

# **The Evaluation of the Effects of Participation of the Spouses to the Expenditures of Marriage Union and Financial Contributions to Each Other During Marriage to the Regime of Participation in Acquired Property**

*Senar Çağırğan Tuncer (PhD)*

Pamukkale University Faculty of Economics and Administrative Sciences  
Department of Legal Sciences, Turkey

---

## **Abstract**

Through marriage, spouses start sharing a common life. The fact that spouses begin to live together by combining their lives causes monetary relations between them to emerge as well as moral relations (Ülker,1973; Acabey, 1998). The legislator has regulated the monetary relations between the spouses under various provisions. In our study, we will evaluate the spouses' participation in the expenditure of the marriage union (TCL Art. 186/III) and the financial contributions of the spouses to each other in terms of the participation to acquired property regime (TCL Art. 218 - Art. 240). In the first part of our study, we will give a brief description of the participation to acquired property regime. In the second part we will refer to the obligation of the spouses to participate to the expenditures of the marriage union and the financial contributions of the spouses to each other. In the last part, we will evaluate the spouses' participation in the expenditure of the marriage union and the financial contributions to each other in light of the participation to the acquired property regime.

---

**Keywords:** Marriage Union, Property Regime, The Regime of Participation in Acquired Property

## **Introduction**

Monetary issues are often ignored between spouses before marriage and during the non-problematic times of marriage. Spouses work together to make a living, contributing money or labor without even thinking about compensation. For the spouses, the sacrifices made for each other are for the future of their shared family (Sarı, 2007). However, when problems begin to arise in the marriage union, the financial issues between the spouses begin to

come to the fore. Taking this into consideration, The legislator has regulated the monetary relations between the spouses under various provisions (Sarı, 2007).

The legislator has regulated the monetary relations between the spouses under various provisions. The obligation to participate in the expenditures of the marriage union (TCL Art. 186/III) in the general provisions of marriage, and the marriage union property regimes (TCL Art. 202 - art. 281) which regulate the rights of the spouses on their assets, are the provisions governing the monetary relations between the spouses.

In our study, we will evaluate the spouses' participation in the expenditure of the marriage union and the financial contributions of the spouses to each other in terms of the participation to acquired property regime which is accepted as the legal regime in the Turkish Civil Law.

### **The Participation to Acquired Property Regime**

In the participation to acquired property assets, the property assets of each spouse are separated into two groups, being the acquired property assets and personal property assets (Turkish Civil Code Art.196) (Hausheer, Geiser and Kobel). While the personal property assets are excluded from apportionment when the property regime is terminated, the acquired property assets are apportioned between the spouses.

The participation to acquired property assets contemplates each spouse to enjoy title to the respective personal property thereof throughout the maintenance of the property regime as is the case with the partition of property. Each spouse may, within legal limits, individually manage the personal property assets and the acquired property assets under the title thereto, benefit the same and dispose of the same also within the participation to acquired property regime (Turkish Civil Code Art.223/I) (Sutter and Kobel, 2009). Hence, the participation to acquired property regime is based on the partition of property system (Zeytin, 2008; Sutter and Kobel, 2009).

When and if the property regime is terminated, the acquired property assets and the personal property assets of the spouses are separated from one another (Sutter and Kobel, 2009). In the participation to acquired property regime, the acquired property assets are defined by Section 219 of the Turkish Civil Code as the property assets, which the spouses may acquire against certain considerations as of the institution and throughout the maintenance of the property regime. The second paragraph of the same section lists examples of certain acquisitions of the spouses in five subparagraphs. Accordingly;

- Acquisitions gained in consideration of labour,

- The payments by social security or social welfare institutions and agencies or the funds established for relief to employees and the like entities,
- Damages paid due to the loss of capability to work,
- Income derived from personal property, and
- The assets that substitute acquired property assets are considered as the acquired property assets. The items listed are not of restrictive but of exemplary nature.

The items listed under Section 220 of the Turkish Civil Code are, legally, the personal property items. Such personal property items are:

- Any item that is intended solely for personal use of either of the spouses,
- The property assets, which the concerned spouse owned at the time of institution of the property regime, those acquired through inheritance or those acquired through outright gains,
- Moral damages receivable,
- Assets that substitute personal property assets.

