

# AN ECONOMIC APPROACH TO FAMILY INSTITUTION: REGULATION OF SPOUSES' PROPERTY RELATIONS IN THE REPUBLIC OF LITHUANIA

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*The paper analyses the problem which is relevant both theoretically and practically, since it tries to disclose family as an economic institution credited with important financial advantages, and it provides different economic and social benefits such as tax exemptions, inheritance, child and spouse maintenance, social security and immigration. This position is revealed analysing the regulation of legal property relations between spouses by laws, various scientific and legal literary works related to this topic as well as court practice.*

*At the moment of marriage commencement, property relations used to acquire a significant value in a major part of traditional societies: in some countries, bride's parents would award their daughters with dowry, the size of which very often determined the groom's choice; in other countries, especially in the East, a groom would pay a ransom for his bride. In some countries such customs are extant to the present day and constitute a traditional part of a marriage settlement. In different cultures the bride's parents must give away part of their property to the newlyweds (known as a dowry). The dowry-giving practice is similar in such countries as Greece, Egypt, India, and China. The type of property called wife's property exists in the countries of different religions and customs. For instance, the Hindu law entitles the wife's property as Stridhanam.*

*Keywords: marriage, spouses, property relations, legal regime of spouses' property.*

## Introduction

In regard of societal relationships, family plays a very important role. It is a fundamental unit and carries out critical functions. These

functions include continuation, education of the young generation, material and moral mutual support. Family is the union of common life between a man and a woman. The formation of this union is called an act of marriage.

Marriage is an agreement between a man and a woman, which is announced in a defined external form and is recognized by public institutions. It is a social acceptance of society. Marriage is not simply a private, closed matter, but a matter of concern to the broader society, state, the nation, and also to organized religion (Perkumiene, 2006).

Marriage is an important institution regulated by laws. It exists for a number of ages in all societies. It is a significant human right. However, both social and legal values of marriage differ in various countries and alter in the course of time. The alteration depends on the social, cultural and economic development, which also conditions the change in values and worldviews. As a result, the viewpoint towards women and interracial marriages has changed. According to the laws of Western countries, wives are considered as equal and not dependent partners; meanwhile, interracial marriages have been legalised by law and are very popular. Since marriage is one of the essential human rights, everyone must be allowed to exercise it (Perkumiene, et al., 2003).

Paragraphs 1–2 of Article 38 of the Constitution of the Republic of Lithuania declare that “The family shall be the basis of society and the State. The State shall protect and take care of family, motherhood, fatherhood, and childhood” (Lietuvos ..., 2000). As good a quality and as big socialisation of the family as possible are required to make the family the real basis of society and the State. Family socialisation within society is aggravated by a huge family mobility, i.e. the high intensity of break-ups and formation of new families, because every third family in Lithuania divorces (Babachinaitė, 1995). In this situation, the State regulation of legal family relationships gains a very important significance. One of the main family socialization directions is the development

(amendment) of property relations, especially in the field of alimony as after divorce mothers are responsible for their children.

Family is defined as an economic institution giving the advantage of financial, economic and social benefit (Cruz, 2001), for example, the perks of tax concessions, child's or spouse's maintenance, social security and immigration. The delegated coordinator of the United Nations J. Lisner has stated that family is the most effective enterprise. Family performs functions relating to all fields of life, it supports materially and emotionally and guarantees the prosperity of its members. Family is the main social and economic unit which guarantees production increment, thus economic and social growth of the community is based on family needs. Moreover, family is the driving force of the economic and social progress (Žiūkas, 1995). The modern family is not just a sexual arrangement. At present, the most obvious thing about it is its economic activities. Family is a kind of business, engaged in the enterprise of running a household (Collins & Coltrane, 1991). The economic trade proceeds almost entirely between an individual husband and wife, not between their families. But the trade remains important. Some theorists have argued that the basis of gender inequality in our society is economic inequality: men have higher incomes, while women have to compensate by providing the menial household labor.

Currently family is still very important, although individuals have become less dependent. Social, economic or other types of individual independence, especially in economically developed countries, weaken the family institution.

**The object** of the current work was the regulation of legal relations of spouses' property.

**The purpose** of the work was to analyse the doctrinal and practical (in the court practice) principles of regulation of legal property relations between spouses.

**The methods** applied in the work include the generalisation of scientific literature analysis, systematic and comparative analysis, the analysis of legislative acts and the logical analytical method.

### **Features of legal regime of family assets**

The Civil Code of the Republic of Lithuania covers the duty of spouses to support each other morally and financially and to contribute toward the common needs of the family or the needs of the other spouse (Civil ..., 2000). The issues of mutual maintenance should be also related to this non-property duty of spouses. The legal regime of family assets emerges after the commencement of marriage and is applied to the marital interrelation until the marriage is terminated, invalidated, or confirmed by separation. The legal regime of family assets provided by the law is applied if the spouses have not concluded a marriage contract. Moreover, this regime is applicable to property acquired by spouses prior to the Civil Code comes in force. The Civil Code of the Republic of Lithuania distinguishes two types of legal property regimes: statutory and contractual (Civil ..., 2000). The general principle indicated in Article 3.81 provides that the property of spouses will be subject to the statutory legal property regime, if the spouses have not concluded a marriage contract. Therefore, the main element of the marriage contract is selection of the legal property regime. Article 3.104 of Family Law provides that the spouses have the right to change the statutory regime and to choose one of three types:

- 1) property acquired both before and during the marriage will be the individual property of each spouse;
- 2) individual property acquired by a spouse before the marriage will become joint community property after the registration of the marriage;
- 3) property acquired during the marriage will be partial community property. Property in this paragraph is considered as the entire property or only its certain part or specified chattels. The property of spouses consists of property acquired during the marriage and the individual property of each spouse acquired before the marriage.

