

REPUBLIC OF AZERBAIJAN

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ABSTRACT

of the dissertation for the degree of Doctor of Philosophy

**THEORETICAL AND PRACTICAL PROBLEMS OF
LEGAL REGULATION OF PROPERTY RELATIONS
BETWEEN SPOUSES IN THE FAMILY LEGISLATION OF
THE REPUBLIC OF AZERBAIJAN**

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GENERAL CHARACTERISTICS OF THE THESIS

Relevance and development of the topic. The development of private property in the Republic of Azerbaijan, which has regained its independence, and the establishment of market economy mechanisms necessitate a review of the legal regulation of property relations in the family, which constitutes the core of society. Because the content of the property relations of spouses also depends on the strength and level of development of the country's economy.

When relationships between family members are built on love, mutual respect, care, and attention, the rights and obligations of spouses, including property-related relationships, are almost never a subject of dispute or discussion. In such circumstances, spouses use not only their common joint property, but also property that each of them owns separately as common property. When family relationships are not normal, when arguments and quarrels between husband and wife are common, and when it is generally impossible to continue the marriage alliance, the state becomes necessary to intervene in those relationships. The importance of defining in legislation the equal status of husband and wife in the sphere of family life, including property relations, is evident precisely in such conflict situations.

The formation of new family legislation in the Republic of Azerbaijan, its unique system and characteristics, necessitates a new scientific approach to the theoretical and practical problems of legal regulation of family, including property relations between spouses, under this legislation. Thus, while the Marriage and Family Code, which was in force in the Republic of Azerbaijan until June 1, 2000, distinguished between the types of property acquired by spouses before and during marriage, the Family Code, which is currently in force and dated December 28, 1999, has given the spouses the opportunity to determine the legal regime of property relations at their own discretion. Thus, the new family legislation, along with the legal regime of the property of spouses, also determines the contractual regime that exists in the conclusion of a marriage

contract. Thus, the new family legislation replaced the imperative legal regulation of the property relations of spouses with a dispositive legal regulation. Using the contractual form of regulation in the regulation of property relations in the family allows the husband and wife, who are the subjects of this right, to independently determine their property regimes, and to take into account the numerous demands they may encounter in family life. A marriage contract also allows the parties to define and apply their own terms in resolving family law disputes.

The relevance of the topic is also due to the instability of marital relations and the rather high number of divorces in our republic in recent years. As is known from experience, the dissolution of a marriage between a husband and wife raises the issue of legal regulation of property relations between them. Divorce cases, as a rule, are accompanied by the resolution of property disputes between spouses in court.

The legal basis of a family union is marriage, and the economic basis is property. In this regard, property rights constitute an important aspect of the relationship between husband and wife. At the same time, the legal aspects of property between spouses retain their relevance not only during the marriage, but also after the termination of the marriage. Thus, in certain cases, resolving property disputes between separated spouses remains a problem even after the dissolution of their marriage.

Another important point regarding the object of research is the impact of the property relations of spouses on the non-property relations existing between them and the effective development of these relations. In this regard, the correct legal regulation of property relations between spouses is of great importance for the stability of family life.

The research work analyzed the scientific works of local and foreign authors who conducted research related to the scientific work. Theoretical and practical aspects of the legal regulation of property relations between spouses in the national legal doctrine have not been the subject of scientific research. The mentioned problem has only been addressed at the textbook level. Thus, the

property relations of spouses were addressed in the textbook “Soviet Family Law”¹ published by G.I. Manayev in 1989 under the old family legislation, and in the textbook “Family Law of the Republic of Azerbaijan”², published by M.D. Damirchiyeva several times under the new family legislation.

Although the problem constituting the object of research or its individual aspects have been studied at different levels at different times in the legal doctrine of foreign states given below: Abdullah Furkan Gorkhmaz(Use and protection of jointly owned property. Istanbul, 2021)³, Alikhanova G.A. (Legal regulation of property relations between spouses in the Republic of Kazakhstan // Legal science and law enforcement practice, 2010)⁴, Baqrova N.B. (Individual legal regulation of property relations between spouses / Dissertation of Doctor of Philosophy in law. Tomsk, 2019)⁵, Plyushko D.S. (Legal consequences of marriage termination under the legislation of Ukraine and the European Union / abstract of the Doctor of Philosophy in law. Odessa, 2023)⁶, Levushkin A.N. (Legal regulation of property relations in the family under the legislation of the Russian Federation / Dissertation of Doctor of Philosophy in law. Ulyanovsk, 2004)⁷, Khimatov H.N. Problems of legal regulation of property relations of spouses: based on the materials of

