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THE DIVISION OF MARITAL JOINT PROPERTY: LEGAL FRAMEWORK AND GENDER IMPLICATIONS IN NORTH MACEDONIA

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ABSTRACT

This paper explores the legal framework governing the division of joint ownership in marital property in North Macedonia, with a particular focus on gender implications. It critically analyzes the Family Law Act and the Law on Ownership and Other Real Rights to assess how these provisions function during marriage dissolution due to divorce or death. By employing a qualitative, legal-analytical approach, the research assesses legislative texts and relevant case law to explore the extent to which current laws ensure equitable property division, irrespective of gender or economic contribution. In addition to legal analysis, the research utilizes case law to highlight and illustrate discrepancies between the law's theoretical principle of equal division and its real-world application, particularly where traditional gender roles are concerned. It discusses how traditional expectations around women's unpaid contributions, such as caregiving and household management, often result in outcomes that disadvantage women. Women, especially those who have forgone paid employment to fulfill domestic roles, face significant challenges in securing an equal share of marital property.

The study emphasizes the need for legal reforms that better account for these disparities, promoting fairness in the division of joint ownership and greater protection for vulnerable parties. This research contributes to ongoing discussions on property rights and gender equality, proposing reforms that align the legal framework with international human rights standards.

To provide a broader perspective, the study includes a comparative analysis of property division practices in selected jurisdictions, situating North Macedonia's approach within an international framework. This examination not only underscores the need for greater consistency in judicial interpretation but also contributes to ongoing discussions on property rights and marital equity by proposing specific areas for legal reform. The originality of this study lies in its detailed, context-specific analysis of North Macedonian property division laws, offering unique insights and practical recommendations for enhancing the fairness and effectiveness of the legal framework within the context of international human rights standards.

Key words: joint ownership, marital property, gender equality, property division

INTRODUCTION

Joint ownership is primarily established through the work performed during the marital union. Spouses' contributions to the creation of joint ownership can be either direct or indirect. Judicial practice recognizes indirect contributions to joint ownership, such as raising children and managing family responsibilities, even if they do not result in immediate financial gain. In contrast, the contributions of employed spouses are considered direct because they have a specific monetary value. Typically, the contribution of the unemployed spouse—often the wife—is classified as indirect; although she does not generate direct monetary income, her efforts in household management, child-rearing, and education significantly aid the other spouse in generating new assets and maintaining the family (Mandro-Balili et al., 2021).

The joint property of spouses is not a permanent and unchangeable institution but ceases in cases provided by law. From a combined reading of Articles 74, paragraph 1 of the Law on Ownership and Other Real Rights (LOORR) and 34 of the Family Law Act (FLA), it is evident that joint ownership of spouses ends in cases of marriage dissolution, as well as through separation by agreement or court order, both during the marriage and after divorce or annulment. Thus, joint ownership ceases in the following cases:

- the death of one spouse,
- the declaration of a missing spouse as deceased, and
- the division of joint property during the marriage or after divorce or annulment.

A distinction must be made between the concepts of termination and division of joint ownership. Termination refers only to the cessation of joint ownership moving forward, whereas division is a method of liquidating joint property by determining the items each spouse will receive.

The joint ownership of spouses ceases in cases of marriage dissolution, as provided in Article 34 of the FLA. Joint ownership ceases upon the death of one spouse or their legal declaration of death. When a marriage is dissolved due to death, the surviving spouse has the right to request the division of joint property. The surviving spouse holds two rights: the right of ownership over the joint property acquired during the marriage and the right of inheritance over the deceased spouse's property. The portion that the surviving spouse will inherit depends on the number of heirs in the same succession order.

The right to claim a share of the joint property is also available to the heirs of the deceased spouse or declared deceased. Before determining the inheritance shares to be divided among the heirs, the court must first divide the joint property of the spouses. Based on the legal presumption of equality, half of the joint property will belong to the surviving spouse, while the remaining half, belonging to the deceased (*de cujus*), will be divided among the legal heirs.

The heirs of the deceased spouse have the right to challenge the legal presumption of equal shares of the joint property upon marriage dissolution. They may request the court to assess the deceased spouse's contribution to the creation of joint ownership through a lawsuit, and if this contribution is proven, the court may allocate a larger share of the joint property to the deceased spouse's heirs (Supreme Court of the Republic of Macedonia, Decision no. 21/90).

Joint ownership also ceases with the termination of marriage by divorce. A marriage can be dissolved by mutual agreement of the spouses (Article 39/1 of the FLA), at the request of one spouse when marital relations have deteriorated to the extent that living together has become unbearable (Article 40 of the FLA), or at the request of one spouse when the marital union has effectively ceased for more than one year (Article 41 of the FLA). Upon separation, joint property is transformed into the separate property of the spouses. In the division of joint property, the court does not base its decision on the fault of either spouse in the divorce. According to Article 250 of the FLA, property disputes between spouses cannot be resolved together with the divorce proceedings. However, an exception to this rule occurs when, during the divorce procedure and with court approval, the spouses reach an agreement on the division of joint ownership, which must be recorded as a court settlement in the official minutes (Articles 307-308 of the Law on Contentious Procedure).

Joint ownership also ceases in cases of annulment of marriage for reasons provided by law (Articles 16-22 of the FLA). Joint ownership may also arise during the marriage, which can later be declared invalid by a valid court decision. In the case of such an annulment, the joint property will be divided between the spouses.

