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Property-related Obligations of Spouses

Property obligations of spouses is one of the fundamental issues of family law, which is characterized by a number of features. The purpose of this article is to define/distinguish the spheres of common and separate obligations of spouses, which in turn affects the scope of their property responsibility. It is worth noting the interest of the creditor towards the fulfillment of the obligation of debtor spouse/spouses – without taking it into consideration, the examination of the property obligations of spouses and conducting respective legal reasoning will not be justified,. It should be emphasized that in general, the property obligations of spouses also include the legal duty of mutual maintenance of spouses established by the Civil Code of Georgia and its regulatory norms, however, the purpose of this article is to separately examine the obligations of spouses not in the context of the alimony relationship, but in the context of the property regime.

Keywords: *Separation of Common and Individual obligations of Spouses, The Interest of the Creditor vs. Common Interest of the Family, Criterion of Covering Family Needs, The Rule of Fulfilling the Individual Debt, The Rule of Dividing the Common Debts.*

1. Introduction

Family law is a complex, multifaceted sphere encompassing all aspects of legal intervention in both the private and domestic areas of individuals who are related by blood or by certain union.¹ In the modern world, the subject of interest towards the family law is mainly conditioned by social and economic aspects of family members, including, by financial consequences following the marriage termination or others.² One of the most important issues in legal relations of spouses is related to the property obligations arising from their relations with the third parties (creditors). This property-related obligations are regulated by articles 1169-1170 of the Civil Code of Georgia (hereinafter, CCG). In consideration of the Georgian family law where joint and personal properties of spouses are differentiated, this very dichotomy is the basis of similar separation of property obligations of spouses.³ Respectively, the definition of the Supreme Court of Georgia, pursuant to which, in order to define what is the joint debt of spouses for family law purposes, the articles 1169-1170 shall be defined systemically, jointly with articles 1158 (Matrimonial property), 1160 (Administration of matrimonial property by mutual agreement) and 1161 (Separate property of spouses) therein, shall be

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¹ Bryan A., *A Straightforward Guide to Family Law*, London, 2015, 10.

² Boele-Woelki K., *Common Core and Better Law in European Family Law*, Antwerp-Oxford, 2005, 5.

³ Shengelia R., *Shengelia E.*, *Family Law*, Tbilisi, 2011, 168 (in Georgian).

shared.⁴ Regardless of this, the above-referred articles require correct definition, firstly in consideration of the legal constructions that are not currently recognized by Georgian family law. In the process of fulfilling the obligations of the spouses to the creditors and, therefore, determining the obligation, the correct opinion must be envisaged, according to which, as in other joint property regimes, the spouses do not have a separate share in the property, which they may dispose independently.⁵ Apart from the aforementioned, before discussing the issues foreseen under this thesis, it is critical to briefly describe the legal systems of modern jurisdictions that regulate the matrimonial property relations and peculiarities of which are considered to regulate the sphere of matrimonial property obligations.

Modern European jurisdictions, according to one of the classifications, recognize four major systems of regulating the marital property relations:⁶ 1. Universal Regime of Marital Property – at the moment, Holland is the only EU state that maintained this regime. A number of efforts to change and modernize the regime failed, however, some steps may still be made to this direction in future. In universal regime of marital property, absolutely all properties for the moment of marriage become the joint properties of spouses, including the property received via gift or inheritance during the marriage. 2. Legal Regime of Marital Property–the most wide-spread legal model in Europe also known under the name of “joint acquisition”. According to this very regime, the joint and individual properties of spouses are separated from each other. This regime is spread in the majority of states with Roman jurisdiction as well as in Middle and East Europe states. Georgian family law chose legal model of marital property (legal regime of joint property) as a legal regime. 3. Deferred Marital Property Regime – this legal system is common to Scandinavian countries. According to this method, there is no joint marital property concept, during marriage each spouse owns alone all his or her property, irrespective of whether the property is marital property or individual property. However, in case of divorce all properties (excluding the gift or inherited properties) become the co-ownership properties of spouses. 4. Legal Compensation Regime – common to countries with German law jurisdiction. Regardless of the marriage, the spouses maintain their individual assets separately. However, unlike the Scandinavian regime, joint property of spouses (marital property) does not arise even in case of the divorce. Instead, during the divorce, the law foresees potential claims of spouses for financial compensation.

This work aims to identify the correct definition of the articles 1169-1170 of the Civil Code of Georgia on the basis of comparative analysis of national and foreign regulations, their scope of operation and importance in legal relations of spouses.