All properties of spouses which are not proved to be personal property are acquired properties (Hegnauer and Breitschmid, 2000).

In the case of liquidation of the property regime, the debts and obligations in respect of the acquired property of each spouse are deducted from the value of the acquired assets (Acabey, 1998). Each spouse is entitled to claim on the half of the value of the acquired property assets of the other spouse. Such claims are, thus, net off.

### **Participation of Spouses to Conjugal Union Expenses**

Conjugal Union expenses are the expenses made to satisfy the needs of the family (Gürpınar 2013). Spouses are obliged to participate in the expenses of the union in proportion to their labor and assets pursuant to the principle of equality of spouses (Gürpınar 2013).

Primarily the monetary contribution of the working spouse comes to mind when meeting the expenses is considered. However, the labor of the spouse who doesn't work outside of the home and do the housework takes care of the children or who works in other spouse's business without payment is also regarded as a contribution to expenses of the union (TCC Article 196/II) (Dural, Öğüz and Gümüş, 2013; Gürpınar, 2013; Kılıçoğlu 2216).

The liability of participating in the conjugal union expenses is in effect over the course of marriage for both spouses. This obligation continues even if the spouses live in separate homes (Dural, Öğüz and Dural, 2013).

### **A. Conjugal Union Expenses**

The concept of union expenses includes the basic needs of the family and conditionally, personal needs of family members. To begin with, expenses related to home (expenses like rent, mortgage loan installments, heating, electricity, and water), health expenses, social security expenses, tax expenses and social and cultural expenses of the family fall into union expenses. Besides that, personal basic needs of spouses and children are also included in conjugal union expenses. Personal basic needs of family members included in union expenses can be personal care, health, education, transportation, sportive and cultural activity expenses (Gürpınar, 2013).

Family members of the elementary family are primarily father, mother, and children. Nevertheless, the children from previous relationships of any spouse who live in the same house and relatives who the spouses are liable to look after are also regarded as family members and their needs are met from the family budget (Gürpınar, 2013).

### **B. Agreement between Spouses Regarding Participation in Expenses of Conjugal Union**

Spouses may enter into an agreement regarding participation in expenses of conjugal union. This agreement made between the spouses is not a formal one (Dural, Öğüz, Gümüş, 2013; Gürpınar, 2013; Kılıçoğlu, 2016). Mostly this agreement is made via implicit declaration of intent. In case the spouses cannot reach to an agreement in terms of participation in expenses, they can request judicial intervention (Gürpınar, 2013; Kılıçoğlu, 2016).

### **C. Applicable Sanctions in Case of Nonparticipation**

Either one of the spouses may apply for compulsory execution to claim his/her bad debt due to nonparticipation in expenses of conjugal union (Dural, Öğüz and Gümüş, 2013; Gürpınar, 2013). Compulsory execution can be imposed on the other spouse provided that monetary contribution is not received. However compulsory execution cannot be imposed on a spouse who fulfils his/her debt to participate in expenses by way of labour such as taking care of kids and cleaning the house. Therefore if the spouse who participates in expenses of conjugal union by way of labour neglects to do this, judicial intervention might be demanded (Gürpınar, 2013).

### **D. Prescription**

Receivables with regard to participation in expenses are subject to common ten-year prescription period regulated in Article 146 of Turkish Code of Obligations as of the date they become due (Dural, Öğüz and Gümüş, 2013). However prescription period ceases as long as the conjugal

union of spouses continues pursuant to Article 153 of Turkish Code of Obligations.

### **E. Determining the Contribution of Spouses to Conjugal Expenses and Assessing in Terms of Marital Property**

In compliance with the principle of equality of spouses, both spouses shall meet the conjugal union expenses together. But pursuant to the expression of “in proportion to their labor” stated in Law, the rate of contribution for each spouse shall be determined by considering their incomes, personal skills, and roles they have undertaken in the family. Spouses can freely make an agreement regarding the participation to union expenses. If the couples cannot mutually agree on this matter, the court determines the monetary contribution of each spouse upon application of one of the spouses goes to law. The labor of the spouse who does the housework, takes care of children or who works in other spouse’s business without payment shall also be taken into consideration (TCC Article 196/II). If the spouses are living together, the monetary contribution of each to meet the conjugal union expenses can only be requested from the court for the previous year and for future years (TCC Article 196/III).

