

THE INTERSECTION OF ALBANIAN COMPANY AND FAMILY LAW CONTEXT ON PROPERTY RIGHTS OF SPOUSES: NECESSITIES FOR ALIGNMENT WITH *ACQUIS COMMUNAUTAIRE*

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Abstract

Harmonization and alignment of domestic legislation with the *Acquis Communautaire* are some of the most prominent and unprecedented topics nowadays in Albanian legal circles. As it is a tool for legal adjustments in different fields of law, to fully strengthen the path towards the EU integration of Albania, it is necessary to highlight and find the relevant framework where the alignment and regulation are acquired. The topic of the property rights of spouses in the context of company law provisions is a coherent and continuous issue for debate among lawyers and jurists in Albania. This paper examines the property rights of spouses in the Albanian Company legal framework and the necessity for harmonization with the *Acquis Communautaire*. The property rights of spouses in Albania have traditionally been governed by the Family Code of Albania, which does not provide clear guidelines for the division of property in the context of quotas, shares, company assets, and investments. This lack of clarity can create legal uncertainties and potential conflicts, particularly in cases of divorce or dissolution of a company and the estate of spouses, regardless of their marital property regime.

Keywords: Spouses rights, company law, harmonization, Albania, legal regime.

I. Introduction

The institution of marriage and the associated property rights of spouses are significant aspects of legal systems worldwide. Generally, the property rights of spouses are sanctioned and elaborated on the relevant family law legislation and existing doctrine. Nevertheless, in the context of company law, the recognition and protection of the property rights of spouses are crucial elements in ensuring fairness, transparency, and stability in business operations.

Even though the Albanian Family Code stipulates that the community property regime includes the commercial activity created during the marriage and the income from it, it has taken more than two decades after the restoration of the market economy in Albania and the beginning of the activity of commercial companies, before the first lawsuits claiming co-ownership of both spouses over the commercial entities created during the marriage were presented to the court. The development of doctrine and jurisprudence is still in its early stages in this area, raising doubts on several issues such as the existence of co-ownership of the commercial entities created by the marriage (despite of who results shareholder in the registry), or the risks arising for invalidity in case of alienation of the commercial entity without the spouses' consent.

Under this scope of existing gaps in the Albanian Company law and relevant doctrine on the spectre, Albania, a candidate country for EU accession, though has made substantial progress in harmonizing its legal framework with EU standards across various sectors, can be drawn that the area of property rights of spouses within the realm of company law requires further attention. This paper aims to shed light on the current status of property rights of spouses in Albanian company law, identify existing gaps which lead to the need to align Albanian legislation with the *Acquis Communautaire*, the body of European Union (EU) laws and regulations, and propose recommendations based on the property rights of spouses within the European context.

To provide a comprehensive analysis, this paper will employ an analytical method that includes the systematic analysis of the relevant legal provision in the Republic of Albania; the analytical method of doctrine, which includes evaluation of relevant scientific articles, comments, Internet search related to contemporary legal debate in national and international level, evidenced in periodicals, doctoral theses, texts, and books organized in monograph form, and lastly the study of the judicial practice cases.

II. Research objectives

The primary objective of this study is to critically examine the legal framework governing the property rights of spouses in Albania, with a particular focus on their intersection with company law. This research is set within the broader context of legal harmonization with European Union standards and aims to contribute to the academic discourse on marital property regimes in commercial settings.

A frontal aim is to analyze the current legislative provisions in Albania that regulate spousal property in relation to company ownership and participation. This includes a systematic review of national laws, followed by a comparative assessment of relevant European Union directives and regulations. By identifying points of convergence and divergence, the study seeks to situate Albanian law within the broader European legal landscape.

In addition, the research aims to identify and interpret the foundational legal principles and doctrines that shape the property rights of spouses within corporate frameworks. This involves evaluating the legal and practical implications of these principles on the rights, duties, and liabilities of spouses who co-own or participate in business ventures.

