not over the entire property acquired during the marriage, but only on the part of property which is divided between the spouses at the time of the dispute.

If the spouses cannot agree to split the common property, then the court, based on the application both spouses or one of them, will decide the dispute between spouses. To illustrate above mention I will bring court precedents, on September 5, 2013, the Parties made agreement about division the property acquired during the marriage. According to the agreement, the defendant had to pay 40 000 USD for the plaintiff.

Defendant paid 30 000 USD and should have paid 10 000 USD within 6 months after signing the agreement_ until 5 March 2014, which he had not paid, consequently, the plaintiff requested the defendant should pay money (see exact request, 09.07.2015 record of meeting Tbilisi City Court). According to the material contained in the case, the court has ordered to pay 10 000 US dollars in favor of the plaintiff.

In case, the division is linked to third party's right (for example, based on credit relationships), and then the dispute on division of property cannot be settled with the consideration of a divorce case. To withdraw the claim on dividing the deposit, which is attributed to one of the spouses, on the ground that the third person is claiming the deposit, it would not be relevant to the law. The same can be said about the transaction on under-aged children's deposit from spouse's common property, which belong to these children and cannot be taken into account when dividing the common property. In this case it does not matter which spouse input money in the bank account, the main thing is that it is transferred to the name of their children, only they have the right to request the money from the bank.

Spouse's common ownership is ceased after division of property. Each of them becomes the owner of the property, which was in co-ownership of spouse's property before splitting.

Each spouse has rights to claim a share in common ownership.

Thus, we can conclude that, in this paper it is generally discussed the content of non-property and property relation on the basis of marriage between ses.

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