Pursuant to Turkish Civil Code, the participation of spouses to union expenses in proportion to their labor or assets and spouses’ right to claim half of the value of acquired property due to the regime of participation in acquired property complete each other in terms of establishing the equality (Zeytin 2008). Thus the monetary return of the labor of spouse who exerts themselves to do the housework and take care of children is recognized (Zeytin 2008).

In accordance with the regime of participation in acquired property, the contribution receivable of each spouse arising within the period of the regime of participation in acquired property is included in the acquired property of spouses (Gümüő, 2008).

### **Material Contributions of Spouses to Each Other During the Marriage**

Material contributions of spouses to each other during the duration of marital property regime without being rewarded for their efforts can be regarded as donations or appreciation increase of value) share receivable pursuant to the regime of participation in acquired property.

If the gratuitous contributions of spouses to each other with the intention of donation, this contribution is included in personal assets in accordance with the regime of participation in acquired property. Pursuant to marital property regime, none of the spouses can claim any receivable from the other spouse in terms of property (Zeytin, 2008).

On the other hand, the receivable that each one of the spouses becomes entitled to collect due to the contribution they made to the other spouse regarding the acquisition, improvement or maintenance of a property or without getting a proper return is called appreciation share receivable.

The usual gratuitous financial and moral support received by each spouse to other in the conjugal union in contemplation of being a family is regarded as a contribution to fulfilling the obligations arising from the conjugal union in the regime of participation in acquired property. Therefore without any necessity to prove the contribution made to conjugal union each spouse will have a contribution receivable amounting half of the surplus value of the other spouse. In terms of appreciation share, on the other hand, it is required the contribution of spouses to each other should be an extraordinary contribution and this contribution should be proven by the claiming spouse (Zeytin 2008)

In accordance with Article 227 of Turkish Civil Code; increment value share stated in the regime of participation in acquired property is the right-to-claim of one of the spouses holds due to his/her contributions without getting any or proper compensation to acquisition, improvement or protection of a property belongs to other spouse. In this sense, increment value claim in the regime of participation in acquired property represents a different right to claim than receivable due to participation (Zevkliler, Ertaş, Havutçu and Gürpınar, 2012). In order for one of the spouses to have the right to claim, the following conditions should be sought:

- Primarily one of the spouses should have been contributed to acquisition, improvement or protection of a property which belongs to other spouse (Sarı, 2007; Dural, Öğüz and Gümüş, 2013; Öztan 2015). Contributed property could be acquired property or personal property (Hausheer, Geiser and Kobel, 2000; Sarı, 2007; Zeytin, 2008). This contribution might be monetary as well as performance of works (Hausheer, Geiser and Kobel, 2000; Hegnauer and Breitschmid, 2000; Sarı, 2007; Dural, Öğüz and Gümüş, 2013).

- Either one of the spouses should not have the intention of granting when he/she contributes with a personal or partnership property (Sarı, 2007; Zeytin, 2008; Dural, Öğüz and Gümüş, 2013; Öztan, 2015). If the contribution of one of the spouses to other spouse's property is granting pursuant to Turkish Code of Obligations, increment value is out of question (Zeytin, 2008).

- Contribution should be gratuitous in part or in whole (Sarı, 2007; Öztan, 2015). Pursuant to Article 227/I of Turkish Civil Code; one of the spouses should contribute to a property of other spouse without getting any or proper compensation.