In North Macedonia, spouses cannot fully regulate their property relations according to their interests, as they cannot entirely or partially bypass legal norms. Ideally, this could be achieved through a marriage or premarital contract, allowing spouses to avoid the default legal property regime and exercise autonomy in managing their property relations (Alincic, et al., 2007, p. 515). A marriage contract, in this sense, would enable spouses to define their matrimonial property regime either before or after marriage ((Majstorovic, 2005, p. 168). However, Macedonian law currently offers no legal framework for selecting a property regime that differs from the statutory provisions. This limits spouses' autonomy in choosing a property arrangement that aligns with the specific interests and circumstances of their relationship. Presently, spouses can only agree by contract on the administration and disposal of common property during marriage. They may also change the property regime during the marriage by agreeing to divide their property, thus converting joint ownership into separate ownership. However, Macedonian law does not formally recognize marriage contracts.

DIVISION OF JOINT OWNERSHIP OF SPOUSES IN NORTH MACEDONIA

In the case of the dissolution of marriage, it is necessary to resolve the division of joint property, which naturally brings legal consequences to the spouses' property relations. Disputes between spouses regarding the division of property – often reflected in their joint parental responsibilities or in damage to the interests of third parties – frequently result in long and difficult conflicts. The division of joint property ends the regime of joint ownership and establishes a regime of separate ownership for each spouse (Article 74/2 of the LOORR). The division of property between spouses produces a series of legal effects, both between the spouses themselves and between the spouses and third parties.

In many instances, the regular functioning of the joint ownership regime is hindered by disputes. These disputes can take various forms, ranging from disagreements over the management and disposal of joint property to disagreements concerning premarital obligations of one spouse, which have been fulfilled using joint property, as well as disputes over the legal presumption that spouses have equal shares in joint ownership (Article 75/2 of the LOORR).

During marriage, within the joint property regime, various relationships are established between spouses concerning their separate properties, or between their separate properties and the joint property. It often happens that items from the separate property of one spouse become part of the joint property, and vice versa. For example, if one spouse contributes to the renovation of an apartment that is the separate property of the other spouse, they do not become a joint owner of the property. However, during the inheritance process of the deceased spouse, they may request that a portion of the inheritance corresponding to their expenses be allocated to them. (Supreme Court of the Republic of Macedonia, Decision No. 401/84).

In all cases of disputes, claims, and obligations between spouses, the court must decide on the procedure for the division of joint property. This division can be achieved through an agreement between the spouses (Article 74/1 of the LOORR) or, in the event of disagreement, through the courts (Article 75/1, 2 of the LOORR).

The law grants spouses the right to divide property acquired during marriage by mutual agreement. However, this division does not apply to property acquired in the future within the marital union. On the contrary, assets acquired by the spouses after the division of joint property will continue to be considered joint property under Article 67 of the LOORR.

If the spouses cannot reach an agreement regarding their shares of joint property, they have the right to petition the court for division. The final judicial decision will be made through non-contentious proceedings (Article 75/1 of the LOORR). However, it may also be decided in contentious proceedings if one spouse requests a larger share of the joint property and proves that their contribution was significantly greater than that of the other spouse (Article 75/3 of the LOORR).

Additionally, a request for separation from creditors of one spouse can be a reason for the termination of joint ownership during marriage. This pertains to personal obligations of the spouse, for which they are responsible not only with their separate property but also with their share of the joint property, in cases where their separate property is insufficient to fulfill the obligations.

The right for spouses to divide joint property by agreement is defined in Article 74/1 of the LOORR. This provision allows spouses to divide joint property both during the marriage and after its dissolution. They can agree to separate all items from joint ownership or only some of them (Basic Court Skopje II, Decision no. 600/04).

Reasons for dividing joint ownership may include disputes over the administration and disposition of the property (Article 73 of the LOORR) or premarital obligations (debts) of one spouse that cannot be fulfilled from their separate assets.

Spouses can agree to a real division of joint ownership through a contract, allocating certain items to the separate property of each spouse, thereby creating a special property regime. Alternatively, they can convert the joint ownership regime into a co-ownership regime, with each spouse having ideally assigned and freely available parts (Article 63/2 of the LOORR). If certain items cannot be physically divided, one spouse can include them in their separate ownership but must compensate the other spouse for their share in monetary value. In this case, the compensating spouse has a right of lien on the indivisible property until the compensation is made (Article 52 of the LOORR).

Upon agreement to divide joint ownership, each spouse enters a regime of separate ownership (Article 74/2 of the LOORR). This allows each spouse to become the sole owner of any movable or immovable property they hold at the time of separation. For movable or immovable property that cannot be divided, the spouses acquire co-ownership in proportion to their contributions (Article 63/2 of the LOORR). The division of real estate must be registered in the public cadastral books (Article 142/1 of the Law on Real Estate Cadaster).

To avoid high costs and prolonged court procedures, spouses should resolve disputes through agreement. The contract for dividing joint ownership can be concluded orally, in writing, or as a notarial deed with notarized signatures. For movable property, an oral or written agreement suffices, while a notarized contract is required for the real estate division. Failure to notarize a real estate division contract renders it legally ineffective (Supreme Court of the Republic of Macedonia, Decision No. 248/81).

Once the division contract is registered in the public real estate books, each spouse acquires separate ownership of their share. From that moment, they can freely dispose of their property without the consent of the other spouse. For items not included in the division contract, the joint property regime continues. If both spouses are registered as co-owners of certain parts in the public book, it is considered that the joint ownership has been divided (Article 69/3 of the LOORR).

