

THIRD PARTY AND BONA FIDE SPOUSE RIGHTS WHEN CONCLUSION OF MARRIAGE CONTRACTS IN UZBEKISTAN AND ARMENIA

Dilshod Ashurov

*Tashkent City Notary, 3rd Class Justice Advisor,
Chairman of the Notary Chamber of the Republic of Uzbekistan,
President of the Asian Affairs Commission of the International Union of Notaries,
Member of the General Council of the International Union of Notaries,
Tashkent, Republic of Uzbekistan,
dilshodjan86@mail.ru
ORCID - 0000-0001-5757-1216*

Ani Mutafyan

*Lecturer at YSU Chamber of Civil Law,
PHD in Law,
"Yerevan" Notarial Territory Notary,
2nd Class Advisor of Judicial Service,
Yerevan, Republic of Armenia,
notary.mutafyan@gmail.com
ORCID - 0000-0002-0160-5082*

Abstract. In the modern world, in parallel with the quantitative growth of marriage contracts, the risks of violating the rights of creditors, heirs, and a bona fide spouse through the conclusion of marriage contracts increases. Often, the parties conclude a marriage contract with the aim of harming the rights of third parties who are not parties to the contract, avoiding the fulfillment of existing obligations towards them. Failure by one of the spouses to notify his or her creditors of the conclusion, amendment or termination of a marriage contract may result in a violation of the rights of the other spouse. In addition, due to the absence of state registers of marriage contracts in the Republics of Uzbekistan and Armenia, there is no unified information base on the property status of spouses, which, in our opinion, very often causes the emergence of disputable situations. The purpose of the research is to study the guarantees for the protection of the rights of third parties who are not parties to the marriage contract, as well as the bona fide spouse, to identify and develop additional mechanisms, and to present relevant recommendations. As a result of a comprehensive study of the legislation, notarial and judicial practice of the Republics of Uzbekistan and Armenia, the authors managed to develop and propose guarantee solutions for the protection of rights, which can be of practical importance for notaries certifying marriage contracts, as well as serve as a basis for the future creation of registers of marriage contracts in the Republics of Armenia and Uzbekistan.

Keywords - *marriage contract; third party not party to the marriage contract; bona fide spouse; heir of the spouse; register of marriage contracts; creditors of the spouses; sole property of the spouses; joint property of the spouses; creditor's notice.*

1. INTRODUCTION

The continuous development of property legal relations and the current hard structural mechanisms have their direct impact on marital and family relations, requiring a special regulation of property relations between spouses. A special means of regulating property relations between spouses is a marriage contract. Moreover, a marriage contract ensures the certainty and predictability of the property relations of spouses, the protection of the rights of spouses both during marriage and in the process of its dissolution.

However, the effect of a marriage contract is not limited to establishing, amending, or terminating property relations between spouses, marriage contracts very often affect the rights and legal interests of third parties who are not parties to the contract, unfortunately sometimes serving as a tool for abuse of rights by spouses, becoming a threat to the rights of spouses' creditors or other third parties. The effect of a marriage contract is not limited to establishing, amending, or terminating property relations between spouses, marriage contracts very often affect the rights and legal interests of third parties who are not parties to the contract, unfortunately sometimes serving as a tool for abuse of rights by spouses, becoming a danger for the violation of the rights of the spouses' creditors or other third parties.

In the Republics of Uzbekistan and Armenia, in parallel with the quantitative increase in the number of marriage contracts, various cases of abuse of rights through marriage contracts are noticeable. The threats to the rights of persons who are not parties to the marriage contract also require the identification and comprehensive study of the problems arising in practice, and the provision of effective mechanisms for the protection of the rights of bona fide persons. Within the framework of this research, the authors have attempted, through a comprehensive study of the notarial and judicial practice of the Republics of Armenia and Uzbekistan, to identify manifestations of abuse of rights by spouses through the conclusion of marriage contracts, the dangers threatening the rights of a bona fide spouse and persons not party to the contract, presented the existing legislative guarantees for the protection of their rights, proposed effective contractual solutions for the protection of the rights of third parties, as well as proposed new mechanisms.

We believe that the application of the proposed solutions will, as far as possible, exclude the protection of the rights of bona fide spouses and persons not party to the marriage contract from various abuses. Due to the purpose of the research, general scientific methods of induction, deduction, analysis, synthesis and others were used during the research, as well as private scientific, system-structural, legal comparative methods.

