

UDC 346.961 : 347.121

DOI 10.31733/2786-491X-2024-1-163-173



**Viktoriia
PIDDUBNA** ©
Ph.D. (Law),
Associate
Professor
(*Yaroslav Mudryi
National Law
University*),
Ukraine



**Olha
YAVOR** ©
D.Sc. in Law,
Professor
(*Yaroslav Mudryi
National Law
University*),
Ukraine

SELECTED ASPECTS OF THE LEGAL REGULATION OF PERSONAL NON-PROPERTY AND PROPERTY RELATIONS BETWEEN SPOUSES: COMPARATIVE CHARACTERISTICS OF THE LEGISLATION OF UKRAINE AND POLAND

Abstract. The article is devoted to the analysis of the nature and types of personal non-property rights of spouses. The authors also consider, from a comparative perspective, certain issues related to the implementation of property rights by spouses. In a comparative aspect, the provisions of the Family Code of Ukraine and the Code on Family and Guardianship of Poland are considered regarding the specifics of the legal regulation of personal non-property spouses, such as: the obligation of spouses to live together, fidelity in marriage, mutual material support and others, as well as property relations, including common relations property of the spouses. The authors of the article analyze the content of the personal non-property and property rights of spouses, explore the obligation, financial, property and corporate relations between spouses. The article examines the judicial practice of Ukraine and Poland on current issues related to the exercise by spouses of their property and corporate rights. Of particular interest is the issue when one of the spouses, becoming a founder (participant) of a corporation, transfers to it property belonging to the spouses under the right of common joint ownership.

Keywords: *personal non-property rights of spouses, property, mutual material support, corporate relations, agreement of donation of a share in the authorized capital.*

Introduction. In the doctrine of family law of Ukraine, personal non-property legal relations are understood as relations regulated by the norms of family law regarding personal non-property benefits and interests of married persons. The features of personal non-property rights include the following: belonging to each of the spouses in accordance with the law; lack of economic content; inseparability from their carriers; impossibility of being the subject of any transactions (Dyakovych, 2022, p. 126).

The category of "personal non-property rights of spouses" includes a list of rights that have different contents and purposes. These include: the right to motherhood; right to paternity; the right of the wife and husband to respect for their individuality; the right of the wife and husband to change their surname; the right of the wife and husband to distribute responsibilities and jointly resolve

© Piddubna V, 2024

ORCID iD: <https://orcid.org/0000-0001-6532-9884>
v.f.piddubna@nlu.edu.ua

© Yavor O., 2024

ORCID iD: <https://orcid.org/0000-0002-5461-6498>
o.a.yavor@nlu.edu.ua

issues of family life; the right of the wife and husband to freedom and personal security; the right to choose a place of residence; right to protection, etc.

O. Kokhanovskaya notes, that personal non-property rights constitute the spiritual basis of society, which is a prerequisite for other rights and freedoms, and in modern doctrine they are considered as absolute, inalienable and a manifestation of freedom and inviolability of the individual (Kokhanovska, 2010, p. 8). S. Slipchenko substantiates, that as a general rule, personal non-property rights are inalienable, at the same time, some of them can be separate, for example, the name of a person, information from his personal life, etc. (Slipchenko, 2012, p. 132).

R. Stefanchuk denies a number of personal non-property rights as being family rights of spouses. Thus, the scientist notes that certain rights defined in Art. 51 (Right to respect for one's individuality), Art. 56 (Right to freedom and personal integrity, to freely choose one's place of residence) are essentially civil rights, belonging to a person regardless of marriage, essentially for life; marriage registration does not significantly affect these rights; they continue to belong to each of the spouses as an individual (Stefanchuk, 2006, p. 50). Family legislation provides spouses with the opportunity to exercise natural rights (the right to marriage, the right to motherhood, the right to family, etc.), and also guarantees spouses the exercise and protection of property rights.

Analysis of recent research and publications. The issue of personal non-property rights has been studied by a number of scientists, such as I. Apopy, M. Bairachnaya, V. Vatrás, A. Dutko, I. Zhilinkova, L. Krasitskaya, O. Posikalyuk, Z. Romovskaya, M. Stefanchuk, R. Stefanchuk, I. Serdechnaya and others. At the same time, the issues of the concept and legal nature of personal non-property rights of spouses in the legal doctrine are considered fragmentarily (Parfentiev, 2022), which confirms the relevance of further scientific research in this area.