The study further engages in a detailed examination of judicial decisions and case law, both within Albania and at the European level. The objective here is to uncover patterns in legal reasoning, assess the influence of precedent on current practice, and determine how EU jurisprudence may inform or challenge domestic judicial interpretations.

An important dimension of this research is the analysis of Albania's progress toward EU integration and its impact on national legislation concerning spousal property rights. Particular attention is paid to legal reforms enacted to align with EU standards and the extent to which these changes affect company law as it pertains to marital property.

The study also addresses the implications of spousal property rights for gender equality, particularly in the context of economic participation and legal recognition. It seeks to determine whether current laws in Albania and the EU perpetuate traditional gender roles or foster a more equitable distribution of assets and responsibilities between spouses in business relationships. To enrich the analysis, a comparative component is included, drawing on legal models from selected EU member states. This comparison is intended to highlight best practices and inform potential legal reforms in Albania.

Finally, the research aims to anticipate future developments in the regulation of spousal property rights in company law. This involves considering emerging social norms, legislative trends, and the evolving role of family structures in commercial activities, both at the national and EU levels.

Methodological aspects

From a methodological perspective, the article will be literature based by using the functionality of the comparison methods, the analysis of the relevant case law when it will be available and also based on interpretation, synthetic interpretation of the relevant statutory legal provisions, thus providing the qualitative methods, from secondary sources.

III. Literature review

The Albanian Family Code is the organic law that originally provided the regulation of the matrimonial property regimes. Based on the provisions of the Albanian Family Code, three matrimonial property regimes are recognized: the community property regime, the contractual property regime, and the separate property regime. Under the scope of this paper, we shall refer only to the community property regime, in which implications arise when evaluated in conjunction with Albanian Company Law provisions. This regime is sanctioned under Chapter II of the Albanian Family Code, Articles 73-107. Specifically, Article 74/ç of this Code, tackles commercial activity, explicitly stating that it is included in the community property regime. Moreover, it also clarifies that if the commercial activity before the marriage belonged to only one of the spouses, but during marriage, it is managed by both spouses, the community property regime includes only profits and increased production. The code further elaborates on Article 75 on the specificity of the property designated for the administration of the commercial activity, which in case it is created during the marriage, is designated for the administration of one's commercial activity from the spouses and the additions of its production are the object of co-ownership only if they exist as such at the moment the marriage ends. If we refer to the personal property of the spouse, sanctioned in Article 77 of this Code, property rights related to commercial activity, are not mentioned; therefore, reinforcing the fact that they are part of the community property regime.

On the other hand, while referring to the main law regulating the status, establishment, administration, rights, and obligations of commercial companies in Albania, specifically Law No.9901 dated April 14, 2008 “On entrepreneurs and commercial companies”, there is no existing provision on regulating the rights and/or obligations of spouses regarding their property rights within a commercial context.

IV. Albania's legal framework and eu significance in property of spouses

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¹ Chapter III of Albanian Family Code, Articles 66-122.

² Chapter II, III, and IV of Albania Family Code.

³ Article 74/ ç, paragraph 2 of Albania Family Code.

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Legal framework of the EU and closer jurisdictions

Under a European Union context, the legal provisions of the individual member states are largely responsible for regulating the property rights of spouses. Through directives and regulations, the EU has standardized several parts of family law, although property regimes continue to fall principally within national jurisdiction⁴.

Matrimonial property regimes and company law are the two primary legal frameworks that might affect a couple's property rights when it comes to property over commercial shares and quotas. As for matrimonial property regimes, similar to the Albanian legal context, these regimes specify how to handle the assets of spouses both during the marriage and after this legal union has ended. Community property, separate property, and contractual property regimes are the three basic categories of marital property regimes in the EU, which are also reflected in our legal system⁵. These regimes put out guidelines for how to divide assets accumulated during a marriage, such as commercial shares and quotas, but with particular regulations, varying between member states.