¹ Manayev G.I. Soviet Family Law. Textbook /G.I.Manayev. - Baku: AUL publishing house, - 1989

² Damirchiyeva M.D. “Family Law of the Republic of Azerbaijan. / M.D. Damirchiyeva. – Baku: Ganun, - 2023

³Abdullah Furkan Gorkhmaz(Use and protection of jointly owned property. Istanbul, - 2021

⁴Alikhanova G.A. (Legal regulation of property relations between spouses in the Republic of Kazakhstan // Legal science and law enforcement practice, - 2010. 2 (12), - p. 63-70

⁵Baqrova N.B. (Individual legal regulation of property relations between spouses / Dissertation of Doctor of Philosophy in law. Tomsk, - 2019

⁶ Plyushko D.S. (Legal consequences of marriage termination under the legislation of Ukraine and the European Union / abstract of the doctor of philosophy in law. Odessa, 2023

⁷Levushkin A.N. (Legal regulation of property relations in the family under the legislation of the Russian Federation / Dissertation of Doctor of Philosophy in law. Ulyanovsk, - 2004

the Republic of Tajikistan / Abstract of dissertation of candidate of legal sciences. – Dushanbe, - 2008)⁸, Stepan Svorak (Stepan Svorak. Marriage contract and agreement on division of joint property of spouses: comparative legal analysis. // International Journal of Management (IJM, 2020)⁹ etc.

The study involves the following national and foreign scientists' research as a scientific and theoretical basis: Allahverdiyev S.S., Antokolskaya M.B., Ipek Betul Aldemir, İllovayskiy I.B., Damirchiyeva M.D., Krashennikov P.V., Lusia Valentova, Manayev G.I., Malikova M.F., Mehdiyev F., Meltem Bulud, Senar Chaghırgan Tuncer, Sergeyev A.P., Shebnem Meral Yalçın, Richard Frimston, Tarusina N.N. and others.

The object and subject of the research. The **object** of research is theoretical and practical problems of legal regulation of property relations between spouses based on the legislation of the Republic of Azerbaijan. The subject of research is legal issues related to the application of the legislation of the Republic of Azerbaijan on the legal regulation of property relations between spouses in judicial practice.

Research goals and objectives. The research goal involves identification of theoretical and practical problems of legal regulation of property relations between spouses, determination of the legal and contractual regime of property of spouses based on the family legislation of the Republic of Azerbaijan, and development of substantiated proposals and recommendations for improving legislation and judicial practice in order to solve problems.

To achieve this goal, the following tasks have been set:

- to characterize the family legislation of the Republic of Azerbaijan as a source of legal regulation of property relations between spouses;

⁸ Khimatov H.N. Problems of legal regulation of property relations of spouses: based on the materials of the Republic of Tajikistan / Abstract of dissertation of candidate of legal sciences. – Dushanbe, - 2008

⁹ Stepan Svorak. Marriage contract and agreement on division of joint property of spouses: comparative legal analysis. // International Journal of Management (IJM) Volume 11, Issue 6, - June 2020, - pp. 123-131

- to determine the characteristics of property relations between spouses as a subject of legal regulation;
- to clarify the features of the mechanism for legal regulation of property relations between spouses;
- to examine the role of judicial practice in the legal regulation of property relations between spouses;
- determining the characteristics of the exercise of property rights by spouses based on the legal regime;
- study of the division of common property of spouses and the determination of shares in this case based on case law materials;
- to determine the legal nature of the marriage contract as the basis for the contractual regime of the property of the spouses;
- clarify the limits of application of the contractual regime of marital property.

The research methods. The research methodology is based on the doctrine of dialectics, which allows us to explain the essence and development characteristics of events and processes, and to identify patterns. Historical-legal, logical, comparative law, analysis and synthesis, statistical, systematic approach, technical-legal, modeling, and other methods were used in the scientific research process.

The main propositions to be defended.

1. Family legislation, in addition to being an element of the legislative system of the Republic of Azerbaijan, acts as an important element of the system of legal regulation of property relations between spouses. In this regard, the supreme legislation of the Republic of Azerbaijan constitutes the source of legal regulation of property relations between spouses, both formally and materially. As a material source, the family legislation of the Republic of Azerbaijan does not only include normative legal acts.

2. Judicial practice in the legal regulation of property relations between spouses in the Republic of Azerbaijan (relevant decisions of the Constitutional Court of the Republic of Azerbaijan on the interpretation of legislation, decisions of the Plenum of the Supreme Court of the Republic of Azerbaijan on the generalization of judicial practice, relevant decisions of the European Court of Human Rights

(hereinafter referred to as the ECHR)) acts as an important auxiliary or additional source for the *de lege lata* application of family legislation and the improvement of *de lege ferenda*.