2. THE MAIN RESEARCH

The Family Codes of the Republic of Armenia and the Republic of Uzbekistan define an identical concept of a marriage contract, namely: " A marriage contract shall be an agreement of the persons entering into marriage or an agreement of the spouses determining the property rights and duties of the spouses during the marriage and (or) in case of its dissolution."¹

¹ See Article 29 of the Family Code of the Republic of Uzbekistan, adopted on 30.04.1998, No. 607-I, available in the National Database of Legislation of the Republic of Uzbekistan at the following link: <https://lex.uz/docs/104723>, (access 10.12.2024), Article 27 of the Family Code of the Republic of Armenia, adopted on 09.11.2004, No. HO-123-N, available in the Legal Information System of Armenia at the following link: <https://www.arlis.am/>, (access 10.12.2024).

"The subject of the regulation of the marriage contract is the property status of the spouses. In particular, by concluding such a contract, the spouses may change the regime of joint property established by law, stipulating the joint or individual ownership rights of the spouses to the property acquired during the marriage. By the marriage contract, the spouses may also determine their mutual rights and obligations to provide for each other's livelihood, to participate in the creation of each other's income, and the procedure for each of them to cover family expenses. The above indicates the regulatory function of the marriage contract. However, the marriage contract performs not only a regulatory, but also a securing function. The securing function of the marriage contract is expressed, first of all, in the guarantee of the property independence of each of the spouses, which is especially important when participating in civil turnover, as well as in the event of dissolution of the marriage."¹

In the case of concluding marriage contracts, as a guarantee for the protection of the rights of third parties, it is provided that: "The spouse shall be obliged to notify his/her debtee(s) of the conclusion, modification, or dissolution of the marriage contract".

The following liability measures are provided for failure to fulfill the aforementioned obligation: "In the failure to perform this duty, the spouse shall be liable for his/her duties regardless of the content of the marriage contract".²

"Notification of the creditor about the conclusion, amendment or termination (their content) of the marriage contract by the debtor spouse is an important guarantee in terms of protecting the latter's interests, since as a result of the conclusion, amendment or termination of such a contract, the legal regime of the spouses' property may radically change, as well as the property status of the debtor spouse, which in turn will affect the course of the obligation's fulfillment. In case of failure to notify the creditor of the conclusion, amendment or termination of the marriage contract by the debtor spouse, he shall be liable to the creditor, regardless of the content of the marriage contract, which means that the property regime in force between the spouses until the conclusion, amendment or termination of such a contract shall continue to operate. Failure of the debtor spouse to notify the creditor of the conclusion, amendment or termination of the marriage contract (their content) shall not be a basis for declaring the marriage contract invalid, but shall lead to the emergence of other legal consequences, in particular, it shall reserve the right for the creditor to demand that the debtor spouse fulfill his obligations, regardless of the content of the marriage contract".³

As a result of the study of notarial practice, it becomes clear that by signing marriage contracts, spouses quite often try to avoid fulfilling their obligations through various schemes. Moreover, notaries who certify marriage contracts often manage to identify such cases and prevent the certification of such contracts. For example, as a result of a direct conversation, the notary ascertains the true will of the parties and reveals that the spouses do not actually want to regulate their property relations through a marriage contract, but rather pursue the goal of saving the property from the

¹ See the decision of the Court of Cassation of the Republic of Armenia dated 30.04.2015 in civil case No. EKD/1791/02/11, available in the Legal Information System of Armenia at the following link: <https://www.arlis.am/>, (access 10.12.2024).

² See Article 35 of the Family Code of the Republic of Uzbekistan, Article 33 of the Family Code of the Republic of Armenia.

³ See the decision of the Court of Cassation of the Republic of Armenia on civil case No. EKD/1791/02/11 dated 30.04.2015, available in the Legal Information System of Armenia at the following link: <https://www.arlis.am/>, (access 10.12.2024).

claims of creditors by changing the spouses' joint ownership regime to a sole ownership regime.

