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Comments in relation to the resolution of the Supreme Court of 19 October 2018, III CZP 45/18[1]

Thesis: Assets acquired during matrimony with matrimonial property where funds partly come from one of the spouses' personal funds and partly from joint property, become part of the spouse's property and matrimonial property in shares being proportional to the funds destined for the acquisition from each respective property, unless the funds from the spouse's personal property or matrimonial property used to acquire the assets were investments in matrimonial or personal property, respectively.

The essence of the legal problem that arose as a result of the legal issue presented in the case by the District Court in Poznań to the Supreme Court is as follows: which property will cover an asset acquired by a matrimony as a result of a legal transaction in exchange for funds in part coming from matrimonial property and in part for funds coming from one of the spouses' personal property (spouses' personal property) that are subject to the principle of substitution.

FACTS OF THE CASE

The resolution was adopted to resolve the legal issue presented by the District Court in Poznań to determine which property will cover an asset acquired by a matrimony as a result of a legal transaction in exchange for funds in part coming from matrimonial property and in part for funds coming from one of the spouse's personal property (spouses' personal property) that is subject to the principle of substitution.

When finally the claim was set forth in detail – as a result of a suit to reconcile the content of a land and mortgage register with legal facts – the claimant requested that

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1 BSN 2018, No. 10, p. 7.

an entry be made in section II of the land and mortgage register kept by the District Court in Szamotuły in relation to property in Rogierówek at ul. Kościuszki 22 for the title to the property in his favour and in favour of his former wife (defendant) of a half part each, in place of the existing entry of the title which showed only the defendant as the sole owner of the property. The claim was based on a statement that, although property had been acquired solely by the defendant, it was done with funds coming from matrimonial property when the parties remained married and they held joint matrimonial property, so it was the joint property of the spouses, while after their divorce it was transformed into co-ownership in equal parts.

In its judgment of 11 October 2017, the District Court in Szamotuły rectified the inconsistency between the actual legal status of the property by entering the claimant into section II of the land and mortgage register with the claimant's title to the property of 20/100 and limiting the defendant's share to 80/100.

The voted judgment was made on the basis facts in accordance with which on 5 November 2014 the defendant entered a property purchase contract stating that she acquired the property with her own funds to her personal property. The purchase of the property was partly funded from the defendant's personal property and in the remaining part from the joint matrimonial property of the parties, including a housing mortgage loan.

In the court's opinion, in that situation there was an inconsistency between the actual legal status of the property and the legal status disclosed in the land and mortgage register which has to be rectified (Article 10.1 of the Act on land and mortgage registers and on mortgage). The ownership right was disclosed solely for the defendant, while the claimant was also entitled to it since the property was acquired during the marriage, also from the joint property of the parties (the amount of PLN 200,000). The proportion of the committed funds showed that during the marriage the property in 60% constituted the defendant's personal property, while in 40% joint matrimonial property. The divorce resulted in the transformation of joint matrimonial property without identified shares into a co-ownership with shares identified as a half to each former spouse. In turn, that resulted in unequal shares of the parties in co-ownership of the disputed property: the defendant was attributed a share of 80/100, while the claimant a share of 20/100.

The court did not share the defendant's standpoint that in case of acquisition of a right of ownership with funds coming from personal property and partly from joint matrimonial property, the classification to personal property or joint property should be based on the proportion of the committed funds: if the personal property part is much higher, the asset does not become an element of the properties in fractional parts *pro rata* to the committed funds but it should constitute an element of personal property with an obligation to account to the spouse for the amount of the committed joint property.

The District Court in Poznań – reviewing the claimant's appeal against the judgment of the District Court in Szamotuły of 11 October 2017 – had material legal doubts which were expressed in the legal issue presented first above.

