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LEGAL REGULATION OF THE STATUTORY MATRIMONIAL REGIME IN RUSSIA AND BULGARIA: A COMPARATIVE LEGAL ASPECT

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The subject of the study is the legislation of the Russian Federation and the Republic of Bulgaria, in particular, the Family Codes of these states, devoted to the regulation of issues of the legal regime of the property of the spouses as well as the law enforcement practice. The objective is aimed at confirming the scientific hypothesis that the RF Family Code does not fully take into account the processes of globalization taking place in the modern world, changes in the economic sphere, the development of digital technologies. It is supposed to confirm the scientific hypothesis about the possibility of improving Russian family legislation, taking into account the experience and practice of foreign countries, primarily those having similar legal systems, common language groups, belonging to one world religion, having geographical proximity, social communities proximity as well as the ability to exchange information and orientation to the preservation of traditional family values.
Research methods. The use of the method of comparative analysis made it possible to study the national legislation of Russia and Bulgaria and identify the general trends in its formation into the regime of joint property of the spouses.
Main results. This study has allowed us to confirm the conclusion that there are unresolved issues in Russian legislation, gaps related to the legal regime of property of the spouses, which give rise to controversial practice. There is a need to establish new legislative rules in the RF Family Code that meet the development trends of modern society and take into account modern realities. The analysis of Bulgarian legislation and the practice of its application have shown that the legislation of Bulgaria contains a number of provisions, to a greater extent than the Russian one, that take into account the interests of the family, minor children, former spouses when establishing matrimonial property regimes.

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1. Introduction

Modern society has entered a new stage of globalization 4.0 [1, p. 84], which involves the erasure of borders, an increase in the volume of world trade, and the large-scale introduction of digital technologies into our lives. This transformation also affects the sphere of human relations [2], including marriage and family. Globalization 4.0 contributes to a significant increase in the number of marriages complicated by a foreign element. Spouses in the era of globalization 4.0 have the right to acquire any movable and immovable property, including abroad. The search for a life partner of any nationality and citizenship is significantly simplified. The place of residence of potential spouses is no longer decisive for finding a partner.

These circumstances have led to the fact that the property relations of spouses are becoming increasingly complex, and issues of common ownership of property arise in a variety of aspects and in relation to more and more new objects. At the same time, the Russian legislation in this part remains unchanged throughout the Soviet and modern periods, which creates contradictions between public relations and legal regulation.

In such conditions, a comparative analysis [3; 4; 5; 6; 7] of the norms regulating the said relations in different countries acquires particular importance, but primarily those that have similar legal systems [8, p. 240], common language groups, belonging to one world religion, geographical proximity, proximity of social communities, the ability of our states to exchange information [9, p. 43], and the focus on preserving traditional family values. The above markers predetermined the choice of a comparative legal study of the legislation of the said states. Russian and Bulgarian law, its branches and sub-branches are based on general legal doctrines reflected in the Universal Declaration of Human Rights, the International Covenants on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitutions of the Russian Federation and the Republic of Bulgaria.

2. Statement of the problem.

The Family Code of the Russian Federation (hereinafter referred to as the RF FC), adopted on December 29, 1995, establishes the rule according to which after marriage, spouses have a regime of common joint ownership of property (Clause 1, Article 33 of the RF FC). During the period of its validity, this norm of the RF FC has not been subject to any changes. Traditionally, it is perceived as a continuation of the well-known structure (Article 20 of the RFSR MFC[1]), laid down in the Soviet period of family law. Meanwhile, the economic situation in the Russian Federation has undergone significant changes, which could not but affect the property relations of spouses. The digitalization of the economy also inevitably affects family relations and property relations of spouses.

Cases have become commonplace when persons who have not registered their marriage declare themselves spouses, the idea of expanding the boundaries of contractual regulation of property relations of spouses is being introduced into family law, etc. All these and other phenomena cannot remain outside the attention of the legislator. And if, for example, civil law and tax law are in the process of reforming under the influence of constantly changing relations, such trends are not observed in family law, which is hardly correct. Scientific developments aimed at improving the legal regulation of the regime of property relations of spouses are required.