SYSTEMS OF DIVISION OF JOINT OWNERSHIP OF SPOUSES

In comparative law, three main systems for dividing joint property between spouses are recognized: the contribution-based system, the equal division system, and the equitable distribution system (*exequo et bono*) (Mladenovic, 1981, p. 655).

1. **Contribution-Based System**: Historically, this system was used in Albania and many countries of the former SFRY, except Macedonia and Slovenia. Under this system, the primary criterion for dividing joint ownership is each spouse's

contribution to its creation. Both direct and indirect contributions are recognized. This means that the work of an employed spouse, whose income directly impacts joint ownership, is considered, as well as the contributions of a non-employed spouse who manages the household and raises children, thus indirectly contributing to the family economy.

2. **Equal Division System**: This system is based on the principle of ensuring equality and property solidarity between spouses. According to this system, joint ownership is divided equally, reflecting the tacit acceptance of equality in property relations upon marriage. This system aims to protect spouses with limited earning capacity or those who have focused on household responsibilities. However, this equal division system is rarely applied in practice because spouses often have different abilities and needs. A pure system of equal shares is rarely satisfying for the spouse who believes they have contributed more or for the spouse responsible for raising children (Mladenovic, 1981, p. 655). Albanian legislation, for instance, does not view spouses as joint owners but as co-owners of the property, dividing it equally. Nevertheless, the court may allocate a larger share to the spouse who will be responsible for the children (Article 103/3 of the Family Code of Albania). This system can be presented in two forms:
    - **Pure System of Equal Parts**: This form is rarely used in practice due to disparities in spouses' abilities and needs.
    - **Mixed System of Equal Parts**: This form is more common and involves dividing property equally while also considering contributions and other relevant factors. For instance, in the Republic of North Macedonia, a mixed system is applied where, if spouses cannot agree, the system of equal shares serves as a baseline, but contributions are also taken into account (Article 75/2 of the LOORR). The court can assign a larger portion to one spouse if their contribution significantly exceeds that of the other (Article 75/3 of the LOORR).
3. **Equitable Distribution System**: This system emphasizes fairness and considers factors such as social or health issues, the duration of the marriage, and the age of the spouses. It provides relief to the disadvantaged spouse. In jurisdictions such as the USA and Canada, this system often results in a larger share of the joint property being assigned to the spouse with custody of the children, typically the wife. Thus, the spouse may be allocated a smaller share of the community assets but still retain what is often the most valuable asset of the marital property: their earning capacity. In the event of a divorce, the court may grant use of the family home to the spouse who is entrusted with the children, often without compensating the other spouse who is the property owner (Parkinson, 2011, p. 26-27)

JUDICIAL DIVISION OF SPOUSAL JOINT OWNERSHIP

If the spouses do not reach an agreement regarding the division of joint property, the division will be carried out by the court upon the request of one of the spouses (Article 75/1 of the LOORR). The right of a spouse to request the division of joint ownership is not prescribed because it is considered a subjective civil right with absolute character, meaning it is not subject to a statute of limitations (Article 63/1 of the LOORR).

The court may handle the division of joint property through either a non-contested procedure (Articles 213–227 of the Law on Non-Contentious Procedure – LNCP) or a contested procedure if the spouses disagree on the method of division or the allocation of shares (Article 217 of the LNCP).

The division of joint ownership in a non-contested procedure occurs when there is no dispute between the spouses regarding the share of each joint asset, but they cannot agree on the method and conditions of division (Article 75, paragraph 1 of the LOORR; Article 213/1 of the LNCP). Conversely, if there is no dispute regarding the manner and conditions of the division, the division is performed by a notary with a notarial deed (Article 213/2 of the LNCP). The involvement of notaries in this process reflects the legislator's intention to facilitate court operations by handling uncontested cases, thereby increasing court efficiency.

The division of joint property is initiated by a written proposal submitted to the court by one of the spouses. The court competent for the division is located in the territory where the joint property items are situated. If the property is real estate located within the jurisdiction of multiple courts, each court is competent (Article 214 of the LNCP). However, only one court will handle the case based on the rules of elective competence. Elective jurisdiction allows the plaintiff to select from among several courts with local jurisdiction for the specific case. The spouse exercises this right at the time of submitting the division proposal, and this choice is considered final (Janevski & Zoroska-Kamilovska, 2009).

The proposal for division can be made by one or both spouses if they wish to divide the joint property but cannot agree on its administration, disposition, or division (Article 215 of the LNCP). The proposal must include details about the items to be divided, their location, and the owners and other persons with property rights over these items. For real estate, the proposal must be accompanied by documentation proving ownership or other real rights (Article 216 of the LNCP).

During the court session based on the division proposal, the court will summon individuals with easement rights or other real rights over the property being divided. These holders have the right to request the court to address their rights as well (Article 218 of the LNCP). Participants may also request that the court summon other interested parties to the hearing (Article 219 of the LNCP).

If the spouses reach an agreement on the method of separation during the procedure, the court will record this agreement in the minutes, ensuring that it does not violate mandatory legal norms (Article 220 of the LNCP). The Supreme Court has ruled that a court agreement for the division of joint ownership can be annulled if it was concluded under duress. In one case, the Supreme Court accepted the wife's lawsuit for annulment of the court agreement due to the threat she faced at the time of its conclusion (Supreme Court of the Republic of Macedonia, Decision No. 37/91).