In order to determine the true intentions of the spouses, notaries can also be helped by clarifying the existence of bankruptcy cases or large unfulfilled obligations on the part of one of the parties. In any case, the notary, having identified a tendency to abuse the right through the conclusion of marriage contracts, must prevent the certification of such marriage contracts, firstly by not allowing a discrepancy between the will and the manifestation of the will in the contracts, and then by any form of abuse of the right that may lead to harm to third parties. Moreover, marriage contracts concluded with the aim of causing harm to creditors must be given a correct legal assessment and the correct methods of protecting rights must be applied to them. For example, marriage contracts concluded solely for the purpose of saving property from creditors, which do not lead to other legal consequences in real life, will be considered fraudulent transactions, to which the consequences of invalidity of void transactions will apply.¹ "When assessing the merits of a fraudulent transaction, courts must assess the proximate and actual purposes of the parties to the transaction, taking into account that the proximate purpose of concluding a transaction is to create the impression of a transaction, and the actual purpose is to obtain some advantage for the parties or one of them or to circumvent any limitation. The actual purpose may be proven by, For example, the existence of an unfulfilled obligation, an unfulfilled judicial act that has entered into legal force, or other similar circumstances."²

However, a study of practice shows that spouses often manage to take advantage of legislative loopholes and conclude marriage contracts that are aimed at violating the rights of creditors, and the mere establishment of the obligation to notify creditors is not considered sufficient to exclude cases of abuse of rights by spouses by concluding marriage contracts and to ensure full protection of the rights of spouses and third parties.

It should be noted that the obligation of spouses to notify about the conclusion, amendment or termination of a marriage contract, as established by the Family Codes of the Republic of Uzbekistan and the Republic of Armenia, applies only to notifying creditors. However, the existence of a marriage contract may also be of decisive importance in determining the composition of the inheritance in the event of the death of one of the spouses. For example, in a marriage contract, spouses may establish the sole ownership of each of them over all the property of the spouses, but at the time of opening the inheritance, the living spouse may hide the fact of the existence of the marriage contract from the heirs.

In addition to the above, it should be noted that the property relations of spouses can be changed not only by concluding a marriage contract, but also by concluding a property division agreement. Meanwhile, the legislation of both the Republic of Uzbekistan and the Republic of Armenia does not provide for the obligation of spouses to notify creditors when concluding a property division agreement.

The lack of clear regulations on notifying creditors may also be vulnerable in terms of protecting the rights of not only third parties, but also spouses. In particular,

¹ See Article 124 of the Civil Code of the Republic of Uzbekistan, adopted on 21.12.1995, available in the National Database of Legislation of the Republic of Uzbekistan at the following link: <https://lex.uz/docs/111181>, (access 10.12.2024), Part 1 of Article 306 of the Civil Code of the Republic of Armenia, adopted on 05.05.1998 No. HO- 239, available in the Legal Information System of Armenia at the following link: <https://www.arlis.am/>, (access 10.12.2024).

² See the decision of the Court of Cassation of the Republic of Armenia dated 22 July 2016 in civil case No. KD1/0935/02/14, available in the Legal Information System of Armenia at the following link: <https://www.arlis.am/>, (access 10.12.2024).

Article 4 of the Family Code of the Republic of Armenia stipulates that "Property and personal non-property relations between family members, not regulated by family legislation, shall be subject to civil legislation insofar as this does not contradict the essence of family relations".

"Therefore a notification shall be considered as proper notification where it has been made through a registered letter accompanied by a delivery notice or by handing it over in person or, in case the mentioned options are impossible to realise, publicly as prescribed by law".¹

Spouses can also use the services of a notary as a means of notifying creditors. "A type of notarial action is the transfer of statements or other documents of individuals to other individuals, which will ensure the indisputability of the fact of notification".²

At the same time, it should be noted that the legislation of both the Republic of Uzbekistan and the Republic of Armenia does not provide for the consequences of spouses failing to fulfill or improperly fulfilling their obligation to notify creditors against each other. For example, spouses establish a sole ownership regime for an apartment to be acquired in the future through a marriage contract, and the spouse who is the future owner of the apartment notifies his creditors in good faith, while the other spouse does not. As a result, the legal consequence of failure to notify is identical for both, namely, it is considered that a marriage contract has not been concluded. In other words, the creditors of the unscrupulous spouse have the right to receive satisfaction of their claims also at the expense of that apartment. Notaries can regulate such situations by drafting marriage contracts correctly. For example, notaries can suggest that the parties include in the marriage contract an obligation to disclose all creditors, even by attaching a list of creditors to the contract as an appendix, they can stipulate in a marriage contract a mutually controllable and clear mechanism for notifying creditors, as well as adverse consequences for each other for failing to fulfill the notification obligation. Thus, any contract, including a marriage contract, defines the rights and obligations of the parties, therefore, if necessary, at the request of the parties, the notary may include a clause in the marriage contract stating that the spouses have the right to supervise each other in matters of notifying creditors. Spouses may also provide for liability measures against each other for failure to fulfill the obligation to notify creditors, for example, payment of a fine.