Justifying its position, the District Court analysed the problem of property reconciliation and stated that science and judgments present a diversity of views

as to which property assets acquired by a spouse should be classified when acquired during the validity of joint matrimonial property, with funds partly originating from the spouses' joint property and partly from the buyer's personal property. One view has it that such assets are always acquired to joint matrimonial property, irrespective of the amount of funds originating from specific properties and committed to the acquisition. Another view is as follows: the identification from which property a major part of funds for the acquisition comes from affects the decision about which property the asset will be classified to. A third view is the following: the acquired asset is purchased as co-ownership of the spouse holding personal property and to joint property simultaneously the shares in which co-ownership are determined *pro rata* to the funds originating from both properties, committed at the acquisition. Having reviewed the arguments quoted in literature and judgments by supporters of the above concept, the District Court expressed its preference to the first of them.

The Supreme Court, reviewing the legal issue presented by the District Court, in its resolution stated as follows: "Assets acquired during matrimony with matrimonial property where funds partly come from one of the spouses' personal funds and partly from joint property, become part of the spouse's property and matrimonial property in shares being proportional to the funds destined for the acquisition from each respective property, unless the funds from the spouse's personal property or matrimonial property used to acquire the assets were investments in matrimonial or personal property, respectively."

NOTE

Basically, the problem covered by the judgment consisted in answering a question on classification of assets to individual properties, which most often happens when the statutory joint matrimonial property ceases to exist.

It also happens (which is covered by this paper) that when joint matrimonial property arises, assets are acquired pursuant to legal transactions made by the spouses jointly or by one of them, simultaneously with funds coming from joint property or personal property of one spouse. The need to make a legal assessment of such situation resulted in wording of the above legal issue when during joint matrimonial property with the claimant it was only the defendant who acted as a party to the property acquisition transaction and the purchase price was covered with funds originating from her personal property and from joint property.[2]

It is worth making several introductory comments to the final view of the question.

The core principle defining the classification of assets in the system of joint matrimonial property was set forth in Article 31 § 1 of the Family and Guardianship Code (henceforth FGC) and consists in classifying all assets to the joint property as long as acquired during the validity of the joint property and not excluded therefrom on the basis of any legal regulation (Article 33 FGC). The legislator used a clear structure to set

[2] Cf. justification for the judgment of the Supreme Court of 19 October 2018, III CZP 45/18.

forth a general principle and a specific catalogue of exceptions to the rule. Decisions as to the classification of individual assets to certain properties in practice usually occur when the joint matrimonial property ceases to exist, when the spouses make mutual settlements, and rely on the moment of acquisition of certain assets and verification if they are not subject to an exception set forth in Article 33 FGC.[3]

The legislator used the term "acquired assets" which should be understood broadly.[4] Thus, assets may be included in joint property as a result of various events, such as: legal transactions (e.g. purchase-sale contracts, donations), acquisition of benefits, inheritance (Article 34 FGC) or acquisition of rights to an injury-compensating annuity due to a spouse as a result of complete or partial disability to work or due to their growing needs or limited prospects for the future (cf. Article 33.6 FGC). Thus, what is decisive with respect to acquisition of an asset is the time of acquiring the right or its occurrence or transfer to a spouse, and not the way of acquisition.

The identification of the composition of each property in the system of joint matrimonial property poses difficulties in certain circumstances, despite the general principle clearly set forth in Article 31 § 1 FGC. According to the principle, assets acquired by both spouses become components of joint property with the exception of those assets that are included in each spouse's personal property.[5] The composition of joint matrimonial property in the system of statutory joint property is stipulated in Articles 31, 33 and 34 FGC but they do not set forth a supposition that joint matrimonial property includes assets acquired during the validity of joint matrimonial property. Therefore, it is admissible to make a factual supposition that assets acquired during the validity of joint matrimonial property become part of joint property with funds originating from the property.[6]

The judgments of the Supreme Court, in the basis of Article 31 FGC assume the existence of statutory preference to joint property versus the spouses' personal property,[7] which is expressed inter alia by respecting a factual supposition that assets acquired during joint matrimonial property were acquired to property accumulated during the marriage.[8]

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[3] J. Słyk, [in:] K. Osajda (ed.), *Kodeks rodzinny i opiekuńczy, Komentarz*, Warszawa 2018; commentary on art. 31 no. 27, Legalis.

[4] Cf. E. Skowrońska-Bocian, [in:] J. Wierciński, *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2014, p. 313.