The Family Code of the Republic of Bulgaria[2]

[1] The Code of Marriage and Family of the RSFSR of 30.06.1969 (no longer in force). http://www.kremlin.ru/acts/bank/6

[2] Family Code in force from 01.10.2009.

(hereinafter the RB FC) has been in force since October 1, 2009, and was being formed in accordance with the European principles of family law[3]. The Bulgarian family law recognizes the legal opportunity of spouses to choose the regime of property relations that they consider most suitable voluntarily [10, p.57]. In this direction, a comparative legal analysis of the legislation of Russia and Bulgaria seems relevant and useful.

3. Common property of spouses.

The structure of the Family Code of both states includes provisions devoted to the common property of spouses. However, their titles and locations are different. Thus, the issues of spouses' property are resolved in Section III of the RF Family Code, entitled "Rights and Obligations of Spouses", and more specifically, in Chapter 7 "The Legal Regime of Spouses' Property" and Chapter 8 "The Contractual Regime of Spouses' Property". Unlike the RF Family Code, the Family Code of the Republic of Bulgaria has the separate Chapter 4, which is much broader in content and includes Section 1 devoted to general provisions. In this part, this approach of the Bulgarian legislator deserves support.

The Russian legislation contains a definition of the legal regime of spouses' property, which is the regime of common joint ownership (Clause 1 of Article 33 of the RF FC) and which is presumed unless the spouses have established otherwise in a marriage contract. According to Article 18 of the RB FC, the regimes of property relations between spouses are: the legal regime of community, the legal regime of separateness, and the contractual regime. In this case, the community regime arises when the parties to the marriage are minors or they have not chosen the property relations regime. These provisions of the RB FC also deserve support, since they allow future spouses to determine the property relations regime independently.

The RF FC in Article 34 of the RF FC defines what should be understood as joint property of spouses. In this case, it does not matter in whose name the property has been acquired, and which of the spouses has contributed the funds. The absence of any of the specified legal facts allows us to conclude that the acquired property is the personal property of one of the spouses. However, there may be cases when the right to property, funds arises during the marriage, and the funds or property become the property of one of the spouses only after the termination of the marriage, which also allows us to talk about the common ownership of the now former spouses to the property or funds.

Probably, once, in Soviet times, the specified provisions of Article 34 of the RF FC were relevant and did not conflict with existing social relations. Currently, the provisions of Article 34 of the RF FC are outdated, public relations have undergone significant changes, and positive judicial practice has developed that recognizes property and funds as common joint property even when received after divorce, if the right to such property arose during the marriage[4]. It seems that the RF FC needs to consolidate the provision that common property is recognized as property acquired at the expense of common funds, which are considered to be the funds received during the marriage, or the right to them arose during the marriage.

According to the legislation of the Russian Federation, an essential feature of a registered marriage, which compares favorably with

https://www.lex.bg/laws/ldoc/2135637484

[3] European Family Law. http://osu.ru/sites/sempravo/about/actual

[4] Review of judicial practice of the Supreme Court of the Russian Federation. - № 1. - 2020. Consultant Plus; Definition of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation dated 26.10.2021 № 5-KG21-101-K2. Consultant Plus