It should be noted that the Family Codes of both the Republic of Uzbekistan and the Republic of Armenia do not regulate the period for notifying creditors. Therefore, at the request of the parties, the notary may also provide for a specific period in the marriage contract during which each spouse is obliged to ensure notification of his or her creditor.

As we note, there are a number of risks in the process of notifying creditors, the reduction of which may be of key importance in ensuring the possibility of state registration of marriage contracts. Moreover, it is necessary to distinguish the state registration of marriage contracts from the state registration of rights subject to

¹ See Part 4 of Article 330.1 of the Civil Code of the Republic of Armenia.

² See Article 73 of the Law of the Republic of Uzbekistan "On Notary public", adopted on 26.12.1996, № 343-I, available in the National Database of Legislation of the Republic of Uzbekistan at the following link: <https://lex.uz/docs/57043>, (access 10.12.2024), Article 72 of the Law of the Republic of Armenia "On Notary public", adopted on 04.12.2001, No. HO-274, available in the Legal Information System of Armenia at the following link: <https://www.arlis.am/>, (access 10.12.2024).

registration arising from the marriage contract, for example, rights to real estate, vehicles, securities.

Although the family codes of both the Republic of Uzbekistan and the Republic of Armenia provide for a mandatory requirement for notarization of the marriage contract, they do not specify the requirement for state registration.

In the Republic of Armenia, rights arising from a marriage contract are subject to state registration if the marriage contract creates, changes or terminates rights that are subject to state registration, for example, real estate acquired during marriage and being the common joint property of the spouses becomes the sole property of one of the spouses by the marriage contract. And if a marriage contract is concluded with respect to real estate to be acquired in the future, then the marriage contract, after notarization and entry into force, can be attached to the cadastral file, subsequently ensuring the unhindered disposal of his sole property by the property owner spouse without the consent of the other spouse.

The Court of Cassation of the Republic of Armenia made a key decision on this issue, which follows from the fact that in the event of changing the regime of joint ownership of real estate to sole ownership through a marriage contract, the restrictions registered with respect to that property must be taken into account and the state registration of the right of sole ownership must be ensured.

The facts of the case are briefly summarized as follows: "A and M are married. Applying to the court, the wife- M, requested the release from the seizure of two immovable properties, against which the seizure had been applied due to the obligations of her husband- A to the bank. The spouses had concluded a marriage contract, among other properties, after the seizure was applied to the said two immovable properties. According to the marriage contract, the mentioned real estate, among other properties, had become the sole property of the wife-M. A copy of the marriage contract had been sent to the creditor bank, but state registration of M's ownership rights to the mentioned properties had not been carried out. By the decision of the court of first instance, the wife M's claim to release the two properties mentioned above from the seizure was rejected, by the decision of the court of appeal, M's appeal was granted, the decision of the court of first instance was overturned and amended, M's claim was granted, and the properties were released from the seizure.

The Court of Cassation, in its decision, addressed the legal question of whether the fact of concluding a marriage contract is sufficient to establish the moment of origin of ownership rights to the seized property.

The RA Court of Cassation, in particular, recorded that the seizure of the disputed property belonging to A and M was applied even at a time when the marriage contract concluded between the spouses did not exist. The above allows us to conclude that at the time of applying the seizure of the disputed property, the right of ownership of the property belonging to the spouses arose in equal shares. The Compulsory Enforcement Service prohibited the disposal and alienation of the seized property.