Assets obtained after marriage often become part of the joint property of the spouses under a community property regime, which is used in numerous EU nations, unless they are specifically excluded. Commercial shares and quotas acquired during the marriage may be regarded in this situation as joint property that will be divided following divorce or separation. Contrarily, separate property regimes may stipulate that any assets obtained during a marriage solely belong to the spouse who acquired them. Commercial shares and quotas acquired separately may be regarded as independent property in such circumstances⁶. It is significant to remember that several EU member states let partners decide on their marital property regime through a marriage agreement, sometimes known as a prenuptial agreement. These contracts can alter the default property system and specify particular guidelines for how assets, such as shares and quotas, would be divided⁷.

As for company law, in each EU member state, company law governs the ownership and transfer of commercial shares and quotas. The creation, administration, and transfer of shares in business entities are governed by these specific legal provisions. The transfer and ownership of shares are normally governed by company law, but in the case of a divorce or separation, it may also affect the division of marital property. While the final decision of ownership and separation will depend on the applicable marital property regime, there are particular circumstances in which the division of business shares and quotas may be subject to special requirements under company law⁸.

It is vital to emphasize that different EU member states may have quite different particular legal provisions governing spouses' property rights over commercial shares and quotas, specifically due to the nature of family law, which is considered strictly private and in reflection of social,

⁴ Andy Hayward, Principles Of European Family Law Regarding Property, Maintenance And Succession Rights Of Couples In De Facto Unions, Edited By Katharina Boele-Woelki, Frédérique Ferrand, Cristina González Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny And Velina Todorova, Intersentia, International Journal Of Law, Policy And The Family, Volume 35, Issue 1, 2021, Ebao014, <https://doi.org/10.1093/Lawfam/Ebaa014>.

⁵ *Ibid*.

⁶ “Principles Of European Family Law Regarding Property Relations Between Spouses” Accessed At [Principles Of European Family Law.Indb \(Ceflonline.Net\)](#).

⁷ Couples In Europe - Matrimonial And Registered Partnership Regimes National Law Of 33 European Countries, Accessed At [Couples In Europe - Matrimonial And Registered Partnership Regimes National Law Of 33 European Countries - News - Uinl](#).

⁸ European Commission Information Website, Accessed At: [Company Law And Corporate Governance \(Europa.Eu\)](#).

economic and political indicators of each state. As a result, it is difficult to rely on general provisions as per an EU context on this issue, however, due to Albanian Family Law's reference to the Italian legal provisions, and it being a neighboring jurisdiction, as per the scope of this paper, Italian Family and Company law provisions shall be evaluated.

The matrimonial regime in Italy (known as “*Regime patrimoniale coniugale*”) is governed by the Italian Civil Code. According to the rules of this Code, there are two kinds of matrimonial regimes in Italy: the community property regime and the separate property regime⁹. According to Article 159 of the Italian Civil Code, in the absence of agreement between the spouses, the matrimonial regime will be that of community property. The goods of the communion are: purchases made by the spouses together or separately during the marriage, except for personal goods, companies managed by both spouses and opened after the wedding, the profits of a personal business of each spouse, if they are not consumed at the time of the dissolution of the communion. However, some personal properties are not considered part of the community such as the goods of property of each spouse before the marriage, property acquired during the marriage by donation or inheritance, the goods of personal use of each spouse and their accessories, and the goods obtained as compensation for damages.

About the regime of separation of property, with this regime, each spouse is the sole owner of his/her property acquired during the marriage. This agreement must have the form of a public act under pain of nullity. The choice of the regime of separation of property may be made by the spouses at the time of the marriage, or before or after the wedding, with an agreement signed in the presence of a notary¹⁰.

Under Italian law, the default matrimonial property regime is known as the community of property (*comunione legale dei beni*), as stipulated in Articles 177 and following the Italian Civil Code. In this regime, assets acquired by either spouse during the marriage, including commercial shares and quotas, are considered joint property.

Upon divorce or legal separation, the joint property is subject to division between the spouses. The division is based on the principle of equal sharing, with certain exceptions and considerations. Italian law provides criteria for the division of joint property, considering various factors such as the contribution of each spouse, their economic situation, the duration of the marriage, and other relevant circumstances.

