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# HISTORY AND DEVELOPMENT OF MARITAL PROPERTY REGIME IN ALBANIA

**Alban Dokushi**

**ABSTRACT:** *This article aims to shed light to the history and development of property regimes in Albania by analyzing marital property regime since the approval of the Civil Code in 1929, the Code of 1966 and 1982, while comparing the current Code of family, without putting on the side some comparing observations of the marital with loyalty, that of the power between a man and woman, this because of the conservatism of the society at the time. While between 1948-1966 accorning the development of the property regime of marital, it is noticed that the development of the relationships in the field of property, where the main characteristic is following the constitutional principle of gender equality. The main form of co-ownership predicted in the Codes of the time is that of total co-ownership. In 1981, in the dispositions of Civic code of the family, codes that entered in force in 1982, pushed by the new "moral-humanist" requests to ensure a real solidarity between the consorts, it was imposed to them the unique marital property regime, that of co-ownership.*

**KEYWORDS**: history, development, marital property, regime, Albania

## HISTORY AND DEVELOPMENT OF MARITAL PROPERTY REGIME IN ALBANIA

### 1 Marital property regime according the Civic Code of 1929

The Civic Code of the Monarchy of Albania entered into force on April 1, 1929. It was created in the foundaments of the modern code of the time, The Civic Code of Napoleon, a kode that had a great influence in many other countries more precisely the Italian Civil Code and the Switzerland one.
The Civil Code of King Zog I, was of great importance for the time in which it was drafted and implemented, as for the first time established on a legal basis family relations which would be unique for all of Albania. However, in practice it was very difficult, this due to the fact that the influence of the rules of canons and religious norms on Albanian social life was very strong, rules which maintained their impact especially in family relations for a long time.

The Kanun of Lekë Dukagjini did not provide for any rights of women, whether over children or even over the home. She also did not enjoy inheritance rights over property left by her husband or children. She had the right to stay in the house of the dead man, or to leave, taking "thirteen ounces and three loads of reeds." This fact best confirms that the wife had very little property rights over what was acquired during the marriage. Undoubtedly, the sharia (Muslim law) also had a great influence on the Albanian customary law, in terms of the regulation of family property relations.

However, in the field of property rights, women were recognized for the autonomy they enjoyed in managing their own property.[1] It follows from the case law of the Court of Dictatorship that the wife had no property rights over the joint property placed during the marriage. According to this practice of the time, she inherited only part of her husband's property after his death.[2]

Until 1929, apart from a few inheritance decisions in the case law of the Court of Dictatorship, there was no case to deal with a problem related to marital property after the dissolution of the marriage.[3]

With the entry into force of the Civil Code of King Zog I, the regulation of property relations between spouses and other family relations was done on a legal basis and not according to the custom or religion of the spouses. The Civil Code recognized for the first time in Albania the institution of secular marriage. According to this Code, marriage is solemnly concluded before the civil registrar. However, even after the adoption of the Civil Code, a good part of Albanian citizens continued to marry: "according to custom" without celebrating secular marriage, as a result not only of their mentality on marriage, but also of the great influence of religion in social relationships.

The Civil Code of the Kingdom of Albania expressly provides for the prohibition of spouses to provide in an unqualified manner that their marriage is regulated according to the customs of the country.
Article 152 of this Code stipulates: “before the marriage is celebrated by the civil registrar, no religious marriage can take place. "Religious offenders in this case are punished with the punishments set forth in Article 208 of the Criminal Code."

Article 1354 of the same Code also provides that: "Spouses are not promised to speculate in a general way that their marriage is regulated according to laws which are not legally exercised."

As can be seen from these provisions, the Civil Code of the Kingdom of Albania has explicitly and taxatively prohibited, both the marriage and the regulation of the consequences arising from marriage based on the customs of the country and religious customs. This Code goes so far as to impose criminal sanctions on clergymen who entered into marriage before the celebration took place.
Yet it is noted that the broad masses of the population did not understand that marriage entered into according to customary norms had no legal value and as such enjoyed no protection by law.

The Civil Code of King Zog I, for the first time provided the marriage contract. This contract is provided in this Code in a separate title, specifically in the fourth Title. The title is divided into four chapters, where in the first chapter are provided: "general provisions", in the second chapter

[1] Family Law K. Begeja, fq.37

[2] Decision no. 24, dated 22.05.1921 of the Dictatorship Court

[3] Tefta Zaka "Marital regimes, Albanian jurisprudence and some comparative systems"

are provided provisions on "Dota", in the third chapter paraphernal property and in the fourth chapter the co-inheritance of profits between spouses.