2. Separation of Property-related Obligations of Spouses

Paragraph 2 of the Article 1170 of Civil Code of Georgia, despite the inaccurate title of the article, offers the criterion as to how to separate individual and joint debts of spouses. In particular,

⁴ Decision № AS-1334-1254-2017 of 18 May 2018 of the Chamber for Civil Cases of Supreme Court of Georgia.

⁵ *Rusiashvili G.*, Matrimonial Property Relations, Comparative law magazine 10/2020, 10 (in Georgian).

⁶ *Scherpe J. M.*, The Financial Consequences of Divorce in a European Perspective, Cambridge, 2016, 4-10.

this criterion is taking the debt for the joint interests of the family, which essentially repeats the definition of the concept of “family needs” (family maintenance) used in Article 1160 of Civil Code.⁷ The latter distinguishes the administered transactions authenticity of which does not require the approval of a non-disposing spouse and the transactions, the authenticity of which requires such approval.⁸ According to the homogeneous Georgian judicial case law, in case of a debt taken by one of the spouses, the joint and several liability of the other spouse for such a liability is not presumed only on the basis of determining the origin of the debt taken during the marriage. Consequently, the debtor spouse bears a responsibility towards the creditor until this debt is recognized as a joint debt and the burden of proof (article 102 of Civil Procedure Code of Georgia) regarding opposite circumstances lies on the person who appeals the debt was used for family maintenance.⁹ Moreover, with regard to the definition of this assessment concept, Georgian judicial case law has currently made some steps and in certain cases, the circumstances belonging to the category of joint interest of the family were specified.¹⁰

From the point of view of legal regulation, it should be noted that the Civil Code of Georgia does not offer any kind of list of examples what should be deemed as an individual and/or a joint debt. In contrast to the above, we can look at Belgian Civil Code, where the Articles 1406 and 1407 provide an exhaustive list of individual obligations of spouses.¹¹ Therefore, in Belgian law there is a presumption in favor of marital property, according to which, the obligations not listed in the above-mentioned articles are considered as joint obligations of spouses and also, it is not uncommon for the Belgian law to use the category of joint interests of the family as a ground to identify the purposes of obligations undertaken by one of the spouses, which is foreseen in the article 1408.¹² Current form of separation of matrimonial obligations in the Georgian family law is mostly common to post-Soviet countries too. For instance, we can have a look at Kazakh family legislation according to which, giving education to a joint child belongs to the category of joint obligations and on the opposite to this,

⁷ *Rusiashvili G., Kavshbaia N., Batiashvili Z.*, Comments on Civil Code of Georgia, Book VII, Tbilisi, 2021, 88 (in Georgian).

⁸ *Meladze G.*, The Rule of Disposal of the Matrimonial Property, Journal of Law № 1, Tbilisi, 2021, 67 (in Georgian).

⁹ Decision № AS-516-489-2015 of 17 June 2015 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № AS-1029-964-2012 of 23 July 2012 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № AS-1334-1254-2017 of 18 May 2018 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № AS-1646-2018 of 22 March 2019 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № AS-315-300-2016 of 17 June 2016 of the Chamber for Civil Cases of Supreme Court of Georgia.

¹⁰ Decision № 3K/519-01 of 29 June 2001 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № AS-981-922-2012 of 24 September 2012 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № AS-516-489-2015 of 17 June 2015 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № AS-372-356-2016 of 3 January 2017 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № 3k/990-01 of 16 January 2002 of the Chamber for Civil Cases of Supreme Court of Georgia.

¹¹ *Verbeke A.*, Marital Property Planning in a Belgian Nutshell, Based on a Lecture at the Annual Conference of the International Academy of Estate and Trust Law (2005), New Mexico, 2006, 5.

¹² *Ibid.*, 6.

any obligations arising from health treatment by one of the spouses shall be covered from the individual property of this spouse.¹³ Similarly, pursuant to the article 45(2) of the Family Code of Russian Federation, joint debt includes the debts taken jointly by spouses (directly meaning – joint) as well as the debt taken by one of the spouses, if in the case of the latter, the Court rules that the debts were used for family maintenance.¹⁴ Accordingly, payment must be made from the joint property of the spouses, and where the said property turns insufficient to satisfy the claim of the creditor, and then each spouse is liable jointly and severally with their individual property.¹⁵

Family law of British Columbia, one of the Canadian provinces shall also be mentioned. In particular, Canada belongs to the binary system state, where two systems of law are effective – Continental Europe (public law) and Anglo-American (private law, including family law).¹⁶ Respectively, in the this province of Canada, the family law area is regulated by Continental-European Law system and its main regulatory instrument – Family Law Act.

