заходів європейських держав стосовно регулювання міграційних процесів з урахуванням міграційних пріоритетів, кількісного та якісного складу міграційних потоків, їх соціальної, демографічної та економічної структури. Визначено основні фактори формування міграційної політики Європейського Союзу.

Ключові слова: принципи ЄС, міграційна політика ЄС, напрями співпраці, правовий механізм регулювання, фактори міграційної політики.

Резюме

Демчишина В.Р. **Принципы миграционной политики Европейского Союза.**

Статья посвящена исследованию основных принципов миграционной политики Европейского Союза. Осуществлена классификация принципов миграционной политики Евросоюза. Раскрыта система правовых, финансовых, административных и организационных мер европейских государств по регулированию миграционных процессов с учетом миграционных приоритетов, количественного и качественного состава миграционных потоков, их социальной, демографической и экономической структуры. Определены основные факторы формирования миграционной политики Европейского Союза.

Ключевые слова: принципы ЕС, миграционная политика ЕС, направления сотрудничества, правовой механизм регулирования, факторы миграционной политики.

Summary

Demchyshyna V. **Principles of the European Union Migration Policy.**

The article is devoted to the study of the basic principles of the migration policy of the European Union. The classification of the principles of EU migration policy is carried out. The system of legal, financial, administrative and organizational measures of the European states concerning the regulation of migration processes, taking into account the migration priorities, quantitative and qualitative composition of migration flows, their social, demographic and economic structure is disclosed. The main factors of formation of the migration policy of the European Union are determined.

Key words: EU principles, EU Migration Policy, Directions of Cooperation, Legal Mechanism of Regulation, Factors of Migration Policy.

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THE ESTABLISHMENT OF BASIC EUROPEAN MATRIMONIAL PROPERTY REGIMES

Problem formulation. A lot of people see marriage primarily as a spiritual union formed and fused together by the feelings of love, mutual respect and self-sacrifice. Nevertheless, scientists and law scholars believe that there is an even greater force that lies at the core of marital relations. This force is believed to have given birth to monogamous marriage, the emancipation of women and modern spousal relations. The name of such force is private property.

From the very first days of human society as we know it matrimonial relations were held together not only by personal ties, but also by property relations. Throughout the centuries every nation developed a different statutory approach to such property relations with its own basic rules and principles. Thus, in order to fully understand the legal peculiarities of each regime in its modern configuration, one should first review the historical prerequisites of its development. Only then would it be appropriate to compare and contrast the main spousal property regimes that dominate in modern European family law.

Analysis of research and publications. The questions of private property relations in England and Wales were highlighted in the works of J. Herring, A. Dicey, J. Baxter and D. Kovacs. Issues regarding the development of community property regimes in France were reviewed by M. Ansel, O. Kahn-Freund and others. Prominent national scholars such as M. Apsel, A. Vasilyev, V. Kisil and V. Kalakura also studied certain aspects of matrimonial property regimes in foreign countries. However, in contemporary Ukrainian family and private international law there is no comprehensive scientific research regarding the establishment of core matrimonial property regimes in European countries.

Aim of the article. The aim of this article is to review the historical development of the three main matrimonial property regimes in Europe: community property, separate property and deferred community property regime. The matrimonial regimes will be reviewed based on their representative examples: France for community property, England for separate property and Germany for deferred community property.

Main material. Article 16 (3) of the Universal Declaration of Human Rights defines family as a "natural and fundamental group unit of society"[1]. However, it has not always been that way. In the wake of humankind around

one million years ago people are believed to have lived in packs where there were no monogamous families and all property was common. Such packs later transformed into collective kins based on blood relations. In 1884 Friedrich Engels in his famous work "The Origin of the Family, Private Property and the State" was the first to put forward a theory that original family as we know it today emerged from private property. In particular, approximately 10 thousand years ago the gradual improvement of prehistoric tools, stockbreeding techniques and the agriculture brought about the appearance surplus product. Men who were physically stronger that women were the ones who created such surplus product and had a natural urge to leave the fruits of their work to their siblings. The product was later appropriated by a pair family that started opposing itself to its kin as an economic unit with its own property. As Engels put it, "monogamy was not the fruit of individual sexual love … it was the first form of family based not on natural but economic prerequisites, namely the victory of private property over primordial, voluntarily emerged collective property"[2]. The man who produced the product was considered head of the family and owner of its estate.