Considerable attention is paid to the study of issues of corporate legal relations in scientific and legal doctrine; the works of such civil scientists as V. Vasilyeva, O. Vinnik, O. Zozulyak, V. Kravchuk, V. Luts, I. Spasybo-Fateeva, and others. The relations that arise between spouses regarding the contribution of common property to the authorized capital were also touched upon in their works by V. Vasilyeva, I. Spasybo-Fateeva and I. Zhilinkova (Spasybo-Fateeva, 2012; Vintonyak, 2018). However, some aspects of such legal relations are not fully understood and are subject to more detailed study.

The purpose of the article is to study comparative characteristics of some aspects of the legal regulation of personal non-property and property relations between spouses in Ukraine and Poland.

Formulation of the main material. General principles for regulating family relations, the right to privacy, the right to personal freedom and the inadmissibility of arbitrary interference in family life. According to Part 6 of Art. 7 of the Family Code of Ukraine, women and men have equal rights and responsibilities in family relationships, marriage and family (<https://zakon.rada.gov.ua/laws/show/2947-14#Text>). In the legal literature, equality is considered the equality of participants in family legal relations (Chernega, 2017, p. 22).

S. Cheshkova notes, that we can only talk about absolute equality when it comes to the rights and responsibilities of spouses. There is no equality between

other family members. The difference in the age of the subjects, the infancy of some or the old age of other family members, the natural subordination that exists between people of different generations, entail the formation of a specific set of rights and obligations, regardless of their legal equality. A. Dutko believes, that the inherent features of personal non-property rights of spouses are also their inalienability, perpetuity, gratuitousness, the exercise of rights in accordance with the moral principles of society, saturation with moral norms (Yurkevich, Dutko et al., 2021, p. 295).

In Poland, the Family and Guardianship Code (<http://prawo.sejm.gov.pl/isap.nsf/>), adopted on February 25, 1964 (with the latest amendments made in 2018), does not contain a separate article systematizing the principles of family law. At the same time, in Polish literature the principles of family law include:

1) Principle of special protection of the family and the child – Art. 18 of the Constitution of the Republic of Poland;

2) Principle of the welfare of the child, guaranteed by Art. 72 of the Constitution of the Republic of Poland, permeates the Code of Family and Guardianship and provides for state protection of children deprived of parental care, protection from any form of violence, priority of the interests of the child in the exercise of parental rights, fulfillment of child support obligations, etc.;

3) Principle of family welfare – spouses are obliged to jointly satisfy the needs of their family in its interests;

4) Principles of monogamy – Art. 13 § 1 of the Family and Guardianship Code of Poland, and stability of marriage, which provides for the need to prove the occurrence of circumstances justifying the need for divorce or invalidation of marriage; in addition, at the level of law it is established that divorce cannot be contrary to the interests of young children – Art. 56 §1-3 (Mendzhul, 2018, p. 110).

5) Principle of equality between spouses – Articles 23 and 24 of the Polish Family and Guardianship Code (<https://notatek.pl/zasady-prawa-rodzinnego>).

The principle of equality of participants in family relations is based on the provisions of Art. 21 of the Constitution of Ukraine, according to which a participant in family relations cannot have privileges or restrictions on the grounds of race, skin color, gender, political, religious and other beliefs, ethnic and social origin, financial status, place of residence, language and other grounds. This principle is traditional for domestic family legislation, which has always been based on the legal equality of participants in family relations (<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>).

In Art. 23 of the Family and Guardianship Code of Poland, a similar rule is established: in marriage, spouses have equal rights and responsibilities. Spouses are obliged to live together for mutual assistance and fidelity, and to work together for the good of the family they have founded. The science of Polish family law indicates that the individual rights and obligations of spouses regulated by Art. 23 *Kodeks rodzinny i opiekuńczy* (Code on Family and Guardianship) are fundamentally different in content from classical rights and obligations arising from civil legal relations, since the nature of these rights and obligations is mainly moral in nature (<https://isap.sejm.gov.pl/isap.nsf/>).

