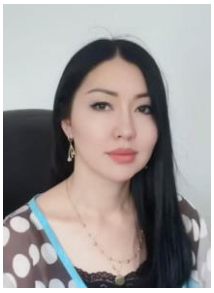
of the circumstances of the case in order to make a legal and well-founded decision on the case. With the development of society, the scope of representation has covered a wide range of both property and non-property relations.

The importance of this institution in social life is determined by the fact that representation makes it possible to optimize and activate the process of acquiring and realizing subjective rights and obligations, and for disabled citizens it is the main means of their participation in legal relations. With the help of representation, it is possible to acquire and exercise most material and procedural civil, as well as other subjective rights and obligations, depending on the industry.

Thus, representation acts as one of the important guarantees of real exercise of rights and fulfillment of duties by subjects of law. The importance of this institution in social life is determined by the fact that, with the help of the institution of representation, additional opportunities are created for the exercise of rights and obligations by participants in civil legal relations, and the most comprehensive protection of their subjective rights is carried out. is ensured, and the efficiency of establishing economic ties between economic entities increases. The relevance of this topic is due to the implementation of systemic and effective legal reforms in Ukraine, which necessitates an in-depth study of the problems of improving mechanisms for the implementation and protection of civil rights and interests of the individual and (in this regard) rethinking some approaches to the legal nature of representation.

***Keywords**: representation, representative, power of attorney, lawyer.*

UDC 340
DOI 10.31733/2078-3566-2022-5-111-120



Aliya MUSAYEVA©
M.Sc. (Law)
(International Taraz Innovative Institute named after Sh. Murtaza, Taraz, Kazakhstan)

THE LEGAL NATURE OF PROPERTY AND NON-PROPERTY FAMILY RELATIONS

Алія Мусаєва. ПРАВОВА ПРИРОДА МАЙНОВИХ І НЕМАЙНОВИХ СІМЕЙНИХ ВІДНОСИН. Розуміння правового статусу сім'ї є важливим у правозастосовчій діяльності. Поняття сімейних правовідносин та їх види визначено Кодексом про шлюб та сім'ю Республіки Казахстан. Сімейні правовідносини у сімейному праві регулюють практично всі сфери життя та відносин у сім'ї. Зміст сімейних правовідносин утворюють правничий та обов'язки учасників. При цьому передача будь-яких прав учасників сімейних взаємин суворо заборонена, оскільки сімейні правовідносини, види яких бувають як немайновими, так і майновими.

Немайнові відносини особистого характеру припускають укладення або розірвання шлюбу, народження дитини або її усиновлення, також сюди належать і рішення, які подружжя приймає спільно – наприклад, вибір прізвища та інші моменти, що стосуються спільного життя. Тут же знаходиться виконання обов'язків з виховання дитини, її освіти та інших важливих життєвих аспектів. Особисті немайнові правовідносини членів сім'ї врегульовані нормами права. Незважаючи на те, що особисті немайнові відносини переважають у сім'ї, оскільки визначаються самою сутністю шлюбу, спорідненості, більшість з них перебувають за рамками правового регулювання.

У зв'язку з цим, у статті встановлено коло договорів у сімейному праві, що регулюють як майнові, так і немайнові відносини суб'єктів сімейних правовідносин, виявлено їх особливості на основі аналізу правових наслідків, укладання таких договорів, а також зумовлених не лише немайновим характером, а й сімейно- правової природою і модернізація зазначених статей, може бути додатковим захистом для непрацездатних членів сім'ї.

***Ключові слова:** сім'я, сімейні правовідносини, суб'єкти сімейних правовідносин, власність, шлюб, подружжя, спільна власність*.

ORCID iD: https://orcid.org/0000-0002-2782-8380
aliya02.85@mail.ru

Relevance of the study. Family legal relations in family law regulate almost all spheres of life and relationships in a family. In this regard, the study of this issue would be logical to begin with a discussion of the concept of "family". In the explanatory dictionary of S. Ozhegov, it is proposed to understand a family as a group of relatives living together (husband and wife, parents with children) [1]. In legal science, various opinions have been offered on the legal definition of a family. G. Sverdlov called a family a social unit based on kinship and marriage (which corresponds to the Marxist doctrine), built on mutual love, equality of men and women, unity of interests of the individual and society and performing the functions of procreation, upbringing and mutual assistance [2].

A similar approach is demonstrated by R. Manakova, who defines a family as a small social group based on marriage, kinship, adoption and other forms of adoption of children for upbringing, connected by commonality of life, as well as family rights and responsibilities [3]. We believe the second definition is more preferable, devoid of illegal and difficult-to-define categories, such as love, mutual assistance, etc.