Any assets will be considered to be family assets owned by either spouse before or during the marriage, which may be used only to meet the needs of the family, in order to "...avoid violation of interests of spouse in good faith and under-age children of the family" (Adomavičius, 2002). The legal regime of family assets will not be applied to the assets acquired and used collectively or to the joint assets of individuals who have not registered their partnership. In the event the marriage is terminated but the spouses have under-age children, the legal regime of family assets will be transferred to their under-age children.

In the neighbouring Poland, like in Lithuania, laws or a contract may regulate property relations of spouses. This type of a contract (*interczyza*) may be concluded before and after the commencement of the marriage. This contract will be concluded if one of the spouses does not wish property relations to be determined by the common statutory procedure. Spouses may choose among three kinds of marriage contracts: 1) contract expanding the provisions of co-operation; 2) contract limiting the provisions of co-operation; 3) contract distin-

guishing co-operation and identifying the assets as individual property of each spouse. A notary public must certify an *interczyza*; otherwise it will be null and void. This contract may be concluded before the marriage; however, it shall come into force only after the commencement of the marriage. Expanded joint ownership of rights is based on the fact that the contract covers objects or rights, which according to the law would be considered as individual property of each spouse. For example, in their marriage contract each spouse can include items acquired before the marriage as well as items that according to the law belong to one of the individuals and serve his or her individual needs. According to the contract of type 2 (joint limited management), specific property rights or items, for example, work payment and income from individual assets, are distinguished from the joint assets of spouses. In case of individual property, the spouses will not possess joint property since only individual property of each spouse exists. Each spouse is the individual owner of his or her property (Property ..., 2006).

Finnish Civil Law provides that the assets owned by a spouse by the right of ownership before the commencement of the marriage are his or her individual property; a spouse will have a right to acquire personal property during the marriage as well (Marriage ..., 2001).

According to the Civil Law of the Czech Republic, the joint community property consists of: a) assets acquired by one or both spouses during the marriage, except the assets devolved to a spouse by succession or gift; b) asset liabilities of one or both spouses arising during the marriage, except the assets liabilities, which are directed towards the assets that belong entirely to one of the spouses (Act of the Czech Republic... 1964).

The legal problems of property regulation

between future spouses or already married couples mostly emerge in cases of divorce or separation. In the course of time, more and more countries legitimate the agreements between spouses or future spouses regarding some specific issues which are mostly related to the assets, since a larger number of spouses or individuals intended to get married are inclined to solve particular issues rising from the marriage individually and, thus, to avoid the statutory regulation of these questions. Each country differently regulates the requirements for conclusion, form and content of such agreement; however, there are some similarities as well. Although spouses are provided with the right to make an agreement regarding their property rights and duties, every country has some restrictions towards this right in order to avoid the violation of interests of the economically weaker spouse or under-age children (Murray, 1995).

The United States of America in 1983 issued the Uniform Prenuptial Agreement Act, which was afterwards accepted by 27 states, while the rest of the States regulate the conclusion of a marriage contract by other laws. This act regulates the conclusion of prenuptial agreements; meanwhile a separate law has not regulated the conclusion of postnuptial agreements. However, the similar principles of prenuptial agreement have been applied to them as well. A prenuptial agreement is considered as an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage. In parallel, a postnuptial agreement is concluded after the commencement of the marriage. In marriage agreement, the spouses can stipulate their rights and duties related to the management of property, mutual maintenance, participation in provision for family needs and expenses; they can also define property partition met-

hods and procedures in the event the marriage is terminated, and other issues related to the property relations between spouses. Meanwhile, the marriage contract does not allow regulating personal non-property relations between the spouses. Therefore, it may seem outright that the marriage contract is a contract of a non-personal character since it regulates only the property rights and duties of spouses. However, it is impossible to make such an unambiguous conclusion. Family relations are both personal and pecuniary. It is noticeable that personal relations prevail within the family; meanwhile the property relations are less important. Family relations are created by the formation of marriage. Consequently, all family relations emerge from one specific legal fact called marriage. Spouses acquire a new legal status as well as property and personal non-pecuniary rights. Not only personal non-property relations but property relations as well emerge from the marriage. The marriage gives birth to both property interrelations between the spouses and pecuniary relations between parents and their under-age children. Therefore, both personal and pecuniary relations of the family concern not only the third parties but also and especially spouses and their under-age children. Property relations in the family law arise from personal marital relations; moreover, pecuniary as well as personal relations are interrelated. The marriage contract discusses some particular property rights, which are acquired on the basis of the marriage or will be devolved in the future. Property relations discussed in the marriage contract may not be considered as pure property relations; however, they are grounded on the mutual trust, respect and loyalty.

In Lithuania, the legal regime of family assets will be terminated if: 1) the marriage is terminated or declared null and void; 2) sepa-

ration; 3) one of the spouses is dead or is declared dead by the judgement of the court. Even in such cases, the legal regime of family assets will, however, be devolved and valid to the under-age children of spouses.