Pursuant to the Chapter 86 of this Act, family debt includes all financial obligations incurred by one or both spouses during the period beginning when the relationship between the spouses begins and ending when the spouses separated, including the debt taken by one of the spouses after the date of separation, if incurred for the purpose of maintaining family property, for example, to fulfill the joint tax obligations.¹⁷

According to this definition, the debt taken by one of the spouses before the marriage or actual cohabitation shall be deemed as his/her individual debt. Article 81 therein provides the presumption by which the spouses are both responsible for family debt, regardless of their respective use or contribution (who used it).¹⁸

European Commission of Family Law (hereinafter – Commission)¹⁹ has developed a set of family law principles to regulate the marital property relations. One of the major goals of the Commission work was to define a common core for comparing the current national family laws of different states under European jurisdiction that overall had to be the best model for regulating different legal issues. For this very purpose, the Commission, as a result of analysis and processing of family law regulations of its 26 states, has developed 58 principles with the best regulatory functions for matrimonial property relations.

In scientific literature, there are some sources that are oriented on the afore-mentioned principles of the Commission and also, the comparative analysis of current regulation in national laws. One of the sources was a work dedicated to the comparative analysis of Spanish family law and Commission principles. In particular, in the context of separation of matrimonial property obligations,

¹³ *Baideldinova Dalpane M.*, *Matrimonial Property and Its Contractual Regulation in Kazakhstan*, The International Survey of Family Law, London, 2011, 249.

¹⁴ *Вишнякова А.В.*, *Комментарий к Семейному Кодексу Российской Федерации*, Москва, 2011, 33.

¹⁵ *Власова М.В.*, *Постатейный Комментарий к Семейному Кодексу Российской Федерации*, Москва, 2013, 151.

¹⁶ <www.oas.org> [15.01.2022].

¹⁷ *Chiu H., Ostrow M.*, *JP Boyd on Family Law, Resolving Family Law Disputes in British Columbia*, Wikibook, 2019, 463.

¹⁸ *Ibid.*

¹⁹ See <www.ceflonline.net> [19.01.2022] for history and goals of the Commission.

if Spanish law is applied, the latter distinguishes the cases where both spouses acted together (or one of the spouses by the consent of the other) from the cases where one of the spouses acted separately.²⁰ According to this analysis, Spanish family law separates the joint responsibility of spouses (object of responsibility – joint property) from the individual responsibility of spouses (responsibility object – individual property). Civil Code of Spain does not offer any list of individual obligations as provided in the Commission principles (4:41) but its meaning is explained by negative formulation (i.e. what does not belong to the joint property is a subject of individual property). Individual obligations shall be covered from the individual property of the debtor spouse (including, his/her income and profit) and also, such obligations may be fulfilled from the debtor spouse's share in the joint property.²¹ In this part, Georgian and Spanish regulation coincide with each other. As for the order of repayment of individual obligations in view of matrimonial property masses – pursuant to the Commission principles as well as to the Spanish law (article 1371 of Civil Code of Spain), it is stated that each spouse's personal debts are his or her sole responsibility and can only be settled out of their individual property.²² Where said individual property is insufficient, creditors make a claim for the debtor spouse's share of the joint property. Respectively, non-debtor spouse's individual property as well as the share in joint property shall be inviolable.²³

3. Rule of Repayment of One of the Spouse's Debt

After separating the joint and individual obligations of spouses, it is important to define the rule of fulfillment of such distinguished obligations. In particular, the rule of payment of the individual obligation of one of the spouses is foreseen in the first paragraph of the article 1170 “Procedure for the payment of the debt of one of the spouses”, according to which, the payment of the debt of one of the spouses may be recovered from his or her property and/or from his or her share in the matrimonial property which s/he would have received if the property had been divided. Considering the fact that common property is a joint and not share-based co-ownership, where each spouse cannot have a share separately even in theory, it is necessary to interpret this provision correctly (like it was mentioned many times, Georgian homogenous judicial case law is developed in wrong direction). In Georgian legal literature, there is a correct opinion that repayment of the spouse's personal debt is made not only from the abstract share in joint property but also from the claim related to division of joint assets (article 1164 of Civil Code of Georgia) and receipt of the specific share.²⁴ In order to imagine the full procedure correctly, how the creditor's due claim shall be realized against the debtor spouse (for the repayment of personal debt), we offer you the detailed scheme formed in paragraphs:

²⁰ *Redondo P.Q.*, Spanish Matrimonial Property Regimes and CEFL Principles regarding Property Relations between Spouses, *European Journal of Law Reform*, Vol.17, Joint Edition, 2015, 338.