But the most difficult question is whether a family can be considered an independent subject of law or at least a quasi-subject entity. The current Kazakhstan marriage and family legislation does not explicitly state that a family is a subject of law. Traditionally, the subjects of law include citizens and legal entities, public entities. At the same time, other legal entities have recently begun to appear. In fact, such legal personality can be recognized for holding entities.

But the well-known classification of civil law relations by object into property and non-property does not imply the inclusion of corporate relations. O. Krasavchikov wrote that "a family, as it is known, is not a legal entity. At the same time, family members, without losing their individuality, jointly acquire some legal opportunities and encumbrances, legally reflecting their relationship with each other and with third parties" [4]. Based on this, it can be assumed that a family is a kind of quasi-legal entity that has common features with a corporate legal entity. This argument is supported by the norms of Article 33 of the The Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family of the Republic of Kazakhstan (CRKMF) and Article 223 of the Civil Code of the Republic of Kazakhstan dated December 27, 1994 (hereinafter referred to as the Civil Code of the Republic of Kazakhstan), which establish the rule on joint property of spouses [5]. Thus, the property jointly acquired by the spouses includes the property acquired by the spouses during the marriage. It does not include the property of each of the spouses that belonged to him/her before marriage, as well as received by one of the spouses during marriage as a gift or by inheritance. Accordingly, it can be argued that there is a separate property of the spouses as a private legal community and the presence of the property of each of the spouses. We believe it is possible to define a family as a family-legal community, which is characterized by some features peculiar to civil law corporations.

Confirmation of the stated position can be found in judicial practice. Thus, in one of the cases, the Pavlodar City Court indicated that a young family acts as a single subject of legal relations [6]. In another case, the Rudny City Court of Kostanay region indicated that the income received from entrepreneurial activity during the joint residence of the spouses was spent jointly for family needs, and in order to impose on the spouse the obligation to repay borrowed funds, it must be established that the obligation was common, that is, as it follows from the paragraph 2 of the article 34 of the CRKMF, originated on the initiative of both spouses in the interests of a family, or is an obligation of one of the spouses, according to which all received assets were used for the needs of the family [7]. In addition, according to the paragraph 1 of the article 34 of the CRKMF, the management of the common property is carried out by mutual consent of all spouses, that is, the family has a management system, which is one of the signs of a corporation. Any of the spouses can act on behalf of the family.

Thus, in relation to other persons, a family as a private legal community (family legal community) acts as a single entity. In addition, it is worth noting such sign of a family as the need for state registration. The basis of a family is formed primarily by the union of a man and a woman. According to the article 13 of the CRKMF, the rights and obligations of spouses arise from the date of state registration of marriage in the civil registry offices. Kazakhstan legislation recognizes only marriage registered in accordance with the established procedure.

Continuing the study of the family, we note that in the paragraph 29 of the article 1 of the CRKMF, according to which a family is "a group of persons connected by property and personal non–property rights and obligations arising from marriage (matrimony), kinship, property, adoption or other form of adoption of children for upbringing and designed to promote the

strengthening and development of family relations". Thus, family relationships can only be built within the family. Persons who are not related to each other by kinship, marriage, property or adoption cannot enter into family relations. Thus, since a family is not recognized as an independent legal entity in the domestic legislation, taking into account the above arguments, we believe it is possible to consider a family as a quasi-legal entity, similarly with holdings or other quasi-subject entities.

Recent publications review. The theoretical basis of the study was the works of leading pre-revolutionary Russian, Soviet, modern Russian and Kazakhstan scientists, whose works served as a necessary basis for conducting a comparative analysis of family law institutions and identifying the essence of family relations, as well as researchers who directly devoted their works to the sciences of the theory of law, civil and family law. These are such researchers as S. Alekseev, M. Antokolskaya, M. Baideldinova, G. Bogdanova, A. Bogolyubov, S. Boshno, M. Braginsky, S. Bratus, Ya. Webers, V. Vitryansky, V. Gribanov, O. Gridneva, M. Gusev, F. Dalpane, A. Didenko, I. Zhilinkova, V. Zalessky, N. Zvenigorodskaya, A. Ignatenko, O. Ioffe, M. Kazantsev, Sh. Kalabekova, G. Kerimov, A. Kiselev, O. Kosova, L. Krasavchikova, A. Kuzhilina, E. Kurumshieva, A. Kuttygalieva, A. Lozovsky, A. Makovsky, L. Maksimovich, V. Maslov, D. Medvedev, D. Meyer, L. Mikheeva, E. Mitryakova, M. Mukanova, A. Murunova, E. Mukhamedzhanov, A. Nechaeva, O. Nizamieva, I. Novitsky, S. Nugmanov, A. Parchment, L. Petrazhitsky, I. Pokrovsky, M. Prudnikova, L. Pchelintseva, D. Rashidkhanova, N. Rulan, V. Ryasentsev, A. Saidov, G. Sverdlov, B. Sisenova, A. Slepakova, N. Sosipatrova, A. Spirkin, A. Stremoukhov, Sh. Stepanyan, E. Sukhanov, L. Syukiyainen, H. Tarusina, A. Tikhomirov, I. Tokmambetova, Zh. Toriya, G. Turysbekova, D. Ulanova, G. Uakpaeva, N. Ulchenko, O. Khazova, G. Shershenevich, D. Shestakov, I. Shipachev, E. Chefranova, etc.