It is important to note that spouses can choose a different matrimonial property regime by entering into a marital agreement (*convenzione matrimoniale*). This agreement allows them to establish a different regime, such as separation of property (*separazione dei patrimoni*) or other arrangements that may affect the ownership and division of commercial shares and quotas. Therefore, it is crucial to consider the specific provisions of any marital agreements that may exist.

Below you will find a comparison table upon the issues of Albanian and Italian jurisdiction on the matter of the spouses property rights in the context of family and company law:

⁹ Italian Civil Code, Chapter VI- Marriage, Art. 79-230.

¹⁰ Article 162 of Italian Civil Code.

Table 1

	Albania	Italy
Relevant Legal Framework	Family Code (Law No. 9062/2003), Law No. 9901/2008 on Entrepreneurs and Commercial Companies, and Civil Code.	Italian Civil Code (Codice Civile, Art. 177–197) and relevant company law provisions (Legislative Decree No. 6/2003).
Default Matrimonial Property Regime	Community of property regime ("bashkësia ligjore") unless spouses select otherwise (Article 73, Family Code).	Community of property regime ("comunione dei beni") by default unless separate property regime ("separazione dei beni") is explicitly chosen.
Shares/Interests in Companies	Shares or quotas acquired during marriage generally become joint marital property, unless explicitly excluded.	Company shares acquired during marriage enter the joint property regime, unless the spouses agree otherwise or use personal funds explicitly declared as separate property.
Management of Company Assets	Company management remains individual unless the spouse formally participates as a shareholder or partner. However, significant company decisions impacting joint property may require spousal consent.	Spouses maintain autonomy in managing company shares held personally, but significant transactions affecting the marital community property typically require consent from both spouses.
Liability for Company Debts	Joint liability only applies to debts incurred explicitly for the benefit of joint property or with mutual consent. Business debts generally remain personal unless related explicitly to joint property.	Liability for company debts generally remains personal to the spouse holding the business interest, except when debts clearly benefit the marital property or are contracted jointly.
Protection of Non-Entrepreneur Spouse	Spouses have rights to be informed and consulted regarding decisions affecting joint property. They can seek judicial protection if marital property is endangered by business activities.	Non-entrepreneur spouses have statutory rights to seek judicial remedies when their rights are affected by transactions involving marital property. Consent is mandatory for major property transactions.
Division of Property upon Divorce	Joint property (including company shares acquired during marriage) is subject to equal division upon divorce unless otherwise agreed or legally determined.	Company shares included in community property are subject to equal division upon divorce or separation, unless a different agreement or regime (such as separate property) is in place.
Inheritance Rights	Surviving spouses inherit shares or interests as per inheritance laws unless otherwise specified by testamentary dispositions. Company statutes must be respected.	Surviving spouses have strong inheritance rights under Italian succession law, with specific statutory shares protected even against testamentary dispositions. Company articles can restrict, but not eliminate, inheritance rights.
Notarial Formalities for Property Agreements	Changes in property regime or spousal consent for certain company-related acts must be executed before a notary to be valid.	Property regime agreements, including those relating to company shares, must typically be formalized through notarial acts to be valid and enforceable.
Alignment with EU standards	Progressive harmonization with EU standards on spousal property regimes (EU Regulation 2016/1103), but ongoing reforms and practical implementation challenges remain.	Fully aligned with EU Regulation 2016/1103 and the EU acquis on matrimonial property, benefiting from developed jurisprudence and comprehensive procedural implementation.

V. Albanian significant court cases analysis

Even though the development of doctrine and jurisprudence is still in its early stages in this area in the Albanian legal context, there have been few cases that have established the basis of case law on this topic. Such is the case “Hoxha v. Sino and Baci”, whose analysis of the Supreme Court provides insights on the application in practice of property rights of spouses through the lenses of company law.