When determining each spouse's share, the court begins with the presumption that joint ownership is divided equally, with each spouse entitled to half of the joint ownership or half of the items subject to division (Article 75/2 of the LOORR). The court aims to fulfill the reasonable demands of the spouses, ensuring that they receive specific items from joint ownership (Article 221 of the LNCP). In deciding which items belong to which spouse, the court considers the special needs of each spouse and the reasons for assigning particular items (Article 222 of the LNCP). Spouses engaged in different professions or activities may be allocated items that are essential for their professional activities or personal needs.

In cases of disproportion (disparity) of values, the other spouse will be compensated with other items from the joint ownership. If, during the division process, one spouse is allocated an item of significantly greater value compared to their share of the joint property, the court will decide that this spouse must compensate the other in money for the difference, within a specified period. If the object of division is an immovable property of substantial value, the other spouse, based on the court's decision, has the right to request the registration of a mortgage on this property, up to the value that the other spouse is obligated to pay (Article 223 of the LNCP). If it is impossible to physically divide the property, or such a division would significantly reduce its value, the court may decide that the property belongs to one spouse and determine the amount that this spouse shall pay to the other. For physically indivisible items, the LNCP allows their sale at a public auction according to the provisions of the Law on Enforcement, with the proceeds from the sale being divided between the spouses (Article 224 of the LNCP).

The court issues a ruling on the division of joint ownership in an uncontested procedure. The division decision contains information about the items being divided, how they are divided, the physical share that each spouse will receive, as well as the rights and obligations of each. The ruling also addresses how servitudes and other real rights held by third parties over the items physically divided between the spouses will be managed (Article 225 of the LNCP).

With the division in an uncontested procedure, the spouses gain the right of separate ownership over the movable and immovable items acquired from joint ownership. If the court, acting on a spouse’s proposal for division, finds that the spouse’s right to joint property is contested, or that the property to be divided or the size of the shares is disputed, it will suspend the procedure and instruct the proposer to initiate a contested procedure within a specified period. If the proposer does not initiate such a procedure within the given deadline, the proposal will be considered withdrawn (Article 217 of the LNCP).

Considering that, during the division of joint ownership in an uncontested procedure, the spouses remain in the marital union, items used by the children will continue to remain jointly owned by the spouses. The division of joint ownership may result in a co-ownership regime over items that cannot be divided. However, if an immovable property that constitutes joint ownership was acquired primarily with the resources of one spouse, while the other spouse made an insignificant contribution, it would not be contrary to the law for the latter not to be recognized as a co-owner of the property. This does not deprive the spouse of the right to a monetary claim against the other spouse for the contribution made toward the acquisition of the real estate. Conversely, if the court finds that one spouse made a significant contribution to the joint property, that spouse may be entitled not only to a monetary claim but also to a share of the joint property itself (Decision of the Tetovo Basic Court, no. 250/05).

The division of joint ownership in a contested procedure occurs when spouses disagree about the size of their respective shares in the joint property or about the manner and timing of its distribution.

The contested procedure is initiated through a lawsuit filed by an actively legitimate plaintiff (Article 175 of the Law on Contentious Procedure - LCP). Each spouse has the right to request through a lawsuit that the court determines their share of the joint property. This right can be exercised at any time during the marriage or after its termination (Article 74/1 of the LOORR). Although the court generally operates under the assumption that joint ownership is divided into equal parts, meaning each spouse owns ½ of the ideal share of the joint property

(Article 75/2 of the LOORR), each spouse has the right to challenge this presumption and prove that their share is greater than the other spouse's. At the request of one of the spouses, the court may allocate a larger share of the jointly owned items to that spouse if they can prove that their contribution to the joint ownership is significantly greater than the other spouse's (Article 75/3 of the LOORR).

Article 217/1 of the LOORR clarifies the judicial process by which a spouse can prove that their contribution to joint ownership is significantly greater. If, during a non-contested procedure, the court finds that the right to joint ownership is disputed – whether regarding the item itself or the size of the shares – it will terminate the procedure and instruct the proposer to initiate a contested procedure. Thus, when ownership rights over items from the joint property become contentious during the non-contested procedure, the court will refer the matter to a contested procedure.

In determining each spouse's contribution to the joint ownership, the court considers not only income earned but also other forms of contribution, such as work within the family related to child-rearing and household management. The court takes into account all forms of assistance or contributions that help maintain or increase the joint property. According to the court's opinion, the mere mathematical ratio of the spouses' incomes is not sufficient to determine their different contributions to joint ownership (Decision of the Basic Court Skopje II, no. 2957/07). By recognizing both direct financial contributions and indirect contributions, such as household management, judicial practice upholds the principles of equality and solidarity between spouses.

However, there is no unified judicial practice regarding the division of common property based on the contributions of spouses. For example, in a decision by the Basic Court of Tetovo, the wife’s request was only partially granted because she failed to substantiate her claimed contribution. The plaintiff sought recognition of ownership rights over half of a house, asserting that it was built with funds earned from the joint work of both spouses during their marriage. The court ruled that only one-tenth of the building belonged to the plaintiff. Although the court acknowledged her role in caring for the children and managing household chores, it noted that while she had a license for curling, she practiced this profession for only a brief period, resulting in minimal income to contribute to the house's construction. Conversely, the defendant husband successfully argued that he created the necessary tools for building the house and worked abroad for over 13 years, asserting that he contributed ten times more than his wife to the funds used for its construction (Decision of the Tetovo Basic Court, no.423/1997).

