Controversial Issues Regarding Joint Property Ownership between Spouses

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Key aspects of the problems regarding the objects of the right of joint property ownership are summarized. The main articles of the Family Code of Ukraine regulating such relationships are examined. The main contradictions regarding the regulation of this problem are determined. Recommendations for further research are proposed.
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A set of general legal issues arising in the context of improving the social policy of Ukraine includes the clarification of the nature of the right of joint property ownership (joint tenancy) between spouses which is extremely important nowadays. This necessitates an analysis of legislation in order to identify the inconsistencies between joint property and joint fractional ownership, as it is of great importance for the proper and unambiguous implementation of the Family Code of Ukraine.

The issues of joint tenancy have been explored by different scientists, in particular, by I. Zhylinkova, A. Hryniak, V. Borysova, L. Baranova, Z. Romovska, I. Novakhatska, etc. However, law enforcement practices have revealed a set of issues that need to be resolved in future. For example, this includes disputes relating to the division of joint property between former spouses. This is the very category of cases quite often considered in court.

The purpose of this article is to investigate some aspects of the right of joint property ownership between spouses. We have analyzed new legislative provisions regarding the regulation of family relations, pointed out the contradictions between them, and proposed the concept of 'the joint property of spouses'.

Joint ownership is a specific legal phenomenon characterized by the multiplicity of subjects in relation to the object of the property. Except in cases determined by law, the Family Code of Ukraine (hereinafter, the FCU) established the principle of commonality of property acquired during a marriage.

According to Article 60 of the FCU, the property acquired by spouses during their marriage belongs to the husband and the wife on the basis of their joint property ownership, regardless of the fact whether one of them had an independent income (revenue) or not [*Romovska*, 2009: 284]. Therefore, the concept of 'commonality' does not apply to the property acquired before the marriage or after its dissolution.

According to Ukrainian scientist I. Zhylinkova, the provision contained in Part 2 of Article 61 of the FCU is controversial as it foresees that the objects of the right of joint property ownership are wages, pensions, scholarships and other revenues obtained by one of the spouses and contributed to the family budget or to his/her personal account in the bank or (credit) institution [*Zhylinkova*, 2009: 17]. Thus, the revenues of each spouse are the object of the right of joint property ownership between a husband and a wife immediately upon when they were contributed to the family budget.

We consider this provision to be controversial because the right of joint property ownership between spouses is always presupposed by the consent of one of the partners. However, as I. Zhylinkova notes, the application of the legal regime of relations between spouses concerning the property of the husband and the wife does not need such permanent expression of will by one of them [*Zhylinkova*, 2009: 20].

The researcher A. Hryniak notes that the legitimate legal regime is applicable in cases when the spouses have not concluded a special agreement. For this purpose, we should pay attention to the complexity of identification of the fact confirming whether the revenue has been contributed to the family budget by one of the spouses [*Hryniak*, 2007: 66].

At the same time, it should be emphasized that the provisions of Part 2 of Article 61 of the FCU contradicts the provisions of Part 3 of the same Article, as they provide that if one of the spouses has concluded a contract for the benefits of the family, the money and other property, as well as fees and gains derived hereunder, are the objects of the right of joint property ownership of both partners. In this case, the right of joint tenancy to the appropriate property arises even if the latter has not been contributed to the family budget.

Moreover, some inaccuracies are also contained in Part 2 of Article 61 of the FCU. It provides that the revenues received by one of the spouses and

contributed to his/her personal account in the bank (credit) institution are the object of the right of joint property ownership of both spouses. Often the reason for the termination of the right of joint tenancy to the property acquired by the couple during the marriage is its division resulting in determination of shares of the joint property which belong to the husband and to the wife accordingly [*Novakhatska*, 2006: 9].

Thus, the joint tenancy commonly exists if there is certain joint property of the spouses. According to Article 60 of the FCU which corresponds to Part 3 of Article 368 of the Civil Code of Ukraine (hereinafter, the CCU), the property acquired by the spouses during a marriage belongs to the husband and the wife due to the right of their joint tenancy to it. This rule is based on the principle according to which the commonality of property of the husband and the wife is a necessary prerequisite for a lasting marriage. One could consider this position in different ways, but we should pay attention to the actual absoluteness of the regulation on the commonality of the property of spouses, as, in our opinion, it does not meet the realities of current life. In addition, application of the model of regulation of relations regarding the joint property ownership between spouses at the stage of the realization of property or transformation of joint property ownership into a joint fractional one, and so on, also remains problematic.

The laws of Ukraine regulating relations in this sphere state that the objects of the right of joint property ownership between spouses are all things except those which have been withdrawn from civil circulation (Part 1 of Article 61 of the FCU) [*Romovska*, 2009: 285]. At the same time, the scientific literature emphasizes the impossibility of formation of an exhaustive list of the objects of the joint tenancy.

Article 68 of the Family Code stipulates that dissolution of a marriage shall not terminate the right of joint tenancy to the property acquired during that marriage. The problems of separation of 'the marital share' and inherited property may arise in the event of the death of one of the spouses. The share in joint property ownership of the spouse who died belongs to the legacy and shall be inherited on general grounds (Article 1226 of the Civil Code).

We should underline the need for legislative clarification and regulation of the issue on the shares in the joint property ownership (articles 370, 371, 372 of the CCU; articles 64, 70 of the FCU). The theory of civil law stresses that the ambiguousness regarding the share in the joint property (in particular, its amount) shall not mean that such a share does not exist at all.

The analysis of the Civil Code regulations proves that the legislators foresee its existence only when the co-owners have the ability or there is a need to identify their shares, e.g., in case of divorce resulting in conversion of the joint property ownership into a joint fractional one.

In contrast to the grounds that are necessary for the joint fractional ownership to occur, the law clearly defines conditions under which the joint property ownership exists. The latter is considered as the joint fractional ownership unless otherwise provided by the law or the contract [*Polishchuk*, 2011: 13-14].

Thus, the joint property ownership (in contrast to the joint fractional ownership) may arise only in the cases provided by law or contract. Neither the Civil Code nor other legal acts provide such a reason for its occurrence as the inheritance of a share in joint property ownership.

Conclusions. Therefore, the family law of Ukraine stipulates that the objects of the right of joint property ownership between spouses are all the things and property except those which have been withdrawn from civil circulation (Part 1 of Article 61 of the FCU).

In compliance with Article 177 of the CCU, the objects of civil rights are things, money and securities, other property, property rights, services, results of operations, intellectual or creative activities, information, and other tangible or intangible values.

In our view, the death of one of the co-owners of joint tenancy is a legal fact that, violating stability of relations regarding joint property, leads to the 'reformatting' of the joint property ownership into a joint fractional one divided into equal shares.

In prospect, this article paves the way for further development of scientific knowledge on the right of joint property ownership, as well as provides answers to some practical issues, in particular, defines the marital property that is considered as the joint tenancy.

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