

# Protection of property rights of spouses according to ukrainian and European Union legislations

*Protección de los derechos de propiedad de los cónyuges según la legislación ucraniana y de la Unión Europea*

*Proteção dos direitos de propriedade dos cônjuges de acordo com a legislação ucraniana e da União Europeia*

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## Abstract

*Introduction:* The protection of spouses' property rights stands as a fundamental aspect within family law, aiming to safeguard their interests during property disputes and divorce proceedings. This study delves into the nuances of property rights protection under both Ukrainian and EU legal frameworks. Emphasizing the evolving legal landscape due to Ukraine's alignment with EU standards, the research scrutinizes the mechanisms governing property division and dispute resolution.

*Methodology:* Amidst the complexities of divorce proceedings, the analysis reveals disparities between Ukrainian legislation and established European legal norms. Despite efforts to align with EU standards, discrepancies persist, influenced by unique legal structures and societal factors. Notably, the study underscores the pivotal role of marriage contracts and judicial interventions in safeguarding spouses' property rights.

*Results:* Recognizing the centrality of property rights within family law, the study advocates for enhanced attention to the harmonization of Ukrainian legislation with EU principles. The efficacy of marriage contracts emerges as a cornerstone in empowering spouses to assert control over property matters.

*Conclusions:* Additionally, the research illuminates pathways for protecting family rights through contractual agreements and legal mechanisms, underscoring the imperative of comprehensive legal reforms to ensure equitable property division.

**Keywords:** Marriage; property rights; spouses; ways to protect family rights.

## Resumen

*Introducción:* la protección de los derechos de propiedad de los cónyuges se erige como un aspecto fundamental dentro del derecho de familia, con el objetivo de salvaguardar sus intereses durante las disputas patrimoniales y los procedimientos de divorcio. Este estudio profundiza en los matices de la protección de los derechos de propiedad en los marcos legales de Ucrania y de la Unión Europea. Haciendo hincapié en la evolución del panorama jurídico debido a la alineación de Ucrania con las normas de la Unión Europea, la investigación examina los mecanismos que rigen la división de la propiedad y la resolución de disputas.

*Metodología:* en medio de las complejidades de los procedimientos de divorcio, el análisis revela disparidades entre la legislación ucraniana y las normas jurídicas europeas establecidas. A pesar de los esfuerzos por alinearse con los estándares de la Unión Europea, persisten discrepancias, influenciadas por estructuras legales y factores sociales únicos. En particular, el estudio subraya el papel fundamental de los contratos matrimoniales y las intervenciones judiciales en la salvaguardia de los derechos de propiedad de los cónyuges.

*Resultados:* reconociendo la centralidad de los derechos de propiedad dentro del derecho de familia, el estudio aboga por una mayor atención a la armonización de la legislación ucraniana con los principios de la Unión Europea. La eficacia de los contratos matrimoniales emerge como piedra angular para empoderar a los cónyuges para ejercer control sobre los asuntos de propiedad.

*Conclusiones:* además, la investigación ilumina caminos para proteger los derechos familiares a través de acuerdos contractuales y mecanismos legales, subrayando el imperativo de reformas legales integrales para garantizar una división equitativa de la propiedad.

**Palabras clave:** matrimonio; derechos de propiedad; esposos; formas de proteger los derechos familiares.

## Resumo

*Introdução:* A proteção dos direitos de propriedade dos cônjuges é um aspecto fundamental no direito de família, visando salvaguardar seus interesses durante disputas de propriedade e processos de divórcio. Este estudo aprofunda-se nas nuances da proteção dos direitos de propriedade sob os arcabouços legais tanto ucranianos

quanto da União Europeia. Enfatizando a evolução do cenário legal devido à alinhamento da Ucrânia com os padrões da União Europeia, a pesquisa examina os mecanismos que regem a divisão de propriedade e a resolução de disputas.

*Metodologia:* Em meio às complexidades dos processos de divórcio, a análise revela disparidades entre a legislação ucraniana e as normas legais europeias estabelecidas. Apesar dos esforços para se alinhar aos padrões da União Europeia, discrepâncias persistem, influenciadas por estruturas legais únicas e fatores sociais. Notavelmente, o estudo destaca o papel crucial dos contratos matrimoniais e das intervenções judiciais na proteção dos direitos de propriedade dos cônjuges.