When dividing joint property and determining each spouse's contribution, the court may assign a greater contribution to one spouse for specific movable or immovable items. For example, if the marital home was purchased with financial support from one spouse's parents, outside the joint ownership, the court may assign the home to that spouse. However, if additions or improvements to the house were made with joint resources, those will be divided equally between the spouses (Decision of the Basic Court Skopje II, no. 250/05).

Similarly, a social apartment purchased at a privileged price based on a right to redemption transferred from one spouse's father, who was the original tenant, cannot be considered as acquired with equal contributions from both spouses (Supreme Court of the Republic of Macedonia, Decision No. 448/95).

Furthermore, any investments made after the termination of the marital union will also be recognized as a contribution. If one spouse invests in the construction of a house that was begun during the marriage but continued after the union ended, that investment will be considered part of their contribution and accounted for during the division of the joint property (Supreme Court of the Republic of Macedonia, Decision No. 693/75).

The position of North Macedonian judicial practice regarding the creation of joint ownership after the termination of the marital union is similarly reflected in the family law of Kosovo and Serbia. According to the Law on Family (LF) of Kosovo, a spouse who, after the termination of the marital union, increases the value of joint property through investment has the right to seek compensation from the other spouse, provided that the investments were necessary and beneficial. Compensation will be proportional to the investing spouse's share in the item (Article 55/3 of the LF).

If it is proven that one spouse used their income solely for personal needs, while the other spouse used their resources to provide essential items for maintaining the joint family economy, then, in the event of separation, the items purchased will belong to the spouse who provided them (Supreme Court of the Republic of Macedonia, Decision No.1139/86).

The persons who have the right to request the division of joint ownership are 1) spouses, 2) heirs of the deceased or declared deceased spouse, and 3) creditors of the spouse who have not been able to satisfy their demands from his separate property.

1) Each spouse has the right to request the division of joint ownership, a subjective right inherent to the nature of joint ownership. This right can be exercised through a proposal in a non-contested procedure or by filing a lawsuit in a contested procedure. A proposal addressed to the court requests the division of joint ownership in a non-contested procedure when there is no dispute between spouses regarding the size of their shares. In cases where there is a dispute over the shares, the division will be sought through a contested procedure. In a contested procedure, the plaintiff spouse presents evidence and facts to prove to the court their ownership of a portion of the joint property accumulated during the marriage. The court then assesses the evidence and establishes the ownership rights of each spouse. Spouses cannot contractually waive their right to request the division of joint ownership or transfer this right to another person (Article 52/3 of the LOORR). If the marriage ends in divorce or annulment, the right of a spouse to request a larger share of the joint property, by proving a greater contribution to its accumulation, is available only to the former spouse (Supreme Court of the Republic of Macedonia, Decision No. 21/90).
2) Upon the death of one spouse or their declaration as deceased, the regime of joint ownership terminates, but joint ownership remains undivided until the division is achieved through court proceedings or by agreement. The heirs of the deceased or declared-deceased spouse have the right to divide the joint property, either by agreement or through the courts. Until the division is complete, the heirs do not know their share of the joint ownership. The deceased spouse could only dispose of their indefinite share of the joint ownership by juridical acts *mortis causa* but could not perform any *inter vivos* transactions with the joint ownership during their lifetime (Article 70/2 of LOORR). Similarly, after the death of one spouse, the surviving spouse can only dispose of ½ of the ideal part of the joint property. For instance, a court accepted a claim where an heir sought to prove that ½ of the ideal

part of an apartment was rightfully the property of their mother. The deceased spouse had disposed of the entire apartment through a contract for perpetual maintenance, transferring ownership to the defendant (the plaintiff's sister) in exchange for maintenance. The court declared the contract partially invalid, specifically regarding the ½ ideal part of the apartment (Decision of the Basic Court Skopje II, no. 3951/07). The legal presumption that spouses are entitled to equal parts of the joint property upon marriage termination applies even if the marriage ends due to the death of one spouse. The heirs of the deceased spouse have the right to contest this presumption, arguing that the deceased contributed more to the joint ownership (Supreme Court of the Republic of Macedonia, Decision No. 21/90).

3) Creditors of one spouse may request the division of joint ownership if they cannot satisfy their claims from the spouse's separate property. This right exists because the shares of the spouses in joint ownership are indefinite, and until the joint ownership is divided, creditors cannot realize their claims. However, the right of personal creditors of one spouse to request the division of joint ownership is not explicitly provided for in the provisions of the LOORR. This raises the question: how will creditors collect their claims? Is it reasonable for them to expect the division of joint ownership based on some other legal grounds? Considering that the object of enforced execution includes specific movable and immovable items (Article 24 of the Law on Enforcement), creditors should be able to demand enforced execution through the sale of certain items from joint ownership. This approach is based on the legal assumption that spouses hold equal shares in the joint property, meaning that half of each item in joint ownership belongs to the spouse against whom the enforcement is carried out (Article 75/2 of the LOORR). If the other spouse claims that their share of the joint property or a specific item to be sold is greater than ½, they must prove this claim in a contested procedure (Article 75/3 of the LOORR). If the execution procedure involves the sale of immovable property from joint ownership at a public auction, the other spouse has a right of pre-emption, meaning they have priority over the most favorable offer, provided they declare their readiness to purchase the property immediately after the auction (Article 180 of the Enforcement Law). On the other hand, in bankruptcy proceedings, the joint property of the spouses is not divided (Article 76/3 of the Law on Bankruptcy). However, under certain conditions, joint ownership or specific items from it can be included in the bankruptcy measure. If the spouses have agreed in writing that the administration and disposal of the joint property or a portion of it will be managed by one spouse, and bankruptcy proceedings are then initiated against that spouse's property, the jointly owned property or the agreed-upon portion will be included in the bankruptcy measure (Article 76/1 of the Law on Bankruptcy). Conversely, the joint ownership of the spouses will not be included in the bankruptcy measure if they have managed and disposed of it jointly and by agreement (Article 76/2 of the Law on Bankruptcy). The request for the division of joint ownership is not subject to a statute of limitations because it pertains to the realization of a real right, such as the right of ownership, which, as an absolute subjective civil right, is not limited by prescription. Therefore, a spouse or any other person with active legitimacy to request the division of joint property has the right to do so at any time. For other prescriptive claims between spouses, the limitation period does not run as long as the marriage lasts (Article 370/1 of the Law on Obligation Relations - LOR). However, if the division of joint ownership occurs by agreement after the dissolution of the marriage, and one spouse is required to pay the other a certain amount of money as compensation for items taken from the joint ownership, such

