

DOI: <https://doi.org/10.63332/joph.v5i3.732>

Marital Joint Property – A Legal and Practical Analysis

Prof. Ass. Dr. Skender Gojani¹, Dr. Sc. Ardian Mehmetaj²,

Abstract

The joint property of spouses represents a fundamental institution in family and property law, significantly influencing economic relationships within marriage. This paper aims to analyze the legal and practical aspects of this concept, based on the Family Law of the Republic of Kosovo, while drawing comparisons with selected international models. The study highlights the challenges in defining, managing, and dividing joint property, as well as the role of courts in fairly applying legal norms. Special attention is given to non-material contributions, such as domestic work and childcare, in assessing property rights. In conclusion, recommendations are presented to improve the legal framework and judicial practice, aimed at ensuring gender equality and protecting the interests of both spouses.

Keywords: Joint property, spouses, ownership, Family Law, gender equality, property division.

Introduction

Marital joint property represents a legal mechanism designed to ensure justice, equality, and economic stability within the marital community. According to the Family Law of the Republic of Kosovo, joint property encompasses all assets acquired by spouses during marriage, except those considered personal property through prior agreements or specific circumstances (Law No. 2004/32, Article 47).

The purpose of this paper is to offer an in-depth analysis of the concept of joint property from both theoretical and practical perspectives. Particularly, it addresses the challenges in implementing legal provisions related to property division, emphasizing non-material contributions often overlooked in judicial practice.

Comparatively, this study includes examples from European countries that apply the principle of joint ownership of property acquired during marriage, such as Germany and Croatia, to evaluate the effectiveness of the Kosovar legal system in protecting economically weaker parties.

Historically, provisions regarding joint property have reflected social and economic structures of their respective times, often favoring the spouse with a more active professional role. In this context, it is essential to analyze whether current legislation successfully maintains a balance between personal and family interests, contributing to the promotion of gender equality within family law.

¹ Profesor i rregullt në Kolegjin AAB skender.gojani@universitetiaab.com.

² Lecture at AAB College, Prishtine – Kosove ardim19@hotmail.com.



Understanding and Criteria for Joint Property

Understanding the concept of joint property in the legal context is essential to recognizing spouses' rights and obligations related to property acquired during marriage. Essentially, joint property includes all tangible and intangible assets acquired by either or both spouses throughout the marriage, except when otherwise stipulated by law. This encompasses income from employment, purchased properties, investments, business profits, and other economic benefits resulting from joint efforts and cohabitation (Law No. 2004/32 on Family Law of Kosovo, Article 47).

The Family Law of the Republic of Kosovo explicitly establishes that joint property is formed from the date of marriage until its dissolution (Constitutional Court of Kosovo, Decision KO113/14, 2015). During this period, any income generated from employment or the management of joint or separate property by either spouse is considered part of the joint property. This principle aims to ensure equality between spouses, reflecting the reality that both parties contribute differently to family life and wealth creation (Dika, 2018).

The criteria for determining if a property is part of joint property include: • Time of acquisition – Assets acquired after marriage are usually considered joint property (Law No. 2004/32, Article 48). • Source of funding – Assets funded through joint spousal income remain part of joint property (European Commission for Family Rights, 2020). • Purpose of use – Assets used for family needs, not solely for one spouse's interest, may be treated as joint property, even if registered only under one spouse's name (Supreme Court of Kosovo, Judgment AC.nr.38/2020). In this context, recognizing non-material contributions as part of creating joint property is critically important. Domestic labor, child care, and emotional and moral support are valuable contributions often overlooked in practice (CEDAW, Report on Gender Equality, 2020). Modern legislation should integrate clearer provisions recognizing these forms of contribution in marital property division (Obiteljski zakon of Croatia, Articles 277-285).

Additionally, exclusions from joint property are crucial for preserving each spouse's personal property, including: • Assets acquired before marriage, remaining personal property (Family Law, Article 48). • Personal inheritance and gifts, remaining personal property unless integrated into joint property (Family Law Commentary, 2019). • Compensation for personal injuries, remaining personal and not divided with the other spouse (European Commission, 2020).