During the marriage of Vjollca Hoxha with the late Dritan Hoxha, several movable and immovable assets were acquired in the legal community, among others, Top-Chanel Company JS, which though founded from a single shareholder Dritan Hoxha who owned 100% of the shares, due being part of the community property, is also considered in co-ownership. But it turns out that while the deceased was alive, through a notarial act he alienated 60% of the shares owned in Top-Channel JS, to the defendant Albert Sino and Aurel Baci of shares (respectively 40% and 20% of the shares each). The plaintiff Vjollca Hoxha, as the beneficiary of the shares as a result of the inheritance from the deceased Dritan Hoxha, being since 2008 in this capacity in the company, was fully aware of the fact of the ownership of the shares of the two defendants Albert Sino and Aurel Baci. Under these conditions, even though she was aware of the ownership of the shares by the two defendants, and continued the normal operation of the company. However, Article 94 of the Family Code stipulates that: *“If one of the spouses exceeds his rights over the community property, the other spouse may be required to cancel the action, if he has not given his consent to this action later. This lawsuit can be filed within 1 year from the date of receiving notice of the action and, in any case, no later than 1 year from the termination of the partnership.”*

Referring to Article 94 of the Family Code, it appears that the right to file a lawsuit is time-barred since the lawsuit was not filed within 1 year from the day of notification. The notification deadline is the moment of registration in the commercial register.

However, if we refer to the definition “no later than 1 year from the end of the community”, it shall be noted that according to Article 96 of the Family Code, one of the cases of termination of the community is with the death of one of the spouses, so in the actual case the deadline on filing the lawsuit would have been 06.06.2009, considering the beginning of the 1-year deadline the date of the opening of the inheritance certificate and the end of the community.

Nevertheless, the plaintiff has recognized, accepted, and made decisions together with the defendants Albert Sino and Aurel Baçi, in no less than 12 (twelve) cases, decisions of the Shareholders' Meeting and other essential acts for the operation of this commercial entity in 6-7 years, as co-shareholders in the company “Top Channel” JS. The company has continued normal operation for Vjollca Hoxha together with the other co-owners and has not raised any claim for invalidity for 8 years of which they were fully aware.

In 2016, 8 years after the death of Dritan Hoxha and 9 years after the conclusion of the contract for the sale of 60% of Top Channel shares, Vjollca Hoxha, Lorela Hoxha, Sara Hoxha, Redia Hoxha, Itan Hoxha filed a lawsuit with the Court of Tirana Judicial District v. Aurel Baçi, Albert Sino claiming the obligation of the defendants to recognize the plaintiffs, owners of over 60% of the shares of the company “Top Channel” JS, and also claiming the absolute invalidity of the sales contract.

Tirana District Court decided to dismiss the case because it was unbiased in law and evidence. The plaintiffs appealed the decision, while the decision of the Court of Appeal considered that the contract of sale of shares of the conflicting parties is a fictitious legal action, therefore barring a cause of invalidity. The court considered that the contract was drawn up and concluded only to fulfill the legal criteria, which required that no entity in the media field be owned by more than 40% of a single person. It is for this reason that Dritan Hoxha signed a contract with two of his acquaintances, such as the defendants. This is because this contract was made exactly

at the moment of the law's release and was not made before, which best shows the true purpose of the drafting of this contract by the parties, which is with stimulating and fictitious actions. However, even though the Court of Appeal upheld the claim of the plaintiffs, awarding 100% of "Top Chanel" JSC to them, it did not evaluate the provisions of the Family Code in Article 94, which clearly defines the deadline for filing a lawsuit. The same position as the Court of Appeal was taken by the Supreme Court in the decision dated 18.01.2023¹¹.

Another landmark case that correlates with the topic of intersection between the two disciplines of law is Decision No. 340, dated June 26, 2012, of the Supreme Court of Albania. In the Brunilda Paskali vs. Ilir Kapxhiu case¹², the Albanian court entertained essential questions about how to divide the property held by a husband and wife and how to interpret family and business laws. The case illustrates how family law and company law overlap, especially in relation to property acquired during a marriage.

Brunilda Paskali and Ilir Kapxhiu were married from 1992 until they divorced in 2009. While married, they established two companies: "Wisdom" sh.p.k and "Wisdom 1" sh.p.k. They had no children, and after they separated, they contested how to share the property they had acquired during their marriage, specifically the shares in the above-mentioned companies.

