

ANA MARUŠIĆ
BRAČNA STEČEVINA U KONTEKSTU OBITELJSKOPRAVNIH ODNOSA
SAŽETAK

Obitelj i brak su dva instituta obiteljskog prava u čijim okvirima čovjek ispunjava svoje temeljne društvene, privatne i emocionalne potrebe, te se ostvaruje u svojoj punini, uz imovinske potrebe i njihovo ostvarenje, koje predstavljaju jednu od glavnih okosnica za uspješan razvoj i osiguranje dobrobiti i prosperiteta svim članovima obitelji. Obitelj, kao i obiteljskopравни odnosi, imaju brojne osobne i imovinske učinke, koji su uzročno-posljedično povezani, te se nalaze u stalnom odnosu. S obzirom na relativno promijenjen koncept obitelji u suvremenom društvu, u radu su uzgredno uključena i druga dva pojavna oblika životnih zajednica, koji proizvode slične pravne učinke, ovisno o stupnju njihovog priznanja i normiranja, a to su izvanbračna i istospolna zajednica, s naglaskom na njihovu imovinsku komponentu. S povijesnog aspekta pristupilo se detaljnoj analizi razvoja ovih instituta od najstarijih poznatih zakonika, preko rimskog prava i zakonika srednjeg vijeka, do građanskih zakonika na čijim glavnim postulatima počiva današnje pozitivnopravno uređenje europskog kontinentalnog kruga, kao i domaće zakonodavstvo. Tema rada je najkompleksnija vrsta imovine, koja se steče u okviru ovih životnih zajednica, a to je bračna stečevina, čijoj se analizi pristupilo u okviru zakonskog i ugovornog imovinskog sustava. U ovom radu, glavna polazna točka jest pozitivnopravno uređenje instituta bračne stečevine u Federaciji Bosni i Hercegovini i zajedničke imovine u Republici Srpskoj, koje važeći obiteljski zakoni nepotpuno uređuju, navodeći samo temeljna načela, dok se detaljnije norme i pravni učinci pronalaze u odredbama stvarnog i obveznog prava.

Poredbenopravnom metodom analizirana su obiteljska zakonodavstva i pravna praksa zemalja u okruženju (Republike Hrvatske, Republike Srbije i Crne Gore), na razini Europske unije, te Njemačke i Francuske. Ovaj pristup se sastojao u posvećivanju pažnje novim institutima, kojima se u okviru zakonskog imovinskog sustava nastoji osigurati najbolja zaštita imovinskih interesa bračnih partnera, kao i svih članova obitelji, posebno prema kojima oni imaju obvezu skrbi i uzdržavanja. Slijedom te okolnosti nameće se potreba detaljnijeg reguliranja ovih pitanja u okviru zakonskog imovinskog sustava, kao što je učinjeno u Njemačkoj BGB-om.

Posebna važnost posvećena je upravljanju i raspolaganju bračnom stečevinom i zajedničkom imovinom, te njihovom utvrđivanju i diobi, kako bi se još detaljnije približili svi aspekti bračne stečevine i zajedničke imovine, kao i blagodati postojanja i učinka bračnog

ugovora na njih, kao i osiguranje pravne sigurnosti i zaštite interesa trećih osoba. Odgovarajućim pristupom materiji i adekvatnom upotrebnom metoda osigurala se kvalitetna obrada predmetne materije, kroz koju je izvršeno potvrđivanje postavljenih hipoteza, iznoseći argumente, koji dokazuju u kolikoj mjeri omogućeni ugovorni imovinski sustav doprinosi uređenju svih važnih segmenata bračne stečevine i zajedničke imovine. Istaknuto je da sporazumno uređenje bračne stečevine predstavlja važan čimbenik stabilnosti braka, a i međusobnih odnosa bračnih partnera nakon eventualnog prestanka braka, uključujući tu i zaštitu najboljeg interesa i dobrobiti djece, kao i imovinskih interesa osoba lišenih poslovne sposobnosti. Česte situacije nesrazmjera u imovinskim stanjima i prihodima bračnih partnera, kao i rashodima koje čini ili čine tokom bračne zajednice bračnom stečevinom ili posebnom imovinom, mogu biti razlogom nesuglasica, te narušiti skladnost bračnog i obiteljskog života. Stoga je naglašena važnost bračnog ugovora kao korektiva premostivih ili nepremostivih razlika i glavnog pravnog mehanizma za efikasno uređenje ovih imovinskopravnih odnosa.

Ključne riječi: imovinskopravni odnosi u obitelji, bračna stečevina, posebna imovina, bračni ugovor, stjecanje, upravljanje, raspolaganje i dioba bračne stečevine, obiteljski dom

ANA MARUŠIĆ

**MARITAL PROPERTY IN THE CONTEXT OF FAMILY LAW RELATIONS
SUMMARY**

Family and marriage are two institutes of family law within which an individual fulfills their fundamental social, private, and emotional needs, achieving their full potential, alongside property needs and their realization, which represent one of the main pillars for the successful development and securing the well-being and prosperity of all family members. The family, as well as family law relations, have numerous personal and property effects that are causally linked and in a constant mutual relationship. Considering the relatively changed concept of family in contemporary society, the work also briefly includes two other forms of life communities that produce similar legal effects, depending on the degree of their recognition and regulation, namely extramarital and same-sex communities, with an emphasis on their property component. From a historical perspective, a detailed analysis of the development of these institutes has been approached, from the oldest known codes, through Roman law and medieval codes, to civil codes on which today's positive legal regulation of the European continental circle and domestic legislation rests. The theme of the paper is the most complex type of property acquired within these life communities, namely marital property, which is analyzed within the framework of the legal and contractual property system. In this paper, the main starting point is the positive legal regulation of the institute of marital property in the Federation of Bosnia and Herzegovina and joint property in the Republika Srpska, which current family laws regulate incompletely, stating only the fundamental principles, while more detailed norms and legal effects can be found in the provisions of property and obligation law.

Using comparative legal methods, family legislation and legal practice in neighboring countries (Republic of Croatia, Republic of Serbia, and Montenegro) have been analyzed at the level of the European Union, as well as Germany and France. This approach involved paying attention to new institutes that aim to ensure the best protection of the property interests of marital partners, as well as all family members, especially towards whom they have an obligation of care and maintenance. Consequently, there is a need for a more detailed regulation of these issues within the legal property system, as it has been done in Germany with BGB.

Particular importance has been given to the management and disposal of marital property and joint property, as well as their determination and division, in order to take a closer look at all aspects of marital property and joint property, as well as the benefits of the existence and effect of a marital contract on them, along with ensuring legal security and protection of

the interests of third parties. An appropriate approach to the subject matter and the adequate use of methods have ensured a quality treatment of the subject matter, through which the set hypotheses have been confirmed, presenting arguments that demonstrate to what extent the contractual property system contributes to the regulation of all important segments of marital property and joint property. It has been emphasized that consensual arrangement of marital property represents an important factor in the stability of marriage, as well as the mutual relations of marital partners after the eventual cessation of marriage, including the protection of the best interests and welfare of children, as well as the property interests of persons deprived of legal capacity. Frequent situations of disproportion in the property statuses and incomes of marital partners, as well as expenses incurred from marital property or separate property during the marital community, can be a reason for disagreements and disrupt the harmony of marital and family life. Therefore, the importance of the marital contract as a corrective for bridgeable or unbridgeable differences and the main legal mechanism for the efficient regulation of these property law relations has been emphasized.

Keywords: property law relations in the family, marital property, separate property, marital contract, acquisition, management, disposal, and division of marital property, family home