Parafernal property is the property of the wife that is not included in the dowry and that the husband has no right to administer or claim her loans if there is no order from the wife. If the wife appoints her husband as a representative for the administration of her paraphernal estate, provided that he is accountable for the fruits, he owes it to her like any other representative.[4]
With regard to co-ownership between spouses, the Civil Code provided only for co-ownership over profits, regardless of whether the constitution of dowry was provided for in the marriage contract or not. The agreement regarding the co-ownership over the profits is foreseen in the marriage contract and starts its effects from the moment of the celebration of the marriage.[5]

According to this Code, co-ownership cannot include the current assets and liabilities of the spouses (at the time of the marriage) nor the property inherited from them during the existence of the co-ownership between them. Joint ownership includes only the enjoyment of the movable or immovable property, present and future of the spouses. All the profits that the husband and wife make together or each of them separately during the duration of the co-ownership regime, whether these profits derive from any joint industrial activity, agricultural activity or from their economy, are common and separately by first deducting the debits that weigh on the joint ownership of the spouses. In these circumstances the spouses must make a detailed and authentic description of the movable property they have before the marriage as well as such a description of the items they benefit during the time of the co-ownership.

Items in co-ownership can be administered only by the husband and only he has the right to perform legal actions related to them. Leaving these rights only to the husband clearly speaks of his complete inequality with the wife and which at the same time shows that we are still dealing with patriarchal families. Separation of property from the court can be decided only in cases of mismanagement of the joint property or when the disorder of the husband's affairs endangers the interests of the wife. For the separation of the property of the spouses, the court applied the rules for the separation of the dowry, rules which were provided in the Civil Code.

The Civil Code of 1929 was an important step in the development of family legal relations of that time. This code could not crystallize the achievements of the modern Codes of Western Europe as not being able to break away from tradition, it preserved the nuances of inferiority of woman in relation to man. This degree of inferiority is clearly seen both in terms of the daily social life of the family of that time, as well as in the legal aspect.

[4] Family law, K,Begeja, p 39
[5] Family law, K,Begeja, p.39

**Regulation of Joint Property of Spouses according to the Family Code of 1966.**

The economic and political changes of our country, with the collectivization of private property throughout the country brought as a necessity and changes in legislation. Part of this change was also the Family Code approved in Law no. 4020 dated 23.06.1965, which entered into force on 1 January 1966.This Code provides for: the legal regime of the property that the spouses had before the marriage, the legal regime of the property placed during the marriage, the administration of the marital property. The Code has also regulated the cases of division of marital property where it is provided that the division can be requested by the spouses during the marriage or after its dissolution. (LAW NO. 4020 23.06.1965)

According to the Family Code of 1966, the property that one spouse has at the time of the marriage remains his property and as such the spouse enjoys the right to administer and dispose of it completely independently of the other spouse.

For the legal regime of the property placed during the marriage, the Family Code stipulates that the property acquired through work by the spouses during the marriage, becomes the joint property of the spouses.[6] Any agreement to the contrary is void. This shows that the spouses can not enter into agreements that harm the property interests of one or the other spouse. For example, the contract concluded between the spouses in which it is foreseen to give up the right of ownership in the property put during the marriage would be invalid. According to the law, the property put during the marriage is presumed to have been put with a joint contribution by both spouses. With regard to savings deposits, due to the legal gap regarding the provisions of spouses in savings banks in the name of only one spouse, the case law has encountered problems which initially from different courts have found different solutions. The main conclusion of these was that applying the principle that everything earned through work during marriage is called joint, deposits, if proven to be the result of work done during marriage are considered joint marital property regardless of in whose name the spouse is booklets.[7]

According to the Family Code and the Instruction of the High Court, it is concluded what should be meant by conjugal residence. So “spousal apartment" should be understood as those separate apartments, which during the marriage have been in the exclusive use of the spouses regardless of in whose name the rent of the apartment was initially concluded and how long this marriage has been concluded. The Court in these cases was also instructed to take into account whether the apartment had sufficient space for both spouses and if so, how it should be divided.

**Spouse property and legal arrangements in the years 1982 -1991.**

With the complete elimination of private property (with the exception of scarce assets), which came as a result of profound political and economic changes, changes which were accompanied by the amendment of the Constitution of the country and the main Codes. With law no. 6599 dt.

[6] Bulletin of the High Court, no. 10, 1978, p. 8.