a request will be subject to the general rules of prescription under Article 349 of the LOR.

EFFECTS OF TERMINATION OF JOINT OWNERSHIP BETWEEN SPOUSES

With the termination of joint ownership, the regime of joint ownership shifts to the regime of separate ownership, and the parts assigned to the spouses during the separation revert to their separate ownership (Article 74/2 of the LOORR). As a result of divorce or annulment of marriage, ex-spouses become the sole owners of specific items previously held in joint ownership. If the joint ownership has not been divided following the termination of the marital union, the spouses will continue to manage and dispose of the joint property by mutual agreement (Article 70/1 of the LOORR).

In cases where the physical separation of the joint property, whether movable or immovable, is impossible, each spouse has the right to request the determination of their share. Consequently, the spouses become co-owners in proportion to their respective shares (Article 63/1 of the LOORR). For items that cannot be physically separated, the court may decide that: a) the item belongs solely to one spouse, who must compensate the other spouse for their share in money (Article 52 of the LOORR), or b) the item is sold at a public auction, with the proceeds divided between the spouses (Article 224 of the LNCP).

In the case of a division of joint ownership by agreement, whether during the marriage or after its dissolution, each spouse can dispose of the movable and immovable property acquired in their name without needing the consent of the other spouse. Ownership of real estate acquired through the division of joint ownership must be registered in the public cadastral records to inform third parties of this change.

REALIZATION OF THE DIVISION OF JOINT OWNERSHIP OF THE SPOUSES

When carrying out the division of joint ownership in court, the court considers not only the primary legal criterion of dividing the property into equal parts, but also supplementary criteria related to the contributions of the spouses in creating the joint ownership. Additionally, the court evaluates other relevant factors, such as the specific needs and interests of the spouses and their joint children. To complete the division of joint ownership, the court must undertake a series of steps, including 1) determining which items are included in the joint ownership, 2) establishing the criteria for division, and 3) ultimately dividing the shares of the spouses.

Determining the items that constitute the subject of the division – In the case of dividing joint ownership between spouses, the court must first determine the subject of the division, i.e., the movable and immovable items that are part of the joint ownership. The basic criterion for considering items as joint property is whether they were acquired through work during the marriage, obtained in exchange for items from the joint ownership, or received as gifts to both spouses during the marriage.

If, after initiating the contested procedure for the division of joint ownership, one spouse has alienated an item from the joint ownership, the court, upon finding that the item – in this case, a car – was part of the joint ownership, ordered the defendant to compensate the plaintiff (the wife) with half of the value obtained from the sale, as well as legal interest since the item was sold without authorization (Decision of the Basic Court Skopje II, No. 3091/06).

To determine the amount of joint property to be divided, the court will first separate items considered part of each spouse's separate property, including those brought into the marriage and those acquired through means other than work, such as gifts, bequests, or inheritances. If a spouse cannot prove that a particular item is part of their separate property, the item will be considered part of the joint property (Decision of the Basic Court Skopje II, No. 600/04).

When dividing joint property, items used exclusively for personal use by each spouse are separated. Each spouse has the right to request items from the joint property that serve their individual professional or personal activities. If the value of these items is disproportionately large in relation to the overall joint property, they will be divided unless the spouse receiving the items compensates the other spouse for their value (Mickovikj & Ristov, 2015, p.328).

The legal property regime in the Republic of North Macedonia allows spouses to divide items they own at the time of separation, but not items they may acquire in the future. Spouses are not permitted to alter the property regime via a marriage contract or prenuptial agreement and must adhere to the rules established by Articles 66-81 of the LOORR. In the sphere of the contractual property regime, our legislator explicitly provides only the contract by which the spouses regulate the management and disposal of the separate and common property. However, this agreement represents only an insignificant part of the contractual property regime of the property of the spouses, which is rarely applied in practice (Ristov, 2019, p. 92-93).

If a spouse has used separate property funds for the needs of the marital community, they will be compensated for expenses that could have been covered by joint property. Generally, a spouse is not required to use the separate property for joint needs if these can be met with joint property. In this context, the court did not grant ownership of ½ of a real estate to the plaintiff, who, despite having a larger income and other means from royalties, did not contribute this profit to the marital community, requiring the respondent to support the family and children with her income and financial help from her parents (Decision of the Basic Court Skopje II, No. 250/05).

During the marriage, a spouse must use separate property funds to maintain the family economy only when joint property is insufficient. A spouse who uses separate property funds for personal needs is not entitled to compensation.