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cohabitation, is that the spouse who carried out housekeeping, childcare or for other valid reasons did not have an independent income during the marriage also has the right to the common property of the spouses (Clause 3 of Article 34 of the RF FC). This norm, according to Russian scientists, indirectly confirms the thesis that housekeeping is socially significant work. The provision on socially significant work, in their opinion, should be directly enshrined in the RF FC [11, p. 24], which will at least somehow protect property interests in a de facto marriage [12, p. 95; 13, p. 4; 14, p. 4] and reliably protect the interests of "classic spouses" when concluding a marriage contract. Without challenging the thesis on the social significance of housekeeping, we consider the proposal to amend the RF FC to be untenable for a number of reasons. Firstly, in order to protect the rights of common-law spouses by implementing this rule, it is necessary to significantly change Article 1 of the RF Family Code, and generally change the attitude of the Russian legislator towards the family, which is hardly appropriate when the priority of traditional family values is proclaimed in the Russian Federation. The analysis of a number of provisions of the RF FC (Clause 3 of Article 1, Article 2, Clause 2 of Article 10) allows us to state that the legal understanding of marriage is a union of a man and a woman registered with the civil registry office. Only in this case it is possible to apply the norms of the RF Family Code to such a union. So the inclusion of the proposed provision in the RF FC will not affect common-law spouses whose relations are regulated by the norms of the RF Civil Code in any way.

Secondly, spouses can determine their property rights and obligations by a marriage contract, and they are free to do this taking into account the fact that one of the spouses is busy with housekeeping or without taking this fact into account. In any case, this choice is made voluntarily by them. The Family Code of the Republic of Bulgaria gives priority to the legal regime of the property of spouses in the cases specified in Paragraph 2 of Article 18, but calls it the legal regime of community (Section II of the RB FC), to which Paragraph 1 of Article 21 of the Family Code of the Republic of Bulgaria refers property rights acquired during a marriage as a result of a joint contribution. In other words, marital property ownership in the Republic of Bulgaria arises in the presence of two legal facts:

A) joint contribution of the spouses;

B) marital relations.

By joint contribution, the Bulgarian legislator understands the pooling of the spouses' personal funds, labor, care for children, and household chores (Paragraph 2 of Article 21 of the RB FC).

At the same time, the Bulgarian legislator, unlike the Russian one, does not detail the list of property rights. It is assumed that spouses can have any property rights provided for by the legislation of the Republic of Bulgaria to any property not withdrawn from circulation. According to the Russian Family Code, the common joint property of spouses includes their income from labor, entrepreneurial, intellectual activities and not only property rights, but also other property rights. The Family Code of the Republic of Bulgaria indicates that the rights acquired by each of the spouses during the marriage are his or her personal property (Clause 1, Article 33). This means that the income of each of the spouses is his or her personal property and is not absorbed by the legal regime of community, and it depends on the will of a specific spouse what part of the acquired property rights he or she is ready to contribute to the marital property community. Similar rules exist in Germany and Switzerland [15, p. 48] and are called the "deferred property

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regime"[5]. Under this regime, marriage does not entail the formation of common property; each spouse owns, uses, and disposes the property acquired both before and during the marriage [16, p. 85]. The German Civil Code[6] defines the legal regime as Zugewinngemeinschaft – community of property growth [17, p. 107]. During the judicial division of property or divorce proceedings, the growth of property received as a result of monetary investments during the marriage or partnership is taken into account (with a few exceptions), and then this property is divided equally between both spouses.

The representatives of the Russian school of private law also advocate the introduction of the deferred property regime in the RF FC, since, in their opinion, it allows for the contribution of each spouse to the growth of family property to be taken into account and is the fairest in the division of property[7]. This approach certainly has positive aspects, but they do not take into account the situation when there are children in the family and one of the spouses, usually the wife, cannot work and, as a result, participate in the growth of property. In case of divorce, it is she who will remain with the child (children) and will receive nothing in the division of property. It seems that implementing the deferred property regime in the RF FC with the replacement of the general joint property regime would be unfair to the woman, but it would be reasonable to offer it as one of the options for building property relations between spouses along with the legal and contractual property regimes.

4. Determination of shares in the division of property.

Both Russian and Bulgarian legislation allows for the division of the common property of spouses resolving the issue of the size of each spouse's share equally, recognizing them as equal (Clause 1 of Article 39 of the RF FC, Article 28 of the RB FC). In this case, the value of the contribution of the spouse who, for example, cared for children and was engaged in running the joint household is not important (Clause 3 of Article 34 of the RF FC, Article 28 of the RB FC).