3. Property relations between spouses constitute the object (regulated part) of the legal regulation system. Although these relations, which combine aspects of property law (on the exercise of property rights) and obligation law (on the determination of responsibility in accordance with obligations related to property), contain features characteristic of property relations, they are included in family relations. The characteristics of the property relations of spouses as family relations (including the emergence between specific subjects, the importance of the personal relations of the husband and wife, etc.) determine the uniqueness of the legal regulation mechanism.

4. The international nature of the property relations of spouses (property relations with a foreign element) necessitates the use of methods of private international law in legal regulation. In this case, the application of the family legislation of the Republic of Azerbaijan is based on the principle of national regime and the provisions of the conflict of laws norm.

5. The fact that the family legislation of the Republic of Azerbaijan refers to civil legislation in the legal regulation of property relations between spouses and the inclusion of international treaties to which the Republic of Azerbaijan is a party in family legislation, accordingly, necessitates the participation of civil legislation and norms of international law (international treaties) in the legal regulation mechanism, along with family legislation.

6. The legal regulation regime of property relations between spouses is entirely dispositive in nature. This nature presupposes that in the legal regulation of the mentioned relations: 1) the dispositive method plays a leading role compared to the imperative method; 2) the use of individual legal regulation.

7. Individual legal regulation of property relations between spouses is the determination of an individualized behavioral model arising from the personal qualities of the subjects of the relationship, using methods and means permitted by the legislation within certain

limits. Individual legal regulation is carried out in the form of contracts and non-contracts (autonomous legal regulation and subordinated legal regulation).

8. In determining the legal regime of the property of spouses, normative legal and individual legal regulation are used. In this case, the application of autonomous legal and subordinate legal types of individual legal regulation is of a subsidiary (additional) nature and serves the realization of legal norms.

9. The contractual regime of the property of spouses is determined by mutual consent of the parties in accordance with the principles of equality of rights and freedom of will of spouses. The subject of the mutual agreement is determined in the form of contracts, which constitute property, but have different contents. The marriage contract, having a complex legal content, acts as the main form of mutual agreement that determines the contractual regime. The statutory regime is used in a subsidiary (additional) manner in relation to the contractual regime. The preferential application of the contractual regime does not exclude the application of mandatory legal norms relating to the property of spouses.

Scientific novelty of the research. The scientific novelty of the study is that the legal regulation of property relations between spouses in the national legal doctrine is studied for the first time at a complex and monographic level. Thus, for the first time, at the level of a dissertation, proposals are being developed to determine the characteristics of the legal regulation system, the theoretical and practical aspects of the legal and contractual regime of marital property under the legislation of the Republic of Azerbaijan, the improvement of the legislation of the Republic of Azerbaijan in this area, as well as the role of judicial practice in this legal regulation.

Theoretical and practical significance of research. The theoretical significance of the research is that it is expressed in deepening scientific-theoretical knowledge about the theoretical and practical problems of legal regulation of property relations between spouses in national jurisprudence, and in being able to move legal consciousness forward in this direction. The dissertation may be useful for conducting lectures and workshops on family law at

institutions of higher legal education, and for writing relevant textbooks, and monographs. The practical significance of the scientific work is that the provisions of the dissertation and the proposals put forward can be used in the process of improving national family legislation and optimizing the application of relevant legal norms in judicial practice. Many of the results obtained in the research work are already being applied in the judicial practice of the Republic of Azerbaijan.

Approbation and application. The main content and scientific provisions of the dissertation, proposals aimed at improving legislation and optimizing judicial practice are reflected in the applicant's published scientific works.

The organization where the dissertation work was performed. Azerbaijan National Academy of Sciences Institute of Law and Human Rights.

The structure of the dissertation. The dissertation consists of an introduction (12885), chapter I (81933), chapter II (119736), chapter III (42392), conclusion (8955) and bibliography (121 sources), with a total volume of (268242) characters.

THE MAIN CONTENT OF THE DISSERTATION

The **Introduction** of the dissertation defines the relevance of the research topic, the degree of scientific processing of the problem, the goals and objectives of the research, states the subject, object, research methods, presents defense clauses, provide information about the approval of the research results and the structure of the research.

The first chapter of the dissertation is entitled “**Features of the legal regulation of property relations between spouses**” and consists of four paragraphs.

The first paragraph analyzes the family legislation of the Republic of Azerbaijan as the legal basis for regulating the property relations of spouses. It is noted that the existing family legislation in the field of regulation of these relations is sectoral legislation. The features of this legislation are conditionally determined for different groups.