There is no specific regulation for cases where one spouse builds an object on jointly owned land using their separate property. In such cases, the rules of civil law regarding the original acquisition of ownership through construction on foreign land apply. If the value of the building greatly exceeds that of the land, the building and land will belong to the spouse who built the structure, who must compensate the other spouse for the land's market value (Article 119/1 of the LOORR). Conversely, if the land's value exceeds that of the building, the building will be considered jointly owned, and the building spouse will be compensated for its value from the joint ownership (Article 119/2 of LOORR).

Civil law rules concerning the original acquisition of ownership will also apply when items of separate ownership are mixed, connected, or joined with items of joint ownership. If the items are joined or attached in a way that makes separation without significant damage or expense impossible, the fate of the new item will depend on the value of the items joined. If the separate ownership item has greater value, the spouse who owns it has the right to acquire ownership of the new item, with the obligation to compensate for the value of the joint property item (Article 115 of the LOORR).

If, while determining the amount of joint ownership, the court finds that there are mutual demands and obligations between the joint ownership and the separate ownership of the spouses, it will determine their respective amounts. For instance, if construction material from the separate ownership of one spouse was used in building an object with common means during the marriage, this will be considered during the division of joint ownership. Consequently, the share of the spouse who provided the construction material will be increased in proportion to the value of the material relative to the built object (Gelevski, 2002, p. 173). The value of the items in the judicial procedure for dividing joint ownership is determined based on their market value at the time of division. The court typically ascertains the real value of the items with the assistance of experts from relevant fields.

When a spouse is entrusted with the care and upbringing of the children, items that are intended exclusively for the children’s use or that serve their needs are assigned to that spouse as property. Additionally, items that are clearly in the best interest of the custodial spouse to possess are also assigned to them (Spirovik Trpenovska, Mickovik, & Ristov, 2013, p. 314).

Determining the shares of each spouse in joint ownership – After determining the items that constitute the joint ownership, the court proceeds with determining the shares of each spouse. The court generally follows the principle of dividing joint ownership into equal parts (Article 75/2 of the LOORR). According to this principle, in the case of separation, each spouse acquires ownership of an ideal ½ share of the items from the joint ownership, meaning that both spouses have equal shares in each item.

Although the court starts with the legal assumption that spouses are co-owners in equal parts of the jointly owned items, each spouse has the right to challenge this assumption and demonstrate that their share is greater than that of the other spouse. This right is also available to the heirs of a deceased or declared deceased spouse if the joint ownership ceased due to the spouse's death or declaration of death (Supreme Court of the Republic of Macedonia, Decision No. 21/90). A spouse claiming a greater share must substantiate this claim with sufficient evidence, including contributions beyond income, such as the maintenance and education of children.

If it is proven during the division of joint ownership that one spouse is entitled to a significantly smaller share, the court, upon request, may order that this disparity be compensated with a monetary payment (Article 78 of LOORR).

In cases where the spouses have reached an agreement on the division of joint ownership but require court intervention for a specific item they could not agree on, the court may allocate a larger share of the contested item to one spouse. For example, the court awarded a larger share of a holiday home to the husband because ¼ of the house's total value was paid with funds from his separate property before the marriage, while the remainder was paid from joint ownership (Decision of the Basic Court Skopje II, No. 6168/07).

Spouses can physically divide separable items. For physically inseparable items, civil separation can be achieved by selling the indivisible item and dividing the proceeds. Alternatively, the spouses can agree that one spouse retains the indivisible property while the other is compensated in cash.

Supplementary criteria for the division of joint ownership of spouses – In addition to the basic legal criterion of dividing joint ownership into equal parts, the composition of the shares is also crucial. Specifically, which items will be allocated to each spouse upon division of the joint property is of significant importance. Each spouse, understandably, may have a vested interest in certain items being included in their share (Spirovik Trpenovska, 1997, p. 248).

In this context, the legislator has provided for several categories of items that, although earned through work during the marriage and part of the joint ownership, have a privileged status compared to other items of joint ownership. These items are to be divided according to specific criteria. According to the LOORR, such items include:

- Items used for the spouse's professional activity (Article 76/1),
- Items serving exclusively for the personal needs of one spouse (Article 76/2),
- Items used by children or dedicated solely to their direct use (Article 77/1),
- Items of particular interest to the spouse who has custody of the children for their upbringing and education (Article 77/2).

In the judicial procedure for the division of joint ownership, the court, after determining the shares of the spouses, addresses the division of privileged items while ensuring that the ratio of the shares between the spouses is maintained.

RETURNING GIFTS

Marital relationships are, above all, deeply personal and based on the close emotional and affective bond between the spouses. As a result, it is common for spouses to express their affection for one another through mutual gifts, both during the marriage and prior to its formalization, when their relationship is harmonious. These gifts can be movable or immovable items. The current legislation in the Republic of North Macedonia does not differentiate between gifts of small or large value. However, the 1973 Law on Marriage of the Socialist Republic of Macedonia (SRM) distinguished between ordinary gifts – those proportionate to the wealth of the spouse who gave them – and extraordinary gifts, which were of significantly higher value in relation to the wealth of the donating spouse (Article 55 of the Law on Marriage).