### **Kinds of the legal regime of spouses' property**

The law of the state of permanent residence of spouses designates the legal status of their property. In the event the permanent residences of spouses are in different countries, the law of the state, citizens of which both spouses are, will be applied. For example, the permanent residence of the husband is Finland, while the wife permanently resides in Lithuania; however, both spouses are Lithuanian citizens. In such case the Lithuanian law will be applied. However, if spouses are citizens of different countries and have never had a joint residence, the legal status of property will be defined according to the law of the state where the marriage has been commenced. For instance, the marriage between a citizen of Sweden and a Lithuanian citizen has been concluded in Lithuania; however, the wife has a permanent residence in Lithuania and the husband permanently resides in Sweden. In this case, the Lithuanian law will govern the property relations of the spouses.

The marriage creates two kinds, statutory and contractual (a marriage contract), of the legal regime of the property of spouses. The statutory legal regime of property will be applied when spouses have not made a marriage contract. It means that the assets acquired by the spouses after the commencement of their marriage will become their joint community property. The new Civil code has a separate chapter in which where all issues related to the partition of such assets are regulated and the

guarantees of creditor rights of spouses are designated. If spouses want to avoid the legal regime of joint community property, they must conclude a marriage contract.

### **Legal regime of spouses' property governed by contract**

A marriage contract is one of the methods to regulate property relations of spouses. It constitutes a new institution of the Lithuanian civil law for spouses or prospective spouses, which allows choosing possible legal regimes to be applied to their property. According to Article 3.101 of the Civil Code Family Law, a marriage contract will mean an agreement of the spouses defining their property rights and duties during the marriage as well as on divorce or separation; it is concluded voluntarily, expressing the single will of both parties and based on the equality of both parties (Civil ..., 2000). However, the marriage contract may be concluded not only after the registration of marriage but also before it (prenuptial agreement). Moreover, this contract may be concluded between the cohabitants as well (Article 3.231 of the Civil Code), and all provisions of Articles 3.101 to 308 of the Family Law may be applied to it. The subject of the contract is the assets and the rights and duties arising due to the assets or related to it. The contract parties may designate the fate of the assets acquired before and during the marriage in the event of divorce or separation. The aim of the marriage contract is to protect not only the rights of the contractual parties, i.e. spouses, but the interests of their under-age children as well, since this contract may have an essential impact on the interests of spouses and their minor. It is also important to protect the interests of any spouse who is more vulnerable in economic terms. The civil code stipulates such

possibility for spouses; however, only one variant of three designated legal regimes of property may be chosen according to the imperative form. The imperative form also applies some limitations to the circumstances to be included into the content of the marriage contract that could violate the rights or interests of one of the spouses or their under-age children or would govern personal non-property relations between the spouses and between spouses and their children. Also, the marriage contract cannot change the imperative law rules protecting public order. It is important to remember that in order to protect the interests of a more vulnerable spouse or their under-age children, the assets the regime of which cannot be possibly changed by the marriage contract, i.e. family assets, are distinguished. Thus, the freedom principle of the contract in determining the content of the marriage contract is narrower than for concluding another type of contract. Limitation of the application of this principle is justifiable with respect to the specific non-commercial character of the marriage contract and its potential impact on the mutual relations between the spouses.

The civil code stipulates that the marriage is allowed to be contracted by persons who by or on the date of contracting a marriage have attained the age of 18; however, the court may reduce the legal age of consent to marriage, but by no more than three years. In the case of pregnancy, the court may allow the person to marry before the age of 15. According to Article 3.102 of Civil Code, a minor may enter into a marriage settlement only after the registration of the marriage. A person who has not attained the age of consent cannot enter into a marriage settlement before the registration of the marriage. After the registration of the marriage a minor obtains absolute legal capacity and has a right to enter into a marria-

ge settlement. A spouse declared by the court as having limited active capacity might enter into a marriage contract only after obtaining a written consent from his or her custodian. If the custodian refuses to give consent, the spouse may apply to the court for a permit to enter into a marriage contract.

A marriage contract must be concluded in a written form and certified by a notary public. The notary public must clarify the definition and meaning of the marriage contract as well as its consequences. The marriage contract must be registered in the register of marriage contracts and only afterwards it may be used against third parties. The matrimonial legal regimes stipulated by the contract will be applied to the entire property of spouses from the date of operation of the register of marriage contracts after the approval of its regulations.

### **Conclusion and validity of a marriage contract**

A marriage contract is considered to be an agreement of the spouses defining their property rights and duties during the marriage as well as on divorce or separation.

The Civil Code of the Republic of Lithuania designates two kinds of legal regime of property of spouses. These are:

- *statutory regime*, when the spouses have not made a marriage contract,
- *contractual regime*, when the spouses have a right to determine their matrimonial regime as they think fit.

Part 3 of Article 3.104 of Family Law stipulates that in their marriage contract the spouses may define the matrimonial legal regime both in respect of their existing and future property. The peculiarity of a marriage contract is determined by its complex character, which

allows to choose not only a matrimonial legal regime but also to regulate rights and duties related to the management of property, mutual maintenance, participation in the provision for family needs and expenses as well as the procedure for partitioning property on divorce and other matters related to the spouses' mutual relations in property. In their marriage contract, the spouses may stipulate the amount of money that each spouse will be able to designate to the provision for family needs such as utilities, food, property improvement, recreation, children's education, medical expenses and so on. Family needs are very multiform; therefore, they must be discussed in the marriage contract. The marriage contract may also discuss the methods and procedures of property partition. By the mutual consent the spouses may include a clause into their marriage contract stipulating that the assets designated as the individual property of spouses in the marriage contract may be attributed to the joint community property subject to partitioning. Moreover, the spouses may stipulate that they will become liable for their own debts with the individual property of each spouse; however, both spouses will be solidary in the common obligations to family interests (Ermiş, 2003).