*Resultados:* Reconhecendo a centralidade dos direitos de propriedade dentro do direito de família, o estudo defende uma atenção reforçada à harmonização da legislação ucraniana com os princípios da União Europeia. A eficácia dos contratos matrimoniais surge como um pilar fundamental no empoderamento dos cônjuges para afirmar controle sobre questões de propriedade.

*Conclusões:* Além disso, a pesquisa ilumina caminhos para proteger os direitos familiares por meio de acordos contratuais e mecanismos legais, destacando a necessidade de reformas legais abrangentes para garantir uma divisão equitativa de propriedade.

**Palavras-chave:** Casamento; direitos de propriedade; cônjuges; formas de proteger os direitos da família.

## I. INTRODUCTION

There are various circumstances that force a man and a woman who are legally married or in the process of divorce to determine the fate of their jointly acquired property. Ukrainian law foresees cases when any spouse may go to court if he or she believes that his or her rights have been violated. In this case, the court will consider all the arguments provided and make a reasoned decision.

## II. LITERATURE REVIEW

Insufficient attention has been paid to the issue of studying the peculiarities of protecting marital property under Ukrainian and EU law. Some researchers have studied this issue based only on the provisions of national legislation. Currently, there are few studies that would cover this issue under EU law. The current changes taking place in society, as well as Ukraine's accession to the EU, require a precise regulation of national legislation. This also includes the provisions relating to the protection of spouses' property rights.

Ukrainian scholar M. I. Bayrachna reveals some aspects of property rights and obligations of spouses. The author emphasizes that marital and family relations arise only when a marriage is registered under the provisions of applicable law. As a result

of such marriage, a man and a woman acquire a special status of spouses, as well as a corresponding set of rights and obligations.

Ye. A. Tkachenko, while studying the legal nature of property relations of spouses in international family law, identifies their distinctive and standard features<sup>1</sup>. These features are primarily based on the specifics of the legal norms of a particular country, legal system, marriage procedure, and its regulation. O. S. Prostybozhenko conducts a comparative legal analysis of the legal regime of marital property under the laws of European countries and identifies the ways of its harmonization. The author analyzes the regulation of property relations in different EU countries, comparing it with the national norms.

O. Kruglova reveals the legal content of marital property – legal and contractual, revealing a detailed description of each property. The author emphasizes that before marriage, it would be more correct to immediately identify all aspects that may arise concerning the property matter in the future. Such a European approach is already beginning to take effect in Ukrainian society. This study aims to describe the protection of the property rights of spouses under Ukrainian and EU legislation.

The research involved several methods of scientific cognition. The historical method was used to analyze the provisions of the Code of Laws on Marriage and Family of Ukraine. The latter defines the peculiarities of regulating the property rights of spouses and ways to protect them. The comparative legal method was applied to compare the provisions of the Civil Code of Ukraine and the Family Code of Ukraine regulating similar or closely related relationships, including those relating to marital property. The methods of analysis and synthesis were employed to identify shortcomings and gaps in current family law and its application in practice. The formal logical method helped to summarize the information and draw conclusions.

### III. RESULTS

The study of the peculiarities of protecting the property rights of spouses should begin with the definition of the concepts of “property rights of spouses” and “property obligations of spouses.” According to M. I. Bayrachna, property rights of spouses refer to the rules of possible behavior between spouses concerning property acquired during marriage regulated by the Civil Code and the Family Code of Ukraine.

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1 Ye. A. Tkachenko. *The legal nature of property relations of spouses in international family law*. SCIENTIFIC BULLETIN OF THE INTERNATIONAL HUMANITARIAN UNIVERSITY, vol. 47, no. 2. 2020. P. 138-141.

Property obligations of spouses are defined as a measure of the necessary behavior of spouses in relation to property acquired during their married life. It is worth emphasizing that the acquisition of property rights gives rise to subjective obligations. Thus, property legal relations of spouses are defined by the norms of national legislation as relations between subjects of law, where any property benefits serve as an object<sup>2</sup>. It should be emphasized that the property relations of spouses cover the sphere of three main areas:

1. the legal regime of marital property in marriage;
2. the procedure for property management;
3. spousal relations regarding the provision of maintenance.