The first group of features is related to the system of family legislation of Azerbaijan Republic. In this regard, based on the analysis of the legislation of Azerbaijan Republic, the following features are identified:

1) The Constitution of the Republic of Azerbaijan, by establishing the relevant principles and norms, constitutes the basis of the general order (ordre public) of the Republic of Azerbaijan in the context of both the family legislation system and Article 4 of the Law of June 6, 2000 on Private International Law;

2) The phrase “adopted in accordance with this Code” in Article 1.1 of the Family Code narrows the scope of family legislation and prevents the inclusion of other normative legal acts establishing norms that may have legal consequences in terms of family law in this legislation. In order to eliminate this, it is appropriate to remove that phrase;

3) The determination of the conflict of laws norms applicable to the property relations of spouses in the Family Code necessitates the determination of the relationship between it and

the Law on Private International Law. In this case, the Family Code acts as a normative legal act related to private international law legislation;

4) In the context of Article 1.1 of the Family Code, the Civil Code cannot be attributed to “other acts”. The relationship of these acts is based on the legal principle that special law prevails over general law (*lex specialis derogat lex generalis*) in accordance with Article 2.3 of the Civil Code. In terms of this principle, the Family Code acts as a special legislative act;

5) Family legislation also includes international treaties to which the Republic of Azerbaijan is a party. In accordance with the provisions of the 1969 Vienna Convention on the Law of Treaties and the purpose of the treaty, the norms of international treaties are applied directly or indirectly.

The second group of features is related to the legal force of family legislation. Based on the analysis of legislation, especially the Constitution, the following features are identified: 1) Based on the conflict of laws norms established in the Family Code and international treaties to which the Republic of Azerbaijan is a party, family legislation may be applied to the property relations of spouses who are citizens of the Republic of Azerbaijan outside the territory of the Republic of Azerbaijan (extraterritorially); 2) Retroactive effect of family legislation is possible within the framework of the requirements of Part Seven of Article 149 of the Constitution, Article 2 of the Constitutional Law on Normative Legal Acts, and Article 7 of the Civil Code; 3) Family legislation applies to the property relations of spouses who are citizens of the Republic of Azerbaijan, as well as stateless and foreign spouses.

The third group of features characteristic of family law is related to the attitude towards the principles of law. First, family law allows for the use of general principles of law in the form of analogy in the application process. Secondly, in order to recognize the primacy of family legislation over generally accepted principles and norms of international law, it is considered appropriate to replace the phrase “universal principles” in Article 3 of the Family Code with the phrase

“generally accepted principles and norms of international law” .

The **second paragraph** analyzes the property relations of spouses as an object of legal regulation. It is noted that the characteristics of the legal regulation mechanism are determined by the characteristics of the property relations of the spouses, which act as the object of regulation. The fact that a husband and wife are closely connected through their personal relationships plays an important role in giving these relationships their unique character. However, the fact that the content is property-related distinguishes the property relations of spouses from their personal non-property relations.

Although the fact that the content is property-related brings the property relations of spouses closer to property relations regulated by civil law, it does not make them identical. In the context of Article 2.3 of the Civil Code, the property relations of spouses have a “special status” compared to property relations regulated by civil law. This status stipulates that the property relations of spouses are initially subject to regulation by family law norms, and the application of civil law norms is of a subsidiary nature.

It is noted that the following features additionally determine that the property relations between spouses have a “special status”: 1) the establishment of these relationships through marriage and the termination of their dissolution; 2) the subject’s circle is sufficiently limited and the subject is represented by a spouse (or former spouse) with equal status; 3) the property relations of the spouses are not essentially equivalent or substitutive in nature; 4) these relations are of a “prolonged nature, etc.”.

The fact that these relations are property-based in nature stems from the fact that they arise specifically in relation to property. The output property as the object of the relationship includes all assets and liabilities that can be valued in money. The expression “acquired by the spouses” as defined in the legislation (Family Code, art. 32.1) implies their acquisition of property rights over the mentioned assets, while the expression “during the

marriage” implies the presumption of common joint ownership. The common obligations of the spouses constitute the passive part of the common joint property.

In conclusion, it is noted that the property relations of spouses constitute the object of regulation of family law norms by combining aspects of property law (on the exercise of property rights) and obligation law (on the determination of responsibility in accordance with obligations related to property). In accordance with the provisions of these norms, the property relations of spouses may be regulated by civil law norms, and in the event of their international nature, by international private law norms.