However, in the event of divorce between spouses, the RB Family Code empowers the court considering the case to depart from the principle of equality of shares and determine a larger share in the common property to the spouse whose contribution to the acquisition of the common property significantly exceeds the contribution of the other spouse (Paragraph 3 of Article 29 of the RB FC).

Of course, this legal provision deserves an analysis. Bulgarian scientists rightly raise the question of how to prove the difference in the size of the contributions of the husband and wife [10, p.57]. It is quite difficult to monetize child care, housework, and management of common property (non-monetary contribution), which is mentioned in Paragraph 2 of Article 24 of the Family Code of the Republic of Bulgaria, but it is possible, since in the modern market society, the services of a nanny, governess, and cleaning service are not exclusive. When determining the contribution of a spouse who has not made any monetary contributions to the increase in marital property, but has devoted himself or herself to child care, housekeeping, and property management, one can be guided by the prices existing in the

[5] Matrimonial Causes Act 1973. – Access mode: http://www.legislation.gov.uk/ukpga/1973/18; Matrimonial Property in Europe: A Link between Sociology and Family Law. – Access mode: http://www.ejcl.org/123/art123-4.pdf.

[6] Grundbuchverordnung vom 23. September 2011 (Stand am 1. January 2012.) – Access mode: http://www.admin.ch/opc/de/classified compilation/20111142/201201010000/211.432.1.pdf

[7] Video materials of the conference. Family law: conference for adults. – 23.06.2021. https://civilist.club/event/20210623

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market for works and services. The judicial practice of the courts of the Republic of Bulgaria refers to the reasons for which the share of one of the spouses can be reduced as "such behavior of the spouse that creates a serious risk of harm to the interests of the other spouse and the children of both spouses"[8]. Thus, in one case, the court found that a larger share should be awarded to the wife, since during the marriage she was the only one supporting the family and caring for the child. Her husband and the father of the child was abroad most of the time and did not allocate funds for the maintenance of his family. The court noted that in this case there was not just a significant difference in the monetary contributions of the spouses, but also "an indirect (non-monetary) contribution voluntarily provided by the wife"[9].

The analyzed norm, at first glance, seems correct and protects the rights of the spouse whose contribution to the increase of marital property is greater. However, in life there may be situations when one of the spouses is engaged in housekeeping, child rearing, and the other is building a career, achieving significant success. His or her income and, as a result, the amount of contribution that he or she makes to the family is several times higher than the contribution of the other spouse. Or another situation, when one spouse holds a position with a low salary (in relation to Russia, an example can be the position of a doctor, teacher), and the other spouse has an income tens of times higher. Of course, the size of their contributions to the family differs significantly from each other, but dividing the property in unequal shares is probably unfair in relation to the spouse who, for objective reasons, has a low income, but is a responsible family member, a good husband, wife, parent to their children. It seems to us that the Bulgarian legislator allows such situations, therefore the disposition of the norm of Paragraph 3 of Article 29 of the Family Code of the Republic of Bulgaria contains the phrase "the court *may* determine a larger share", which indicates the right of the court, despite the different amounts of contributions of the spouses, to maintain equality of shares when dividing property due to divorce.

Inequality of shares of spouses when dividing common property in the Bulgarian Family Code can also be due to the presence of common minor children who remain to live with one of the parents, if this creates special difficulties for him or her [10, p. 58]. It is this parent who has the right to claim a larger share in the common property (Paragraph 1 of Article 29 of the RB FC). This parent also has the right to movable property, which is intended for the care and upbringing of minor children (Paragraph 2 of Article 29 of the RB FC).