[7] The magazine "People's Justice", no. 4, 1966

On June 29, 1982, the Family Code was adopted, repealing the previous Code of 1966. It entered into force on September 1, 1982, in which the property relations of the spouses are not regulated. During this period the regulation of the property relations of the spouses was already done by the Civil Code in the chapter "Joint ownership between the spouses", Code which entered into force on January 1, 1982. The Civil Code of 1982, in the direction of the property relations of the spouses brought important changes which mainly consisted in the form of co-ownership. giving up co-ownership in its entirety, that the Decree on Ownership recognized the property long put by the spouses during the marriage as well as for some objects of the agricultural family.[8] Regarding the changes brought by the Civil Code of 1982, regarding the joint ownership of the spouses, they have been made in two directions: 1. It was accepted for the spouses, the joint ownership in parts and the presumption of equality of parts. 2. The circle of objects, items in joint ownership was expanded as it includes not only the assets acquired through work by the spouses during their marriage but also from the items, deposits in the savings banks and everything else acquired by the spouses during the marriage.

One problem that had previously encountered difficulties due to the legal gap and difficulties that arose in practical implementation was the problem of the cash provisions of one spouse. By depositing money in savings banks a legal obligation relationship is created and this contractual relationship is created between the depositor and the depositor.[9]

Article 86 of the Civil Code deals with the objects of the right of ownership and not with the object and relations of the right of obligation. In this case, the non-depositing spouse cannot dispose of the savings deposits made by the other spouse, as he / she is not a contracting party in the legal relationship of the obligation.

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According to Article 87.3 of the Civil Code, the share of each spouse is determined based on the equality of shares. But taking into account the income from the work of each spouse, the performance of household chores, as well as any other work in the administration, maintenance and addition of objects in joint ownership, the share of each may be increased or decreased.[10]

The determination of this contribution is related not only to the income from work given by each spouse in putting the property and performing household chores, but also to any other useful work related to the administration, maintenance and addition of facilities. jointly owned. Thus, the spouses have the right to file claims and prove that before the marriage they had a certain amount

[8] Tefta Zaka "Marital Regimes, Albanian Jurisprudence and Some Comparative Systems", p 35.
[9] Tefta Zaka "Marital Regimes, Albanian Jurisprudence and Some Comparative Systems", p 37
[10] Bulletin of High Court, no.11, 1982, p.10

of property with which they contributed to the increase of the joint property, which should be taken into account for the assignment of shares to each spouse. When dividing the property, the debts that are aggravated by the relationship that are related to this property should also be divided. In the Civil Code in terms of gifts that spouses make to each other, they are no longer divided according to their value into ordinary and unusual.[11]

**Property regime provided by the Family Code (year 2003)**

The adoption of the Family Code in 2003 reflected a marital property regime completely different from what was previously provided for in Albanian legislation. The Family Code recognizes the possibility of selecting by agreement a different property regime from that provided in the code. The contractual regime represents the general rule, while the legal regime will be applied exceptionally, in those cases when the spouses have not determined by agreement the regime that will be applied to their property relations. In the absence of an agreement, the property regime will be regulated according to the legal regime.[12]

According to Article 66 of the Family Code, spouses are granted the opportunity to regulate by agreement the legal status of the property to be acquired after the marriage. Spouses have the opportunity to provide by contract the property regime that will be applied to property rights and obligations. The spouses will be subject to the legal property regime, ie the legal community only if: - They have not entered into a marriage contract; - They have entered into a marriage contract only for a part of the property; In this hypothesis, only the part provided in the marriage contract will be subject to the rules of legal union.-The marriage contract is invalid.

Legal joint ownership represents a modality of the right of private property belonging to natural persons, which consists of items acquired by each spouse or both together during the joint exercise of the rights of possession, use and disposition of these items. Joint ownership of spouses, as a special form of property right presents the following characteristics: - Holders of things in the community are both spouses; -The scope of each spouse's right is determined in the form of an ideal part, which represents ½ parts on common objects. -The material object of each spouse's right to things in the community is unknown. An item will be common if the following conditions are met cumulatively: -The item was acquired by either spouse during the marriage;

-The item does not belong to the category of those items which the law considers personal to each spouse.[13]

These items are considered common as the law presumes that both spouses have contributed to their acquisition.

[11]Bulletin of High Court, no.11, 1982, p.10.

[12] Family Law, Sonila Omari, p. 88

[13] Family Law, Sonila Omari, p.95

In the case when the obligation is contracted in the self-interest of one of the spouses and it is repaid from the property in the community, the beneficiary spouse is obliged to make the compensation of the community.[14]

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