According to Article 60 of the Family Code of Ukraine, property acquired during the marriage of a woman and a man living together as one family belongs to them as jointly owned property, even though one of the spouses did not work for a valid reason. Each thing acquired during the marriage, except for common-use items, is considered to be the object of joint family property<sup>3</sup>.

M. I. Bayrachna also adds that Ukrainian legislation does not define property rights. Instead, Article 190 of the Civil Code of Ukraine defines property as a separate item or a set of items, as well as property rights and obligations<sup>4</sup>. At the same time, property rights are non-consumptive and are defined as real rights<sup>5</sup>.

When considering the community regime in Ukrainian law, it should be noted that it includes property acquired during marriage, except in cases stipulated by the law. Each spouse has the right to use this property without allocating a share. Such property should be managed in such a way as not to violate the rights of the other spouse<sup>6</sup>. As a family, the spouses have the right to use and dispose of joint property by mutual agreement. When entering into legal agreements, it is assumed that one spouse acts in the interests of the other and vice versa.

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- 2 Legal regulation of personal non-property and property relations between subjects of family legal relations. Clarification of the Ministry of Justice of Ukraine dated 07/05/2011. (2011). Available at: <https://tinyurl.com/bdfr7n79>
  - 3 Family Code of Ukraine No. 21-22. Dated 10.01.2002. Verkhovna Rada of Ukraine. (2002).
  - 4 Civil Code of Ukraine No. 435-IV. Dated 16.01.2003, Verkhovna Rada of Ukraine. (2003).
  - 5 M. I. Bayrachna. SOME ASPECTS OF PROPERTY RIGHTS AND OBLIGATIONS OF SPOUSES. Kalamar. (2020). P. 10.
  - 6 T. V. Chudik. *Peculiarities of the division of marital property*. YOUNG SCIENTIST, vol. 3, no. 55. March 2018. P. 633-637, 633.

D. S. Plyushko emphasizes that the property relations of spouses correlate with the fate of the spouses themselves. As long as the marriage actually lasts, the property relations are valid. In case of divorce, these relations are terminated. Overall, the end of marriage and family relations entails the separation of property. The author notes that marriage is a social institution in every society<sup>7</sup>.

According to O. I. Safonchuk, divorce and marriage annulment are two different concepts that have various consequences. Therefore, according to the author, the main difference is that in the case of divorce, legal implications of property and non-property nature arise for the former spouses. If the marriage is declared annulled for some reason, the legal consequences for the spouses cease from the moment of marriage<sup>8</sup>.

According to Article 104 of the Family Code of Ukraine, a marriage may be ended due to one of the following reasons:

1. as a result of the death of one of the spouses or declaration of death;
2. due to divorce<sup>9</sup>.

Divorce, as a legal fact, has certain legal consequences. First of all, mutual rights and obligations between the spouses are terminated. It is worth noting that divorce provokes a property dispute. In other words, it determines the need to divide the property acquired by the spouses during their marriage. The shares of property under the right of joint ownership are equal unless there is another agreement between the spouses or a marriage contract<sup>10</sup>.

It is worth emphasizing that divorce is a frequent phenomenon in Ukraine. The way spouses end their family relationship will determine the outcome of further relationships between spouses and their children when dividing property and resolving

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7 D. S. Plyushko. LEGAL CONSEQUENCES OF TERMINATION OF MARRIAGE UNDER THE LEGISLATION OF UKRAINE AND CERTAIN EU STATES. Odesa National University. (2023). P. 6.

8 O. I. Safonchuk. CERTAIN ASPECTS OF THE TERMINATION OF MARITAL AND FAMILY LEGAL RELATIONS IN UKRAINE AND SOME EU COUNTRIES. THE CURRENT STATE AND PROSPECTS FOR THE DEVELOPMENT OF FAMILY LAW IN UKRAINE IN THE CONTEXT OF ADAPTATION TO EUROPEAN LAW. Phoenix. (2017). P. 20.

9 Family Code of Ukraine No. 21-22. Dated 10.01.2002. Verkhovna Rada of Ukraine. (2002).

10 A. O. Dutko. FAMILY LAW OF UKRAINE. LVDUVS. (2018). P. 257.

other pressing issues<sup>11</sup>. The Family Code of Ukraine provides for two types of property division: voluntary, and judicial<sup>12</sup>.