[5] J.S. Piątowski (ed.), *System prawa rodzinnego i opiekuńczego*, part 1, Ossolineum 1985, p. 376.

[6] Cf. A. Dyoniak, *Ustawowy ustrój majątkowy małżeński*, Ossolineum 1985, p. 55; J. Ignaczewski, *Małżeńskie ustroje majątkowe*, Warszawa 2006, p. 19; judgment of the Supreme Court of 17 May 1985, III CRN 119/85, OSPiKA 1986, No. 9, item 185 with glosses by: Z. Gawlik, OSPiKA 1986, No. 9–10, item 185 and M. Goettel, OSPiKA 1988, No. 5, item 131; resolution of the Supreme Court of 6 February 2003, IV CKN 1721/00, Legalis.

[7] See resolution of the Supreme Court of 13 March 2008, III CZP 9/08, OSNC 2009, No. 4, item 54.

[8] See judgment of the Supreme Court of 17 May 1985, III CRN 119/85, OSP 1986, No. 9–10, item 185: "In the system of existing family law assuming a principle of the regime of statutory joint matrimonial property, a supposition may be made that certain assets in a transaction executed by a spouse were acquired from property generated in the marriage for statutory joint matrimonial property. However, the acquisition of an asset from a spouse's separate property must stem not only from a statement by the spouse but also – and primarily – from overall legally material circumstances under FGC provisions"; judgment of the Supreme Court of 11 September 1998,

It is accepted that Article 32 § 1 FGC gives rise to a presumption that the assets acquired during the matrimony belong to the property generated during the marriage when acquired by both spouses or by either of them, while the fact that certain assets belong to personal property has to be proven by the interested spouse.[9] The fact that one spouse was a party to a contract is insufficient to presume that a share in a property acquired during the existence of statutory joint matrimonial property became a part of the property of the spouse who was the party to the contract.[10] It is stated that the above presumption may be invalidated by specifying that such asset was acquired with funds originating from personal property.[11] Also, literature presents a view that the ownership right acquired during the existence of joint matrimonial property becomes a part of joint property, irrespective of the fact whether it was acquired by either of the spouses or by both. It is of no importance if the funds used to acquire the ownership right originated from joint property or from personal (separate) property, unless the acquisition was made by way of substitution, understood as replacement of an asset in personal (separate) property with another asset acquired to replace it. Judgments by the Supreme Court present the same view that acquisition of certain assets from a spouse's personal property must stem clearly not only from a statement by the spouse but primarily from overall related circumstances.[12] As emphasized by the Supreme Court in its judgment of 9 January 2001 (II CK 1194/00, LEX No. 52375): "The party claiming substitution is obliged to evidence the funds applied to acquire such asset."

APPLICATION OF THE SUBSTITUTION PRINCIPLE

The substitution principle counteracts increasing joint property at the expense of the spouses' personal property and guarantees that its value remains unchanged.[13]

The literature of the subject, when Article 33.3 FGC remained valid,[14] presents a view that the objective of substitution relating to separate property is to maintain

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I CKN 830/97, unpublished; ruling of the Supreme Court of 6 February 2003, IV CKN 1721/00, LEX No. 78276; judgment of the Supreme Court of 16 April 2003, II CKN 1409/00, OSNC 2004, No. 7–8, item 113; decision of the Supreme Court of 18 January 2008, V CSK 355/07, LEX No. 371389. See also A. Dyoniak, *supra* n. 6, p. 55; J.S. Piątowski, *supra* n. 5, p. 366; Z. Gawlik, *Glosa do wyroku Sądu Najwyższego z dnia 17 maja 1985 r., III CRN 119/85*, OSPiKA 1986, No. 9–10, p. 411; M. Goettel, *Glosa do wyroku Sądu Najwyższego z dnia 17 maja 1985 r., III CRN 119/85*, OSPiKA 1988, No. 5, p. 248.

[9] See, e.g. judgments of: 11 September 1998, I CKN 830/97, unpublished; 29 June 2004, II CK 397/03 unpublished; 16 April 2003, II CKN 1409/00, OSNC 2004, No. 7–8, item 113; 30 June 2004, IV CK 513/03, unpublished; and resolution of 6 February 2003, IV CKN 1721/00, unpublished.