The **third paragraph** analyzes the features of the mechanism for legal regulation of property relations between spouses. It is noted that the substantive law norms established in family legislation as the normative basis for the legal regulation of property relations between spouses act as the primary element of the regulatory mechanism. Regardless of whether it is imperative or dispositive, the regulation carried out on the basis of these norms is substantive legal regulation.

In some cases, legal regulation may not be implemented based on these norms. Thus, the application of substantive law norms established in the family legislation of the Republic of Azerbaijan in the regulation of property relations between spouses with a foreign element depends on the provisions of the conflict of laws norm. In this case, legal regulation is carried out not by substantive law, but by the conflict of law method.

The reference feature typical of conflict of laws rules is also characteristic of the blanket norms established in the Family Code and referring the Civil Code. According to family law, several forms of reference to the Civil Code can be distinguished: 1) a specific reference made through norms relating to the property relations of spouses; 2) a reference through general norms that can manifest themselves in various ways; 3) a form of analogy. According to Article 5 of the Family Code, the following application forms of this form can be distinguished:

a) application of civil law norms directly regulating the

relationship; b) application of civil law norms regulating similar relationships; c) application of general principles of civil law. The legal consequence of the reference in these forms is that, in addition to family law norms, civil law norms also participate in the legal regulation of the property relations of spouses. In this case, the relationship between the substantive legal norms of the two legal fields is based on the legal principle that special law overrides general law (*lex specialis derogat lex generalis*).

In determining the features of the legal regulation regime of property relations between spouses, it is noted that the regime as a whole is dispositive in nature. This feature implies the following: 1) the dispositive method plays a leading role in the legal regulation of property relations between spouses compared to the imperative method; 2) the parallel use of individual legal regulation methods in the regulatory mechanism, along with normative legal regulation. As a result of the analysis of the approaches existing in the legal doctrine regarding individual legal regulation, it is determined that this regulation uses contractual and non-contractual types.

The **fourth paragraph** analyzes the role of judicial practice in the legal regulation of property relations between spouses. It is noted that although the attitude towards accepting case law as a source is not unambiguous in legislation and legal doctrine, case law plays an important role in the correct and uniform application of legislative norms applicable to the property relations of spouses. To achieve the stated goal, it is important to provide an “authentic interpretation” of the relevant legislative norms. In the legal system of the Republic of Azerbaijan, only the Plenum of the Supreme Court and the Constitutional Court of the Republic of Azerbaijan can provide an “authentic interpretation.” For this purpose, the decisions of the Plenum of the Supreme Court and the Constitutional Court, as well as the relevant decisions of the ECHR regarding the object of research, are analyzed.

It is noted that the relevant decisions of the Plenum of the Supreme Court are important in terms of giving the necessary direction to the judicial practice on the application of family

legislation, ensuring the correct application of legislation in the consideration of such cases, and forming a unified judicial practice. For this purpose, the Resolution of the Plenum of the Supreme Court “On the Practice of Applying Legislation in Disputes Regarding the Division of the Common Property of Spouses” dated March 12, 2024 is analyzed in a comparative manner with previous decisions.

It is determined that the decisions of the Constitutional Court of the Republic of Azerbaijan: interpretation of relevant articles of the Family Code in accordance with the Constitution, verification of the compliance of the decisions of the Supreme Court on specific cases with the Constitution and laws, and verification of the compliance of the norms of the Family Code with the Constitution play an important role in making appropriate changes to family legislation *de lege ferenda*, and in correctly interpreting and applying the existing norms of family legislation in judicial practice *de lege lata*.

Based on the analysis of the decisions of all three aforementioned judicial bodies, it is determined that the family legislation of the Republic of Azerbaijan does not exclude the use of judicial practice in the legal regulation of property relations between spouses. And this result is accompanied by the following features: 1) case law acts as an additional or auxiliary source; 2) case law serves to fill a gap in the legislation; 3) case law plays the role of an “interpretative precedent”, which is an act of interpretation.

The second chapter of the dissertation is entitled “**Legal regime of marital property: theory and practice**” and includes two paragraphs.

The **first paragraph** examines the issue of the exercise of property rights of spouses. For this purpose, a comparative analysis of the legislation of the Republic of Azerbaijan and the legislation of other states is carried out. At the same time, a comparative analysis of family legislation and its application practice is carried out.