Therefore, the rights and obligations arising between spouses are mutual, but not equal. For example, in the case of severe disability, one of the spouses is obliged to provide assistance only to the other, but at the same time cannot count

on equivalent assistance for himself. This indicates that the provision of the Code on Family and Guardianship is a deviation from the civil law principle of legal equality, in particular, in sales transactions, when exchanging goods for money. The following example: spouses are obliged to remain faithful to each other, but the betrayal of one of them does not relieve the other from the obligation of fidelity, that is, the obligation of fidelity is unequal, since it exists independently of the actions of the other spouse.

A feature of the legal regulation of personal non-property relations between spouses is the absence of forced execution or the absence of direct sanction. For example, there are no civil, criminal or financial penalties for adultery by one of the spouses. In Polish legislation, just like in Ukrainian, there are indirect family sanctions, for example, divorce can be the basis for adultery and, as a result, alimony can be paid. A sanction, according to O. Yavor, as a measure of state coercion, deprivation or restriction of the guilty person's subjective personal or property rights is applied with the aim of convincing the need to fulfill a certain set of moral and legal obligations for the family (Yavor, 2018, p. 142).

In family law in Poland, as in family law in Ukraine, personal non-property rights are closely related to property relations. Thus, according to the Family and Guardianship Code, in Poland the rights and responsibilities of spouses include the following: duty of cohabitation: spouses have equal rights and responsibilities in marriage (Art. 23 *Kodeks rodzinny i opiekuńczy*). Spouses are obliged to live together, to mutual assistance, fidelity and cooperation for the benefit of the family that they founded thanks to their relationship. As for the obligation to live together, the doctrine of Polish law reveals the content as follows: The main non-property obligation of the spouses is the obligation to live together.

According to established jurisprudence in Poland, spouses must maintain close spiritual, physical and economic ties. It is assumed that spiritual community consists of mutual positive emotional relationships between spouses, respect, trust, honesty, fidelity, understanding, respect for the personal qualities of the spouses, consideration of his personal needs and willingness to make concessions and compromises" (decision of the Supreme Court of Poland, No. V (CKN 741/00).

The essence of physical communication is to maintain sexual intercourse, depending on the age, physical and mental health of each spouse. An economic community is spouses who run a common household, live together, satisfy each other's economic needs and own common property. Regarding the duty of mutual assistance, one of the main duties of spouses is the duty to help each other, which boils down to supporting spouses in achieving the goals of the marital relationship, including both moral and purely physical support, for example, in the performance of duties or in the event of illness. It should be emphasized that in marriage, spouses have equal rights and responsibilities; they decide important family matters together. If it is impossible to reach agreement on this matter, each of them has the right to demand that the court make an appropriate decision. Then it is absolutely necessary.

Regarding the duty of fidelity, the scope of the obligation of fidelity includes refraining from pursuing any personal or intimate relationship with a third party. There is also the concept of "emotional infidelity", which occurs

when one of the spouses commits other actions that violate generally accepted moral standards and create the appearance of infidelity. The emotional connection of the spouses with another person, in which, although there is no love relationship, but such a connection is accompanied by a declaration of love and kisses, may be perceived by the other spouse as an undermining or even severing of the emotional connection that united the spouses and may, depending on the circumstances, be considered an important reason dissolution of marital life (Supreme Court decision, case No. C 813/51).

It is important that the decision to divorce does not relieve one from the obligation to remain faithful. In Polish judicial practice, the prevailing opinion is that divorced spouses are obliged to remain faithful to each other. This is mainly due to the fact that the purpose of divorce is to reconcile the spouses. The beginning of a new relationship by one of the divorced spouses may, in certain situations, result in those spouses being held solely responsible for the breakdown of the marriage.

Unlike the Family Code of Ukraine, the Family and Caregiver Code of Poland establishes the obligation of spouses to worry about the financial support of the family. So, according to Art. 27 *Kodeks rodzinny i opiekuńczy*: both spouses are obliged, each in accordance with their strengths, wages and property abilities, to contribute to meeting the needs of the family they created by their union. The fulfillment of this responsibility may also consist in whole or in part of personal efforts to raise children and work in a joint household. duties belonging to that spouse, in whole or in part, to the other spouse. This order remains in force even if the spouses terminate their cohabitation after its issuance. However, at the request of each spouse, the court may change or cancel this order. Interesting in content is Article 28 of *Kodeks rodzinny i opiekuńczy*, which states that if one of the spouses living together does not fulfill his duty to help meet the needs of the family, the court may order that remuneration for work or other obligations belonging to this spouse be paid in whole or in part to the other from spouses (§ 1 Art. 28 KRO). The procedure mentioned in the previous paragraph remains in force in the event of termination of the cohabitation of the spouses after its issuance. However, the court can do this at the request of each spouse and can change or cancel this order (§ 2 Art. 28 KRO). According to Art. 28 *Kodeks rodzinny i opiekuńczy*: if one of the spouses has ownership rights to an apartment, then the other spouse can receive the right to use this housing.