In their marriage contract the spouses may dispute other issues related to the property relations. Such property relations include the right of any of the spouses to dispose income derived from trade in stock, bank deposits and commercial enterprises, property rent, dividends derived from stock, etc. The end of validity of the marriage contract not necessarily may coincide with the termination of the marriage. The rights and duties of the spouses provided for in their marriage contract may be limited in time, or may be related to the fulfillment or omission of a certain condition stipu-

lated in the marriage contract. Not only spouses but cohabitants as well have a right to enter into a marriage settlement. The rules of Article 3.231 of the Civil Code regulating the cohabiting without the registration of the marriage stipulate the legal regime of the property used collectively, which may be designated following the provisions of Articles 3.10 to 3.108 (Civil ..., 2000). The rules of Articles 3.83 and 3.101 to 3.108 of the Civil Code regarding the legal regime of spouses' property designated by a contract have been applied since 1/7/2002, i.e. from the date of operation of the register of marriage contracts. Prior to the Civil Code comes in force, the legal regime of property acquired by spouses may be changed by the marriage contract. In consequence, the right of spouses to stipulate the legal regime applied to their property in their marriage contract allows them to avoid the statutory legal regime of property. As a result, the main element of the marriage contract is the choice of legal regime of property. This provision has been qualified as positive because spouses or prospective spouses are allowed choosing themselves the most acceptable the legal regime to be applied to their property, other than provided by the law.

The legislator has designated two kinds of marriage contracts:

- (prenuptial / prenuptial agreement contracted before the registration of the marriage);
- (postnuptial agreement contracted after the registration of the marriage).

A postnuptial contract will come into force on the date of the commencement of the marriage unless the contractual parts stipulate otherwise in their marriage contract. A prenuptial contract will come into force on the date of the registration of the marriage. Con-

sequently, if the marriage has not been commenced, the marriage agreement will not come into effect, i.e. it will have no legal force and will not cause any legal consequences. Thus, the marriage contract may be characterised by a specific circle of subjects, i.e. spouses "... as a result, if a marriage has not been commenced, a legal requirement regarding the specific composition of subjects shall not be exercised" (Anatolskaya, 2000).

### **Requirements to the form and content of a marriage contract**

The legislator has strictly identified the parties of a contract. Only specific subjects such as spouses or prospective spouses may conclude the marriage contract. The Civil Code of the Republic of Lithuania designates that "Marriage is a voluntary agreement between a man and a woman to create legal family relations executed in the procedure provided for by law". Marriage is realised as a unity of agreement form and content. A man and a woman who have commenced a marriage acquire a new legal status and property as well as personal non-property rights. In the marriage contract, an agreement regarding property rights acquired on the basis of the marriage or to be acquired in the future is made. The marriage contract may be considered as a particular agreement supplementing the matrimony contract, which may also be grounded on respect, loyalty and trust.

In the USA, a marriage contract is subject to the general legal rules of contracts regarding the conclusion, amendment and invalidation of contracts. However, the marriage contract may be characterised not only by the general features attributed to all transactions, but by some specific characteristics as well. This contract is similar to other civil contracts, but

it is not identical. It is possible to distinguish three features typical of a marriage contract, which differentiate it from other ordinary contracts (Homer, Clark, 1996).

First of all, the mutual relations between the parties are grounded on trust; therefore, it is important that one contractual party would not deceive the other party (Mullin, 2005). After the commencement of the marriage, spouses acquire particular duties arising from the relations of mutual trust, which emerge specifically from the marriage irrespective of any law. It is unquestionable that marriage is based on the mutual trust between the spouses; therefore, any other agreements between spouses must meet strict requirements. The conditions of such agreements must be fair and made with respect to both contractual parties and their under-age children. Although the circle of issues to be included into the marriage contract has expanded, particular limitations still remain.

Secondly, the most frequent object of this contract is family assets and funds used for the needs and maintenance of spouses. As a result, interest and concern about the security of interests of contractual parties and their minors is much greater than in the ordinary commercial contracts.

Thirdly, the period between the conclusion and exercise of the contract is frequently quite long. As a result, it increases the possibility that there will be various unintended amendments that may influence some conditions of the contract, so their execution may become unreasonable and improper with regard to the third parties, i.e. minors.

A marriage agreement may be distinguished by its unique content. The spouses are allowed to stipulate the legal regimes to be applied to their property; however, the choice is limited by the imperative provision regulating

the content of the marriage contract. Namely, spouses may choose one of the legal regimes indicated in this article:

- “Property acquired both before and during the marriage shall be the individual property of each spouse”  
“Individual property acquired by a spouse before the marriage shall become joint community property after the registration of the marriage”  
“Property acquired during the marriage shall be joint community property” (Adomavičius, 2002).