[10] Cf. resolution of the Supreme Court of 16 October 1997, I CKN 130/97, unpublished.

[11] See judgment of the Supreme Court of 9 January 2001, II CKN 1194/00, unpublished.

[12] Cf. judgment of the Supreme Court of 9 January 2001 r., II CKN 1194/00, LEX No. 52375; resolution of the Supreme Court of 6 February 2003, IV CKN 1721/00, LEX No. 78276; judgment of the Supreme Court of 27 November 2007 IV CSK 258/07, LEX No. 492180.

[13] Cf. M. Nazar, [in:] T. Smyczyński (ed.), *System Prawa Prywatnego*, Vol. 11, *Prawo rodzinne i opiekuńcze*, Warszawa 2014, p. 329.

[14] The Family Code of 1950 did not provide directly for the principle of substitution.

the value of the property, despite the fact that components thereof change.[15] The components listed in Article 33.1 and 33.2 FGC "constitute (...) a sort of basic fund of separate property which does not gradually merge with joint property (...) Article 33.3 is a compromise between an intention to retain separate property and a trend to develop joint property."[16]

The legal doctrine generally provides that the core condition for substitution is the fact that exclusion (disposal or loss) of an asset from separate property and acquisition of another asset (substitute) has resulted from the same legal transaction.[17] It is commonly accepted that the application of the substitution principle may be modified with the will of the spouse for whom such substitution is to take place.[18]

In its judgment of 12 May 2000 (V CKN 50/00, Legalis) the Supreme Court specified the premises underlying substitution as set forth in Article 33.3 FGC. There are two requirements: firstly, one and the same event resulted in exclusion of an asset from separate property and acquisition of another asset, and secondly, the acquired asset must be obtained in an economic sense at the expense of separate property. The asset acquired to personal property must be then an equivalent to the asset that is excluded from the property.[19]

However, the application of an additional economic criterion is partially questioned by the doctrine. In Stefan Breyer's opinion, the equivalence of substitution elements (that is the acquired and lost assets) is immaterial:[20] a legal or economic relationship must exist between elements of direct and indirect substitution, but the elements may be of a different nature and a different economic value.[21] This justifies the acceptance of a "fiction of economic identity of elements of substitution

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[15] See, e.g. J.S. Piątowski, *supra* n. 5, p. 375; A. Dyoniak, *supra* n. 6, p. 159; E. Kitłowski, *Surogacja rzeczowa w prawie cywilnym*, Warszawa 1969, p. 100. The author stresses protection of separate property against potential depletion as a result of mixing it with joint property; the protection consists in ensuring the integrity of the total asset value in separate property, which, however, does not apply to each individual subjective right being part of the property.

[16] J.S. Piątowski, *supra* n. 5, pp. 375–376.

[17] *Ibid*., p. 377; A. Dyoniak, *supra* n. 6, p. 164; A. Ohanowicz, *Glosa do orzeczenia z dnia 6 lipca 1967 r., III CR 117/67*, Państwo i Prawo No. 8–9, 1968, p. 445; E. Kitłowski, *supra* n. 15, p. 19.

[18] A. Dyoniak, *supra* n. 6, p. 161; J.S. Piątowski, *supra* n. 5, p. 380; M. Sychowicz, [in:] K. Piasecki (ed.), *Kodeks rodzinny i opiekuńczy z komentarzem*, Warszawa 2001, p. 168.

[19] In its judgment of 15 October 2009 (I CNP 43/09, Legalis), the Supreme Court stated that a property separated in favour of a spouse in the process of consolidation and exchange of land during the existence of statutory joint property constitutes an equivalent of a property being part of separate property before joint property was established. In line with the principle of substitution, it is also possible to treat as personal property any refund of a loan obtained as a result of materialisation of receivables being part of the property (cf. judgment of the Supreme Court of 9 September 1970, I CR 298/70, OSNCP 1971, No. 6, item 102). In its ruling of 20 June 2008 (IV CSK 60/08, Legalis), the Supreme Court classified as personal property the ownership right to residential premises acquired as a result of tenant ownership and despite a fee paid from joint property in connection with the acquisition that underlay a claim for refund of expenditures pursuant to Article 45 FGC.