The Russian legislator also allows for a deviation from the equality of shares when dividing the common property of spouses. Article 39 of the RF Family Code specifies possible cases that must be taken into account by the court considering the case. These are the presence of common minor children who remain with one of the parents, or the interests of one of the spouses that deserve attention. The latter may include the lack of income of one of the spouses for disrespectful reasons or the disposal of common property to the detriment of the interests of the family.

The RF Family Code, like the RB Family Code, protects the interests of children during the division of property, indicating that things acquired exclusively to meet the needs of minor children (clothes, shoes, school and sports supplies, musical instruments, children's library, etc.) are not subject to division and are transferred without compensation to the

[8]Decree of the Plenum of the Supreme Court № 5 of 1972

[9] Decision № 119 of 19.02.2009 on civil case Nr. 4040/2008 of DCS

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spouse with whom the children live. If the parents opened deposits in the name of their children, then it is the children who have the rights to the funds in the deposits, so they are also not subject to division (Clause 5 of Article 38 of the RF FC).

Unlike the Russian Family Code, the Bulgarian legislator decides on the fate of the residential premises where the family lives in the event of divorce. Thus, according to Article 26 of the Family Code of the Republic of Bulgaria, a spouse - the sole owner of real estate - family housing (*terminology of the RB FC*) has the right to dispose it *only with the consent* of the other spouse - not the owner, if both spouses do not have another residential premises belonging to them on the right of common ownership or being the property of each of them. It turns out that if one of the spouses owns an apartment, and the other does not own housing, then the latter may not give consent to the alienation of the apartment. A serious decision of the Bulgarian legislator! In the absence of such consent, the spouse - the owner of the property can apply to the regional court for permission to sell the apartment and will be refused if such disposal is carried out to the detriment of minor children and the family (Article 26 of the RB FC). Such harm probably refers to a situation in which a spouse who is the owner of a residential property wants to sell it, leaving his family without family home. In other words, in order for a spouse who is the owner of an apartment to fully exercise his or her powers as an owner, he or she needs to get a divorce. It is unlikely that this rule will contribute to the creation and strengthening of a family. A citizen who owns an apartment will hardly be interested in marrying a person who does not have a place to live in without concluding a marriage contract.

However, the provision under consideration of the Family Code of the Republic of Bulgaria is quite consistent with the model of protecting family housing in accordance with the principles of European Family Law on property relations between spouses [18, p. 55; 19, p. 171], which, unlike the Bulgarian legislator, even calls rented housing a family residence (4:6 of the Principles of European Family Law [20, p. 73]) and stands up for the protection of such housing rented by spouses. The protection of rented family housing in the context of this principle means that when one of the spouses concludes a lease agreement, the other one automatically becomes the subject of this agreement. Termination of a lease agreement is impossible without the consent of the spouse who did not participate in the deal; the lease agreement may be extended at the request of the spouse who did not participate in the conclusion of the agreement. Bulgarian legal scholars propose extending the effect of this principle to the territory of Bulgaria, and even propose considering spouses in housing lease relations as legal representatives of each other [21]. At the same time, the practice of the courts of the Republic of Bulgaria quite rightly does not allow for a broad interpretation of Article 26 of the RB FC[10] and extending the effect of this rule to rented housing, seeing this as a limitation of the landlord's property rights.

Russian legislation also offers a mechanism for protecting family members of the owner of residential premises. Thus, the Civil Code of the Russian Federation contains rules regulating the rights of family members of the owner of residential premises (Article 292 of the RF Civil Code). They can use residential premises under the conditions stipulated by housing legislation. At the same time, the Civil Code of the Russian Federation does not in any way limit the right of the owner of residential premises to sell it, even if the family does not have other residential premises. The owner himself, as well as

[10] Decision № 610 of 22.08.2001 on civil case № 40/2001, II year of the court on the Higher Court of Justice.