According to the Family Law of Ukraine, a man and a woman have the right to divide property in their joint ownership by mutual agreement by concluding a property partition agreement. This agreement may be concluded only with respect to property owned by the spouses in their joint property. If the object of division is real estate, this agreement shall be concluded in writing and is subject to mandatory notarization, according to Article 69 of the Family Code of Ukraine.

If a voluntary agreement on the division of property is not reached, the spouses have the right to go to court to protect their rights and interests. According to the Plenum of the Supreme Court of Ukraine No. 11, in case of disputes regarding the division of an indivisible thing, the court should apply the provisions of Part 4 and Part 5 of Article 71 of the Family Code of Ukraine. This provision stipulates that the division of such property requires the consent of one of the spouses to receive monetary compensation. Therefore, one of the spouses must deposit a part of the funds to the other spouse's deposit account and retain the property if such an agreement has been previously reached<sup>13</sup>.

O. Prostybozhenko notes that in the EU countries, the division of marital property during divorce is regulated by the rules of inheritance. For example, in France, according to Article 1476 of the Civil Code of France, the peculiarities of the division of marital property, its preservation in joint ownership, the peculiarities of obtaining certain property in kind, the peculiarities of its sale, and many other issues related to the property are determined by the title "Inheritance." Similar provisions are contained in the laws of Poland, Luxembourg, Spain, etc. At the same time, the author points out that in some European countries, joint property is divided according to the rules of joint ownership division<sup>14</sup>. For example, in Belgium, marital property is converted into post-marital property of both persons after a divorce. Therefore, the division is carried

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11 K. Gurkovska. PECULIARITIES AND CONSEQUENCES OF TERMINATION OF MARITAL AND FAMILY LEGAL RELATIONS. LVDUVS. (2020). P. 19.

12 Family Code of Ukraine No. 21-22. Dated 10.01.2002. Verkhovna Rada of Ukraine. (2002).

13 Plenum of the Supreme Court of Ukraine No. 11. Dated 12.21.2007. On the practice of applying legislation by courts when considering cases on the right to marriage, dissolution of marriage, recognition of its invalidity and division of joint property of spouses.

14 O. S. Prostybozhenko. *Ways of dividing joint property of spouses: Experience of legal regulation of European states*. ENTREPRENEURSHIP, LAW, AND PROCESS, no. 1. 2018. P. 31-35, 31.

out according to the division rules of joint property<sup>15</sup>. A similar practice of converting marital property into community property after marriage is also in place in Italy<sup>16</sup>.

It is worth noting that in Ukrainian law, the division of marital property is mostly in kind, based on the item's value. In addition, the court may decide that one spouse should pay the other a certain amount of money and, in return, retain the indivisible property. One of the ways to divide property is also to sell such property at a public auction.

Consequently, the court is the main participant that protects the parties' rights in case of their violation and, by establishing all the circumstances, resolves the dispute. It is worth emphasizing that the court, when hearing a case on the division of property, takes into account the interests of the wife, husband, children, and other circumstances that are essential to the case.

As for professional equipment, the court awards it to the person who carries out professional activities by using it. At the same time, the value of these items is taken into account when dividing other property between the spouses. In this way, the court seeks to distribute things that are useful to that party as accurately as possible and without violating the rights of each party.

Judicial protection, as one of the ways to protect family rights, should clearly clarify all the circumstances of the case and make a reasoned, legal decision based on the principles of legal proceedings. If there are underage children in the marriage, the court should take these factors into account when dividing the marital property by increasing the share in favor of the spouse with whom the children will remain. Thus, an increase in the share is allowed when dividing property in the following cases:

- living together with underage children or with disabled adult sons or daughters;
- receiving alimony for the maintenance of a child or disabled children;
- the amount of alimony received by a person is not sufficient for the person's livelihood.

Thus, spouses have the right to divide their jointly acquired property in two ways – voluntarily or by applying to the court<sup>17</sup>.

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15 V. Pintens, S. Sains, V. Allaerts, G. Pignolet. **PROPERTY RELATIONS BETWEEN SPOUSES**. Commission on European Family Law. (2024).

16 *What are the consequences of divorce/separation? Couples in Europe. The law for couples in the 27 EU countries*. (2022). Available at: <https://tinyurl.com/5xn9e9rd>

17 *Division of marital property: Legal analysis and actual costs*. (2021). Available at: <https://tinyurl.com/53yxy9kb>



O. Voynarovska, while exploring the peculiarities of protecting marital property in EU practice, notes that European case law is gradually moving away from the unconditional observance of the 50-50 rule of marital property division. The courts have discretionary powers to decide on the division of certain property belonging to the spouses. They consider each spouse's needs, financial status, provision level after marriage, and other essential features determined or established by the court.