In Kazakhstan, in recent years, several dissertation studies have been conducted for the degree of Doctor of Philosophy (Ph.D.) on the problems of family institutions.

Methodological foundations of the study. The theoretical and methodological basis of the research falls in the organic combination of the requirements of general scientific and private scientific methodology. In the research process, the dissertator applied the general scientific dialectical method of cognition, as well as private scientific methods: comparative legal, system analysis, formal legal, logical, historical and legal.

The article's objective is to establish a range of contracts in family law regulating both property and non-property relations of subjects of family legal relations, to identify their features based on the analysis of the legal consequences of concluding such contracts due not only to their non-property nature, but also to the family-legal nature, as well as the modernization of these articles for compliance with the concept of mutual family obligations, this is it will serve as additional protection for disabled and needy family members.

Discussion. Understanding the legal status of the family is important in law enforcement activities, since the CRKMF regulates family legal relations, their content, the rights and obligations of the parties, as well as any other aspects that relate to the life of the family.

There are the following methods of state-legal regulation of family relations and their features: prohibitions: have certainty; are intended for direct participants in family relations or for persons intending to become their participants; are associated with the onset of adverse legal consequences or with the possibility of their occurrence; permissions: less defined; addressed to other persons besides the participants; related to procedural norms.

The main aspect of such regulation is the compilation of prohibitions and permits. Each of the spouses independently determines the framework in which the relationship takes place, while the second, agreeing, undertakes to fulfill all the requirements.

The grounds for the emergence, modification and termination of family legal relations are legal facts: a) actions – lawful and unlawful. The legitimate ones include, for example, the registration of marriage, the conclusion of a marriage contract, etc., the illegal ones are the evasion of alimony; b) events – death, illness, which led to the recognition of a citizen as incapacitated; c) sometimes there are very common in family law special types of legal facts – states, for example, kinship, property, adoption, marriage, neediness, etc.

Family legal relations are a rather extensive concept, and it is possible to recognize one or more criteria for such an action only by characteristic signs. Family legal relations have the following features:

– this type of interaction is of public importance and plays an important role in the formation of society;

– rights arise only between certain persons;

– certain legal circumstances form both the rights of each of the participants in the process and his/her obligations;

– these rights operate inextricably with existing regulations and legislation;

– family legal relations, their classification and features depend solely on the will of all parties;

– family legal relations and legal facts based at the time of their action are regulated by law and are dependent on all amendments.

Despite the obvious signs, family legal relations have features that distinguish them in a variety of types of relationships.

So, family legal relations can be classified as follows:

– relative with an absolute nature of protection (for example, legal relations regarding the upbringing of children);

– absolute with some signs of relative (for example, legal relations regarding the common joint property of the spouses);

– relative, not having an absolute nature of protection (for example, personal non-property relations between spouses).

In family legal relations, the subjects are each other's spouses, close relatives, parents or guardians, that is, they are related to each other or in civil relations. Family legal relations, the concept and types of which are predetermined by the CRKMF, are characterized by long-term interaction and are interrupted only after the termination of the relationship at the legal level.

The transfer of any rights of participants in family relationships is strictly prohibited, since family legal relations, the types of which are both non-property and property, are based precisely on personal interaction. The key factor of this interaction is the trusting relationship between each of the members of this cell of society.

The classification and nuances of family legal relations indicate that only personal ties between family members can serve as the emergence of such interaction. Despite the fact that one of the types of relations is of property nature, they can arise only in the case of personal contacts of participants in the entire process. Any family legal relations and their general characteristics are based precisely on the types of such contacts. Each of them has its own characteristics, but they are all dependent on each other and are completely based on them. Without this factor, no family norms and acts can be applied to citizens. In addition, family relationships are built on trust and respect for each other, and as soon as this sign disappears, the family actually ceases to exist. In this case, the family turns into a fiction, which, in principle, generates certain negative legal consequences (marriage, for example, can be dissolved without clarifying the motives, marital property ceases to be considered jointly acquired, custody and adoption can be canceled, etc.).