It is noted that, in accordance with the legislation, the legal

regime of marital property is of a subsidiary nature and its application depends on the will of the spouses. That is, the right of ownership, use and disposal of the common property of the spouses is exercised on the basis of their mutual consent. Depending on the type of property, the form of this consent may vary. The expression “what the spouses acquire” as defined in the legislation (Family Code, Article 32.1) includes the acquisition of ownership rights over property owned by the spouses. The phrase “during the marriage” in the aforementioned article implies the presumption of common joint ownership of the spouses. This means that property rights acquired during the marriage are presumed to arise from the common resources of the spouses, regardless of whether they were acquired “at the expense of the spouses’ common income” (Family Code, Article 32.2.2) or “as a result of the activities of each of them” (Family Code, Article 32.2.1). The common property of spouses includes all assets and liabilities (common obligations of spouses) acquired during the marriage that have economic value and can be valued in money.

Family legislation does not exclude the following, in addition to the common joint property of spouses: 1) that each of the husband and wife shall have separate property; 2) that the property owned separately by the husband and wife shall be considered their common joint property; 3) that the division of the common joint property of the husband and wife or the determination of the shares belonging to each of the husband and wife.

The analysis of judicial practice reveals that the Supreme Court Plenum Decision No. 1/2024 may be significant in the formation of a unified judicial practice on the correct application of the existing legislation *de lege lata*. This can be further justified by the following: 1) it is confirmed that the jewelry given to the husband or wife as a gift before and during the marriage ceremonies belongs to their separate property; 2) a list of jewelry is determined. Thus, these items include not only precious metals, but also other valuable ornaments, decorations, and beauty items (watches, clothing accessories, etc.).

The **second paragraph** analyzes the legislation and judicial practice in the field of division of common property of spouses. Based on the analysis, the following conclusions are drawn:

Family law determines that the division of common property depends on the will of the spouses. The agreement of spouses on the division of common property creates a contractual obligation that is binding on the parties. If the common property has already been divided by the spouses or if no items are disputed, that property cannot be divided against the will of the parties.

The division of marital property can be carried out during the marriage, after the dissolution of the marriage, and at the request of a creditor who so requests.

During the division of property, the spouses' shares in the common property are considered equal (presumption of equality of shares) and their common debts are determined in accordance with these shares. Although the aforementioned presumption implies that proportionality should be expected during the division, it does not exclude that the significant interests of the spouses, as well as the children, should be taken into account.

The division of property between spouses is carried out in kind, taking into account the nature of the property (divisible or indivisible, value, etc.) and the wishes of the parties.

In the event of a marriage being declared invalid and the division of property between persons in a *de facto* marital relationship is carried out on the basis of civil law norms. At this time, the Resolution of the Civil and Commercial Chambers of the Supreme Court dated December 6, 2024 on the application of some provisions of the Civil Code of the Republic of Azerbaijan related to shared ownership may be taken into account.

The Supreme Court Plenum Decision No. 1/2024 plays a significant role in the formation of a unified judicial practice towards the correct application of family law *de lege lata* on the division of common property of spouses.

The third chapter of the dissertation is entitled **“Features of the contractual regulation of property relations between**

spouses” and includes two paragraphs.

The **first paragraph** examines the legal nature of the marriage contract as the basis for the legal regulation of the property relations of spouses. For this purpose, and in the context of the widespread non-application of marriage contracts in the practice of Azerbaijan, a comparative analysis of the provisions of the Family Code and the Civil Code is being conducted. It is noted that the marriage contract acts as the main form of individual regulation by realizing freedom of will, which is the main principle of the private legal system. The existence of a marriage contract necessitates the subsidiary application of the legal regime of property relations between spouses. A marriage contract constitutes a form of agreement between spouses regarding property.

Analyzing the existing approaches in the doctrine regarding the legal nature of the marriage contract, it is noted that the marriage contract is *a special status contract* that belongs to family law due to the fact that it aims to ensure the interests of the family, is closely related to marriage and produces legal consequences only together with marriage, as well as due to the composition of the subject. This agreement, concluded taking into account the imperative requirements of the Family Code, defines the rights and obligations of the spouses regarding property. Although the marriage contract is indefinite, it can be changed and terminated by agreement of the parties.

Being a form of realization of the principle of freedom of will, which also applies to civil law, the marriage contract, in addition to its “special status”, must also meet the requirements of the provisions of the Civil Code regarding contracts. In this regard, when concluding a marriage contract, in addition to the norms established in the Family Code, the provisions of the Civil Code regarding contracts are also taken into account. In de facto marital relations, an agreement (contract) determining the regime of common or individual property, even if it serves the same purpose, is not considered a marriage contract. And such agreements are regulated by civil law norms.

The **second paragraph** analyzes the limits of application of the contractual regime of marital property. It is noted that although the family legislation of the Republic of Azerbaijan favors contractual regulation of property relations between spouses, it does not define the spouses' freedom of will as unlimited.