At the same time, the lawyer notes that the development and intensive use of prenuptial agreements to protect the rights of spouses abroad is quite common. This allows either spouse not to worry about being left "with nothing" after the marriage. The constant growth in the number and complexity of premarital and post-marital agreements indicates that there is a European, coordinated, and balanced approach to the settlement regarding the division of marital property<sup>18</sup>.

In Ukraine, the economic function of the family has often been reduced to economic and household aspects based on the relationship between basic satisfaction and simple household needs. The family order in Ukraine significantly differs from that in European countries. In these countries, a man can stay at home with his children and not work, while a woman has her own business and runs her own affairs. In Ukraine, such relationships are strange for the majority of society, given stereotypical assumptions.

A gradual transition to new social and qualitative family relations in Ukraine has taken place very recently. The very essence of the spouses' approach to the institution of marriage, family, joint property, and the provision of the material basis of family life has changed. It is worth noting that the content and peculiarities of the Ukrainian and European family structures are difficult to compare. Ye. A. Tkachenko notes that these relations have no uniformity. At the same time, even though property relations in marriage are a complex, inseparable category from the property ownership regime, their development and legal regulation depend on a certain country's structure and the specifics of marriage<sup>19</sup>.

Before moving on to the specifics of judicial division of property, it is worth determining the subject of such division, taking into account the following main categories:

- items belonging to the spouses on the right of joint and shared ownership;
- creditors' claims of the spouses;
- debt obligations of the spouses.

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18 O. Voynarovska. *TRENDS OF EUROPEAN FAMILY LAW IN 2021*. Kalamar. (2021).

19 Ye. A. Tkachenko, *supra*, note 1. P. 141.

Some scholars are quite ambiguous on this issue, believing that the subject of property liabilities can only include those acquired by the spouses during the marriage. Several experts recognize that the term “marital property” should not involve debts, as they cannot be enforced. They can only burden the marital property but cannot be included in it.

According to Article 73 of the Family Code of Ukraine, all debts are divided into personal and joint debts. Joint debt liabilities include debts that arose in the following circumstances:

1. in the case of entering into transactions by spouses by mutual consent;
2. in the case of transactions entered into by one of the spouses, but the funds – the material result of the transactions – were spent in favor of the family;
3. as a result of joint obligations that caused damage to other persons or their minor children;
4. from unjustified acquisition of property of other persons.

Personal debt obligations include:

- debts that arose before the marriage;
- debts that occurred after the marriage, but the purpose of which was to satisfy their own needs (for example, gambling);
- debts that are closely related to the personality of the debtor (e.g., child support payments to a child from a previous marriage), etc.<sup>20</sup>

According to some researchers, any property obligation arising from a contract concluded by one of the spouses is considered to be joint if the material benefit received was used for the benefit of the family. This is the dominant approach, and the court takes it into account when considering the disputed issue of the division of not only property but also the spouses’ debts<sup>21</sup>.

According to K. G. Zhdanyuk and M. G. Polishchuk, the division of marital property is a complex, complicated, and time-consuming process. The scholars point out that additional claims and requirements may arise during the judicial protection of spouses in the process of property division. Such claims and requirements entail the presence of various types of expertise, interim relief, establishing the value of certain

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20 Family Code of Ukraine No. 21-22. Dated 10.01.2002. Verkhovna Rada of Ukraine. (2002).

21 A. O. Dutko, *supra*, note 10. P. 175-176.

property, the need to provide new evidence, and the involvement of witnesses. If this process is handled correctly, the case resolution will have a positive result for the person interested in legal consideration and resolution of issues related to the property split<sup>22</sup>.

The court is entitled to satisfy the requirements for divorce, leaving other requirements without consideration or performing other procedural actions determined by the Civil Procedure Code of Ukraine<sup>23</sup>. After the separation of property, each spouse acquires ownership of this property on a general basis. At the same time, the other spouse has no right over the property that was transferred to the ownership of the first spouse<sup>24</sup>.