The RA Court of Cassation noted that when dividing the spouses' common property, the equality of the shares of the participants in joint ownership was violated, in other words, the share belonging to the debtor Marianna Grigoryan by right of joint ownership was increased, under which conditions the rights arising from the marriage contract were subject to state registration. The right of ownership to real estate is also considered a right subject to state registration. In cases where the right to property is subject to state registration, the right of ownership of the acquirer arises from the moment of its registration. As a result, the RA Court of Cassation recorded that the lower court committed a violation of the substantive law norm that undermined the very essence of justice, in particular, in the absence of a fact proving the state

registration of ownership rights to the property based on a marriage contract, it satisfied the request to release the property from seizure".¹

As a result of the study of the notarial practice of the Republic of Uzbekistan, it becomes clear that marriage contracts ratified in Uzbekistan do not provide for a clause stating that the marriage contract is subject to state registration, since it only defines the rights and obligations of each party to any property acquired jointly by the spouses or property acquired in the name of one of them. The transfer of ownership of property from one spouse to the other is carried out by ratifying a property alienation agreement, which states the mandatory requirement for state registration of the right, based on this agreement, the property is re-registered from the name of one spouse to the name of the other spouse and changes are made to the cadastral documents. The transfer of ownership of property can also be carried out by dividing the property between spouses, the rights arising from which are also subject to state registration. In the Republic of Uzbekistan, marriage contracts, as a rule, do not change the title owner² of property between spouses. The transfer of property from the title-owning spouse to the other spouse is carried out by property alienation contracts, the rights arising from which are subject to mandatory state registration. For example, a marriage contract may stipulate that property acquired in the name of one of the spouses during the marriage is the sole property of the latter, is not subject to division, and the consent of the other spouse is not required for alienation.

The issue of protecting the rights of third parties arises not only when concluding a marriage contract, but also when amending or terminating it.

In the Republic of Armenia, transactions regarding amendments or additions to transactions or their early termination are ratified by the notary who ratified the main transaction, except in cases of replacement and dismissal of the notary.³ That is, an agreement to make amendments or additions to a marriage contract ratified in the Republic of Armenia is ratified by the notary who ratified the main contract. Moreover, since the electronic notary program of the Republic of Armenia does not yet provide the opportunity to see in the electronic system the amendments to the marriage contract certified by another notary in the territory of the Republic of Armenia, notaries, when certifying transactions regarding property stipulated by a marriage contract, practically clarify this circumstance by sending a request to the relevant notary through the electronic notary system, at the same time certifying a written statement with the signature of the party stating that the submitted marriage contract has not been amended or supplemented. The same statements are also used in cases when marriage contracts certified in other countries are presented to them.

In the Republic of Uzbekistan, in order to make changes to a marriage contract or to terminate it, it is not necessary to apply to the notary office where the contract was ratified. Spouses have the right to apply to any notary office. Any notary in Uzbekistan has the opportunity to check the facts of changes and termination of contracts, including marriage contracts, through the "Notary" automated information system. When spouses apply to a notary with a request to amend or terminate an existing contract, the notary enters the system, finds the previously certified contract by identification number, and attaches his /her/ act on its termination or amendment to

¹ See the decision of the RA Court of Cassation of 27.01.2021 in civil case No. ARAD/1300/02/19, available in the Legal Information System of Armenia at the following link: <https://www.arlis.am/>, (access 10.12.2024).

² The title owner is the person who owns the property and whose name is listed on the legal documents.

³ See Part 2 of Article 55 of the Law of the Republic of Armenia "On Notary Public".

the main contract. The fact of the termination or amendment of the contract is immediately recorded in the previously concluded contract. Spouses will not be able to deceive or mislead the notary, because the notary with whom one of the spouses has applied to resolve the issue of alienation of property has the opportunity to see the amendment or termination of the contract in the system.

Notaries in the Republic of Uzbekistan and Armenia also conduct inquiries about marriage contracts ratified in other countries in accordance with the Minsk and Kishinev Conventions.¹

Looking ahead and taking into account the noticeable increase in the number of marriage contracts over time, we can note that an effective guarantee of protecting the rights of third parties in the event of the conclusion, amendment or termination of marriage contracts can be the creation of state registers of marriage contracts, which will ensure the state registration of marriage contracts. The purpose of state registration of marriage contracts is the recognition, guarantee and protection by the state of the rights and restrictions of rights of spouses defined by the marriage contract, the creation and management of an information system on the property status of spouses, and the provision of accessibility, objectivity, continuity and uniformity of data on the property status of spouses. Moreover, state registers of marriage contracts make it possible to ensure the registration of marriage contracts not only concluded within the territory of a given state, but also concluded outside the borders of that state. Moreover, in the case of registration of a marriage contract in the register of marriage contracts, the spouses have the right to refer to the fact of concluding the marriage contract in relations with third parties.