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members of his family, lose the right to use the residential premises, unless otherwise provided by law (Clause 2 of Article 292 of the RF Civil Code). It seems that such legal regulation is more consistent with the needs of civil circulation, the provisions of Article 35 of the Constitution of the Russian Federation and Chapter 13 of the Civil Code of the Russian Federation on the right of ownership.

5. The problem of determining the property regime upon divorce.

The regime of general joint property is terminated upon division of property by spouses or by the court (Article 38 of the RF FC). However, the RF Family Code is silent on whether this regime is retained after divorce if the property is not divided. This silence of the Russian legislator gives rise, in theory and practice, to the question of the impact of the termination of marriage on the regime of general joint property. Some authors believe that after the termination of marriage, the property of the former spouses becomes their common shared property [22, p. 7]. Others believe that it is retained, but is regulated by the norms of the RF Civil Code [23, p. 61; 24, p. 76; 25, p. 13]. Discussions in theory also give rise to problems in law enforcement practice. Thus, the Supreme Court of a constituent entity of the RF considered that after the dissolution of marriage, general joint property is retained and is regulated by the RF Family Code until it is divided[11]. In turn, the Supreme Court of the Russian Federation in one of its resolutions indicated that after the dissolution of a marriage, the common ownership of property acquired during the marriage does not cease, but is regulated by the provisions of the Civil Code of the Russian Federation[12]. Recognizing the priority of the decisions of the Supreme Court of the Russian Federation, it is difficult not to see the heterogeneity of judicial decisions. It is proposed to consider the position of N.V. Artemyeva as justified, which can be supported by the following arguments based on the analysis of the legislation.

In accordance with Clause 3 of Article 244 of the Civil Code of the Russian Federation, joint ownership arises in cases provided for by law. Such cases are specified in Article 256 of the Civil Code of the Russian Federation (common property of spouses) and Article 257 of the Civil Code of the Russian Federation (property of a peasant (farm) household). At the same time, Article 252 of the Civil Code of the Russian Federation regulates the specifics of the division of common property between participants in joint ownership. An interesting question is who the Civil Code of the Russian Federation understands as participants in common joint ownership: only those specified in Articles 256, 257 of the RF Civil Code or a wider list of subjects. Clause 3 of Article 254 of the Civil Code of the Russian Federation contains a rule that the grounds and procedure for division are determined by the rules of Article 252 of the Civil Code of the Russian Federation, unless otherwise provided by other laws and does not follow from the essence of the relations of the participants in joint ownership. We believe that in this norm, the Civil Code of the Russian Federation allows the application of other laws only in relation to *the grounds and procedure for division*, but not to the participants in common ownership; the RF Civil Code is silent about former spouses.

The reasoning proposed in this paragraph about the imperfection of the RF Family Code is completely irrelevant to the RB Family Code, which since 2009 contains a rule that the regime of marital property community is terminated upon termination of marriage (Paragraph 1 of Article 27 of the RB Family

[11] Appellate ruling of the Supreme Court of the Republic of Buryatia of 23 January 2013 on case № 33-3655 / SPS Consultant Plus.
[12] Ruling of the Supreme Court of the Russian Federation of 06.07.2016 № 47-KG 16-5 // SPS Consultant Plus.

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Code).

6. Conclusion.

The conducted comparative analysis of the legal regulation of the legal regime of the property of spouses has demonstrated the commonality of the approaches in the legislation of both states to the consolidation of the legal regime of the property of spouses, the establishment of rules in this part that are close in content (joint ownership, community regime, grounds for the emergence of the said community, etc.). In the Russian legislation there are some unresolved issues, some gaps related to the legal regime of the property of spouses, which give rise to contradictory practices. There is a need to establish new legislative rules in the RF FC that meet the development trends of modern society. The legislation of Bulgaria, based on the principles of the European family law, contains some provisions that, to a greater extent than the Russian one, take into account the interests of the family, minor children, former spouses when establishing the property regimes of spouses. When improving the Russian family legislation, the Bulgarian legislation and the practice of its application can be used by way of reception.

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