

ქორწინების დროს შეძენილი ქონების განსაზღვრის მეთოდები საქართველოს უზენაესი სასამართლოს პრაქტიკაში

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აბსტრაქტი

მეუღლეთა თანასაკუთრების საკითხებს არეგულირებს საქართველოს სამოქალაქო კოდექსი. მხარეებს შორის დავის შემთხვევაში, მეუღლეების მიერ გამოთქმულ მოთხოვნებს მნიშვნელობა ენიჭება. მეუღლეთა თანასაკუთრების მთავარი არსი მისი შეძენაა ქორწინების დროს, თუ ქორწინების ხელშეკრულებით სხვა რამ არ არის დადგენილი. ეს საშუალებას აძლევს თითოეულ მეუღლეს შეიძინოს თანასაკუთრების უფლება ქორწინების დროს შეძენილ ქონებაზე.

მეუღლეთა ერთობლივი საკუთრებისგან განსხვავებით, არსებობს მეუღლეთა ინდივიდუალური ქონება, რომელიც გამოყოფილია თანასაკუთრების რეჟიმისგან. მისი არსებობა განპირობებულია იმ მარტივი იდეით, რომ მეუღლეებს მიეცეთ სივრცე ერთმანეთისგან დამოუკიდებლად შეიძინონ ქონება. ქორწინებამდე თითოეული მეუღლის საკუთრებაში არსებული ქონება და ქორწინების დროს თითოეული მეუღლის მიერ მემკვიდრეობით ან ჩუქებით მიღებული ქონება ითვლება ინდივიდუალურ საკუთრებად. ინდივიდუალური ქონების არსებობა არ ნიშნავს მის ხელშეუხებლობას. ნაშრომის მიზანია შეაფასოს ქორწინების დროს შეძენილი ქონების განსაზღვრის სირთულეები საქართველოს უზენაესი სასამართლოს პრაქტიკაში.

საკვანძო სიტყვები: ქორწინება, მეუღლეთა თანასაკუთრება, სასამართლო დავა.

Methods of Determining Property Acquired During Marriage in the Practice of the Supreme Court of Georgia

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Abstract

Issues of co-ownership of spouses are regulated by the Civil Code of Georgia. In case of a dispute between the parties, the requirements expressed by the spouses are given importance. The main essence of the co-ownership of the spouses is its acquisition during the marriage, unless something else is established by the marriage contract. This allows each spouse to acquire the right of co-ownership of the property acquired during the marriage.

Contrary to joint property of spouses, there is individual property of spouses, which is separated from the regime of joint ownership. Its existence is due to the simple idea of leaving space for spouses to acquire property independently of each other. Property owned by each spouse before marriage and property received by each spouse during marriage by inheritance or gift are considered individual property. The existence of individual property does not mean that it is inviolable. The paper aims to assess the challenges of determining property acquired during marriage in the practice of the Supreme Court of Georgia.

Keywords: Marriage, Co-ownership of Spouses, Litigation.

Introduction

In the practice of the Supreme Court of Georgia, a special place is occupied by the division of the share from the joint property between the spouses during the divorce. There is often a dispute about which property can be considered co-ownership and, accordingly, the claim of the spouses. The purpose of the study is to evaluate the methods of interpretation of Article 1158 of the Civil Code of Georgia in the judicial practice of the Supreme Court of Georgia.

The Main Part of the Research

Article 1106 of the Civil Code of Georgia defines the concept of marriage. The main elements of the concept of marriage are: the voluntary union of a man and a woman, the purpose of creating a family and the fact of registration in the relevant body.¹ By combining these three elements, the concept of marriage is created, which means that without the fact of registration, the union of a man and a woman, even for the purpose of creating a family, cannot produce the legal consequences that the Civil Code of Georgia defines in the case of marriage.²

The fact of marriage registration separates the actual relationship from the one registered for the purposes of this Code. This helps to separate and classify claims at the first stage in case of litigation. Also, it provides a distinction between the starting point of the co-ownership regime of spouses.³ From the adoption of the Civil Code to the present, the legislative amendments made in Article 1106 were addressed only to the registration body. Although the third sign of Article 1106 of the Civil Code (the fact of registration) is not specified in the text of the Constitution,⁴ However, without it, despite the presence of the first two signs, the marriage will not be considered real.⁵ The fact of marriage registration may be accompanied by a marriage contract, the provisions of which indicate different legal consequences, although the marriage contract, which was concluded before the marriage registration, enters into force only after the marriage registration.