It should be noted that not all countries currently have public registers of marriage contracts.

Public registers of marriage contracts or public registers of property rights of spouses do not exist in either the Republic of Uzbekistan or the Republic of Armenia. At the same time, such registers operate effectively in a number of European countries, with different models. For example, "in France, although there is no register of marriage contracts as such, the marriage certificate must state whether a marriage contract was concluded, as well as the name and address of the notary who certified the marriage contract. If the marriage certificate does not contain a mention of a marriage contract, the spouses are considered married in relations with third parties under the regime established by law".²

"In Germany, the so-called "Register of Matrimonial Property Regimes" is maintained by the regional courts, i.e. the courts of the states. This register is considered public and its data can be consulted by any interested person. The validity of a marriage contract does not depend on its registration in the register. However, in order for the spouses to be able to refer to the property regime established by the marriage contract in their relations with third parties, they must register it in the "Register of Matrimonial Property Regimes".³

¹ See the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, adopted in Minsk on 22/01/1993 (The Minsk Convention), available at the following link: <https://www.unhcr.org/media/convention-legal-aid-and-legal-relations-civil-family-and-criminal-cases-adopted-minsk-22>, (access 10.12.2024), the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, adopted in Kishinev on 07/10/2002, available at the following link: <https://cis.minsk.by/page/614/konvencia-o-pravovoj-pomosi-i-pravovyh-otnoseniah-po-grazdanskim-semejnym-i-ugolovnym-delam-07-oktabra-2002-g-g-kisinev>, (access 10.12.2024),

² See <https://www.coupleseurope.eu/couples-in-france> available as of 18.11.2024.

³ See <https://www.coupleseurope.eu/couples-in-germany> available as of 18.11.2024.

"In Italy, the matrimonial property regime established by law is presumed and enforceable in relations with third parties, unless otherwise indicated in the marriage registry. Contractual regimes become public through a note in the marriage registry, which is filed in the paper or electronic archives of the Civil Registry Office. The consent is submitted to the record by the notary who certified it. Any person may apply to the Civil Registry Office to obtain access to the register information".¹

"In Spain, also, the matrimonial property regime and any changes to it must be registered in order to be effective in relations with third parties. In Spain, both the marriage and any marriage contract are registered in the civil registry according to the place of permanent residence of the spouses. Only the registration of the marriage is mandatory. The information registered is public, but the data retained is only accessible to the interested parties or their heirs".²

"In Portugal, civil registry offices record the current matrimonial property regime. If the spouses have concluded a marriage contract before marriage, this must be stated in the marriage certificate. The marriage certificate must include, among other information, an indication of whether the marriage is to be registered with or without a marriage contract. The civil registry is public. A marriage contract can only be effective in relations with third parties if it is registered".³

As we note from the study of the experience of European countries, in order to ensure the full effect of a marriage contract in relations with third parties, it is necessary to ensure the registration of marriage contracts in public registers, which allows creditors, heirs and other interested parties to obtain information about the property regime of the spouses.

Thus, the most important and effective guarantee for protecting the rights of creditors, heirs, and a bona fide spouse when concluding, amending, or terminating marriage contracts may be the creation of a registry of marriage contracts and the provision of the possibility of state registration of marriage contracts. Moreover, state registration of a marriage contract should not condition the validity of the marriage contract. The Ministry of Justice of the Republic of Uzbekistan and the Notary Chamber are taking measures to create registers of marriage contracts, which can truly and significantly reduce the above-mentioned risks. We believe that the Republic of Armenia will also strive to create such a register.

3. CONCLUSION

According to the results of the research, we can note that in the case of concluding marriage contracts, there are risks of violation of the rights of third parties who are not parties to the contract, as well as of the bona fide spouse. We believe that establishing the obligation of spouses to notify creditors about the conclusion, amendment or termination of a marriage contract is not sufficient to curb the risks of abuse of rights by spouses. First, the work of the notary who certifies the marriage contract is of decisive importance in protecting the rights of third parties. As with any contract, when certifying a marriage contract, the notary must ensure the compliance of the parties' will with the declaration of will, therefore, in cases of intentional inconsistency, including cases where the spouses do not really want to regulate their property relations, but try to avoid fulfilling obligations by concluding marriage contracts, to save property from the claims of creditors, he/she must prevent the

¹ See <https://www.coupleseurope.eu/couples-in-italy> available as of 18.11.2024.