Each of these types has its own distinctive features, their presence in matters concerning the institution of the family is mandatory. M. Mukanova and E. Arutyunyan rightly note that for proper regulation of relations in the family sphere, it is necessary to investigate the nature of the emerging relations, to identify their legal essence [9]. Like any legal relationship, family relations include three elements: content, subject and object.

The content of family legal relations is formed by the rights and obligations of the participants in these relations. For example, the responsibilities of parents for the maintenance of minor children correspond to the child's right to receive alimony. These rights and obligations are mutual. The rights and obligations of participants in family legal relations cannot be transferred to other persons either by law or by contract, since they are inseparable from the identity of their bearers. So, for example, if a minor child's parents die, then a child in need of assistance acquires the right to receive alimony from his grandparents who have the necessary funds for this (the article 152 of the CRKMF). But the obligation to maintain a child does not pass from parents to grandparents in succession, the obligation of grandparents to support their needy minor grandchildren is independent, not passing from parents and arising only if a minor grandson is unable to receive maintenance from his parents. In our opinion, linking the duties of grandparents with the inability of grandchildren to receive maintenance from able-bodied parents and siblings contradicts the general idea of receiving support in the family. In this regard, we propose to state the article 152 of the CRKMF in the following wording: "Minor grandchildren in need of assistance have the right to receive alimony in court from their grandparents who have the necessary funds for this".

Taking into account the existence of mutual family obligations, we propose to amend the

article 153 of the CRKMF and state it in the following wording: "Disabled grandparents in need of assistance have the right to demand in court alimony from their able-bodied adult grandchildren who have the necessary means for this".

The subjects of family legal relations can only be individuals, family members connected by marriage, kinship, property, adoption or other means of placement of children left without parental care, or former family members. The relations that arise between family members and state bodies (for example, under the registration of acts of civil status or the placement of children left without parental care) are not private law, but public law. Each of the subjects of family legal relations is endowed with family legal capacity, which, like civil, arises from the moment of birth and ceases with the death of a person. The CRKMF does not decipher the concepts of family legal capacity and legal capacity and does not disclose the relationship of these concepts in civil and family law. In this regard, based on the provision of the article 5 of the CRKMF, it can be concluded that these concepts in civil and family law have no special differences.

Interpretations of these concepts are given in the legal literature. For instance, J. Webers defines family legal capacity as the ability of an individual "in accordance with the law to perform family legal acts and have personal non-property and property rights and obligations provided for by the legislation on marriage and family", and family legal capacity as "the ability to acquire and exercise family rights and obligations" [10].

In addition, it should be borne in mind that participants in family legal relations may be persons who do not have civil legal capacity, for example, a minor father can independently file a claim for establishing paternity against his child from the age of 14; when resolving some family issues in court, for example, when determining the child's place of residence when the parents divorce, the consent of the child is required if he has reached the age of 10.

The objects of family legal relations are things and actions. Things act as objects of property relations. For example, when dividing the property of spouses, the objects are movable and immovable things, income, etc.; in alimony obligations the object is cash paid as interest on income or in a fixed amount. Actions are objects in personal legal relations, for example, between spouses it is the choice of surname, occupation, etc.

Any family legal relations, the subjects, objects and content of which are strictly defined by the CRKMF and are clearly regulated by law and they are based, first of all, on interaction in the family, which is understood as a separate cell of society, all participants of which are linked by blood or voluntary consent to receive such a status. It is generally believed that everyone who is a participant in such contact is called a "family member". The state does not establish a clear definition of this concept, however, everyone who is legally or blood related can call himself a participant in such a process and, accordingly, a member of a certain family.

Existing de facto and legally family legal relations, the concept, structure and types of which fully comply with the current legislation, have features related specifically to the content of the relationship itself. Each participant in the interaction has not only special rights, but also obligations that all participants must fulfill under almost any circumstances. The subject composition of family relations is formed only by individuals. State bodies, officials, legal entities, unlike civil legal relations, cannot be subjects of family relations. Participants in most family relationships can be both capable and incapacitated and limited capable persons (including foreign citizens and stateless persons). Thus, the emergence of family relations is due to special circumstances, which include: kinship, marriage, adoption of children for upbringing.

Family legal relations are, first of all, personal property or non-property relations between spouses or immediate relatives. We offer a classification of types of family legal relations in accordance with the norms of the CRKMF.