The title of Article 48 of the Law of Georgia "On Civil Acts" is the origin of marriage. Marriage registration by the Civil Acts Registration Authority is required for marriage to take place, where persons wishing to get married must submit an application in accordance with the conditions of the law.⁶

The Constitutional Court of Georgia in the case "Tsiala Pertia v. Parliament of Georgia" made important clarifications about the fact of marriage registration.⁷ This decision of 2023 somehow summarizes the legal issues of marriage registration and the origin of rights and obligations. The court points out that marriage registration is a sign that is identical and universally applicable to groups identifiable by different personal signs. This sign is not used to determine a person's belonging to any particular group, but independently ensures the perception of the origin of the rights and duties of spouses for the purposes of the Civil Code. In the case considered by the court, the comparable groups are spouses in registered and unregistered marriages. According to the judgment of the court, the fact of marriage registration is differentiating between them. By this, the court indicates that it does not reject the unregistered marriage of spouses as a voluntary union of persons in actual relationship, therefore the fact of registration of marriage in the mentioned case did not attribute to persons in unregistered marriage an essentially unequal group of persons.

¹ Civil Code of Georgia, 1997.

² Nino Basiladze, "De facto Marriage" - Nature, Term, Signs, Subjects and Concept", " Journal of Law ", No. 1 (2020): 110-111.

³ Giorgi Rusiashvili, "Property Relations of Spouses, Georgian-German Journal of Comparative Law", No. 10 (2020): 10-11.

⁴ Constitution of Georgia, 1995.

⁵ Besik Loladze and Anna Phirtskhalashvili, Basic Rights - Commentary (Tbilisi: "Forma" Publishing House, 2023), 769-770.

⁶ Law of Georgia "On Civil Acts", 2011.

⁷ Decision of the Constitutional Court of Georgia on case No. 2/4/1351, 09/06/2023.

The Constitutional Court of Georgia notes that "in order to consider the constitutional claim justified, the plaintiff is obliged to present substantiated opinions regarding which aspect of the right to personal and family life is limited by the absence of co-ownership of the property acquired in an unregistered marriage, in what way such an arrangement prevents him from enjoying the named constitutional rights".⁸ Similar argumentation was not presented in the constitutional claim. The Constitutional Court points out that according to Article 1151 of the Civil Code of Georgia, the rights and obligations of spouses arise only from a marriage registered in accordance with the law of Georgia.⁹

The purpose of dividing the common property during marriage may be related to the desire of the spouses to separate their share of the common property. In this case, after the division, the part of the property that has not been divided and the property that they will acquire in the future are considered joint property of the spouses (unless otherwise stipulated by the marriage contract). The purpose of this record is to facilitate the use of the right to divide property between spouses during marriage, to record the right of co-ownership, and more.¹⁰

It is important that the relationship existing during the marriage is interpreted in such a way that it has certain consequences for the parties. For example, according to the definition of the Constitutional Court of Georgia, the right to family life is an important legal part of personal life. A person's personal life "includes connection and relations with family members and his "close circle", then implies the relations established between spouses as a result of marriage or actual cohabitation, the right to develop connections with family members and biological relatives."¹¹ Family life is a private relationship established by individuals with a separate circle and refers to the connections in the "close circle". These connections are strongly characterized by a strong emotional and biological connection.¹²

During the divorce of the spouses, the question of the division of common property arises. Common property, as already mentioned, can be divided both during the marriage and after its termination. Marriage is terminated by the death of one of the spouses, declaration of death of one of the spouses and divorce. In case of death, inheritance rules apply to obtain the right to the property (co-ownership) of the deceased person, and in case of divorce, the spouses establish their claim to specific property. A guide for the court is the claim, by which the spouses express the scope of their claim.¹³ This scope is limited by the property acquired during the marriage and it is on this that the mutual comparison is made.

The Supreme Court of Georgia considers the case in accordance with the principle of disposition, competition, equality of the parties, the court cannot determine the co-ownership of a spouse on a specific property if there is no corresponding request.

The Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia focused

⁸ Decision of the Constitutional Court of Georgia on case No. 2/18/1662, 25/07/2023.

⁹ Decision of the Constitutional Court of Georgia on case No. 2/11/714, 29/12/2016.