The initial ruling of the Court of First Instance was that each party would receive equal portions (½ each) of the assets of the companies. It declared such assets as marital property under the provisions of the Albanian Family Code. The ruling was based on the fact that both companies were established during the course of the marriage and hence were joint property.

Then, the Appeal Court of Tirana concurred with the initial decision in favor of the notion that the companies were under the rules of marital property. The appellate court noted that the assets acquired during marriage, such as the companies, should be distributed according to the rules of the Family Code, not those of commercial entities.

The case landed to the Supreme Court of Albania by applying the legal instrument of "Rekurs" (Appeal) from by the defendant Ilir Kapxhiu who did not approve of the appellate decision. He clarified the court made an error in the application of law since it failed to use the relevant provisions of the Law No. 9901/2008¹³ and applied the Family Code instead. He asserted the legal norms on carrying out business activities must prevail over family legislation when it comes to the partition of a company's shares.

Court's Interpretation and Holdings remained at Civil Panels of the Supreme Court, which ultimately agreed with the trial courts' decisions, upholding a series of important interpretations:

1. Company Law versus Marital Legal community Regime: The court made it clear that the businesses involved were marital property as they were formed during the marriage. Therefore, they came under the purview of the Family Code, which dictates the division of assets in case of divorce. The decision echoes the belief that the personal aspects and conditions of marriage prevail over business considerations in the determination of ownership and rights over assets acquired during the marriage.

2. Best Interest of the Parties: The court noted that Brunilda had a just cause to seek a legal separation of the property gained during the marriage. This is an indication that the law respects individual rights within marriage and aims at fairly sharing the properties gained together.

3. Hierarchy of Laws or Norms: The Supreme Court's decision stressed that the Family Code is more important than commercial law when it comes to marital property. This understanding is important because it shows that family law takes priority over commercial law for dividing assets after a divorce.

¹¹ Decision no.00-2023-207 (13), dated 18.01.2023, of Albanian Supreme Court.

¹² Decision No. 11112-02188-00-2011, dated June 26, 2012, Civil Panels of the Supreme Court of Albania, accessed online via www.gjykataelarte.gov.al

¹³ Law No.9901/ 2008 on " Entrepreneurs and Commercial Companies", as ammended, articles 72 and beyond.

4. Judicial Authority regarding Division of Assets: The court once again asserted that it has the authority to make decisions regarding how shares in a company are to be divided because they are part of the marital estate. This part of the ruling is important as it increases the authority of the court to provide equity for both parties in a divorce, especially for joint business enterprises.

This is a significant Albanian company and family law case, illustrating the complexities that arise where commercial interests and personal relationships intersect. The ruling of the court illustrates a commitment to upholding the principles of equity and fairness in the division of matrimonial property, asserting the relevance of the Family Code in arriving at such determinations. It also establishes the legal standing for future cases on the division of property where business and domestic interests coincide. This works to guarantee that both family law and business law are invoked so as to protect individuals' rights in marriage.

Selected CJEU and ECtHR cases

The Rinau case involved a custody battle between separated parents of Lithuanian descent, in which the mother had relocated the child from Germany to Lithuania. The child's return was ordered by the German courts under the Brussels IIa Regulation (Regulation No 2201/2003), but the Lithuanian courts were reluctant to enforce this ruling. The CJEU held that once a return order under Article 42 of Brussels IIa has been certified by the court of origin, its enforcement in another Member State may not be denied, even if conflicting decisions have been issued by national courts. The case reaffirmed automatic recognition and enforcement of return orders in cross-border family cases, prioritizing mutual trust between EU Member States.¹⁴

In the case of GN v. ZU, a German judicial ruling on the division of matrimonial property, including business interests, required recognition and enforcement in Croatia. The principal question at issue was whether the German ruling fell under the application of Brussels IIa or pertained to general civil and commercial jurisdiction. The CJEU ruled that property consequences of matrimonial disputes fall outside the scope of Brussels IIa, as it covers only parental responsibility and matrimonial matters *stricto sensu*, and not property. Recognition and enforcement then had to follow general principles under the Brussels I Regulation. This defined the limits of EU family law instruments and the necessity of harmonization through instruments like Regulation 2016/1103 on matrimonial property regimes.¹⁵