[20] S. Breyer, *Stosowanie surogacji w prawie małżeńskim*, Palestra No. 3, 1974, pp. 18–20 and C. Wiśniewski, *Glosa do uchwały z dnia 14 sierpnia 1985 r., III CZP 41/85*, Nowe Prawo No. 4, 1988, p. 90.

[21] S. Breyer, *supra* n. 20, pp. 18–20. Similarly, S. Breyer, S. Gross, [in:] B. Dobrzański, J. Ignatowicz (eds), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 1975, p. 164.

or acceptance as substitution changes to certain legal relationships also by way of pursuing claims”.[22] As a result, supporters of the discussed concept accept that economic identity (and thus substitution) occurs, irrespective of the origin of funds to cover the purchase price.[23]

The literature also presents a view that the substitution principle may be excluded in a legal transaction resulting in the acquisition of an asset and replaced with a claim for refund of expenditures from personal property to joint property.[24] However, the doctrine indicates no basis to accept admissibility of excluding the principle by a decision solely of one spouse.[25] The above could result in an acquisition of an asset in a way unacceptable to the other spouse with a simultaneous charge of the property with an obligation to refund the value thereof.

In that context, major doubts arise in a situation when assets are acquired both with funds originating from joint and personal property. The applicable regulations (Article 31 § 1 and Article 33.10 FGC) do not allow excluding *a priori* any of the concepts specified below; additionally, each of them is also approved in the doctrine and has supporters in jurisprudence.[26]

STANDPOINT OF JURISPRUDENCE

The representatives of jurisprudence for quite some time have been of a view that if nothing else stems from the nature of a legal transaction, the acquired asset is owned proportionately to the amount of funds used to acquire it from separate property and joint property, in an appropriate fractional part with respect to separate property and in the remaining part to joint property. However, the content of a legal transaction may be decisive if the acquired asset becomes a component of either property, and thus *ex lege* an obligation will be established in favour of the other property related to expenditures and outlays (Article 45 FGC). In the opinion

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[22] S. Breyer, S. Gross, *supra* n. 21, p. 164.

[23] *Ibid*., p. 165.

[24] Cf. J.S. Piątowski, *supra* n. 5, p. 380; E. Skowrońska-Bocian, *supra* n. 4, p. 347.

[25] J. Słyk, *supra* n. 3, commentary on Article 33, thesis 57, Legalis.

[26] See, e.g. S. Breyer, *supra* n. 20, p. 19; A. Dyoniak, *supra* n. 6, pp. 161–163; Z. Gawlik, *supra* n. 8, pp. 411–412; M. Goettel, *Majątek odrębny małżonków*, Szczytno 1986, pp. 177–178; M. Goettel, *Glosa do uchwały SN z 29.09.1987 r., III CZP 54/87*, OSPiKA 1988, No. 5, p. 249; E. Kitłowski, *supra* n. 15, pp. 100–103; M. Nazar, *supra* n. 13, pp. 338–342; J.S. Piątowski, *supra* n. 5, pp. 380–381, 394; E. Skowrońska-Bocian, *Rozliczenia majątkowe małżonków w stosunkach wzajemnych i wobec osób trzecich*, Warszawa 2006, pp. 72–73; A. Stępień-Sporek, M. Ryznar, *Nabywanie przedmiotów przez małżonków za środki z różnych mas majątkowych*, Państwo i Prawo No. 11, 2010, pp. 84–86; R. Trzaskowski, *Przekształcenie prawa użytkowania wieczystego w prawo własności a stosowanie surogacji w prawie małżeńskim*, Palestra No. 7–8, 2010, pp. 248–251; A. Wolter, *Majątek wspólny i majątki odrębne małżonków pod rządem wspólności ustawowej*, Nowe Prawo No. 1, 1965, pp. 113–115, and the literaturę and case law cited therein. See J. Biernat, *Dopuszczalność wyłączenia zastosowania zasady surogacji w majątku osobistym małżonka przy dokonywaniu czynności prawnej*, [in:] M. Pecyna, J. Pisuliński, M. Podrecka (eds), *Rozprawy cywilistyczne. Księga pamiątkowa dedykowana Profesorowi Edwardowi Drozdowi*, Warszawa 2013, p. 672; E. Drozd, [in:] J.S. Piątowski (ed.), *System prawa cywilnego. Prawo spadkowe*, Vol. IV, Ossolineum 1986, pp. 422–427. See also E. Kitłowski, *supra* n. 15, pp. 101–102.