² See <https://www.coupleseurope.eu/couples-in-spain> available as of 18.11.2024.

³ See <https://www.coupleseurope.eu/couples-in-portugal> available as of 18.11.2024.

certification of such marriage contracts, not allowing any abuse of the right that may lead to harm to third parties.

Furthermore, the application of correct contractual regulations can be effective in protecting the rights of third parties, in particular, stipulating the consequences of spouses' failure or improper fulfillment of the obligation to notify creditors in the marriage contract, establishing the obligation to disclose all creditors in the marriage contract, providing for a mutually controllable and clear mechanism for notifying creditors, as well as establishing liability measures for failure to fulfill the obligation to notify, and providing for a deadline for notifying the creditor.

In addition, if a marriage contract creates, changes, or terminates rights that are subject to state registration, the registered restrictions on that property must be taken into account, and the rights arising from the marriage contract must be subject to state registration.

The protection of the rights of both persons not party to the contract and spouses will be significantly improved by creating the possibility of state registration of marriage contracts. The introduction of the register of marriage contracts will guarantee the creation and management of an information system on the property status of spouses. Moreover, state registers of marriage contracts will also make it possible to ensure the registration of marriage contracts concluded outside the borders of a given state.

ԵՐՐՈՐԴ ԱՆՁԱՆՑ ԵՎ ԲԱՐԵՆԻՂՃ ԱՄՈՒՄՆՈՒ ԻՐԱՎՈՒՆՔՆԵՐԸ ՀԱՅԱՍՏԱՆՈՒՄ ԵՆ ՈՒՋԲԵԿԱՏԱՆՈՒՄ ԱՄՈՒՄՆԱԿԱՆ ՊԱՅՄԱՆԱԳՐԵՐ ԿՆՔԵԼԻՍ

Դիլշոդ Աշուրով

*Տաշքենդ, քաղաքի նոտար, արդարադատության 3-րդ դասի խորհրդական,
Ուզբեկստանի Հանրապետության նոտարական պալատի նախագահող,
Նոտարների միջազգային միության Ասիայի հարցերով հանձնաժողովի նախագահ,
Նոտարների միջազգային միության գլխավոր խորհրդի անդամ*

Տաշքենդ, Ուզբեկստանի Հանրապետություն

dilshodjan86@mail.ru

ORCID - 0000-0001-5757-1216

Անի Սուբաֆյան

ԵՊՀ քաղաքացիական իրավունքի ամբիոնի դոցենտ,

իրավաբանական գիտությունների թեկնածու

«Երևան» նոտարական տարածքի նոտար,

դատական ծառայության 2-րդ դասի խորհրդական

Երևան, Հայաստանի Հանրապետություն

notary.mutafyan@gmail.com

ORCID - 0000-0002-0160-5082

Համառոտագիր. Ժամանակակից աշխարհում ամուսնական պայմանագրերի քանակական աճին զուգահեռ մեծանում են ամուսնական պայմանագրերի կնքմամբ ամուսինների պարտատերերի, ժառանգների, ինչպես նաև բարեխիղճ ամուսնու իրավունքների խախտման ռիսկերը: Հաճախ կողմերն ամուսնական պայմանագիր են կնքում՝ նպատակ ունենալով վնասել պայմանագրի կողմ չհանդիսացող երրորդ անձանց իրավունքներին՝ նրանց հանդեպ առկա պարտավորությունների կատարումից խուսափելով: Ամուսնական պայմանագրի կնքման, փոփոխման