Personal non – property relations are divided into:

– personal legal relations between spouses;

– personal legal relations between parents and children (adoptive parents and adopted);

– personal legal relations between other family members.

Property relations can be classified:

a) on a subject basis:

– property legal relations between spouses;

– property relations between parents and children;

– property relations between other family members;

b) in relation to the property:

– mandatory (for example, alimony);

– property law (property relations).

Let's consider each of the listed types.

Non-property relations of a personal nature involve the conclusion or dissolution of marriage, the birth of a child or his adoption, and also include decisions that the spouses make together – for example, the choice of a surname and other issues related to living together. Here is also the fulfillment of responsibilities for the upbringing of the child, his education and other important aspects of life. Personal non-property legal relations of family members are regulated by the norms of law relations between family members regarding intangible benefits.

The list of intangible benefits is contained in the paragraph 3 of the article 115 of the Civil Code of the Republic of Kazakhstan. These include life and health, personal dignity, personal integrity, honor and good name, business reputation, privacy, personal and family secrets, the right to free movement, choice of place of residence and residence, the right to a name, the right of authorship, other personal non-property rights and other intangible benefits.

L. Krasavchikova divides intangible benefits into two groups: the rights that ensure the physical existence of citizens (the right to life, health, a favorable environment, etc.) and the rights that ensure the social existence of a person (the right to a name, honor, dignity, personal and family secrets, freedom of movement) [11].

Since intangible benefits cannot be measured by economic, physical, or other indicators, therefore personal non-property relations have no economic content and are not of a material nature. Despite the fact that personal non-property relations are predominant in the family, since they are determined by the very essence of marriage, kinship, based, as a rule, on love, mutual understanding and mutual respect, most of them are outside the scope of legal regulation.

Remaining in the existing paradigm, we will consider the legal regulation of personal non-property relations of spouses, since in family the relations of spouses, in our opinion, are decisive, since whatever content we put into the concept of family, in any case we are talking about community, and the core of this union is the community of spouses. These relationships, of course, have a property aspect, but in reality personal relationships come to the fore. It is well known that the law is only able to regulate the relations of the latter category to an extremely limited extent, which is also true in relation to the relations of spouses.

The personal rights and obligations of spouses are inextricably linked with their personality, and therefore they are inalienable and non-transferable in any way: neither by agreement, nor by universal succession, nor in any other way. The CRKMF enshrines the following personal non-property rights:

1) the right of the spouse to choose the type of occupation, profession, place of residence and residence. This means that each spouse, guided by their abilities, interests, opportunities and available knowledge, independently chooses the sphere of their labor and creative activity. The other spouse can only give advice and recommendations on this issue, but his opinion and objections have no legal significance.

The right to freely choose their place of residence and place of stay means that spouses are not obliged to live together or follow each other when one of the spouses changes their place of residence (for example, in connection with enrollment in a public position or studying in another locality). This also includes the right of the spouse to choose citizenship. The independence of a spouse's choice of citizenship from the desire of another spouse is provided for in the article 7 of the Law of the Republic of Kazakhstan dated December 20, 1991 № 1017-XII "On Citizenship of the Republic of Kazakhstan": the conclusion or dissolution of a marriage between a citizen of the Republic of Kazakhstan and a person who does not have citizenship of the Republic of Kazakhstan does not entail a change in the citizenship of these persons; a change in citizenship by one of the spouses does not entail for a change in the citizenship of the other spouse [12]. These rights of each spouse correspond to the obligation of the other spouse not to cause obstacles in the implementation of their personal non-property rights;

2) the spouse's right to divorce (the article 14 of the CRKMF). As it has been noted more than once, one of the principles of family law is the voluntary nature of the marriage union. This means, in particular, the inadmissibility of forced marriage, so both spouses are entitled to terminate the marriage at any time. The other spouse has the obligation not to prevent him from exercising this right (for example, by avoiding the dissolution of marriage in the registry office, despite the absence of objections to the divorce);

3) the right of the spouse to appoint him as a guardian (trustee) of the child. This right also corresponds to the obligation of the other spouse not to interfere with the exercise of his right, since the decision of the guardianship and guardianship authority is made taking into account how the family members of the future guardian (trustee) treat the child (the paragraph

3 of the Article 122 of the CRKMF);

4) the right of spouses to jointly resolve issues of family life: issues of motherhood, fatherhood, upbringing and education of children, distribution of the family budget, acquisition of property and others.

The paragraph 4 of the article 30 of the CRKMF also provides for the duty of spouses to build their relationships in the family on the basis of mutual respect and mutual assistance, to promote the well-being and strengthening of the family, to take care of the welfare and development of their children.