²¹ *Ibid.*

²² *Ibid.*

²³ *Shengelia R., Shengelia E.*, *Family Law*, Tbilisi, 2011, 170 (in Georgian).

²⁴ *Rusiashvili G., Kavshbaia N., Batiashvili Z.*, *Comments on Civil Code of Georgia*, Book VII, Tbilisi, 2021, 133 (in Georgian).

- An agreement was made between one of the spouses and the creditor, by which the spouse undertook responsibility to fulfill a certain obligation;
- The debtor spouse has violated this obligation;
- The creditor decided to hold the debtor spouse liable and since the obligation was incurred by one of the spouses, the Article 1170 of the Civil Code of Georgia shall be applied. The creditor filed a lawsuit against this spouse, winning the dispute, however, the spouse still fails to fulfill the obligation;
- First of all, the creditor should try to satisfy the claim from the individual property of the debtor spouse, i.e. first his / her personal property should be determined and the assets corresponding to the value of the creditor's claim should be seized on this property (for the purposes of family law);
- Where such property does not exist or it is not sufficient to satisfy the creditor's claim, the Article 1170 (2) of Civil Code of Georgia shall be applied; according to this paragraph, the payment must be made from the marital joint property, provided that what was received from the obligation will be used for the joint interests of the family.
- At this stage, the creditor must apply to the court to claim the repayment from the debtor spouse's share in the matrimonial joint property, which the latter would receive if the property was divided. Respectively, this record shall be interpreted as an opportunity to seize a joint property claim or a claim under Article 1164 of the Civil Code of Georgia. In this case, Chapter X (Enforcement of Claims (Articles 55-60) of the Law of Georgia on Enforcement Proceedings shall be applied.
- In resolving the issue of seizure, the court must identify that what was received by one of the spouses as an obligation was used for the common good of the whole family;
- If the court finds that it has not been used for the above-mentioned purposes, the claim must not be satisfied and the creditor's claim cannot ultimately be realized too;
- If the court finds that it was used for this purpose, then the claim shall be satisfied and the claim of debtor spouse for division of the joint property must be seized;
- After all these, the debtor spouse can still voluntarily fulfill the obligation, which may become the ground for lifting the seizure;
- If the debtor spouse still fails to fulfill such an obligation, then the creditor will proceed with enforcement procedure of the claim;
- In particular, the creditor, instead of the debtor spouse, will demand the division of the joint property;
- From the moment of realization of the claim for division of the joint property, the latter ceases to exist and consequently this particular seizure will not exist, i.e. the property will be divided. However, the right of the creditor to the obligation-legal claim will remain in force as it has not yet been fulfilled at this stage;
- In such case, the Court may divide the joint property equally or may divert from equal division rule upon evaluation of different circumstances foreseen in the law (e.g. provisions of the article 1168)

- Once determining both the shares and the specific items assigned to these shares between the spouses, only then the creditor will be able to choose from the relevant items belonging to the debtor spouse's share and the property of the value of his claim and seize the said asset. Therefore, other items actually belonging to the defined share will remain in the ownership of the debtor spouse, with the right of disposal.
- At this stage, the debtor spouse should be able to fulfill his / her obligation to save himself / herself from sale of specific items;
- If s/he still does not fulfill this obligation, then these items will be sold at auction, the proceeds will be used to satisfy the creditor's claim and any amount that may exceed the value of the claim will be returned to the debtor spouse.

Article 1412 of the Civil Code of France offers an arrangement that is different from the scheme described above and from the possibility of seizing the debtor's claim for divorce by the creditor. According to this article, in case of repayment of one of the spouse's personal debt from joint property, the latter has an obligation to reimburse the other.²⁵ This norm does not consider the possibility of division of the joint property and repayment of the creditor's claim from the separated property. Opposite to this, pursuant to articles 233 and 234 of Swiss Civil Code, the obligation that was taken for the common interest of the family shall be repaid from the matrimonial property, while the obligation taken by one of the spouses for personal interests shall be covered exclusively from the personal property of the latter and from his/her share in the joint property; this case may consider sale of joint property too (article 189 of Civil Code of Switzerland).²⁶ In particular, according to the given article, when the debtor spouse is under the regime of marital property and the creditor demands from him/her to fulfill the individual (personal) obligation and his/her share in the joint property is under seizure, National Bureau of Enforcement has a right to demand division of the joint property via the Court.²⁷ Georgian family law shall also foresee this approach by adopting similar regulation at the legislative level in order to equip the creditor with relevant rights for claim (seizure of joint property, division and forced realization of the debtor spouse's share).