According to paragraph 4 of Art. 57 of the Family Code of Ukraine, housing acquired by her or him during the marriage as a result of its privatization in accordance with the Law of Ukraine "On the Privatization of State Housing Fund" refers to the personal private property of the wife or husband. Changes to Art. 57 of the Family Code of Ukraine were introduced by the Law of Ukraine "On Amendments to the Family Code of Ukraine regarding property that is the personal private property of a wife or husband", which came into force on June 13, 2012. But as indicated in the legal literature, how to resolve the situation with the division of housing or land that was acquired during the marriage but was privatized before June 13, 2012 (Haydarzhyy, n.d.) According to Art. 5 of the Civil Code of Ukraine, an act of civil legislation does not have retroactive effect in time, except in cases where it mitigates or cancels the civil liability of persons. That is, housing or land that was acquired by one of the spouses during the

marriage, but through privatization before June 13, 2012, are subject to division on a general basis.

According to Art. 30 § 1 *Kodeks rodzinny i opiekuńczy* both spouses are jointly and severally liable for obligations incurred by one of them in cases arising from the fulfillment of ordinary obligations of family needs; Art. 30 § 2 *Kodeks rodzinny i opiekuńczy*: for important reasons, the court may, at the request of one of the spouses, decide that only one of the spouses will be liable for the above obligations. This provision may be waived if circumstances change. Art. 41 §1 *Kodeks rodzinny i opiekuńczy*: if the spouses entered into obligations with the consent of the other spouses, the creditor may also demand satisfaction from the common property of the spouses. Regarding the financial obligations of spouses in Polish law, they are jointly and severally liable for the obligations of one of them in matters related to meeting the ordinary needs of the family. However, each of them, if there are good reasons, may demand that only the one who incurred them be liable for such obligations. Such a case is decided by the court by a ruling, which can be canceled if the circumstances of the case change.

In the Family Code of Ukraine, Part 4, Art. 65 establishes a similar provision that an agreement concluded by one of the spouses in the interests of the family creates obligations for the second spouse if the property received under the agreement is used in the interests of the family. Analyzing judicial practice (Resolution of the Supreme Court of Ukraine dated July 10, 2020 in case No. 752/7501/18, Resolution of the KCC of the Supreme Court dated 05/24/2022 in case No. 333/911/20) on the interpretation of Part 4 of Art.65 of the Family Code of Ukraine, it can be stated that the spouse who did not directly participate in the conclusion of the agreement becomes an obligated party (debtor) under the agreement, subject to two conditions: 1) agreement was concluded by the second spouse in the interests of the family; 2) property received under an agreement, used in the interests of the family. Only a combination of these conditions allows the second spouse to be qualified as an obligated person (debtor).

According to Art. 31 *Kodeks rodzinny i opiekuńczy* defines the concept of common property of spouses and, as in Art. 61 of the Family Code of Ukraine, specific objects of the right of joint ownership of spouses. Thus, the common property of spouses in Poland covers property acquired during the marriage by both spouses or one of the spouses. Joint property includes: 1) remuneration received for work and income from other profitable activities of each spouse; 2) income from common property, as well as from the personal property of each spouse; 3) funds accumulated in the employee's open account, including the pension of each spouse; 4) amount of contributions recorded in the subaccount (social benefits); 5) funds accumulated in a personal account (for example, a pension accrued for work in Europe).