The latter right and obligation are declarative in nature, since the legislation does not provide for mechanisms for their enforcement and the possibility of applying sanctions for their violation. After all, if one of the spouses has appropriated the right to resolve issues of family life, then the law does not provide for an effective way to force the spouses to solve them together. It is also impossible to oblige a spouse to respect another spouse, since this relates to the sphere of feelings and may not have an objective expression. If disrespect has received an objective form, then the norms of criminal law, not family law, will already be applied here. However, in some cases, violation of such rights and non-compliance with obligations can have a negative impact on the offending spouse. Thus, according to the paragraph 3, the paragraph 1 of the the article 150 of the CRKMF, in case of improper behavior in the family of a disabled spouse in need of assistance, the court may release the other spouse from the obligation to maintain him.

Another personal non-property right of spouses is the right to choose a surname at the conclusion and dissolution of marriage. Each of the spouses decides for himself what surname he (she) should have, regardless of the consent of the other spouse or third parties (for example, their parents or other relatives). The other spouse has an obligation not to exert unlawful influence and not to abuse his other rights in order to obtain the necessary solution.

At the conclusion of marriage (matrimony), the spouses, at will, choose the surname of one of them as a common surname, either each of the spouses retains his premarital surname, or one (both) joins the surname of the other spouse to his surname. The combination of surnames is not allowed if the premarital surname of at least one of the spouses is double. The surname of one of the spouses or the surname formed by joining the wife’s surname to the husband’s surname may be recorded as the common surname of the spouses. The common surname of the spouses may consist of no more than two surnames connected when writing with a hyphen. In case of divorce, each of the spouses has the right to keep the surname that he acquired when marrying, or to restore his premarital surname regardless of the consent of the other spouse (the paragraph 1 of the article 31 of the CRKMF).

Having outlined the issues of personal non-property relations in the family, we will proceed to the study of property relations, which also develop between all family members, but the most common and significant are the relations between spouses, since they are one of the most important and painful issues of family law. Property relations between spouses presuppose relations regarding the division of property acquired in marriage, the payment of alimony for the maintenance of a spouse, including the former, and others. The marriage and family legislation of the Republic of Kazakhstan provides for the possibility of spouses to settle their property relations both through a marriage contract and without concluding one, based on the norms of the CRKMF.

The paragraph 1 of the article 32 of the CRKMF establishes the following: "The legal regime of the spouses’ property is the regime of their common joint property, unless otherwise established by the marriage contract." By the way, a similar approach can be observed in other post-Soviet republics. The article 31 of the Family Code of Azerbaijan states: "The regime of joint property of spouses is considered the legal regime of their property. The legal regime of the spouses’ property is valid, unless the marriage contract provides for another case." The article 23 of the Family Code of Belarus states: "The property acquired by the spouses during the marriage, regardless of which of the spouses it was acquired or on whom or by whom of the spouses’ funds were deposited, is their common joint property" [13], etc.

The paragraph 1 of the article 41 of the CRKMF states: "By a marriage contract, spouses have the right to change the regime of common joint ownership established by the laws of the Republic of Kazakhstan, to establish a regime of joint, shared or separate ownership of all the property of the spouses, its separate types or the property of each of the spouses. A prenuptial agreement can be concluded both with respect to the existing and future property of the spouses".

The regime of common property established by the norms of the CRKMF does not require

additional settlement by a marriage contract, if we are talking about the application of this regime on a general basis, that is, without exclusion or addition of new conditions. This means that the regime of community of property, being a legal regime, will always be applied "by default", even in the absence of a marriage contract [14]. A marriage contract, however, may extend the effect of the community regime to the property that is defined by law as being in separate ownership of the spouses, or, conversely, limit the effect of the legal regime on certain objects. In the same case, when the regime of community of property for some reason does not suit the parties, this regime can be replaced by another through a marriage contract.

Let us consider in more detail what the legal regime of marital property established by the national marriage and family legislation is, and analyze the consequences of its change to one or another regime specified in the article 42 of the CRKMF.

M. Baideldinova and F. Dalpane rightly note [15] that the property regimes of spouses are numerous and diverse, and for the deepest understanding of the essence of these regimes, to identify the relationship between them, their classification should be carried out. In this paper, an attempt is made to classify by generalizing and systematizing different positions of legal scholars, with the justification of their own view. Thus, V. Maslov proposes to divide all marital property regimes into two main groups: compatibility regimes and separation regimes [16]. L. Maksimovich adheres to the same position, emphasizing, however, also the presence of "combined regimes derived from them" [17]. At the same time, I. Zhilinkova suggests taking into account the third component when classifying: the mode of "conditional" or "deferred" community (deferred community) [18].

