



Legal regulation of the right of common property in accordance with the civil legislation of the Republic of Uzbekistan

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ABSTRACT

The article discusses the features of the legal regulation of the right of common property under the civil legislation of the Republic of Uzbekistan - the definition of the right of common property is given, the grounds for the emergence of the right of common property and the legal status of subjects of the right of common property are considered, the objects of the right of common property are defined. Depending on the nature of internal relations between co-owners, two types of common property are analyzed: shared and joint. The definition of a share in common property is considered.

Keywords:

common property right, shared property, joint property, share in common property, legislation.

The right of common ownership is the subjective right of two or more persons to own, use and dispose of their common property at their common discretion in the 36th share established by law or by agreement between them (shared ownership), or jointly (joint ownership). The right of ownership to a thing or a certain combination of several things may belong simultaneously not to one, but to two or more persons. In this case, the right of common ownership takes place. A characteristic feature of the right of common ownership is the plurality of subjects of the right of ownership, which are called participants in the right of common ownership or co-owners. Property may simultaneously belong to several citizens, several legal entities, or both citizens and legal entities. The state and municipal formations can also act as participants in the right of common ownership.

The grounds for the emergence of the right to common property can be various legal facts, including: inheritance by law and by will, acquisition of property by spouses during marriage, activities of a dekhkan (farm)

economy for the production of agricultural products, privatization of residential premises, participation in shared construction, acquisition things by several persons under a contract of sale, exchange, donation and others.

The specificity of common property relations is due to the presence of several subjects of common ownership of the same object. This is the reason for the need for special legal regulation of common property relations. The right of each participant in common ownership extends in full to all property as a whole. Participants in common ownership jointly exercise their powers of possession, use and disposal of property. Relations arising from common property can be divided into two groups. On the one hand, these are relations that arise between co-owners regarding the possession, use and disposal of the thing belonging to them. On the other hand, - the relationship of co-owners with all third parties. The former are relative in nature, while the latter are absolute. The nature of internal relations between the 37 co-owners differs mainly depending on the type of common

property and the content of existing agreements between them.

The object of the right of common ownership can be any property that has not been withdrawn from civil circulation. It must always be individually determined and really existing. The objects of the right of common ownership are property that cannot be divided among its participants without changing its purpose (indivisible things), or is not subject to division by virtue of law.

Depending on the nature of internal relations between co-owners, the Civil Code of the Republic of Uzbekistan establishes two types of common property: shared and joint. In accordance with paragraph 2 of Art. 216 of the Civil Code, property may be in common ownership with the definition of the share of each of the co-owners in the ownership right (shared ownership) or without determining such shares (joint ownership). Common ownership of property is shared in cases where each of its participants owns a certain share. Common ownership of property is joint in cases provided for by law, if the share of each of its participants is not defined. As a general rule, common ownership of property is shared, except when the law provides for the formation of joint ownership of this property (paragraph 3 of article 216 of the Civil Code). Thus, the Civil Code establishes a presumption, according to which common property is supposed to be shared, unless otherwise provided by law. The law allows for the possibility of converting joint ownership into shared ownership. By agreement of the participants in common joint ownership, and if no agreement is reached, by a court decision, the shared property of these persons can be established on the common property (clause 5 of article 216 of the Civil Code).

The regulation of such relations is reflected in the works of Burkhanova L.M. [2,3,4,5,6,7,8,9,10,11,12,13,14], Musaev E.T. [15,16,17,18,19,20,21,22,23,24,25,26,27], Karakhodzhaeva D.M. [2], Sharakhmetova U.Sh. [2], Egamberdiev E.Kh. [2]

The right of common shared ownership presupposes the belonging of a thing on the right of ownership simultaneously to all its

participants. However, each of them owns the right to a certain share, so it is called equity. In the legal literature, there are various approaches to the concept of an owner's share in common property. The legal significance of the owner's share in common property has been a subject of dispute among lawyers for many years. Some believe that this is a specific real share in the form of a physically separate part of the object of common property, belonging to one or another co-owner. However, it should be borne in mind that the real share can not be determined in any thing. For example, how to establish the real share of a home theater owned by common share ownership of two citizens living together? In addition, when determining the real share due to one or another co-owner, he becomes the sole owner of the allocated share, and not a participant in common property. Consequently, the concept of a real share as a separate part of common property in kind contradicts the very legal nature of common property.

Common shared ownership may arise on any grounds permitted by law or contract. The law does not provide an exhaustive list of grounds for its occurrence

The law also does not limit the subject composition of participants in common shared ownership. Participants in common shared ownership in any combination may be citizens and legal entities, citizens and the state, legal entities and the state, as well as other subjects of civil law.