If we compare the content of these articles of Polish and Ukrainian family legislation, we can point out that Art. 61 of the Family Code of Ukraine regulates common property objects in more detail. So, for example, according to Part 2 of Art. 61 of the Family Code of Ukraine, the object of the right of joint ownership is wages, pensions, scholarships, and other income received by one of the spouses and contributed to the family budget or deposited into his personal account at a banking (credit) institution. Analyzing judicial practice, for

example, Resolution of the KCC of the Supreme Court of July 20, 2022 No. 703/2284/19, the Supreme Court in this decision indicated that the common joint property of the spouses includes not only the fact of acquisition of such property during marriage, but also the common participation of the spouses or labor in acquiring property (<http://iplex.com.ua/doc.php?regnum>).

According to § 2 Art. 41 *Kodeks rodzinny i opiekuńczy*, the provision is established that if the spouses have entered into an obligation without the consent of the other spouse or the obligation of one of the spouses does not arise from a legal act, the creditor may demand satisfaction from the debtor's personal property, from remuneration for work or from income received by the debtor from other profitable activities, as well as from benefits received from his rights, as well as receivables arising in connection with the conduct of business from property owned by the enterprise.

Neither the Family Code of Ukraine nor the Code of Family and Guardianship of Poland defines the legal regime of certain objects that have recently acquired importance and occupy a special place in the property of spouses. For example, securities, shares, bonds, contributions to the authorized capital, shares in business activities. The most controversial in practice is contribution to the authorized capital, as a type of corporate law.

The emergence of corporate relations was led to the complication of property relations at the present stage of economic turnover, and corporate legal relations are recognized in Ukraine as a type of social relations, which in their subject matter are relations in the management of campaigns (capitals). It is they who claim to be considered corporate in the most general form (Vasylieva et al., 2017, p. 43). V. Vasylieva defines a corporate legal relationship as a type of civil legal relationship, which is based on the participation of subjects in organizational and legal entities that have the characteristics of legal entities, the content of which is the so-called corporate rights and arising on the basis of certain legal facts, namely participation in the constituent agreement, incorporation of a legal entity, joining a corporate party, acquiring ownership of a share, shares, etc. (Vasylieva et al., 2017, p. 53).

I. Spasybo-Fateeva, considering the legal regime of the spouses' property transferred to the authorized capital of a business company, notes that corporate rights are conditioned by shares in the authorized capital or shares. The right to a share exists in corporate relations and property relations between spouses. Being in corporate relations, their participant acquires corporate rights in accordance with the right to a share in the authorized capital of a business company. At the same time, this right to a share remains in the same legal regime of common joint property of the spouses, since this legal regime cannot automatically change with one of the spouses making a part of their property in the form of a contribution (Spasybo-Fateeva (ed.) et al., 2013, pp. 93-94). By transferring to a corporate-type legal entity the property belonging to the spouses under the right of common joint ownership, corporate rights in full, both property and non-property, are acquired by only one of the spouses - the one who becomes the founder (participant) of corporate relations (Vintonyak, 2018, p. 13).

In the doctrine of law, corporate rights are a complex legal phenomenon, which is complicated not only by the inconsistency of their legal regulation, but also by the essence of their legal nature. Thus, corporate rights are regulated by

both the Civil Code of Ukraine and the Economic Code of Ukraine. In particular, in Art. 167 of the Economic Code of Ukraine provides a definition of corporate rights, which are understood as the rights of a person whose share is determined in the authorized capital of a business organization, including the rights to participate in the management of the business organization, to receive a certain share of the profit of this organization and assets in the event of liquidation, as well as others powers are provided for by law or statutory documents (<https://zakon.rada.gov.ua/laws/show/436-15#Text>).

Corporate rights consist of two components: property rights, expressed in the right to receive part of the profit from the activities of the company and assets upon liquidation of the company, and other and organizational rights, this is the right to participate in the management of a business company, information about its activities. Members of the company have the right to a share and the right to a share similar to the right of shareholders to a share and the right to a share. In addition, the doctrine of law raises the question of whether corporate rights are the object of civil rights or whether they represent only subjective rights of participants in legal relations (Spasybo-Fateeva, 2012).