¹⁰ George Meladze, "Spouses Property Obligations", "Journal of Law", No. 2 (2022): 84-85.

¹¹ Decision of Georgia Constitutional the courtJudgment on case No. 1/2/458, 10/06/2009.

¹² Decision of Georgia Constitutional the courtDecision on case No. 2/8/1444, 22/11/2023.

¹³ Giorgi Meladze, "Rule of Disposing of Property Jointly Owned by Spouses", " Journal of Law ", No. 1 (2021): 67.

on the issue of essentially correct interpretation of Article 1158 and justification of the decision. According to the court, the apartment received from the cooperative by one of the spouses during the marriage is co-owned by the spouses regardless of which spouse received it.¹⁴

According to the court, if the property is acquired during marriage, despite its registration in the public register, it is still co-owned and the co-owner spouse has the right to it.¹⁵

The court considers that, based on the interests of the acquirer, the ownership right to the real estate acquired during the marriage of the spouses arises only after both of them are registered in the public register, otherwise, the register entries for third parties are considered correct. This means that, unlike a bona fide purchaser, a bona fide spouse is legally entitled to protect his right from encroachment by registering in the public registry. A bona fide buyer does not have this right.¹⁶

The court points out that the property acquired during the actual cohabitation, which is registered in the name of one of the partners, cannot be considered as co-ownership, because the regime of co-ownership arises from the moment of marriage registration through the property acquired during the marriage.¹⁷

The court focuses on the special importance of establishing the actual circumstances of the acquisition of property during the marriage. Without evaluating this issue, it is impossible to consider the property as individual property of the spouse only by the registry entry.¹⁸

The subject of the court discussion was the purchase agreement concluded between the spouses, the subject of which was the property acquired during the marriage. Signing such a contract can be equated with a transaction concluded with oneself in one's own name.¹⁹ The court considered the mentioned contract invalid based on Article 54 of the Civil Code.

According to the court, the property acquired during marriage can be considered not only the property registered in the register, but also the property that only one spouse enjoys, if this property, in the case in question, the workshop space was purchased with common funds. According to the court, it is appropriate to consider the whole space as an individual item of personal use.²⁰

Divorce does not deprive the spouse of the right to claim a share from co-ownership.²¹

The criterion of co-ownership of spouses provided for in Article 1158 of the Civil Code is the acquisition of property during marriage, regardless of whose funds it was purchased, except for inheritance or

¹⁴ Decision of Supreme court of Georgia on case No. 3k/658-01, 28/11/2001.

¹⁵ Decision of Supreme court of Georgia on case No. 3k/328-02, 01/05/2002

¹⁶ Decision of Supreme court of Georgia on case No. 3k-932-02, 09/12/2002.

¹⁷ Decision of Supreme court of Georgia on case No. 3k-1232-02, 25/12/2002.

¹⁸ Decision of Supreme court of Georgia on case No. AS-614-1271-03, 28/11/2003.

¹⁹ Decision of Supreme court of Georgia on case No. AS-325-619-04, 16/07/2004.

²⁰ Decision of Supreme court of Georgia on case No. AS-414-738-05, 23/09/2005.

²¹ Decision of Supreme court of Georgia on case No. AS-409-756-05, 16/09/2005.

gifting.²² Spouses have equal rights to co-owned property. Legislation does not limit the principle of equality, even if co-ownership is created only with the funds and income of one of the spouses.

The property relations of the spouses have a relative character and arise between the spouses. In case of violation of the co-ownership rule, the party with the violated right can demand the protection of his right and the fulfillment of the obligation stipulated by the law from the spouse in a civil manner.²³

Property acquired during marriage is considered immovable and movable property, which was acquired with the joint labor and funds of both spouses. This should not be understood as if spouses have an equal duty to provide funds. In general, the salary or other cash income belongs to the property, regardless of whose name it is registered. The main function of the registry in relation to things subject to registration is to guarantee civil circulation.²⁴

The third part of Article 1168 of the Civil Code provides for the case when the property is acquired without the participation of one of the spouses, and regardless of whether they are married or not, prejudicial significance is not given to the right, but to the fact of the actual termination of marriage. This is the prerogative of the court.²⁵

Joint property of spouses in a household produces different legal consequences. If there are other family members registered in the household besides the spouses, this property is the joint property of the household members and not the joint property of the spouses.²⁶ The legal difficulties and uncertainty related to the household made the separation of the joint property of the spouses in the co-ownership regime between the members of the household unclear. Often the joint ownership of the spouses was expressed by combining the equal shares of the spouses in the household and demanding the separation from the common property of the household, regardless of whether the property was acquired during the marriage or not. The rule of allocation of property ownership and share.