In the Jelić v. Croatia case, the applicant, a woman, complained that her right to peaceful enjoyment of property was violated pursuant to Article 1 of Protocol No. 1 to the European Convention on Human Rights, after she was excluded from a bank account which was solely registered in the name of her former husband. The Croatian courts held that the account did not constitute part of the marital property regime, in line with the rules of procedure and registration of ownership, despite her insistence that it was jointly acquired during marriage.¹⁶

The ECtHR held the case to be inadmissible, with the rationale that the applicant failed to prove her ownership of the property under domestic law, and therefore could not assert a "possession" under Article 1 of Protocol No. 1. The ruling established that property claims under the ECHR need to be legally established as 'possessions' under domestic law in order to activate protection. Nevertheless, the issue inevitably underscores the need for developing clear, complete, and non-discriminatory domestic laws to manage matrimonial property to facilitate access to justice as well as legal certainty, particularly where financial interests are at stake or in cases of business interests.¹⁷

¹⁴ CJEU, Case C-195/08 PPU, Inga Rinau, ECLI:EU:C:2008:406

¹⁵ CJEU, Case C-379/17, GN v. ZU, ECLI:EU:C:2019:623

¹⁶ ECtHR, Jelić v. Croatia, App. No. 29574/02, Decision of 5 October 2006

¹⁷ Ibid

VI. Conclusion

The institution of marriage and the property rights associated with it, bearing great importance in worldwide legal systems, are also well defined and elaborated in the Albanian legal instruments. The Albanian Family Code establishes three matrimonial property regimes, including the community property regime. Under this regime, the commercial activity created during the marriage and its income are considered part of the joint property. However, when it comes to the associated property rights in conjunction with company law, the development of doctrine and jurisprudence in this area is still in its early stages, leading to doubts on issues such as co-ownership despite the shareholder registration and the risks of invalidity in case of alienation without spousal consent.

While Albania has made substantial progress in harmonizing its legal framework with EU standards in various sectors due to its candidacy for EU accession, the area of property rights of spouses within the context of company law requires further attention. In the EU, the property rights of spouses are largely regulated by the legal provisions of individual member states, with family law considered primarily within national jurisdiction. Matrimonial property regimes and company law are the two key legal frameworks that may affect a couple's property rights concerning commercial shares and quotas. Within the EU, there is diversity among member states in how they handle assets acquired during marriage, with various matrimonial property regimes in place.

The case law analysis in Albania, having not yet developed a doctrine in this direction, highlights one significant case, "Hoxha v. Sino and Baci," and Paskali v. Kapxhiu which provides insights into the application of property rights of spouses concerning commercial entities. The case dealt with the co-ownership of a company, and the issue of time-barred lawsuits was raised, showing the complexities of the current legal framework.

To address the existing gaps in Albanian company law concerning the property rights of spouses, several recommendations can be made.

First, the law should be amended to explicitly recognize and regulate the property rights of spouses in the context of commercial entities. This should include provisions on co-ownership, consent requirements for alienation, and the division of assets in case of divorce or separation. As Albania aims to align its legal framework with EU standards, a comprehensive study of the property rights of spouses within the EU member states should be conducted to develop a compatible and effective legal framework. To promote legal certainty and awareness, the Albanian legal system should encourage the use of prenuptial agreements, enabling couples to define their chosen matrimonial property regime and establish specific rules for the division of assets in case of marriage dissolution. Furthermore, judicial practices should be strengthened to ensure consistent and well-reasoned decisions on cases related to the property rights of spouses in commercial contexts, contributing to the development of robust case law.

In conclusion, addressing the property rights of spouses within the realm of company law is essential for ensuring fairness and stability in business operations in Albania. By taking steps to clarify and regulate these rights, Albania can create a more conducive environment for commercial activities and investment, and move closer to alignment with EU standards in this critical area.

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