In the context of fulfillment of individual obligation by one of the spouses, it shall be considered how to resolve the issue related to fulfillment of obligation of this spouse incurred before marriage. Provision of the article 1161 (a) of the Civil Code of Georgia concerns only the establishment of the individual property regime for the property that belonged to each spouse before they entered into marriage; however, it does not define anything regarding the fulfillment of individual obligation of each spouse incurred in the same period.

According to *William de Funiak*, one of the leading scholars on matrimonial property issues, the basic principle of matrimonial property system is to fulfill only the obligations incurred during the marriage.²⁸ A different approach to the above is directly contrary to the basic principles of the matrimonial property system. The main issue that needs to be resolved in this case is the following: in

²⁵ *Izquierdo A.O., Rodriguez A.M.O., Izquierdo A.M.O., Matrimonial Property Regimes Throughout the World*, Madrid, 2018, 334.

²⁶ *Ibid*, 841.

²⁷ <www.fedlex.admin.ch> [22.01.2022].

²⁸ *The Antenuptial Obligation and Arizona Community Property Law*, Law and Social Order, 1970, 614.

the context of one of the spouses fulfilling a pre-marital obligation, which should be given the priority – the best interests of the family or the interests of the creditor. Joint property system gives preference to the family welfare/interests and for this very choice, it is deemed inadmissible to repay the pre-marital personal debt from the matrimonial property.²⁹ In this respect, it is interesting to look at the case *Kaizer against James* at Court of Appeals of Louisiana State (USA) as of 1963.³⁰ According to the factual circumstances of the case, the couple intended to marry; the bride rented an apartment before marriage for a period of one year. The landlord signed an agreement under one condition, the tenant had to marry her fiancé, future husband (presumably, the landlord wanted to secure the rent by a reliable property). In three months after Rent Agreement, the couple got married and the husband moved to the wife's rented apartment where the latter lived from the day of rent agreement. The rent fee was paid from the joint revenues of spouses, from May until the month when the Agreement terminated. The landlord filed a lawsuit to the court claiming the reimbursement of three months' rent for June, July and August. It was unequivocally established in the case that the rent was intended to benefit the common property interests of the spouses; nevertheless the court denied the possibility of reimbursing the rent from the matrimonial property. This decision was justified by the argument that the obligation, fulfillment of which was claimed in the lawsuit, related to the debt taken by one of the spouses before marriage and therefore, it had to be considered as an individual obligation (even though, apartment was rented for the joint property interest of spouses and the rent fee was also paid from the joint property). This case has become a case law and the presumption made by the Court in this case has been used in other disputes many times.³¹ According to this presumption, in cases where the wife concludes contracts during the marriage, it shall be assumed that the relation is established between her and the co-ownership, i.e. the agent and the principal. Respectively, it is assumed that whilst concluding the contract she acts not for her personal interests but for the joint interest of her family. On its side, this presumption affects the distribution of burden of evidence between the dispute parties. In particular, if it is applied, the non-debtor spouse,³² the defendant against the creditor must prove the opposite, i.e. the debt was taken for the interests of the family and not for personal purposes of the debtor spouse.

Regardless of the above-mentioned decisions that led to the development of Louisiana judicial practice completely different court judgments can also be found in the USA, for example – the case

²⁹ Ibid, 614.

³⁰ *Keyser v. James*, 153 So. 2d 97 – La: Court of Appeals, 1st Circuit 1963, www.scholar.google.com [29.05.2022].

³¹ For Example, *American National Bank of Beaumont v. Rathburn*, 264 So. 2d 360 – La: Court. of Appeals, Third Circuit 1972, <www.casetext.com> [29.05.2022]; *Commercial Credit Plan, Incorporated v. Perry*, 186 So. 2d 900 – La: Court. of Appeals, First Circuit 1966, <www.casetext.com> [29.05.2022].

³² **Note:** In the present case, it should be noted that the legal status of spouses in relation to property interests was not always equal. In particular, the husband held more privileged position than the wife, which was expressed in the term – “head and master of community.” Respectively, the creditors normally filed a lawsuit regarding the joint property of spouses against the husband and normally, the wife never participated in such disputes, regardless of her actions.