Yes, a participant in a business company has corporate rights; these rights are determined by his share in the authorized capital or shares; corporate rights are the subjective rights of participants in business companies. Does the right of joint joint ownership arise in particular for the contribution of one of the spouses in the authorized capital of a business company? Analyzing judicial practice on these issues (Supreme Court Resolution dated October, 16, 2019 in case No. 906/936/18, Supreme Court Resolution in case No. 909/52/19, Supreme Court Resolution dated March 13, 2019 in case No. 756/10797, dated June 29, 2021 in case No. 916/2813/18, Supreme Court Resolution dated November 10, 2021 in case No. 496/1249/13-ts) it can be stated that the property of the spouses, which was a contribution to the authorized capital of a legal entity, becomes the property of the legal entity. From the moment of depositing funds or other property as a contribution to the authorized capital of a legal entity, the legal regime of the property changes. Thus, in case No. 9162813/18 dated June 29, 2021, the plaintiff filed a claim with the Economic Court to invalidate the donation agreement for a share in the authorized capital of a Private Enterprise (<https://verdictum.ligazakon.net/document/98531899>).

In support of the claims, the plaintiff indicated that he did not authorize the defendant to dispose of the common joint property, namely the authorized capital of the Private Enterprise created during his marriage. From the case materials, the spouses owned 80 % of the authorized capital, however, the defendant, without the consent of the plaintiff, donated 40 % of the authorized capital to a third party. The economic court closed the proceedings on the case, on the basis of § 4 of Part 1 of Art. 20 of the Code of Civil Procedure of Ukraine, since this case cannot be considered according to the rules of economic proceedings, since a transaction in family relations is disputed. By the decision of the court of appeal, the ruling of the Economic Court was canceled; the court of appeal, considering the case, indicated that at the time of the conclusion of the said agreement, the defendants were participants in a Private Enterprise, and this transaction was concluded not between spouses, but between the defendants,

who are participants in a Private Enterprise. Therefore, this case is subject to consideration in the economic court. Having considered this case, the court of appeal indicated that the transaction of donating a share in the authorized capital does not contradict the requirements of Art. Art. 61 and 65 of the Family Code of Ukraine, grounds for declaring it invalid in accordance with Part 1 of Art. 203 of the Civil Code of Ukraine, Part 1, Art. 215 of the Civil Code of Ukraine, Part 4 of Art. 369 of the Civil Code of Ukraine is also missing.

The plaintiff appealed to the Economic Court of Cassation with a cassation appeal against the decision of the Economic Court of the first instance and the Court of Appeal. In the reasoning part of the decision, the Grand Chamber of the Supreme Court indicated that the case in the dispute about invalidating an agreement concluded by one of the spouses without the consent of the other spouse on the disposal of shares in the authorized capital of a legal entity should be considered by an economic court in accordance with clause 4 of Part 1 of Art. 20 Code of Civil Procedure of Ukraine.

Taking into account the norms of Art. 115 of the Civil Code of Ukraine, Art. 85 of the Economic Code of Ukraine, Art. 12 of the Law "On Business Companies", according to which the owner of the property transferred to the business company by its participants as a contribution to the authorized capital is the company itself, the alienation by a company participant of a share in the authorized capital in favor of another person does not terminate the company's right of ownership to the property belonging to it, including contributions made by participants. From the moment of making money or other property as a contribution, such property belongs by right of ownership to the company itself and it loses the characteristics of an object of joint ownership of the spouses. The Grand Chamber of the Supreme Court refused to satisfy the cassation appeal to invalidate the agreement of donation of a share in the authorized capital of a private enterprise.

Conclusions. Analyzing the provisions of the Family Code and the Family and Guardianship Code of Poland, it can be pointed out that most of the norms of family law have similar content in regulating personal non-property and property relations between spouses. We believe that the scope of personal non-property rights of spouses may be influenced by certain legal facts, such as being married, living separately after divorce, and establishing a separation regime. At the same time, there are rules, in particular, on the obligation of spouses to financially care for and provide for the family, which could be proposed to be included in the provisions of the Family Code of Ukraine. Also, to date, the issue has not been resolved either in the Family Code of Ukraine or in the Code of Family and Guardianship of Poland regarding the legal regulation of the contribution of one of the spouses to the authorized capital of a business company.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