The property of the spouse arising from the marriage is a joint right. Persons who are aware of this right are obliged to take into account the preferential right of spouses, regardless of whether this right is registered in the register or not.²⁷

It was noted in the case that one of the spouses alienated the jointly owned property of the spouses. The Court of Cassation points out that a certain rule of calculation should be developed for compensation of damages caused without the consent of the second spouse.²⁸

According to the court, the presumption of being the owner of the property of the spouses is due to the special norms of the law defining the rights and duties of the spouses and the special status of the

²² Decision of Supreme court of Georgia on case No. AS-335-660-05, 12/09/2005.

²³ Decision of Supreme court of Georgia on case No. AS-741-1010-05, 16/02/2006.

²⁴ Decision of Supreme court of Georgia on case No. AS-33-483-06, 08/09/2006.

²⁵ Decision of Supreme court of Georgia on case No. AS-108-388-08, 29/10/2008.

²⁶ Decision of Supreme court of Georgia on case No. AS-684-905-08, 09/02/2009.

²⁷ Decision of Supreme court of Georgia on case No. AS-1058-1325-09, 23/03/2010.

²⁸ Decision of Supreme court of Georgia on case No. AS-1136-1067-12, 11/02/2013.

protected object. Its purpose is to protect not only the spouses, but also third parties, so that they do not find themselves in a position that is harmful to them.²⁹

From a procedural point of view, the circle of circumstances included in the subject of the assertion based on Article 1158 is defined as follows: the spouses must be in a registered marriage, there must be common property, the spouses must express an interest in their share of the property.³⁰

The Supreme Court explains that co-ownership of immovable property between spouses arises from the purchase of property that they acquired jointly during the marriage. The legislator assumes that this property is created with the joint funds of the spouses by running the family farm and working together. This assumption is regulated at the legislative level, and the opposite assertion is the subject of the parties' assertion.³¹

Within the framework of presuming joint ownership of the disputed property, it is important to distribute the burden of proof on each party, including the establishment of the main principles of the relationship of spouses in order that they are not used by the parties to substantiate their claims, but by the court to evaluate these claims.³²

In case of dispute, the fact of acquiring certain property during the marriage is sufficient to consider the property as co-ownership of the spouses. The burden of proof to the contrary is on the person who disagrees with the above. The regime of co-ownership of spouses serves the purpose of protecting the interests of the family and it is derived from the concept of family. To outline the legal consequences of family maintenance and common goals through the mechanism of marriage registration.³³

In judicial practice, the issue of turning individual property into co-ownership occupies an important place. In this case, the factual circumstances are of particular importance, otherwise the court is deprived of the opportunity to independently determine the form, extent and scope of such conversion.³⁴

The co-ownership regime of spouses cannot be changed by the creditor's demand, because this demand is part of the obligation of the co-owners and it does not have a prohibitive function for one of the spouses to obtain the right to co-ownership.³⁵

A marriage contract largely changes the legal outcome that would have occurred in its absence. The nature of the marriage contract is determined by its direct reference in the Code. Instructions on the validity of marital contact are given in the following cases: the marriage contract changes the general rule of determining joint ownership of spouses; The marriage contract changes the rules for transforming

²⁹ Decision of Supreme court of Georgia on case No. AS-290-276-2013, 23/12/2013.

³⁰ Decision of Supreme court of Georgia on case No. AS-506-480-2015, 29/07/2016.

³¹ Decision of Supreme court of Georgia on case No. AS-1169-1089-2017, 24/11/2017.

³² Decision of Supreme court of Georgia on case No. AS-1426-1346-2017, 02/03/2018.

³³ Decision of Supreme court of Georgia on case No. AS-180-169-2017, 19/07/2018.

³⁴ Decision of Supreme court of Georgia on case No. AS-963 2018, 25/04/2019.

³⁵ Decision of Supreme court of Georgia on case No. AS-140-2020, 17/06/2020.

the spouse's property into co-ownership of the spouses; The marriage contract changes the rules for dividing the common property of the spouses during the marriage; With the marriage contract, the spouses have the right to determine the terms of income sharing, the manner in which each of them will pay family expenses, and the property that will be transferred to each spouse at the end of the marriage.