Having studied the property regimes of spouses established by the marriage and family legislation of the Republic of Kazakhstan, the positions of scientists set out in the legal literature, we consider it possible to systematize them as follows: the regime of joint ownership (common joint ownership and common shared ownership) and the regime of separation.

The paragraph 1 of the article 33 of the CRKMF establishes: "The property acquired by the spouses during marriage is their common joint property".

According to the paragraph 2 of the article 38 of the CRKMF, the court has the right to depart from the beginning of equality of the spouses' shares in their common property based on the interests of minor children. However, in modern law enforcement practice, this rule is rarely applied, since the plaintiff must provide extraordinary evidence pointing to the interests of children, although the customary law of the Kazakhs, which regulated the property rights of women mothers, protected them to a certain extent. So, if during the divorce of the spouses the children remained with the mother, then the father allocated part of his property in their favor and the wife managed this property under the condition that she would not remarry and would not move to live with her relatives [19].

Conclusions. So we believe that it is precisely such norms that can most fully protect the interests of minor children when a marriage is dissolved between parents, and in this regard we believe it is possible to implement them into modern national marriage and family legislation.

The regime of common shared ownership is established by the spouses in the marriage contract, in which the spouses have the right to indicate that the property will be in common joint ownership, for example, three years after the marriage or ten years after the birth of the child, etc.). In addition, the spouses have the right to specify in the marriage contract not all, but only part their property and even a separate thing as an object of joint ownership.

Under the above-described regime of common joint ownership, the spouses' shares in their property are not allocated, and when dividing such property, the spouses have the right to equal parts of it. In the case of shared ownership, the situation is different. Spouses have the right to establish a regime of shared ownership of all or part of the property, strictly determining which share (part, percentage) belongs to each of them, and, accordingly, will belong to the division of property. This means that the spouses will have the right to share this property, but each of the spouses will be able to dispose of their share.

The size of the share in the marriage contract can be determined depending on the income of the relevant spouse or depending on his financial participation in the acquisition of this property [20]. The basis on which the spouse receives this or that share may not be described in the marriage contract at all. The parties, however, should adhere to the condition established by law that none of the parties should be in an extremely unfavorable financial situation. Otherwise, such a contract may be fully or partially invalidated by the court, in accordance with the paragraph 2 of the article 43 of the CRKMF.

Unlike the regime of common ownership, in which all or part of the property of the

spouses forms the so-called common property fund, the separation regime implies the absence of any common fund at all. This has its advantages and disadvantages. The advantages are to simplify the proceedings for the judge conducting the divorce proceedings between the spouses who have established such a property regime. The procedure for dividing property is automatically omitted: the property has never been shared. The debts of each of the spouses and other obligations in favor of third parties are also obligations of each of the parties separately.

The disadvantage of such a regime, however, is following. In the event that one of the spouses does not have his own income for any reason (in particular, due to disability, child care or housekeeping), upon the dissolution of the marriage, he will be left with nothing, since he will not have the right to a share in the jointly acquired property. Actually, there will be no property that can be considered jointly acquired. The second establishes certain boundaries of such separation, whether it is a period of time or the occurrence of any circumstance or the inclusion in separate ownership of not all, but only part of the property of the spouses (for example, income from personal property, bank accounts, real estate, etc.).

The traditions of Kazakhstan and all other post-Soviet states, the legislative experience of some European states (France, Italy), as well as the desire of the legislator to protect the property interests of both spouses to the greatest extent allowed the Kazakh legislator to choose the regime of common joint property as a legal regime from all existing regimes. A detailed study of the regime of separate ownership is equally important, since it can become a contractual regime of the spouses' property if they conclude a prenuptial agreement.

Family legal relations, the grounds for the emergence and termination of which are discussed above, are fully regulated by the current domestic marriage and family legislation, while entirely dependent on the parties involved in their conclusion and implementation. This kind of interaction, despite clearly defined norms and the framework of the law, depends entirely on the relationship between people. Despite the fact that more and more people are trying to protect themselves with a marriage contract and other documents, trust is the main factor forming a family, creating the ground for the development of legal relations.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. Dictionary : Meanings & Definitions of Words. URL : https://www.dictionary.com/.

2. Family Law : Legal encyclopedia / resp. ed. Yu. S. Shemshuchenko and others. Kyiv: Ukrainian encyclopedia named after M. P. Bazhana, 2003. Vol. 5. 736 p.