References

- Chernega, V. (2017). Yurydychna rivnist' uchasnykiv simeynykh pravovidnosyn [Legal equality of family members]. Materials of the conference "European and international approaches to the protection of human rights" (Kyiv, April 7, 2017). Pp. 22-25. [in Ukr.].
- Dyakovych, M. (2022). Simeyne pravo Ukrayiny : navch. posib. [Family law of Ukraine: academic manual]. Kharkiv : EKUS, 2022. 416 p. [in Ukr.].
- Haydarzhyy, A. (n.d.). Podil pryvatyzovanoho nerukhomoho mayna mizh podruzzhzham [Division of privatized real estate between spouses]. URL : <https://www.haidarzhyy.com.ua/blog/%D0%BF%D0%BE%D0%B4%D1%96%D0%BE-%D0%BC%D0%B0/>. [in Ukr.].
- Hospodars'kyi Kodeks Ukrayiny vid 16.01.2003 № 436-IV [Economic Code of Ukraine dated January 16, 2003 No. 436-IV]. URL : <https://zakon.rada.gov.ua/laws/show/436-15#Text>. [in Ukr.].
- Kodeks rodzinny i opiekuńczy z dnia 25 lutego 1964 r. [Family and Guardianship Code dated February, 25, 1964] Kancelaria Sejmu. URL : <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19640090059/U/D19640059Lj.pdf>. [in pol.].
- Kokhanovska, O. (2010). Ponyattya ta vydy osobystykh nemaynovykh prav u tsyvil'nomu pravi Ukrayiny [Concepts and types of personal non-property rights in the civil law of Ukraine]. *Bulletin of Taras Shevchenko Kyiv National University: Legal sciences*. Is. 84. Pp. 8-9. [in Ukr.].
- Konstyutsiya Ukrayiny vid 28.06.1996 № 254k/96-VR [Constitution of Ukraine dated June 28, 1996 No. 254k/96-VR]. URL : <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>. [in Ukr.].
- Mendzhul, M. (2018). Pryntsypy simeynoho prava v zakonodavstvi derzhav Skhidnoyi Yevropy [Principles of family law in the legislation of Eastern European countries]. *Scientific Bulletin of the Uzhhorod National University: Law Series*. 53 (1). Pp. 106-111. [in Ukr.].
- Parfentiev, A. (2022). Ponyattya ta pravova pryroda osobystykh nemaynovykh prav podruzzhzha u simeyno-pravoviy doktryni [The concept and legal nature of personal non-property rights of spouses in the family legal doctrine]. *Current Problems of Jurisprudence*. 3 (31). Pp. 114-118. URL : <http://dspace.wunu.edu.ua/bitstream/316497/48652/1/%D0%9F%D0%B0%IO...%D1%8C%D1%94%D0%B2.PDF>. [in Ukr.].
- Postanova KTSS VS vid 20.07.2022 r. № 703/2284/19 [Resolution of the Central Committee of the Supreme Court dated July 20, 2022 No. 703/2284/19]. URL : <http://iplex.com.ua/doc.php?regnum=105533337&red=100003d1da92629c7e28957b65201b41bd13c7&d=5>. [in Ukr.].
- Postanova VP VS vid 29.06.2021 u spravi № 916/2813/18 [Decision of the Supreme Court of Ukraine dated June, 29, 2021 in case No. 916/2813/18] URL : <https://verdictum.ligazakon.net/document/98531899>. [in Ukr.].
- Simeynyy kodeks Ukrayiny [Family Code of Ukraine]. URL : <https://zakon.rada.gov.ua/laws/show/2947-14#Text>. [in Ukr.].
- Slipchenko, S. (2012). Nevidchuzhuvanist' ta neviddil'nist' osobystykh nemaynovykh prav [Inalienability and inseparability of personal non-property rights]. *Actual problems of improving the current legislation: collection of scientific articles*. Ivano-Frankivsk : Prykarpattia National University named after Vasyl Stefanyk. Vol. 29. Pp. 132-133. [in Ukr.].
- Spasybo-Fateeva, I. (2012). Tsyvilystyka: na shlyakhu formuvannya doktryn [Civil studies: on the way to the formation of doctrines]: select. of scient. Works. Kh. : Golden Pages. 696 p. [in Ukr.].
- Spasybo-Fateeva, I. (ed.), et al. (2013). Khar'kovskaya tsyvylystycheskaya shkola: antolohiya semeynoho prava [Kharkiv civil school: anthology of family law]: monograph / V. K. Antoshkina, V. I. Borisova, I. V. Zhilinkova, et al.; under ed. Doctor of Law, Prof. I. V. Spasybo-Fateeva. Kharkiv : Pravo. 240 p. [in Ukr.].
- Stefanchuk, R. (2006). Systema osobystykh nemaynovykh prav fizychnykh osib u sferi simeynykh vidnosyn: do pytannya vdoskonalennya [The system of personal non-property rights of individuals in the sphere of family relations: to the issue of improvement]. *University Scientific Notes*. 2 (18). Pp. 107-111. [in Ukr.].
- Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy. URL : <https://isap.sejm.gov.pl>