The legal burden of the marriage contract is determined by the parties' interest in it. If there is no marriage contract, then conditions different from the general rule cannot be established between the spouses, even if one of the parties indicates this in the event of a dispute,³⁶ For example, the court will deviate from the principle of equality of shares only in cases expressly provided for by law.

The Civil Code outlines the criteria for the general division of the property acquired by the spouses during the marriage, which has already been mentioned in the paper, thus the court can determine the legal status of the property owned by the spouses and assign it to the appropriate group. Article 1158 of the Civil Code allows the spouses to take into account the change of the legal regime of the property in the marriage contract. At this time, the will of the spouses takes precedence and the marriage contract is the basis by which the property acquired during the marriage will be recognized as shared property or vice versa. If the relationship is not regulated by the marriage contract, the property acquired during the life of the spouses together, which was purchased with joint labor and funds, as well as the property purchased by one of the spouses in that case, will be considered joint property. i.e. The marriage contract also changes the basis of Article 1158 of the Civil Code.

The mentioned reasoning applies in criminal cases. In one of the decisions of the Criminal Affairs Chamber of the Supreme Court of Georgia in 2020, attention is focused on the violation of the rules provided for in Articles 1159 and 1160 of the Civil Code of Georgia. The court of cassation pointed out that in this case there was clearly a violation of the civil norms regulating co-ownership of spouses, although this should not be considered a criminal offense, as it was the subject of a private legal relationship between the parties. In the mentioned case, the property was acquired legally, but it was illegally disposed of by one of the spouses. We would have a different case if the property was acquired illegally. In the opinion of the court, I am involved in the civil turnover of the co-owned item, and the legal consequences arising from it may be the subject of a civil dispute. This violation is not considered an object of criminal protection.

More specifically, the citizen disposed of the co-owned item donated by his spouse. The court ruled that this item was purchased for family use, so this item could not be an individual property. On the one hand, the court focused on the civil legislation on the disposal of property jointly owned by spouses, on the other hand, it pointed out that the disposal of property in this form cannot be considered arbitrary. The court does not appreciate the violation of the rule of disposal of the property acquired during the marriage, regardless of how it affects the spouses,³⁷ But if the property is registered in the name of the

³⁶ Roman Shengelia and Ekaterine Shengelia. Family and Inheritance Law. Tbilisi: "Meridian", 2017. 47-48.

³⁷ Decision of Supreme court of Georgia on case Number 688AP-19.

spouses in an illegal way, it will definitely become a subject of criminal assessment.³⁸

With a restraining order issued by the court, it is possible that the abuser is prohibited from using the co-ownership alone. This prohibition is due to the fact that during the issuance of a restraining order, it becomes physically impossible to run a joint economic activity and dispose of common property with the joint participation of both spouses. During the issuance of the restraining order, the person is prohibited from approaching the spouse closer than the specified proximity. Therefore, it is unnecessary to talk about the fact that they can dispose of the common property jointly. The restraining order issued by the court is temporary, therefore, after the expiration of the term established by the order, the possibility of sole disposal of the co-ownership arises again for the spouse.

The court did not share the opinion of the lawyer defending the interests of the convict, that the car, which the prosecution argued against the defense, was the joint property of the spouses, which was purchased during the period of cohabitation of the spouses, which is why the convict did not damage his wife's property, but his own property.³⁹ According to the court, due to the fact that the said car was owned by the victim's spouse, it could not be considered only the property of the convicted person.

Results of the Research

The research showed the problem of determining property acquired during marriage in Georgian judicial practice. What difficulties arise when a dispute arises between spouses. The theoretical study and evaluation of the mentioned issues is important in order to separate and assign this or that property from co-ownership to one of the spouses in accordance with the request of the parties.

Conclusion

The division of the property of the spouses is of great importance, both during the marriage and after the divorce in order to assess the demands of the spouses. The legislation directly defines the following types of property of spouses: joint ownership of spouses; individual property of spouses; individual property of spouses, which turned into co-ownership; items of individual property of spouses; Things necessary for spouses' professional activities.

It is necessary to form clear views, for the cases that are still unplanned for the spouses, in order to prevent further legal disputes. For a uniform interpretation of the articles of the Civil Code of Georgia, it is desirable to establish guidelines and generalize the practice.

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