Accordingly, spouses cannot choose the legal regime of property other than stipulated in the above article. As one can see, the freedom principle of the contract in stipulating the content of the marriage contract is narrower than on concluding other civil contracts. Since a marriage contract concerns not only the interests of spouses but their under-age children as well, the limitation of the above-mentioned principle is substantiated in order to protect the interests of the spouse more vulnerable from the financial point of view. The same reasons have caused the prohibition to change the legal regime of the new family law institution, i.e. family assets, by the marriage contract with a view to protect the interests of the whole family and the pecuniary guaranties of each family member. Any assets will be considered to be family assets owned by either spouse before or during the marriage, which may be used only to meet the needs of the family, in order to avoid violation of interests of spouse in good faith and under-age children of the family” (Adomavičius, 2002). Spouses have a right to regulate their mutual property relations related to the management and partition of property, mutual maintenance, participation in the provision for family needs, etc.; meanwhile, the regulation of the personal relations and du-

ties of the spouses unrelated to property in the contract is forbidden; for example, none of the rights and duties of the spouses regarding their minors can be regulated; also, it is impossible to reject personal duties of spouses such as loyalty and moral support.

A marriage contract may be declared null and void on the general grounds for the nullity of transactions and specific grounds for the nullity of marriage contracts. One of the specific grounds for the nullity of the contract may be the following: "...if the agreement is in serious breach of the principle of equality or is especially unfavourable for one of the spouses". All provisions of a marriage contract cannot be inconsistent with the imperative rules of law, good morality or public order. Since the essential condition for the validity of the marriage contract is the marriage itself, the marriage contract will be terminated on the termination of the marriage; however, the declaration of the marriage contract as null and void does not make the marriage invalid. In the course of time more and more countries legitimate the agreements between spouses or prospective spouses regarding some specific issues, which are mostly related to the assets, since a larger number of spouses or individuals intended to get married are inclined to solve particular issues rising from the marriage individually and, thus, to avoid the statutory regulation of these questions.

The United States of America issued the Uniform Prenuptial Agreement Act in 1983. It was accepted by 27 states, while the rest of the states regulated the conclusion of a marriage contract by other laws. This act regulates the conclusion of prenuptial agreements; meanwhile no separate law has regulated arrangement of postnuptial agreements (Smith, 2006) However, analogous principles of prenuptial agreement have been applied to them

as well. A prenuptial agreement is considered as an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage. In parallel, the postnuptial agreement is concluded after the commencement of the marriage.

In France, the Civil Code regulates the form and content of the marriage agreement (Walzer, 2006).

In the majority of countries, both common and civil laws apply strict requirements to the conclusion, form and content of marriage contracts. A marriage contract must be concluded in written form and signed by both present and future spouses. In some states of the USA the signatures of the contractual parties must be certified by the third party or the notary public (Carper et. al., 1999). In case of the breach of this requirement the USA courts will declare the marriage contracts null and void (USA case...,1997). In France, in addition, a marriage contract must be certified by the notary public who also introduces spouses to the legal consequences of the legal regime selected to be applied to their property. In the USA, a marriage contract must be concluded in free will and in good faith. The courts will take into consideration the circumstances of contract making, i.e. whether the contractual parties have been aware of their rights, the individual property and debts of each spouse and the legal consequences of the conclusion of the contract (USA case: *McHugh v. McHugh*, 1980). The Civil Code of France also stipulates the requirement of honesty during the conclusion of the contract (Walzer et al., 2004); however, in practice this requirement is seldom breached since the participation of the notary during the conclusion of the contract is mandatory. In the USA, a marriage agreement will not be mandatory to a spouse who has been misguided by the information about assets possessed by the

other spouse (Clark, 1988). This duty of a spouse to acquaint the other spouse with his or her material state is more drastic than in case of ordinary civil contracts. Meanwhile, the Civil Code of France does not stipulate the requirement to reveal the material state of one spouse to the other. The USA courts may declare a marriage contract null and void if it has been signed before the commencement of the marriage. The parties of the contract must have time enough for the conclusion and revision of the contract, and also they must receive some legal assistance from the lawyer. Each party of the contract must have its own lawyer in order to get some independent assistance. Although it is not strictly required by the law to have a separate lawyer by both spouses, with reference to the court practice it is not just advisable (Smith, 2005) but also may become the cause for the nullity of the contract. That's precisely the way to avoid probable dishonesty during the conclusion of the contract and to increase the probability of meeting the requirement of disclosure of the material state of spouses. This problem is not so relevant in France because, as it was mentioned before, a marriage contract will be null and void if a notary public, who performs consultative, explanatory and testing functions, does not certify it. In the USA, the Act on Uniform Premarital Agreement specifies the content of the contract. Two groups of questions, which spouses are allowed to dispute about in the agreement, may be distinguished: Some states provide against the inclusion of issues related to the maintenance rights into the content of a marriage contract (USA case: *In re Marriage*...1979). However, a tendency in the court practice to allow the estimation of these questions in a marriage contract has been noted (USA case: *Osborne*...1981). Meanwhile, in France the maintenance issues cannot be disputed in the mar-

riage contracts. As mentioned before, in the USA spouses may agree upon individual rights and duties if it is in compliance with public order or penal laws. The right of spouses to make an agreement regarding individual rights and duties will not be considered as unconditional in other cases either, i.e. spouses cannot use a marriage contract to make a negative impact on the interests of their under-age children. The spouses may deal with specific issues related to the care, maintenance, education of minors, etc.; however, the court is not obliged to refer to such agreement because, if the court finds the conditions of the marriage contract inconsistent with the interests of the minor, it may change these conditions into other conditions that will be most favourable to a child (Atkinson, 2003).

It should be noted that the Civil Code of France does not stipulate the possibility for the spouses to have a discussion on individual rights and duties in the marriage contract. The freedom of concluding this contract is strictly limited by the choice of the legal regime of property.