Share in common property is expressed as a fraction. So, the co-owner may own $1/2$, $3/5$, $7/9$, etc. If the shares of the participants in shared ownership cannot be determined on the basis of the law and are not established by agreement of all its participants, the shares are considered equal (clause 1 of Art. 217 of the Civil Code). An agreement of all participants in shared ownership may establish a procedure for determining and changing their shares depending on the contribution of each of them to the formation and increment of common property (paragraph 2 of article 217 of the Civil Code).

A participant in shared ownership who has made inseparable improvements to this

property at his own expense, in compliance with the established procedure for the use of common property, has the right to a corresponding increase in his share in the right to common property (paragraph 3 of article 217 of the Civil Code). If the procedure for making inseparable improvements has not been observed, then the co-owner is not entitled to demand an increase in his share. Separable improvements to the common property, unless otherwise provided by an agreement between the participants in shared ownership, shall become the property of the participant who made them. At the same time, the introduction of such improvements does not in itself give the co-owner the right to demand an increase in his share in the common property

The content of the right of common shared ownership includes the rights belonging to the owner to own, use and dispose of common property. It is necessary to distinguish between the powers of all participants in relation to a thing that belongs to them on the basis of the right of common ownership, and the powers of each participant in the possession, use and disposal of his share in the common property. At the same time, it is necessary to take into account the presence of complex obligations that bind the participants in the common shared ownership with each other. Ownership and use of property in shared ownership is carried out only if there is an agreed will of all its participants. If such agreement is not reached, the dispute between the co-owners is subject to resolution in court (part 1 of article 219 of the Civil Code).

A participant in common shared ownership has the right to provide for his possession and use of a part of the common property commensurate with his share, and if this is not possible, he has the right to demand from other participants who own and use the property attributable to his share, appropriate compensation (clause 2, article 219 GK).

In accordance with paragraph 1 of Art. 218 of the Civil Code, the disposal of property in shared ownership is carried out by agreement of all its participants, regardless of the size of the share owned by each of them. Imposing on all participants in common shared ownership the

obligation to own, use and dispose of common property only with the consent of all participants, the law gives each of them the right to alienate his share to another person at his own discretion. At the same time, it is not only about the method of alienating one's share. Each co-owner can not only sell, donate, bequeath, exchange, pledge his share or dispose of it in another way, but also independently resolve the issue of the identity of the new acquirer (paragraph 2 of article 218 of the Civil Code). At the same time, when selling a share in common property to an outsider, the remaining participants in common shared property have the pre-emptive right to purchase the share being sold at the price for which it is being sold, and on other equal terms, except in the case of sale at public auction. The procedure for ensuring the pre-emptive right to purchase a share in the right of common shared ownership is regulated in sufficient detail in Art. 224 GK. When selling his share, the seller is obliged to notify in writing the other participants in shared ownership of his intention to sell his share to an outsider, indicating the price and other conditions under which he wishes to sell it. If the other participants in common shared ownership refuse to purchase or do not acquire the sold share in the ownership of real estate within a month, and in the ownership of movable property - within 10 days from the date of notification, the seller has the right to sell his share to any person. When alienating a share in another way (donation), the other co-owners do not have the pre-emptive right to acquire.

The law also extends the pre-emptive right to purchase the alienated share to relations arising from the alienation of a share under an exchange agreement (clause 7, article 224 of the Civil Code). This norm, in our opinion, can hardly be called working. When a share is alienated under an exchange agreement, the co-owners will not always be able to offer the alienator the thing he needs in return. Moreover, the content of paragraph 7 of Art. 224 of the Civil Code can negate the possibility of exercising the pre-emptive right to purchase a share in the right of common ownership by co-owners.

Each participant in common shared ownership is obliged, in proportion to his share, to participate in the payment of taxes, fees and other payments on common property, as well as in the costs for its maintenance and preservation. According to the shares in the common property, each co-owner has the right to receive the fruits and income brought by the thing. The fruits, products and income from the use of property in shared ownership enter the common property and are distributed among the participants in shared ownership in proportion to their shares, unless otherwise provided by an agreement between them (Article 220 of the Civil Code). If the desire to acquire an alienated share in the right of common ownership is expressed not by one, but by several participants in common shared ownership, then the right of choice, in our opinion, should be given to the seller. When selling a share in violation of the pre-emptive right to purchase, any other participant in shared ownership has the right, within three months, to demand in court that the rights and obligations of the buyer be transferred to him (clause 4 of article 224 of the Civil Code). In this case, the plaintiff-co-owner who filed a claim should raise the question not of invalidating the transaction for the alienation of a share to an outsider, but of transferring the rights and obligations of the buyer to himself, with the payment to the court of the money paid by the latter and other expenses incurred by him.

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