The right of joint ownership arises from legal facts, such as a woman and a man are married, as well as in other cases provided for by law. Stocks and bonds acquired by one of the spouses in his or her own name during the marriage are not considered marital property. Therefore, the law protects the rights and interests of the spouse who owns the stocks and bonds. The exception applies to cases where it is proven in court that the stocks and bonds were acquired at the expense of the spouses' joint assets<sup>25</sup>. Paragraph 27 of the Plenum of the Supreme Court of Ukraine No. 11 stipulates that stocks and bonds may be the objects of joint and common property. They may be divided only if it is proved that they were acquired using joint assets.

Ukrainian legislation does not address the issue of establishing the amount of shares in the case of property division between spouses. First of all, this is done to ensure that the spouses are in the same conditions when dividing their property. Thus, in the case of sharing property determined by a marriage agreement, the shares of the partition should be determined per the terms of the marriage agreement. Sometimes, when dividing property under a marriage agreement, the court may deviate from the principles of equal shares and increase the share in favor of one of the spouses, taking into account the interests of one of the spouses or the interests of minor children. In this regard, according to part 4 of Article 93, part 1 of Article 103 of the Family Code of Ukraine, provisions of the marriage contract that put one of the spouses at a

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22 K. G. Zhdanyuk, M. G. Polishchuk. *DIVISION OF PROPERTY UPON DIVORCE*. Svichado Publishers. (2022).

23 S. V. Dyachenko, V. S. Onofrei. *Procedural features of consideration of cases on the division of marital property*. LEGAL SCIENTIFIC ELECTRONIC JOURNAL, vol. 3. (2021). P. 91-94.

24 V. V. Tsyura. *Peculiarities of legal regulation of the division of marital property under the legislation of Ukraine*. LAW AND SOCIETY, vol. 4, no. 4. 2015. P. 119-124.

25 Plenum of the Supreme Court of Ukraine No. 11. Dated 12.21.2007. On the practice of applying legislation by courts when considering cases on the right to marriage, dissolution of marriage, recognition of its invalidity and division of joint property of spouses.

financial disadvantage or violate the rights of minors or those under guardianship may be declared invalid per paragraph 22 of the Plenum Resolution<sup>26</sup>.

Ukrainian legislation regulates relations concerning the protection of the property rights of spouses based on the provisions of family and civil law. According to European legislation, most foreign countries define the main responsibilities of spouses both in and out of marriage. Therefore, the legal regulation of property relations between spouses in international family law includes two property regimes – treaty and legally based. The legal regime of marital property in the treaty arises from a marriage contract. The agreement between the spouses defines what property belongs to whom. This agreement establishes the ownership of property acquired before a man or woman entered into marriage, as well as property acquired during marriage. At the same time, it provides for property sanctions in case of divorce. Therefore, in the case of divorce, the court must proceed not from the provisions of the law but from the terms of the marriage contract. This quite significant circumstance has a substantial impact on strengthening the protection of the property rights of spouses. Wealthy people, when entering into a marriage, already know in advance that in the event of its dissolution, their property belongs to them alone and cannot be alienated by anyone.

Most European countries have long used a marriage agreement (contract) when entering into a marriage. This greatly facilitates the activities of not only the spouses undergoing divorce but also the court. It is worth emphasizing that the Anglo-American legal family has certain peculiarities in the marriage process. Therefore, when concluding a marriage agreement, future spouses must adhere to the principle of reasonableness and fairness, and regulate issues related to the upbringing and supporting their children. However, people should not assume that everyone in Europe enters into marriage contracts. Some families do not enter into prenuptial agreements. In this case, during the divorce and property division process, the court is guided by the provisions of the law, i.e., it establishes the legal regime of the spouses' property.

In general, if we analyze the laws of France, the Netherlands, Italy, and some states of the United States, we can see that there is a marital property regime, according to which each spouse owns property jointly while married. Another regime, the regime of deferred joint ownership, is in effect in England, in most us states, and in Germany. In the case of separation, the property should be divided according to the following principle: whoever acquired the property during the marriage owns it<sup>27</sup>.

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26 *Id.*

27 L. Radchenko. MARRIAGE CONTRACT IN FOREIGN LEGAL SYSTEMS: SEPARATE PRINCIPLES OF LEGAL REGULATION. Kalamar. (2017). P. 38.