From this point of view, the USA marriage contracts are much more flexible, because the amendments to the contract may be inflicted any time if specific circumstances change during the marriage, applying the same proceedings as the conclusion of the contract. In France, the contract may be amended only two years after its conclusion and with the court's permission.

In their marriage contract, the spouses may stipulate their rights and duties related to the management of property, mutual maintenance, participation in the provision for family needs and expenses as well as the procedure for partitioning property on divorce and other matters related to the spouses' mutual relations in property; however, it is forbidden to regula-

te personal non-pecuniary relations in the marriage contract. Therefore, it may seem outright that the marriage contract is a contract of non-personal character since it regulates only the property rights and duties of spouses. However, it is impossible to make such a shaitforward conclusion. Family relations are both personal and pecuniary. It is noticeable that personal relations prevail within the family; meanwhile the property relations are less important. Family relations are created by the formation of the marriage. Consequently, all family relations emerge from one specific legal fact called marriage. Spouses acquire a new legal status as well as property and personal non-property rights. Not only personal non-pecuniary relations but also property relations emerge from the marriage. The marriage gives birth to both property interrelations between spouses and pecuniary relations between parents and their minors. Therefore, both personal and property relations of the family concern not only third parties but also spouses and their minors. Property relations in the family law arise from personal marital relations; moreover, pecuniary and personal relations are intertwined. A marriage contract discusses some particular property rights which are acquired or will be devolved in the future on the basis of the marriage. Property relations discussed in the marriage contract may not be considered as purely property relations; however, they are grounded on the mutual trust, respect and loyalty.

In deciding whether a marriage contract may be attributed to the contracts of personal character, some specific indications of a marriage contract are especially relevant. These indications include a strictly defined circle of persons allowed to conclude a contract, tightened requirements for the form and content of a contract and particular principles identified for the nullity of marriage contracts.

As mentioned before, in their marriage contract the spouses may stipulate their rights and duties related to participation in the provision for family needs. Although this participation in the provision for family needs is attributed to property relation, it will also cover the satisfaction of spiritual, cultural, intellectual, etc. family needs; for example, expenses on tickets to children plays should be treated as the form of implementation of the parental duty to take care of children's education and upbringing.

The Civil Code of the Republic of Lithuania designates the duties of spouses to support each other both materially and morally as well as to contribute to the satisfaction of joint family needs and individual demands of each spouse. The issues of mutual maintenance of spouses should be also related to the above-mentioned non-pecuniary duty of spouses. It should be also noted that the rights and duties of the spouses provided for in their marriage contract may be related to particular circumstances or the fulfilment or omission of a certain condition stipulated in the marriage contract. The spouses may relate the emergence or termination of their rights and duties with a specific circumstance, the emergence of which is doubtful (for example, adultery and child birth) (Adomavičius, 2002). Thus, although the marriage contract cannot regulate personal rights and duties, the spouses may relate the emergence or termination of property rights and duties with the circumstances of a personal character.

With regard to what has been stated above, it is possible to consider the marriage contract as attributable to the category of personal contracts. The marriage contract will terminate on the divorce or separation of spouses; however, some duties may be stipulated in the contract, which will remain in force on divorce or separation; for example, it may be

designated that a motor vehicle, which has been considered as a joint community property, will become an individual property of one of the spouses on termination of the marriage. However, it should be noted that the validity date of a marriage contract would not necessarily depend on the termination of the contract; for instance, the validity of the marriage contract may end on the date indicated in the contract. Also, the marriage contract may be dissolved by the death of one of the spouses. The termination of marriage contract must be also registered in the register of a marriage contracts. With the emergence of disputes regarding amendment or termination of the marriage contract, one of the spouses may address the court with the request regarding the amendment or termination of the marriage contract. Then the marriage contract may be amended or terminated by the decision of the court on the grounds provided for in Book Six of the Civil Code on the amendment or termination of a marriage contract. The amendment or termination of the marriage contract will come into force:

- 1) on the mutual agreement of spouses certified by a notary public, if no otherwise is stipulated in the marriage contract;
- 2) on the coming into effect of the judgement of the court regarding the amendment or termination of the marriage contract.

A marriage contract will be considered as null and void if the conditions stipulated in the marriage contract contradict the mandatory legislative rules. In this case the marriage contract will be void, i.e. it will not inflict any legal consequences from the moment of its conclusion.

## Conclusions

1. The spouses must exercise all requirements related to the mortgage of the as-

sets, tax payment and other joint property because both spouses share the liabilities.

2. The legal regime of family assets will emerge only after the commencement of the marriage and will be applied to the property relation of spouses until the termination or nullification of the marriage or separation of the spouses.
3. The statutory legal regime of family assets will be applied if no marriage contract is concluded. Moreover, this type of legal regime will be applied to the property acquired by the spouses prior to the Civil Code coming in force.
4. The new Civil Code of the Republic of Lithuania has brought a number of amendments into the regulation of family legal relations. One of them is related to the right of spouses to change the statutory legal regime applied to their property with a marriage contract. In their marriage contract the spouses may stipulate the legal status of their property.
5. Marriage contract is a civil legal transaction; however, it is characterised by some specific features; for example, the object of the contract is the property relations between spouses based on mutual trust, loyalty and respect; the contract may be concluded both before and after the registration of the marriage; the circle of persons allowed to conclude a contract is strictly defined; the requirements for the form and content of the contract have been tightened and specific grounds for the nullity of marriage contracts have been stipulated.
6. The practice of foreign countries confirms a specific character of marriage contract. With respect to the specific

features of marriage contract it should not be identified with other commercial transactions.