Weinberg vs. Weinberg.³³ Traditionally, in California, it was believed that joint property could be subject to the responsibility for pre-marital individual obligations of the spouses. In this case too, defining the policy of the family law was considered as a priority issue – whose interest was more important, the family's interest or the creditor's interest. The Judge Traynor in his decision contends that protection of the property interests of the husband's creditors, related to the pre-marital obligations, outweighs the interest of protecting the family revenues. Therefore, such creditors shall have access to the spouses' property to satisfy the due claims. It is also interesting that this judgment was made in the context of realization of the alimony claim of the ex-wife of the husband (from first marriage).

Current arrangement of the Georgian family law does not consider the repayment of pre-marital debts first of all because there is no legal basis at the legislative level. Theoretically, two types of pre-marital obligations may be separated (no matter which spouse undertook to repay the obligation): 1. The obligation taken by one of the spouses clearly for personal interest and 2. Fulfillment of the obligation that was undertaken by one of the spouses for personal interests before the marriage, but this obligation was intended for joint property interest of the future family. In both cases, pursuant to the Georgian family law system, the repayment of these obligations shall not be allowed from joint property of spouses. It is clear that pre-marital property is an individual property of spouses (article 1161 (a) of Civil Code of Georgia), respectively, the pre-marital obligation shall similarly be the individual/personal obligation of the debtor spouse, otherwise, we will receive the situation where consideration of pre-marital individual property as a matrimonial property will not be accepted while the fulfillment of pre-marital obligation will be allowed from the joint property (marital property) of spouses which clearly contradicts the Georgian family law policy – the choice of the legislator made in favor of maintaining the family unity.

It is noteworthy that alimony obligations incurring from the first marriage should not be allowed to be paid from the spouses' joint property too, as the latter does belong to the individual obligation of the spouse. Therefore, for the fulfillment of such obligation, the individual property of the debtor spouse shall be used first, and in its absence or insufficient volume, the matrimonial property shall become subject to division – firstly, the debtor spouse's share shall be determined for the ultimate satisfaction of the creditor from the property of the value of this share.

In the case of criminally derived property, the responsible is the specific joint property item or items that were purchased through criminal offense.³⁴ This is regulated by Article 1170 (3) of the Criminal Code of Georgia. According to the definition of the Court of Cassation, this norm allows to recover compensation for the damage caused by one of the spouses from the joint property of spouses only if the court judgment determines that the property was purchased with funds received as a result of the criminal offense.³⁵ Accordingly, the precondition for the application of this norm is that there is

³³ *Traynor Roger J., Weinberg v. Weinberg* 67 Cal.2d, University of California, UC Hastings Scholarship Repository, 1967, 557.

³⁴ *Rusiashvili R., Kavshbaia N., Batiashvili Z., Comments on Civil Code of Georgia, Book VII, Tbilisi, 2021, 134 (in Georgian).*

³⁵ Decision № AS-569-540-2015 of 1 July 2016 of the Chamber for Civil Cases of Supreme Court of Georgia; Decision № 2b/6774-14 of 17 February 2016 of the Chamber for Civil Cases of Tbilisi Court of Appeals.

an effective judgment of conviction in place that establishes the property was purchased by one of the spouses as a result of the use of funds received through the criminal offense.

4. Rule for Division of Joint Debts of Spouses

The rule for the division of joint debts of spouses is stipulated in the article 1169 of Civil Code of Georgia. First of all, it must be noted that according to the Georgian judicial case law, the spouse's claim for division of the joint debt is considered as an action for declaration, which is not a shared position.³⁶ According to the correct opinion expressed in the Georgian legal literature, this lawsuit is not an action for declaration but rather a transferred claim, because here, the spouse does not actually ask for the existence / absence of a certain obligation, s/he just demands division of certain obligations.³⁷ Respectively, in this case, the existence of obligation does not raise any doubts.³⁸ Apart from the afore-mentioned, Georgian judicial case law does not have any judgments in the context of article 1169 of CCG that would be ground for changing the content of this article.³⁹ Thus, the outcome of division of joint debt is expressed in the fact that the pre-division obligation had to be performed jointly and after division, we would receive individual responsibility of spouses.