3. Manankova R. P. The legal status of a family member under the law. 1985. 22 p.

4. Krasavchikov O. A. Decree. op. 42 p.

5. Civil Code of the Republic of Kazakhstan dated December 27, 1994. Code of the Republic of Kazakhstan dated December 27, 1994 No. 268-XIII. Gazette of the Supreme Council of the Republic of Kazakhstan, 1994, No. 23-24.

6. Decision of the Pavlodar city court dated January 20, 2020 (case No. 5510-19-00-2/15904). URL : https://office.sud.kz/courtActs/document.xhtml.

7. Decision of the Rudny city court of Kostanay region dated October 28, 2020 (case No. 3924-20-00-2/582). URL : https://office.sud.kz/courtActs/document.xhtml.

8. Code on marriage (matrimony) and family of the Republic of Kazakhstan dated December 26, 2011, No. 518-IV ZRK (as amended on 07.07.2020). *Gazette of the Parliament of the Republic of Kazakhstan.* 2011. No. 22, art. 174; 2012, No. 21-22, Art. 124; 2013, No. 1, art. 3; No. 2, art. 13. *Kazakhstanskaya Pravda*. 01/07/2012. No. 6-7 (26825-26826).

9. Mukanova M.Zh., Harutyunyan E. Treaties and agreements in family law. *Bulletin of KarSU. History series. Philosophy. Law. 2009*, No. 4 (56). P. 227-233.

10. Webers Ya. R. Legal personality of citizens in Soviet civil and family law. Monograph. Riga : Zinatne, 1976. 232 p.

11. Krasavchikova L. O. The concept and system of personal, non-property rights of citizens (individuals) in the civil law : abstract diss. … d.j.n. 1994. 435 p.

12. Law of the Republic of Kazakhstan dated December 20, 1991 No. 1017-XII "On Citizenship of the Republic of Kazakhstan": ILS "Adilet".

13. Family Code of the Republic of Azerbaijan (approved by the Law of the Republic of Azerbaijan dated December 28, 1999, No. 781-IQ).

14. Code of the Republic of Belarus dated July 9, 1999 No. 278-З On marriage and family. URL : https://online.zakon.kz/document/?doc_id=30414964.

15. Baydeldinova M. B. Some aspects of determining the parties to a marriage contract and their

legal capacity in the legislation of the post-Soviet states. *Analytical review*. 2008. No. 5. P. 94-100.

16. Baydeldinova M. B., Dalpane F. P. On the issue of property relations of spouses in Kazakhstani family law: regimes of spouses'' owners. *Bulletin of KazNU*. 2015. No. 4 (76). P. 128-136.

17. Maslov V. Property relations in the family. Scientific and practical commentary on the current legislation of the USSR, RSFSR, Ukrainian SSR and the practice of its application. Publishing House of Kharkov University. Kharkov. 1972. 186 p.

18. Maksimovich L. The marriage contract in law. 2003. 144 p.

19. Zhilinkova I. V. The legal regime of the property of family members. Kharkiv: Ksylon, 2013. 155 p.

20. Turysbekova G. G. Theoretical problems of legal regulation of the institution of motherhood in the Republic of Kazakhstan. Thesis for the degree of Doctor PHD: 6D030100. Jurisprudence. Al-Farabi Kazakh National University. Almaty, 2016. 152 p.

21 Khazova O. Marriage and divorce in bourgeois family law. Comparative legal analysis. 1988. 173 p.

Submitted 07.12.2022

ABSTRACT

Understanding the legal status of the family is important in law enforcement. The concept of family legal relations and their types are defined by the Code of Marriage and Family of the Republic of Kazakhstan. Family legal relations in family law regulate almost all spheres of life and relations in the family. The content of family legal relations is formed by the legal and responsibilities of the participants. At the same time, the transfer of any rights of participants in family relations is strictly prohibited, since family legal relations, the types of which are both non-property and property.

Non-property relationships of a personal nature include the conclusion or dissolution of marriage, the birth of a child or its adoption, this also includes decisions that spouses make together – for example, choosing a surname and other points related to joint life. This is also where the duties of raising a child, its education and other important aspects of life are carried out.

Personal non-property legal relations of family members are regulated by law. Despite the fact that personal non-property relations prevail in the family, as they are determined by the very essence of marriage and kinship, most of them are outside the scope of legal regulation.

In this regard, the article establishes a circle of contracts in family law that regulate both property and non-property relations of the subjects of family relations, their features are revealed based on the analysis of the legal consequences of concluding such contracts, as well as those caused not only by non-property nature, but also family-law nature and modernization of the specified articles, can be additional protection for disabled family members.

Keywords: *family, family legal relations, subjects of family legal relations, property, marriage, spouses, joint property.*