7. The general principles of contracts are applied to marriage contract as a civil legal transaction including the principle of freedom. However, the application of this principle is limited due to the specific non-commercial character of the marriage contract and its potential impact on the mutual relations of spouses.
8. Although the marriage contract allows regulating only property relations, such relations are not purely property relations but are also related to the personalities of spouses. Marital relations (both property and non-property) emerge from a specific legal fact called marriage. A man and a woman who have commenced a marriage acquire a new legal status and property as well as per-

sonal non-property rights. In the marriage contract, an agreement regarding property rights acquired on the basis of the marriage or to be acquired in the future is made. The marriage contract may be considered as a particular agreement supplementing the matrimony contract, which may also be grounded on respect, loyalty and trust. Although the participation in the provision for family needs is attributed to property relations, it will also cover the satisfaction of spiritual, cultural, intellectual, etc. family needs. The personal character of the marriage contract is also supported by the duty of mutual maintenance of the spouses.

9. Since the property relations of spouses regulated by the marriage contract have direct links with their personal non-property relations, it may be concluded that the marriage contract should be attributed to personal contracts.

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## EKONOMINIS POŽIŪRIS Į ŠEIMĄ: SUTUOKTINIŲ TURTINIŲ SANTYKIŲ REGULIAVIMAS

Dalia Perkumienė, Vida Čiulevičienė

### Santrauka

Santuoka apibrėžiama ir kaip ekonominė institucija, kuriai priskiriami svarbūs finansiniai privalumai, nes ji suteikia įvairią ekonominę, socialinę naudą. Tai apima lengvatą, susijusią su mokesčiais, paveldėjimu, vaiko ir sutuoktinio išlaikymu, socialine apsauga, imigracija. Net naujausiais laikais, kai asmuo tapo labiau nepriklausomas, šeima vaidina didžiulį vaidmenį. Tiesa, dėl socialinės, ekonominės ir kitokios individualios nepriklausomybės, ypač ekonomiškai stipriau išsivysčiusiuose kraštuose, šeimos institucija silpnėja.

Darbe nagrinėjama problema yra aktuali tiek teoriniu, tiek praktiniu požiūriu. Ekonominis požiūris į šeimą atskleidžiamas analizuojant sutuoktinių teisinius turtinius santykius, jų reguliavimo esmę bei svarbą, analizuojant įstatymus, įvairių mokslinę teisinę literatūrą šia tema, taip pat teismų praktiką.

Santuoka – svarbus institutas, kurį reguliuoja įstatymai. Jis gyvuoja daug amžių ir visose visuomenėse. Tai svarbi žmogaus teisė. Tačiau tiek socialinė, tiek teisinė santuokos prasmė yra nevienoda skirtingose valstybėse ir bėgant laikui keičiasi. Tą kaita priklauso nuo socialinės, kultūrinės, ekonominės raidos, lemiančios vertybių bei pasaulėžiūros keitimąsi. Taip pasikeitė ir požiūris į moterį, į skirtingų rasių asmenų santuokas. Žmonos Vakarų šalių įstatymuose dabar laikomos lygiaverčiais, o ne pavaldžiais partneriais, skirtingų rasių asmenų santuoka įteisinta įstatymų ir plačiai paplitusi visuomenėje. Santuoka yra viena iš

esminių asmens teisių, tai ją turi būti leista pasinaudoti visiems.

Lietuvos Respublikos Konstitucijos 38 straipsnio pirmoje ir antroje dalyse teigiama, kad „šeima yra visuomenės ir valstybės pagrindas. Valstybė saugo ir globoja šeimą, motinystę, tėvystę ir vaikystę“. Siekiant, kad šeima taptų realiu visuomenės ir valstybės pagrindu, būtina kuo geresnė šeimos kokybė ir kuo didesnė šeimos socializacija visuomenėje. Šeimos socializaciją visuomenėje apunkina didelis šeimų mobilumas, t. y. didelis jų irimo ir naujų kūrimo intensyvumas, nes kas trečia šeima Lietuvoje skiriasi. Esant tokiai situacijai ypatingą reikšmę įgyja valstybės reguliuojami teisiniai santykiai šeimoje. Viena iš svarbiausių kryptių šeimos socializacijai yra turtinių santykių šeimoje ir visuomenėje tobulinimas, ypač alimentų mokejimo srityje, nes po skyrybų dažniausiai motinai tenka visa vaikų auklėjimo našta, aukojant vaikams savo gyvenimą ir savo asmeninius interesus bei iš dalies savo turtinius išteklius.

Šeimos turto teisinis režimas atsiranda tik sudarius santuoką ir turtiniams sutuoktinių tarpusavio santykiams galioja, kol ši baigiasi, pripažįstama negaliojančia arba patvirtinama separacija. Įstatymų numatytas sutuoktinių turto teisinis režimas taikomas, jei sutuoktiniai nėra sudarę vedybų sutarties. Be to, toks režimas taikomas jų įgytam turtui prieš įsigaliojant CK.