Taking into account the aforementioned, it is unclear how the division of the joint debt affects the interest of spouses' creditor. In particular, after division of the total debt, the creditor will be allowed to hold liable each spouse for failure to fulfill the obligation only within the scope of defined shares. Hence, the question whether division of the total debt of spouses requires the consent of the creditor or not, shall be resolved. At the legislative level, there are no preconditions defined for the division of joint debt. The only precondition that can be identified after logical interpretation of the article 1169 of CCG is the identification of individual share of each spouse in the joint property, proportionally to which, the joint debt shall be divided later. The current law does not mandatorily require the creditor's consent. Therefore, in the absence of definition, the creditor's interest in fulfillment of the obligation is jeopardized, because in certain cases, the joint fulfillment may ensure more guarantee for the realization of claim than an individual responsibility for the failure to fulfill the obligation. In the Georgian legal literature a correct opinion can be found, according to which, for the division of debt, the creditor's consent is required and if such does not exist, the debt can be divided only through the court.⁴⁰ In such case, for the purposes of division of the debt, the legal ground for requesting the creditor's consent lies in the article 204 of the Civil Code of Georgia, because this article regulates not the division of the debt between some people, but the assumption of the debt by the third person. Where the creditor does not agree to divide the debt, each spouse shall be authorized

³⁶ Decision № 2b/6774-14 of 17 February 2016 of the Chamber for Civil Cases of Tbilisi Court of Appeals.

³⁷ *Rusiashvili G., Kavshbaia N., Batiashvili Z.*, Comments on Civil Code of Georgia, Book VII, Tbilisi, 2021, 128 (in Georgian).

³⁸ On the Types and Separation of Lawsuits in Civil Procedural Law, see *Kurdadze Sh., Khunashvili N.*, Civil Procedure Law of Georgia, Tbilisi, 2012, 304 (in Georgian).

³⁹ Decision № AS-605-579-2016 of 17 February 2017 of the Chamber for Civil Cases of Supreme Court of Georgia.

⁴⁰ *Rusiashvili G., Kavshbaia N., Batiashvili Z.*, Comments on Civil Code of Georgia, Book VII, Tbilisi, 2021, 129 (in Georgian).

to refer to the court with such claim. The court, whilst discussing and making the decision on the claim, shall definitely consider the creditor's interest in the obligation.

Moreover, the legal fate of undivided, joint debts of spouses shall also be considered. First of all, the joint debt shall be divided into two categories: 1. Divisible and 2. Indivisible obligations. Since both belong to the joint debt, they shall be fulfilled by spouses jointly and depending how the joint debt division issue is qualified, different outcomes will arrive: 1. In case of the divisible obligation, this obligation will be divided in the process of division of joint property according to the article 1169 of CCG and after the division, the joint obligation will turn into the individual obligations. 2. In case of indivisible obligation, since it cannot be divided during the division of joint property, the decision shall be made when to perform such obligation. Considering the fact that joint obligation of spouses is normally performed jointly, first this obligation shall be fulfilled and then the joint property shall be divided.⁴¹ Otherwise, there is a risk that the spouse, by rule of regress, may not be able to recover from the other spouse half of the value of his/her performance pursuant to the article 473 of CCG. Interestingly, if the monetary assets, the spouses hold in joint property, are not sufficient to cover the joint indivisible debts, the items included in the joint property shall be sold and the rule for division of joint property shall be applied, as regulated by articles 963/964 of CCG.⁴² Respectively, these articles may be applied by the similar rule of the law, on the basis of the first paragraph of the article 5 of CCG.

5. Conclusion

Georgian family law is based on joint property regime which is the most common regime in European countries. Respectively, for analyzing its peculiarities, the experience of such countries shall be studied. Moreover, Georgian family law has a great resemblance to the laws of Post-Soviet states and respectively, the legal arrangement of these states is one of the main subjects of this study. Special attention shall be paid to the set of principles elaborated by EU Commission. These principles regulate the matrimonial property relations and studying them will allow us identify the best European practice, which may be established in the Georgian family law.

As it has been identified, separation of property-related obligations shall be based on the purpose of taking the debt, which shall be defined by the court judgment. It must be mentioned that division of joint property by the creditor is a complete novelty for the Georgian family law. The scheme provided in this work describes this novelty in much detail. In this respect, the arrangement of Swiss law may be shared, although the approach of the French family law is also interesting, not speaking of the judicial case law of US states. Considering that court judgments of various US states completely differ from each other, we believe that pre-marital obligation is the individual obligation of the spouse who undertook to perform this obligation.

With regard to the rule of division of joint debts of spouses, first of all, it shall be divided in the process of division of joint property, because only after the spouse's share in joint property is

⁴¹ Ibid.