## IV. DISCUSSION

The protection of property rights of spouses is no less important institution than marriage itself. Regulation of marital and family relations is carried out by contract and by law. Such regulation would consider not only the nature of property relations but also the peculiarities of property acquisition. Considering all circumstances, the court makes a reasoned decision that satisfies both parties in the property distribution process. Ukrainian legislation and the legislation of other European countries in the process of property distribution and protection of property rights of spouses have both common and distinctive features. Thus, the development of Ukrainian legislation regarding the distribution of property held in joint ownership is significantly influenced by European integration processes implemented by the state. Some legal frameworks have already been successfully implemented in Ukrainian legislation.

O. S. Prostybozhenko notes that an essential step in harmonizing domestic family law and EU law, where the legal regime of marital property is established, primarily lies in the consistency of the mutual obligations of spouses towards each other and joint responsibility. However, the author emphasizes that it is not entirely expedient to use a legal norm that provides compensation for the value of property to the other spouse for an item that has been in use because sometimes its value significantly decreases over time<sup>28</sup>.

Undoubtedly, the issue of protecting the rights of spouses in the process of property division is rarely resolved out of court. It is appropriate to emphasize that the most successful practice borrowed from EU countries is the marital contract. Spouses can conclude it before entering or already being in a marriage. This important document will help save nerves and time in divorce. When concluding a contract, it is possible to depart from the principle of equal shares in joint ownership within the extrajudicial division of property. In other words, such property can be divided not in half but based on the conditions defined in the contract. Judicial division of property is a lengthy process but the cheapest. The complexity of this process lies in gathering the necessary evidence, sources of property acquisition, ownership, and other circumstances determined by law<sup>29</sup>.

While the rights and obligations of married couples are clearly defined by law, the situation is different for couples who lived together but did not enter into marriage.

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28 O. S. Prostybozhenko. *Legal regime of marital property under the legislation of European states: Comparative legal analysis and directions of harmonization*. I. I. MECHNIKOV NATIONAL UNIVERSITY BULLETIN, vol. 1, no. 28. 2016. P. 111-129, 123.

29 *Division of marital property: Legal analysis and actual costs*. (2021). Available at: <https://tinyurl.com/53yxy9kb>

Therefore, if individuals are not in an official marriage but live together as a family, the property acquired during cohabitation is considered their joint common property, and thus, the same legal norms apply to them as to persons in a registered marriage. According to Article 74 of the Family Code of Ukraine, such property belongs to them as joint common property. The main condition of this division is that the court, in the process of property division between these individuals, must establish their cohabitation, joint management of the household, as well as other substantive circumstances. When seeking protection for their violated property rights, a person should understand whether they have sufficient grounds to prove and establish the factual circumstances that will be essential in the judicial proceedings<sup>30</sup>.

R. O. Havrik, while studying the issue of protecting the property rights of spouses, notes that both in our country and in European countries, the legal regulation of the main ways of protecting property rights is carried out according to the provisions of civil law with the application of separate norms regulating family and other types of relations. The regulation of these legal relations is characterized by a certain dualism in the legal regulation of the mentioned issues, such as:

- in legal relations with third parties, general methods of legal regulation are used;
- in legal relations between spouses, the norms of family law are applied.

Overall, the protection of property rights of actual spouses, spouses in church marriage, and partners who have concluded a marriage contract have different legal natures and, therefore, other ways of protecting these rights. These unions are more characteristic of Europe, and hence, property acquired in such unions should be distributed, taking into account the norms of civil law and other sectoral legal acts<sup>31</sup>.

## V. CONCLUSIONS

The study of the peculiarities related to the protection of spouses' property rights under Ukrainian and EU legislation has established that the provisions of European law contribute to a more complete protection of spouses' property issues.

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<sup>30</sup> *Id.*

<sup>31</sup> R. Havrik. PROTECTION OF THE RIGHT OF OWNERSHIP OF PROPERTY ACQUIRED IN FAMILY UNIONS UNDER THE LEGISLATION OF UKRAINE AND THE COUNTRIES OF THE EUROPEAN UNION. Kalamar. (2021).

In particular, this can be facilitated by concluding marriage contracts and a more balanced and rational approach to determining which property belongs to whom. In Ukraine, the protection of property rights of spouses is regulated by family and civil law. In cases where the issue cannot be resolved on a voluntary basis, the parties go to court to protect their violated rights.

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