In comparative law, two main systems exist regarding the return of gifts exchanged between spouses: the legal-criminal concept (also known as the guilt system) and the legal-civil concept. According to the legal-criminal concept, the return of gifts in the event of marriage dissolution depends on who is at fault for the dissolution. The innocent spouse retains all gifts received before and during the marriage, regardless of their value, and may even demand the return of gifts from the guilty spouse. This principle is applied in all cases of dissolution of marriage by court decision, whether due to annulment or divorce. This solution serves as a form of punishment for the spouse deemed guilty of causing the dissolution (Mladenović, 1981, p. 674).

Conversely, according to the legal-civil concept, the gift contract implicitly contains a silent clause for the return of gifts in the event of the marriage's dissolution. Given the personal nature of marriage, where emotional bonds between the spouses are paramount, gifts are often given with a specific motive (*animus donandi*). When the marriage dissolves, that motive also vanishes. However, only extraordinary gifts (such as cars, vacation homes, expensive jewelry, or boats) whose value is disproportionate to the spouse's financial situation are subject to return. Ordinary gifts are not returned, regardless of whether the receiving spouse is at fault (Mladenović, 1981, p. 674; Hadživasilev, 1987, p. 214).

In legal doctrine, fault in the dissolution of marriage refers to the mental attitude of the spouse found guilty of violating marital obligations and the consequences arising from that violation. Historically, many legal systems placed significant emphasis on fault, treating it as a prerequisite for divorce. Divorce could only be sought by the innocent spouse, as it was seen as a form of punishment for the guilty party (Omari, 2007, p. 254).

The 1973 Law on Marriage of the SRM partially accepted the fault-based system, but only in cases of annulment, not divorce. Under this law, in cases of divorce, the return of gifts depended solely on the value of the gift. Ordinary gifts were not returned, while extraordinary gifts were, regardless of fault. In cases of annulment, the law followed the criminal concept, allowing the innocent spouse to retain all gifts received and demand the return of gifts from the spouse found to be at fault (Articles 48 & 55 of the Law on Marriage).

Current legislation in RNM takes the position that gifts exchanged between spouses, whether before or after the marriage, are not returned (Article 80 of LOORR). Fault in the dissolution of marriage no longer plays a role in the return of gifts. This aligns with the broader shift toward no-fault divorce, which began in Western countries during the 1960s, aimed at making the divorce process more equitable and less emotionally charged.

The main idea behind no-fault divorce is to provide a "*decent burial*" for marriages that have ceased to exist, with the legislator’s role being to ensure that the process is as fair and painless as possible, minimizing anger, anxiety, and humiliation. The role of the courts, in this context, is not to perform an autopsy on the marriage but rather to facilitate a more healing process (Parkinson, 2011, p. 21).

In contemporary family law, fault is no longer considered a legal cause for divorce nor a factor in determining the division of joint property between spouses.

CONCLUSION

The legal framework for the division of joint ownership between spouses in North Macedonia reveals a well-established system designed to balance the interests of both spouses, particularly when a marriage is dissolved through divorce or death. However, these legal solutions regulating property relations are outdated and do not reflect the evolving trends and dynamics of family and marital relationships. The study highlights the importance of differentiating between the termination of joint ownership and its division, with the former signifying the end of joint ownership as a legal status and the latter focusing on the practical division of assets between spouses.

Macedonian legislation, specifically the Law on Ownership and Other Real Rights (LOORR), does not explicitly define which items constitute joint ownership and which belong to the separate ownership of the spouses. It is essential to establish provisions that clearly delineate the items considered joint and separate property. This clarity would help avoid dilemmas and actions that contradict the legislator's intentions. The precise regulation of marital property relations is crucial for ensuring legal security in the property relations between spouses and third parties. Creditors and executors encounter numerous challenges when attempting to enforce claims.

North Macedonia's legal system predominantly adheres to the principle of equal division of joint ownership, with each spouse presumed to hold an equal share. However, the system also recognizes unequal contributions, allowing courts to award a larger share to the spouse who can demonstrate greater input into the accumulation of joint assets. This flexibility ensures that the division of joint ownership is not purely mechanistic but reflects the realities of marital contributions, including non-financial roles such as child-rearing and household management.

Nevertheless, property division in the courts is conducted according to varying standards. There is no unified practice for assessing the indirect contributions of housewives to the creation of joint property, leading to inconsistent court decisions regarding the division of spouses' joint assets. To address this issue, it is recommended that courts enhance communication with one another and engage in joint training sessions. Such collaboration would help judges develop the necessary skills to competently evaluate these cases, thoroughly investigate the relevant factual and legal circumstances, and make objective decisions.

In North Macedonia, spouses cannot choose a property regime different from the legal one because the marriage contract is not regulated by law. This inability to contractually modify the property regime poses challenges for couples who wish to define their own arrangements, highlighting the need for legislative reform to allow for greater flexibility. Recognizing that a single property regime cannot meet the diverse needs of all individuals entering into marriage, it is proposed that, in addition to the mandatory legal regime of joint and separate ownership, the legislator should establish optional contracted regimes. These regimes could be defined through a marriage contract, drawing on the legislative models of other countries in the region and beyond.

Moreover, the absence of an explicit provision allowing creditors to request the division of joint ownership during the marriage remains a significant oversight. While the current framework provides a degree of flexibility, creditors' rights should be more clearly defined to avoid complications during the enforcement of debts.

In conclusion, the legal structure governing the division of joint ownership in North Macedonia could benefit from refinements that ensure greater clarity and fairness in property division processes, especially in cases involving vulnerable parties such as women. Legislative reforms that align with international human rights and gender equality standards are essential to improving the overall effectiveness and fairness of the division of joint ownership in the country.

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