However, practical challenges arise when personal assets are used for family purposes, becoming an integral part of marital life. For instance, an inherited apartment used as a family home and renovated with joint funds may be treated as joint property (Supreme Court of Kosovo, Judgment AC.nr.38/2020).

In conclusion, understanding and criteria for defining joint property are fundamental for ensuring fair and equal application of family law, protecting both spouses' rights, and promoting gender equality within and after marriage (Dika, 2018).

Object of Joint Property

The object of marital joint property includes all tangible and intangible assets created or acquired during marriage, irrespective of the spouse under whose name they are registered (Law No. 2004/32 on Family Law of Kosovo, Article 47). This definition necessitates a clear identification of elements encompassed within this concept, ranging from personal income, movable and immovable property, intellectual property, and investments or financial benefits derived from marital cohabitation.

According to Kosovo's Family Law, all tangible assets acquired during marriage are deemed joint property, excluding those received as personal gifts, inheritances, or specifically appropriated as separate property (Constitutional Court of Kosovo, Decision KO113/14, 2015).

This excludes assets possessed by either spouse before marriage or legally exempt from joint ownership (Dika, 2018).

Financial Income as Joint Property One of the most critical elements of joint property includes income from both spouses' employment, such as: • Monthly wages, bonuses, and financial compensations, • Pension benefits and social security schemes, • Profits from private or jointly-owned businesses. Such income typically fulfills daily family needs, investments, loan repayments, and long-term wealth creation (Supreme Court of Kosovo, Judgment AC.nr.38/2020).

Movable and Immovable Property Movable assets like vehicles, electronic devices, furniture, valuable clothing, and jewelry represent a significant category of joint property. Even if registered under one spouse's name, these items are joint property if purchased with joint income (Family Law, Article 48).

Immovable properties such as land, houses, apartments, and constructions during marriage are among the most valuable assets in property division disputes. Courts must fairly evaluate each spouse's contribution, particularly when properties are built on inherited land, financed through joint loans, or used exclusively for family purposes (European Commission, 2020).

Intangible Assets and Intellectual Property The law also recognizes intangible assets as part of joint property, including copyrights on intellectual works created during marriage, trademarks, inventions, and business benefits derived from creative skills. Although individually registered, profits from these assets can be joint property if gained during marriage and contributing to family well-being (CEDAW, Report on Gender Equality, 2020).

Financial Investments and Business Ownership Financial investments, such as stocks, bonds, savings accounts, and other financial instruments created during marriage, are considered joint property, including rental incomes, capital gains, and business management profits. When one spouse establishes a business during marriage, assessing the other's contribution is essential for fair property division (Supreme Court of Kosovo, Judgment AC.nr.38/2020).

Legal Nature and Administration of Joint Property

The legal nature of joint property between spouses is based on the concept of joint ownership, automatically established by marriage, unless there is a prior agreement for property division. According to Kosovo's Family Law, property acquired during marriage is automatically considered joint property, irrespective of which spouse's name it is registered under (Law No. 2004/32, Article 47). This principle aims to reflect the equality of contributions by both spouses, whether financial, physical, or moral (Dika, 2018).

The legal nature of joint property includes not only ownership but also the rights related to its administration, use, and management. Kosovo's Family Law recognizes spouses' joint decision-making rights concerning joint property, requiring mutual consent for significant legal transactions such as sale, donation, or rental (Constitutional Court of Kosovo, Decision KO113/14, 2015). Transactions conducted without mutual consent may be declared void by the court (Supreme Court of Kosovo, Judgment AC.nr.38/2020).

In practical terms, managing joint property can be challenging, especially with poor communication or trust issues between spouses, often leading to persistent conflicts requiring judicial intervention. Effective administration necessitates maintenance, protection from damage, and value preservation, though responsibility might be assigned primarily to one spouse

with accountability and joint decision-making rights maintained (Obiteljski zakon, Croatia, Articles 277-285).

Division of Property in Case of Divorce

In case of marital dissolution, prior management of joint property becomes crucial in determining its division. If it is proven that one spouse has misused property or unfairly avoided equitable division, the court may decide in favor of the other spouse (Constitutional Court of Kosovo, Decision KO113/14, 2015). This ensures both parties benefit equally from property acquired during marriage, preserving gender equality.