⁴² Ibid, 130.

identified, the joint obligation can be divided proportionally. In case of indivisible obligations, firstly, this obligation shall be performed and then the joint property of spouses shall be divided in consideration of the risks that the sale of regressive claim of the performing spouse shall not be jeopardized.

Bibliography:

1. Civil Code of Georgia, Legislative Herald of Georgia, Parliamentary Gazette, 24/08/1995.
2. *Bryan D.*, A Straightforward Guide to Family Law, London, 2015, 10.
3. *Boele-Woelki K.*, Common Core and Better Law in European Family Law, Antwerp-Oxford, 2005, 5.
4. *Chiu H., Ostrow M.*, JP Boyd on Family Law, Resolving Family Law Disputes in British Columbia, Wikibook, 2019, 463.
5. *Dalpane M.*, Matrimonial Property and Its Contractual Regulation in Kazakhstan, The International Survey of Family Law, London, 2011, 249.
6. *Izquierdo A.O., Rodriguez A.M.O., Izquierdo A.M.O.*, Matrimonial Property Regimes Throughout the World, Madrid, 2018, 334, 841.
7. *Kurdadze Sh., Khunashvili N.*, Civil Procedure Law of Georgia, Tbilisi, 2012, 304 (in Georgian).
8. *Meladze G.*, Rules for Disposal of Spouses' Property, Law Magazine № 1, Tbilisi, 2021, 67 (in Georgian).
9. *Rusiashvili G.*, Matrimonial Property Relations, Comparative Law Magazine 10/2020, 10 (in Georgian).
10. *Rusiashvili G., Kavshbaia N., Batiashvili Z.*, Comments on the Civil Code, Book VII, Tbilisi, 2021, 88,128,129,133,134 (in Georgian).
11. *Redondo P. Q.*, Spanish Matrimonial Property Regimes and CEFL Principles regarding Property Relations between Spouses, European Journal of Law Reform, Vol.17, Joint Edition, 2015, 338.
12. *Shengelia R., Shengelia E.*, Family law, Tbilisi, 2011, 168, 170 (in Georgian).
13. *Scherpe J. M.*, The Financial Consequences of Divorce in a European Perspective, Cambridge, 2016, 4-10.
14. *Traynor Roger J.*, Weinberg v. Weinberg 67 Cal.2d, University of California, UC Hastings Scholarship Repository, 1967, 557.
15. The Antenuptial Obligation and Arizona Community Property Law, Law and Social Order, 1970, 614.
16. *Verbeke A.*, Marital Property Planning in a Belgian Nutshell, Based on a Lecture at the Annual Conference of the International Academy of Estate and Trust Law (2005), New Mexico, 2006, 5, 6.
17. *Вишнякова А.В.*, Комментарий к Семейному Кодексу Российской Федерации, Москва, 2011, 33 (in Russian).
18. *Власова М.В.*, Постатейный Комментарий к Семейному Кодексу Российской Федерации, Москва, 2013, 151 (in Russian).
19. Decision № AS-1646-2018 of 22 March, 2019 of Supreme Court of Georgia.
20. Decision № AS-1334-1254-2017 of 18 May, 2018 of Supreme Court of Georgia.
21. Decision № AS-605-579-2016 of 17 February, 2017 of Supreme Court of Georgia.
22. Decision № AS-372-356-2016 of 3 January, 2017 of Supreme Court of Georgia.

23. Decision № AS-569-540-2015 of 1 July, 2016 of Supreme Court of Georgia.
24. Decision № AS-315-300-2016 of 17 June, 2016 of Supreme Court of Georgia.
25. Decision № 2b/6774-14 of 17 February, 2016 of Tbilisi Court of Appeals.
26. Decision № AS-516-489-2015 of 17 June, 2015 of Supreme Court of Georgia.
27. Decision № AS-981-922-2012 of 24 September, 2012 of Supreme Court of Georgia.
28. Decision № AS-1029-964-2012 of 23 July, 2012 of Supreme Court of Georgia.
29. Decision № 3k/990-01 of 16 January, 2002 of Supreme Court of Georgia.
30. Decision № 3K/519-01 of 29 June, 2001 of Supreme Court of Georgia.
31. <www.scholar.google.com> [29.05.2022].
32. <www.casetext.com> [29.05.2022].
33. <www.oas.org> [29.05.2022].
34. <www.ceflonline.net> [29.05.2022].
35. <www.fedlex.admin.ch> [29.05.2022].