- isap.nsf/download.xsp/WDU19640090059/U/D19640059Lj.pdf. [in pol.].
- Vasylieva, V. (ed.), et al. (2017). Korporatyvne pravo Ukrainy: problemy teorii ta praktyky [Corporate law of Ukraine: problems of theory and practice]: monograph / V. A. Vasylieva, A. V. Zelisko, V. V. Luts, I. B. Sarakun, L. V. Sishchuk, et al.; general ed. by prof. V. A. Vasylieva. Ivano-Frankivsk : Suprun V. P. 612 p. [in Ukr.].
- Vintonyak, N. (2018). Korporatyvni vidnosyny v aspekti vidnosyn mizh podruzzhzhyam [Corporate relations in the aspect of relations between spouses]. *Entrepreneurship, Economy and Law*. No. 10. Pp. 10-14. URL : <http://pgp-journal.kiev.ua/archive/2018/10/3.pdf>. [in Ukr.].
- Yavor, O. (2018). Sanktsiyi v simeynomu pravi: osoblyvosti zakhystu prav dytyny – VPO [Sanctions in family law: features of the protection of IDPs children’s rights] / Protection of the rights of internally displaced persons: monograph / general ed. by Doctor of Law, Prof. O. Ya. Rogacha; Doctor of Law, Prof. M. V. Savchyna; Doctor of Law, Assoc. Prof. M. V. Mendzhul. Uzhgorod : RIK-U. 268 p. Chapter 4. Pp. 123-143. [in Ukr.].
- Yurkevich, Yu., Dutko, A. et al. (2021). Osobysti nemaynovi prava osoby [Personal non-property rights of a person]: educ. manual / edited by A. O. Dutko. Lviv : Lviv State University of Internal Affairs. 444 p. [in Ukr.].
- Zasady prava rodzinnego. URL : <https://notatek.pl/zasady-prawa-rodzinnego>. [in pol.].

Вікторія ПІДДУБНА, Ольга ЯВОР

**ОКРЕМІ АСПЕКТИ ПРАВОВОГО РЕГУЛЮВАННЯ ОСОБИСТИХ
НЕМАЙНОВИХ І МАЙНОВИХ ВІДНОСИНИ МІЖ ПОДРУЖЖЯМ:
ПОРІВНЯЛЬНА ХАРАКТЕРИСТИКА ЗАКОНОДАВСТВА УКРАЇНИ І ПОЛЬЩІ**

Анотація. Статтю присвячено аналізу природи та видів особистих немайнових прав подружжя. Авторами також розглядаються, в порівняльному аспекті, окремі питання пов’язані з реалізацією майнових прав подружжям. В порівняльному аспекті розглядаються положення Сімейного Кодексу України і Кодексу про сім’ю і опіку Польщі щодо специфіки правового регулювання особистих немайнових прав подружжя, таких як: обов’язок спільного проживання подружжя, вірності в шлюбі, взаємного матеріального забезпечення і інші, а також майнових відносин, зокрема відносин спільної власності подружжя. Авторами в статті аналізується зміст особистих немайнових та майнових прав подружжя, досліджуються зобов’язальні, фінансові, майнові та корпоративні відносини між подружжям. В статті досліджується судова практика України і Польщі з актуальних питань, пов’язаних з реалізацією подружжям своїх майнових та корпоративних прав. Особивий інтерес представляє питання, коли один із подружжя, стаючи засновником (учасником) корпорації, передає їй майно, що належить подружжю на праві спільної сумісної власності.

Ключові слова: особисті немайнові права подружжя, майно, матеріальна взаємодопомога, корпоративні відносини, договір дарування частки у статутному капіталі.

Submitted: 06.02.2024

Revised: 13.02.2024

Accepted: 28.02.2024