First, the subject matter of the marriage contract must comply with the grounds set forth in the legislation. That is, for the contract regime to be considered valid, the marriage contract must be considered valid. Among the conditions for a contract to be considered invalid, the first thing to note is that the parties must be legally competent. At the same time, the marriage contract must be considered valid in terms of form. That is, the marriage contract must be drawn up in writing and notarized.

Although family law does not stipulate a restrictive norm regarding the moment of conclusion of a marriage contract, it is an essential condition that the parties enter into marriage. In case of prior conclusion, the marriage contract enters into force from the moment of conclusion of the marriage.

The legislation provides for the inclusion of provisions in the marriage contract that define the duties of spouses regarding property. However, the marriage contract cannot include provisions that restrict the rights of either party or are contrary to public order (*ordre public*). Otherwise, the marriage contract is considered invalid from the moment it is concluded.

Based on the provision in Article 38.6 of the Family Code that "a marriage contract...may not contain provisions regulating the personal non-property relations of the spouses...", it can be concluded that the position of the legislation of the Republic of Azerbaijan regarding the subject matter of a marriage contract consisting only of property relations is imperative. The possibility of the spouses derogating from this imperative is thus excluded. Otherwise, this could result in the invalidity of the marriage contract.

The important proposals and results obtained in the **conclusion** of the dissertation can be generally expressed as

follows:

1. The family legislation of the Republic of Azerbaijan, being the main legal basis for regulating the property relations of spouses, includes a unique sectoral legislative system by combining substantive law norms, which are the main elements of the regulatory mechanism, conflict of laws norms applied to family relations with foreign elements, as well as norms of international treaties to which the Republic of Azerbaijan is a party.

2. The family legislation of the Republic of Azerbaijan does not exclude the use of judicial practice in the system of legal regulation of property relations between spouses with the following features: 1) case law acts as an additional or auxiliary source; 2) serves to fill a gap in the legislation; 3) case law plays the role of an “interpretative precedent”, which is an act of interpretation.

3. As an object of legal regulation, the property relations of spouses have a “special status” compared to property relations regulated by civil law, with the following features: 1) these relations arise with the conclusion of marriage and are terminated with its dissolution; 2) the subjects of these relations are the husband and wife (or former husband and wife); 3) the regulation of these relations is significantly influenced by the personal relations of the spouses; 4) these relations combine the features of exercising the property rights of spouses (common joint or individual property) (property law) and determining the responsibility of spouses in accordance with their property-related obligations (obligation law).

4. The presence of a foreign element in the property relations of spouses entails the following: 1) the use of the conflict of law method in the legal regulation of property relations between spouses; 2) the application of the substantive norms of the family legislation of the Republic of Azerbaijan depends on the conflict of law norm; 3) the need to resolve the relationship between private international law and family law. In order to resolve the latter, the Family Code acts as a normative act related

to private international law.

5. Family law defines various forms of reference to civil law in regulating the property relations of spouses. In the case of such references, the relationship between the substantive legal norms of two areas of law is based on the legal principle that special law overrides general law (*lex specialis derogat lex generalis*).

6. In the event of a conflict between the norms of the Family Code and the norms of international treaties to which the Republic of Azerbaijan is a party, the following should be taken into account. 1) The legislation of the Republic of Azerbaijan determines the priority of international treaty norms in this case; 2) the norms of international treaties are interpreted and applied in accordance with the provisions of the 1969 Vienna Convention on the Law of Treaties and the purpose of the treaty; 3) the application of international treaty norms must not violate the general order (*ordre public*) of the Republic of Azerbaijan.

7. Contractual and non-contractual types of individual regulation of property relations between spouses are used. Contractual regulation, which is usually manifested in the form of a marriage contract, constitutes the main type of regulation by determining a different regime for the property of spouses. Individual regulation in the non-contractual type: 1) autonomous regulation (one of the parties exercises its right by unilaterally transferring it to the other party); 2) subordinate regulation (a specific dispute is resolved through the activities of law enforcement agencies).

8. The subsidiarity of the legal regime of marital property, proceeding from the dispositive nature of the regulatory regime, is expressed in the fact that the parties either do not want their material relations between them to be regulated by a marriage contract, or the marriage contract is annulled or considered invalid. Otherwise, the legal regime cannot be applied against the will of the parties. This should be taken into account especially in the division of the property of the spouses.

9. A marriage contract, which acts as a form of agreement between spouses, is a *contract with a special status* that belongs

to family law due to its purpose of ensuring the interests of the family, its close connection with marriage, and its legal consequences only with marriage, as well as its subject matter. At the same time, when concluding a marriage contract, the imperative norms of family law and the provisions of civil law regarding contracts cannot be violated. Otherwise, this may result in the marriage contract being considered invalid.