Lietuvos Respublikos civiliniame kodekse skiriamos dvi sutuoktinių turto teisinio režimo rūšys: įstatyminis ir sutartinis. Bendras principas nustatytas 3.81 straipsnyje: sutuoktinių turtui taikomas įstatyminis turto teisinis režimas, jeigu sutuoktiniai nėra sudarę vedybų sutarties. Todėl pagrindinis vedybų sutarties elementas yra turto teisinio režimo pasirinkimas. „Šeimos teisės“ 3.104 straipsnyje numatyta, kad sutuoktiniai turi teisę pakeisti įstatymo nustatytą režimą ir pasirinkti vieną iš trijų rūšių: 1) turtas, įgytas tiek iki santuokos, tiek gyvenant susituokus, yra kiekvieno sutuoktinio asmeninė nuosavybė; 2) turtas, kiekvieno sutuoktinio įgytas iki santuokos ir esantis jų asmeninė nuosavybė, po santuokos įregistravimo tampa jų bendrąja jungtine nuosavybe; 3) turtas, įgytas susituokus, yra bendroji dalinė sutuoktinių nuosavybė. Šioje nuostatoje turtas yra suprantamas kaip atskiri

daiktai arba jų įsuma. Sutuoktinių turtas susideda iš turto, įgyto santuokos metu, ir kiekvieno sutuoktinio turto, įgyto iki santuokos sudarymo.

Šeimos santykiai yra tiek asmeniniai, tiek turtiniai. Visi šeimos santykiai atsiranda iš specifinio juridinio fakto – santuokos. Sutuoktiniai įgyja naują teisinį statusą ir turtines bei asmenines neturtines teises. Iš santuokos atsiranda ne tik asmeniniai neturtiniai santykiai, bet ir turtiniai. Iš santuokos kyla tiek sutuoktinių tarpusavio turtiniai santykiai, tiek tėvų ir nepilnamečių vaikų turtiniai santykiai. Taigi šeimos santykiai, tiek asmeniniai neturtiniai, tiek turtiniai, liečia ne pašalinius asmenis, o būtent sutuoktinius ir jų nepilnamečius vaikus. Vadinas, turtiniai santykiai šeimos teisėje kyla iš santuokinių asmeninių santykių, be to, tiek turtiniai, tiek asmeniniai santykiai yra tiesiogiai susiję.

## AN ECONOMIC APPROACH TO FAMILY INSTITUTION: REGULATION OF SPOUSES' PROPERTY RELATIONS IN THE REPUBLIC OF LITHUANIA

Dalia Perkumienė, Vida Čiulevičienė

### Summary

Family is defined as an economic institution giving the advantage of financial, economic and social benefit, for example, perks of tax concessions, child's or spouse's maintenance, social security and immigration. The family is the main social and economic unit which guarantees production increment, thus economic and social growth of the community is based on family needs. Moreover, family is the driving force of the economic and social progress. The modern family is not just a sexual arrangement. At present, time the most obvious thing about it is its economic activities. The family is a kind of business, engaged in the enterprise of running a household. The economic trade is almost entirely between the individual husband and wife, not between their families. But the trade remains important. Some theorists have argued that the basis of gender inequality in our society is economic inequality: men have higher incomes, while women have to compensate by providing the menial household labor.

The paper analyses the problem which is relevant both theoretically and practically, since it tries to disclose family as an economic institution as it is credited with important financial advantages, and it provides different economical and social benefits, such as tax exemptions, inheritance, child and spouse maintenance, social security and immigration. This position is revealed analysing the regulation of legal

property relations between spouses by laws, various scientific and legal literary works related to this topic as well as court practice.

Marriage is an important institution regulated by laws. It has existed for a number of ages in all societies. It is a significant human right. However, both social and legal values of marriage differ in various countries and alter in the course of time. The alteration depends on the social, cultural and economic development, which also conditions the change in values and worldviews. As a result, the approach to women and interracial marriages has changed. According to the laws of Western countries, wives are considered as equal and not dependent partners; meanwhile, interracial marriages have been legalised by law and are very popular among society members. Since the marriage is one of the essential human rights, everyone must be allowed to exercise it.

Paragraphs 1-2 of Article 38 of the Constitution of the Republic of Lithuania declare that "The family shall be the basis of society and the State. The State shall protect and take care of family, motherhood, fatherhood, and childhood". The highest possible quality and socialisation of the family are required to make it the real basis of society and the State. Family socialisation within society is aggravated by a huge family mobility, i.e. the high intensity of break-ups and formation of new families, because every third

family in Lithuania divorces. In this situation, the State regulating legal family relationships gains a very important significance. One of the main family socialization directions is the development (amendment) of property relations, especially in the field of alimony as after divorce mothers are responsible for their children.

The general principle indicated in Article 3.81 provides that the property of spouses will be subject to the statutory legal property regime, if the spouses have not concluded a marriage contract. Therefore, the main element of the marriage contract is selection of legal property regime. Article 3.104 of Family Law provides that the spouses have the right to change the statutory regime and to choose one of its three types:

1) property acquired both before and during the marriage will be the individual property of each spouse;

2) individual property acquired by a spouse before the marriage will become joint community property after the registration of the marriage;

3) property acquired during the marriage will be partial community property. Property in this paragraph is considered as the entire property or only its certain part or specified chattels. The property of spouses consists of property acquired during the marriage and the individual property of each spouse acquired before marriage.

The marriage creates two kinds, statutory and contractual (a marriage contract), of the legal regime of property of spouses. The statutory legal regime of property will be applied when the spouses have not concluded a marriage contract. It means that the assets acquired by spouses after the commencement of marriage will become their joint community property. The new Civil Code has a separate chapter where all issues related to the partition of such assets are regulated and the guarantees of creditor rights of spouses are designated. If spouses want to avoid the legal regime of joint community property, they must conclude a marriage contract.

**Keywords:** marriage, spouses, property relations, legal regime of spouses' property.

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