կամ լուծման մասին ամուսիններից մեկի կողմից իր պարտատերերին ծանուցելու պարտականությունը չկատարելը կարող է հանգեցնել մյուս ամուսնու իրավունքների խախտմանը: Բացի այդ, Ուզբեկստանի Հանրապետությունում և Հայաստանի Հանրապետությունում ամուսնական պայմանագրերի պետական ռեգիստրների բացակայության հետևանքով առկա է ամուսինների գույքային դրության վերաբերյալ միասնական տեղեկատվական բազա, ինչն էլ, մեր կարծիքով, շատ հաճախ պատճառ է հանդիսանում վիճելի իրավիճակների առաջացման: Հետազոտության նպատակն է ամուսնական պայմանագրի կողմ չհանդիսացող երրորդ անձանց, ինչպես նաև բարեխիղճ ամուսնու իրավունքների պաշտպանության երաշխիքների ուսումնասիրությունը, լրացուցիչ կառուցակարգերի բացահայտումը, մշակումը, համապատասխան առաջարկությունների ներկայացումը: Հեղինակներին հաջողվել է Ուզբեկստանի Հանրապետության և Հայաստանի Հանրապետության օրենսդրության, նոտարական և դատական պրակտիկայի համակողմանի ուսումնասիրության արդյունքում մշակել և առաջարկել իրավունքների պաշտպանության երաշխիքային լուծումներ, որոնք կարող են ունենալ ինչպես գործնական կարևոր նշանակություն ամուսնական պայմանագրերը վավերացնող նոտարների համար, այնպես էլ հիմք հանդիսանալ հետագայում Հայաստանի և Ուզբեկստանի Հանրապետություններում ամուսնական պայմանագրերի ռեգիստրների ստեղծման համար:

Բանալի բառեր - *Ամուսնական պայմանագիր; ամուսնական պայմանագրի կողմ չհանդիսացող երրորդ անձ; բարեխիղճ ամուսին; ամուսնու ժառանգ; ամուսնական պայմանագրերի ռեգիստր; ամուսինների պարտատերեր; ամուսինների միանձնյա սեփականություն; ամուսինների համատեղ սեփականություն; պարտատիրոջ ծանուցում:*

ПРАВА ТРЕТЬИХ ЛИЦ И ДОБРОСОВЕСТНОГО СУПРУГА ПРИ ЗАКЛЮЧЕНИИ БРАЧНЫХ ДОГОВОРОВ В УЗБЕКИСТАНЕ И АРМЕНИИ

Дилшод Ашуров

*нотариус города Ташкента, советник юстиции 3-го класса,
председатель Нотариальной палаты Республики Узбекистан,
президент Комиссии по делам Азии Международного союза нотариата,
член Генерального совета Международного союза нотариата,
Ташкент, Республика Узбекистан
dilshodjan86@mail.ru
ORCID - 0000-0001-5757-1216*

Ани Мутафян

*Доцент кафедры гражданского права ЕГУ,
кандидат юридических наук,
нотариус нотариальной территории "Ереван",
советник 2-го класса судебной службы,
Ереван, Республика Армения
notary.mutafyan@gmail.com
ORCID - 0000-0002-0160-5082*

Абстракт. Наряду с количественным ростом брачных договоров в современном мире возрастают риски нарушения прав кредиторов супругов, наследников, а также прав добросовестного супруга при заключении брачных

договоров. Нередко стороны заключают брачный договор с целью нанести ущерб правам третьих лиц, не являющихся сторонами договора, уклонившись от выполнения имеющихся перед ними обязательств. Неуведомление одним из супругов своих кредиторов о заключении, изменении или расторжении брачного договора может повлечь нарушение прав другого супруга. Кроме того, из-за отсутствия государственных реестров брачных договоров в Республиках Узбекистан и Армения отсутствует единая информационная база об имущественном положении супругов, что, на наш взгляд, часто приводит к возникновению спорных ситуаций. Цель исследования - изучение гарантий защиты прав третьих лиц, не являющихся сторонами брачного договора, а также добросовестного супруга, выявление и разработка дополнительных механизмов, а также представление соответствующих рекомендаций. В результате комплексного исследования законодательства, нотариальной и судебной практики Республик Узбекистан и Армения авторам удалось разработать и предложить гарантийные решения по защите прав, которые могут иметь важное практическое значение для нотариусов, удостоверяющих брачные договоры, а также послужить основой для создания будущих реестров брачных договоров в Республиках Армения и Узбекистан.

Ключевые слова - *Брачный договор; третье лицо, не являющееся стороной брачного договора; добросовестный супруг; наследник супруга; реестр брачных договоров; кредиторы супругов; единоличное имущество супругов; совместное имущество супругов; уведомление кредитору.*