In accordance with the above-mentioned results, the following are proposed:

a) In order to protect the general order (*ordre public*) of the Republic of Azerbaijan in the field of family relations, it is appropriate to define the expression “husband and wife” in Article 34 of the Constitution in the form of “husband (man) and wife (woman)”.

b) In order to allow for the inclusion of normative legal acts establishing norms applicable to family relations into family legislation, it is appropriate to remove the phrase “adopted in accordance with this Code” from Article 1.1 of the Family Code and insert the phrase “other relevant legislative acts” after “this Code” in that article.

c) The phrase “general principles of family law and civil law” in Article 5 of the Family Code should be defined as “general principles of family law and civil law”, and the phrase “principles of humanism and justice” should be defined as “general principles of law such as humanism and justice”.

d) In order to bring family legislation into line with the generally accepted principles and norms of international law and to recognize the primacy of those norms, it is appropriate to replace the phrase “universal principles” in Article 3.0.1 of the Family Code with the phrase “generally accepted principles and norms of international law.”

e) It is appropriate to establish in Article 32.3 of the Family Code that spouses who do not have independent income for valid reasons have equal rights over common property, and for this purpose, the word “equal” should be added before the words “has the right” at the end of that article.

f) In Article 213 of the Civil Code, it is necessary to replace the word “several” with the word “two or more.” Because the minimum number in the word “two or more” is two, and there is no limit on the maximum number..

g) By the Law of the Republic of Azerbaijan No. 315-IIIQD dated April 17, 2007, in Article 33.3 of the Family Code, the words “may be considered invalid by the court at the request of the husband (wife)” were replaced with the words “may be contested by the husband (wife)”. This is about a contract that was concluded in essence being declared invalid by the court at the request of the husband (wife). The provision “the contract may be considered invalid” has a more definite and clear meaning than the provision “the contract may be contested”. Therefore, the first edition of Article 33.3 of the Family Code is considered more successful.

h) In order to further increase the legal certainty of the content of Article 36.4 of the Family Code, it is appropriate to add the phrase “at the expense of the other party” after the word “to the other” in the second sentence.

The main provisions of the dissertation are reflected in the following scientific works of the applicant:

1. On some specific aspects of family legal relations //- Baku: Scientific and legal journal of law, 2018. No. 10 (288), - pp. 9-14.
2. General characteristics of property relations between spouses in the context of a historical approach // - Baku: Scientific and legal journal of law, - 2018. No. 11 (289), - pp. 28-37.
3. Individual legal regulation of property relations between spouses /Materials of the international scientific-practical conference on the topic “Integration of the Republic of Azerbaijan into the international community and modern development trends of legal science in the construction of a legal state” dedicated to the 90th anniversary of the Faculty of Law of Baku State University, - Baku: - 14 December, 2018, - pp. 521-523.
4. Some issues of the legal regulation of property relations between spouses // - Baku: (Juridical sciences and education), - 2019. No 59, - pp. 155-176.
5. Legal regulation of property relations between spouses in international practice / Materials of the republican scientific-practical conference on “Development directions of modern legal science in the Republic of Azerbaijan” dedicated to the 96th anniversary of the birth of the national leader of the Azerbaijani people Heydar Aliyev, - Baku: - 21 May, - 2019, - pp. 190-192.
6. Some issues of property division between spouses under the family legislation of the Republic of Azerbaijan // - Baku: (Juridical sciences and education), -2019. No. 60, - pp. 359-375.
7. Some features of the legal nature of property relations between spouses // - Baku: Scientific and legal journal of law, 2019. No. 9 (299), - pp. 83-86.
8. Historical roots of legal regulation of property relations between spouses in the Republic of Azerbaijan / Current issues of legal education in the modern world: in the context of

globalization of infrastructure development. Kyiv 02-03 April, - 2020, - pp. 104-109.

9. Methods of legal regulation of property relations between spouses // - Baku: Scientific News of the Police Academy. Scientific law journal, - 2020. No. 3 (27), - pp. 87-91.
10. Legal regulation of property relations between spouses in international practice. Шляхи розвитку правової науки в умовах сьогодення / Матеріали XI Міжнародної науково-практичної конференції, - Kyiv: - 22-23 April, - 2021, - pp. 92-97.
11. The division of common property of spouses and the definition of their shares according to the legislation of the Republic of Azerbaijan // - Moscow: Law and state: theory and practice, - 2021. No. 6 (198), - pp. 220-223.



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