- There should be an increase in the value of the contributed property during the liquidation of matrimonial property (Dural, Öğüz and Gümüş, 2013). However the increment value of property should be due to the changes in supply and demand equilibrium in the market. Increment values arising due to the efforts of the spouse cannot be regarded as increment value debt within the scope of liquidation of matrimonial property (Dural, Öğüz and Gümüş, 2013). If there is a loss of value during liquidation, the initial value of contribution is grounded on (TCC a. 227/I). In case the property is disposed before liquidation, increment value share to be paid to other spouse shall be justly appraised by judge (TCC a. 227/II).
- Increment value share should not have been waived (Sarı, 2007; Öztan, 2015). In accordance with Article 227/III of Turkish Civil Code; “Spouses can waive the receipt of increment value share by a written agreement or change the rate of share”. Waiver might be limited with only a certain property or with regard to all contributions during the period of marital property regime (Sarı, 2007) In case one of the spouses don’t claim a counter action for his/her contribution, this cannot be regarded as waiver of increment value share, unless it is mutually agreed on otherwise by the parties (Dural, Öğüz and Gümüş, 2013).
- It is necessary for the marital property regime to be expired and liquidation should be requested (Sarı, 2007). Because the right-to-claim based on contribution of one of the spouses without getting any or proper compensation to acquisition, improvement or protection of a property belongs to other spouse can be alleged during the liquidation. Increment value share cannot be claimed during the continuation of the regime of participation in acquired property (Sarı 2007).

## **Conclusion**

When it is assessed in terms of the regime of participation in acquired property, the debt of participation during conjugal union falls within acquired property category. Therefore the due receivables arising from participation in expenses of conjugal union are subject to sharing between the spouses as acquired properties during the liquidation of matrimonial property.

In case financial contributions of spouses to each other during the marriage are accepted as grants within the frame of Turkish Code of Obligations, they are regarded as personal property and fall outside of sharing during the liquidation of matrimonial property.

In accordance with the regime of participation in acquired property, if the contribution of a spouse to other is made without the intention of granting and without getting any or proper compensation to acquisition, improvement or protection of a property in the regime of participation in acquired property, it is regarded as increment value debt. Debt of increment value share is a right-

to-claim for the contributing spouse that he/she can collect during the liquidation of matrimonial property.

### **Acknowledgements**

The author of the paper express their appreciation to Scientific Research Projects Coordination Unit, Pamukkale University for their support (Project No: 2017KKP015)

### **References:**

- Acabey, M. B. (1998). *Evlilik Birliğinde Yasal Mal Rejimi*, Dokuz Eylül Üniversitesi Yayınları, İzmir.
- Dural, M., Öğüz, T. and Gümüş, M. A. (2008). *Türk Özel Hukuku*, Cilt III Aile Hukuku, 2.Baskı, Filiz Kitabevi, İstanbul.
- Gümüş, M. A. (2008). *Evliliğin Genel Hükümleri ve Mal Rejimleri*, Vedat Kitapçılık, İstanbul.
- Gürkan, Ü. (1973). “Karının İktisaden Korunması”, Ankara Üniversitesi Hukuk Fakültesi Dergisi, Cilt: 30, Sayı: 1-4, s. 317-352.
- Gürpınar, D. (2013). “Eşlerin Evlilik Birliğinin Giderlerine Katılma Borcu”, Prof. Dr. Aydın Zevkliler’e Armağan II, Yaşar Üniversitesi elektronik Dergisi, Cilt: 8, Özel Sayı, İzmir 2013, s. 1293-1337.
- Hausheer, H., Geiser, T. and Kobel, F. (2000). *Das Eherecht Des Schweizerischen Zivilgesetzbuches*, 2. Auflage, Bern.
- Hegnauer, C and Breitschmid, P. (2000). *Grundriss des Eherechts*, Staempfli Verlag, Bern.
- Öztan, B. (2016). *Aile Hukuku*, 4. Bası, Turhan Kitapçılık, Ankara.
- Sarı, S. (2007). *Evlilik Birliğinde Mal Rejimi Olarak Edinilmiş Mallara Katılma Rejimi*, Beşir Kitabevi, İstanbul.
- Sutter-Somm, T. and Kobel, F. (2009). *Familienrecht*, Basel.
- Zevkliler, A., Ertaş, Ş., Havutçu, A., Gürpınar, D. (2012) *Yeni Medeni Kanuna Göre Medeni Hukuk (Temel Bilgiler)*, 7. Bası, Turhan Kitapçılık, Ankara.
- Zeytin, Z. (2008). *Edinilmiş Mallara Katılma Rejimi ve Tasfiyesi*, 2. Bası, Seçkin Yayıncılık, Ankara.