Cooperation and Transparency in Administration

Ultimately, the legal nature of joint property is based on principles of joint ownership and equality, while its administration demands cooperation, transparency, and mutual respect. Proper implementation of these principles fosters family stability and prevents post-marital conflicts. Clear legal regulations and judicial oversight are vital for ensuring fair enforcement of property rights within marriage (Family Law Commentary, 2019).

Immovable Property and Public Registration

Immovable property holds significant importance within joint property due to its economic value and specific legal procedures for registration and administration. In Kosovo's legal system, property registration in cadastre and public property registries ensures legal certainty and ownership rights (Law No. 2004/32 on Family Law of Kosovo, Article 47).

Properties acquired during marriage, such as apartments, houses, land, or agricultural property, are considered joint property unless otherwise documented. Challenges arise when properties are registered under one spouse's name, potentially leaving the other spouse legally vulnerable. Jurisprudence addresses these issues by evaluating each spouse's actual contributions (Supreme Court of Kosovo, Judgment AC.nr.38/2020).

Public registration of immovable property is essential for transparency and conflict prevention. Kosovo's Cadastre Law mandates property ownership changes to be reflected publicly, clearly marking joint spousal ownership when applicable (Cadastre Law, Article 21). Marital property agreements specifying property rights can also be officially registered, reinforcing legal certainty and accurately reflecting property rights (Obiteljski zakon, Croatia, Articles 277-285).

The Role of Public Registration in Legal Transactions

Public registration also plays a crucial role in legal transactions involving immovable property, such as buying and selling, gifting, or inheritance. Interested parties can verify property status, understand any legal proceedings or restrictions, and make informed decisions regarding potential transactions (Constitutional Court of Kosovo, Decision KO113/14, 2015).

Conclusions and Recommendations

Conclusions

From the detailed examination of the marital joint property concept, it is clear that this institution is significantly important not only for family law but also for general property and economic law. According to Kosovo's Family Law, all assets acquired during marriage are considered joint property unless otherwise proven. This approach aims to maintain equality between spouses and acknowledge contributions, whether material or non-material.

However, the practical implementation of this principle faces numerous challenges, including property registration under one spouse's name, the absence of prenuptial agreements, and insufficient recognition of non-material contributions. Courts play a crucial role in interpreting the law and determining each spouse's fair share, yet approaches can vary and have room for improvement.

Additionally, the lack of public legal education and awareness about joint property registration necessitates institutional intervention to enhance public information. Although the law clearly mandates the public registration of immovable properties, it is often ignored in practice, causing legal uncertainty.

Recommendations

1. Review and amend Family Law to include detailed provisions on recognizing non-material contributions and clearly define criteria for property division.
2. Conduct public educational campaigns to raise awareness about property rights and joint property registration.
3. Develop unified judicial practices through interpretative guidelines by the Supreme Court and Kosovo Judicial Council.
4. Encourage prenuptial agreements and mediation to establish clear property division agreements that are legally enforceable.
5. Modernize the public property registration system, enhancing transparency and equal access for both spouses.
6. Provide professional training for legal practitioners and notaries to ensure compliance with legal standards and protection of both spouses' interests.

These recommendations aim to strengthen spouses' property rights and establish a fair, transparent, and efficient system for managing joint property in Kosovo.

References

- Bundesgesetz über den ehelichen Güterstand (Germany), BGB §1363-1390.
CEDAW (2020), Report on Gender Equality in Family Property.
Dika, M. (2018), Family Law, Pristina: Academy of Legal Sciences.
European Commission (2020), Legal Framework for Marital Property Regimes in EU Member States.
European Commission. (2020). Gender Equality in the EU: Legal framework and good practices.
Constitutional Court of Kosovo, Decision KO113/14, dated 15.12.2015.
Supreme Court of Kosovo, Judgment AC.nr.38/2020.
Commentary on Family Law, Publication of the Institute for Legal Studies, Pristina, 2019.
European Commission for Family Rights (2020), Legal Framework for Marital Property Regimes in EU Member States.
Law No. 2004/32 on Family Law of the Republic of Kosovo.
Cadastre Law, Republic of Kosovo.
M. Dika, "Family Law", Pristina: Academy of Legal Sciences, 2018.
Obiteljski zakon (Family Law, Croatia).