Over the course of thousands of years, the situation in Europe had not changed radically. Until the end of the XIX century most European societies still employed the model of house-wife marriage, where the man worked to provide the family while the woman looked after the house and raised children. The man as the family`s breadwinner enjoyed ownership over all family property. Gradual change came about only in the XIX century, when the profiles of two basic matrimonial regimes emerged: the one of community property and the one of separate property[3].

The first matrimonial property regime to appear in Europe was the community property regime. It was pioneered by Napoleon in the French Civil Code (1804), the first comprehensive codification of civil law in Europe. The Code was significantly influenced by classic Roman law as well as the works of glossators and post-glossators. In fact, the basics of the community property regime (albeit under the control of the pater familias) were laid down at the times of the Roman Empire. During the drafting of the French Civil Code, especially the sections on family and inheritance law, the authors were also swayed by local customary law and dogmas of canonic law.

Being the result of Roman law reception, the French Civil Code is structured according to the institutional system of Gaius: persons, property, obligations. All the norms regarding family relations are concentrated in Civil Code, namely Titles V-IX of Book I and Title V of Book III. To this day, there is no Family Code or even a separate book in the Civil Code devoted to family law in France.

The fundamental principle of community property regime was laid down in Article 1402 of the French Civil Code: "All property, movable or immovable, shall be deemed an acquisition of the community where it is not proved that it is a separate property of one of the spouses in accordance with a provision of law"[4]. Under the initial version of the Civil Code, every piece of property of each spouse became common after marriage. Even movable and immovable property obtained by each of the spouse before marriage was considered common. The man was still viewed as an analogue of the Roman pater familias and had the exclusive right to manage and dispose of such common property. Pursuant to the then version of Article 214 of the French Civil Code, the husband was supposed to give the wife everything necessary for her needs while the wife had an obligation to follow him everywhere.

The first radical changes in the community property regime took place after World War II. Namely, the new post-war Constitutions of the French Republic (1946) guaranteed equal rights for men and women in all domains[5]. As a result of this declaration, during 1964–1975 ten laws on different aspects of family law were promulgated in France. In particular, the new law adopted in 1965 enshrined that property obtained before marriage was considered private property of each spouse. Man`s domain over community property was weakened: he now had to obtain his wife`s consent for the some material agreements. The aforementioned Article 214 of the Civil Code was also changed, and now each spouse was supposed to contribute to marriage expenses in proportion to their respective means. The reform was considered so substantial that some scholars saw it as the downfall of community property regime. As Kahn-Freund stated, "in the classic country of community property the latter was practically abolished … the new wine of separation was poured into the old bottles with the former name "community"[6].

The community model of the French Civil Code was eventually borrowed by most continental law countries such as Spain, Italy, the Netherlands, Switzerland etc. Ukraine also drafted its Family Code based on the French community model. Moreover, the French Civil Code heavily influenced the approach to family law even in Latin America and the USA. For instance, nine out of fifty US states today have a community property regime in their legislation[7].

As compared to continental law countries, common law states have a completely different approach to matrimonial property. Due to the absence of strong impact from Roman law, common law countries chose a different approach and put forward the presumption of separate property. The most representative example of separate property regime is, without doubt, England.

The separate property regime crystalized in England at the end of the XIX century. Until 1882, all spousal property as well as all property belonging to the woman before marriage was undisputedly deemed man`s private property. There was no such notion as common spousal property, because the "wife`s personality as well as her property dissolved in the personality and property of her man"[8]. However, as a result of the economic and industrial development such rules began to contradict the interests of the ruling elite. The maintenance of property rights of the wife`s blood relatives brought about the need for separating woman`s and man`s property. As a result, ad hoc decisions of certain equity courts at the beginning of the XIX century began to recognize the rights of wealthy women to separate property.

In 1882 the Married Women`s Property Act finally envisaged the basic rule of separate property regime: all property obtained by man or wife before or after marriage is considered their private property respectively[9]. The pro-

visions of the Law on Property Act (1925) furthered this regime, stating that "in realizing their property rights the husband and wife are deemed as two separate persons"[10]. As Dicey put it, the rules of equity law created for daughters of the wealthy finally extended to daughters of the poor"[11].

As years went by, Anglo-Saxon states gradually diverted from the pure separate property regime. According to Baxter, this was largely because the separate model failed to protect the interests of married women who had no property and did not work[12]. Indeed, such regime was unfair towards the woman whose contribution to family welfare was non-financial, i.e. housekeeping and raising children. Therefore, such important spousal assets as the family home were declared common property[13].

Further change was brought about by the Matrimonial Causes Act (1973). The said statute granted the courts wide authority in property issues in the event of its division. In particular, the court was allowed to grant an "ancillary relief"[14], thereby fairly dividing the property or granting compensation based on a variety of factors such as every person`s financial needs, income, age etc. The separate model was also greatly influenced by court precedents such as White v. White (2000) and Miller v. Miller (2006). These decisions introduced the yardstick of equality division under which all courts were advised to decide matrimonial property cases. As a result, today we observe a trend towards the gradual convergence of community and separate property regimes. Meanwhile, English lawyers firmly believe that the complete copying of the French community property regime will not be a good fit for the "British climate of separability"[15].

The third major matrimonial regime in Europe is the deferred community model that combines the traits of both of the aforesaid property regimes. According its main principle, all property during marriage is considered individual, as in the separate model. However, in the event of divorce all family property is put into one basket and then equally divided between the spouses. The said regime formed in Germany and Scandinavian states (Sweden, Norway, Denmark, Finland, Iceland) in the XX century.

In Germany the community of accrued gains regime (Zugewinngemeinschaft) was implemented as a default statutory regime in the German Civil Code in 1957. Under this regime, all property obtained before or during marriage was considered private property of each spouse. Property may be disposed of freely with only certain exceptions. In case of divorce the husband and wife had the right to demand half of all the obtained spousal property. The obtained property is calculated by the court by reducing the cost of both spouses` property at the moment of divorce on the cost of all property at the moment of marriage[16].

The deferred community model in Scandinavian countries is similar to the German accrued gains model with only minor differences. For example, if one of the spouses in the deferred community model abused his right to dispose of property obtained during marriage or ignored the financial interest of the other spouse, he may be required to compensate the damages caused[17].

All three aforementioned basic European matrimonial property models refer to statutory property regimes. However, it should be kept in mind that apart from statutory regimes there is also a contract regime of managing spousal property. Most European states support the concept of the contractual nature of marriage, thereby stipulating the possibility to conclude prenuptial agreements. Although a priori property relations after marriage are governed by statutory provisions, spouses are allowed conclude a prenuptial agreement and determine their own special property regime which may be radically different from the one provided by law. For instance, the French Civil Code allows to envisage a separate property regime in the prenup that is similar to the one in common law countries. English courts recognize and enforce prenuptial agreements in any case unless they are not explicitly unfair. States with deferred community models also lay down elaborate provisions on prenuptial agreements.

Conclusion. Historical, social, cultural and religious prerequisites brought about the emergence of three basic European matrimonial property models in the XIX century. The community property regime was introduced in France and later borrowed by most continental law countries. The separate property regime appeared in England and now serves as a yardstick for other common law countries. Germany and Scandinavian states have developed their own deferred community regime which proves to be a mix of community and separate property models. However, no country in the world today has a classic community or separate property regime. All models are converging, and therefore one may often observe certain elements of separability even in traditional community model states and vice versa.

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Резюме

Пашинський А.П. **Становлення базових європейських режимів власності подружжя.**

У цій статті йдеться про історичний розвиток трьох основних режимів власності подружжя в Європі. Зокрема, у праці проаналізовано режим спільності майна подружжя, режим роздільної власності та режим відкладеної спільності. Автор роботи аналізує становлення режиму спільності на репрезентативному прикладі Франції, режиму роздільності – на прикладі Англії, а режиму відкладеної спільності – на прикладі Німеччини і країн Скандинавії.

Ключові слова: режими власності подружжя, режим спільної власності, режим роздільної власності, режим відкладеної спільності, міжнародне сімейне право.

Резюме

Пашинский А.П. **Становление базовых европейских режимов собственности супругов.**

В этой статье идет речь об историческом развитии трех основных режимов собственности супругов в Европе. В частности, в работе проанализирован режим общности имущества супругов, режим раздельности имущества и режим отложенной общности. Автор труда анализирует становление режима общности на репрезентативном примере Франции, режима раздельности – на примере Англии, а режима отложенной общности – на примере Германии и стран Скандинавии.

Ключевые слова: режимы собственности супругов, режим общей собственности, режим раздельной собственности, режим отложенной общности, международное семейное право.

Summary

Pashynskyi A. **The establishment of basic European matrimonial property regimes.**

This article is about the historical development of the three main matrimonial property regimes in Europe. Inter alia, the article deals with community property, separate property and deferred community property regimes. The author analyzes the community property regime based on the representative example of France, the separate property regime on the example of England and the deferred community property regime based on the example of Germany and Scandinavian states.

Key words: matrimonial property regimes, community property regime, separate property regime, deferred property regime, international family law.