of Józef Stanisław Piątowski,[27] in such situation inclusion of an asset in joint property is subject solely to the will of the spouse whose separate property, subject to substitution, has been contributed; while, inclusion in separate property is subject to the will of both parties "(...) unless the commitment of joint property in the case is a part of ordinary management".[28]

A different view in that matter was expressed by the Supreme Court which, under the provisions of the Family Code of 1950, in its resolution of 13 November 1962, III CO 2/62,[29] assumed that property acquired by a spouse during the marriage constituted joint property also when – apart from funds being a part of statutory joint property – some funds committed to the acquisition of the property constituted personal property of both spouses, unless the legal transaction specifies otherwise. The resolution stated that "it is not possible to assign decisive importance to statements by spouses that the acquired part of property does not belong to property generated in matrimony since such statement may not rule out the effects resulting from Articles 32–34 FGC when the spouses had statutory joint matrimonial property. Any restriction or exclusion therefrom is obviously possible with a marital contract providing for the above and made in the form of a notary deed."

In its justification, the court stated that "Substitution (...) is possible only when as a result of a legal operation no material change occurs, in an economic sense, in the status of the specific properties (personal property of a spouse or joint property), and therefore, the asset acquired by way of substitution may not be treated as property generated in the marriage. (...) The nature of substitution understood in that way does not support its presumption only on the basis of the fact that the buying spouse committed partly funds from personal property to acquire the asset. In order to identify substitution, it is necessary to specify the acquired asset or a part thereof in the contract which is sufficient to treat such acquired asset as an economic equivalent to the asset in the buyer's personal property that was disposed of in connection with the purchase."

The view was upheld by the Supreme Court in accordance with the Family and Guardianship Code. In its judgment of 17 May 1985, III CRN 119/85,[30] the Supreme Court emphasized that the notion of substitution may not be interpreted so broadly that each commitment of funds from property not subject to statutory joint matrimonial property results in the acquired asset being treated in whole or in part as private property of a spouse. If funds from separate property of a spouse were used to partly cover the purchase price and the remaining part was paid from

[27] J.S. Piątowski, *supra* n. 5, p. 381. See also Z. Gawlik, *supra* n. 8, p. 412; M. Goettel, *supra* n. 8, p. 249. The author claims that the spouses may exclude the statutory substitution effects: their intention must be disclosed not only explicitly but also *per facta concludentia*; similarly, E. Kitłowski, *supra* n. 15, pp. 101–102; cf. also M. Sychowicz, *supra* n. 18, p. 169.

[28] J.S. Piątowski, *supra* n. 5, p. 381. Similarly, E. Kitłowski, *supra* n. 15, p. 102. The author argues that the will to treat expenditures for the purchase of a substitute as an outlay from joint property may also be expressed by the spouse to whose personal property the acquisition of the new asset is closely related, as long as such transaction is performed as part of ordinary management.

[29] OSNCP 1963, No. 10, item 217.

[30] OSPiKA 1986, No. 9–10, item 185.

funds generated in the matrimony, the acquired share in property constitutes joint property. The spouse who committed funds from his/her private property could only claim refund of such funds pursuant to Article 45 FGC.[31]

One needs to quote a view of the Supreme Court that is materially applicable and which was expressed in assessing the basis to make an entry of ownership right in land and mortgage registers. The Supreme Court stated as follows: "Article 31 § 1 FGC does not provide for a legal presumption that the assets, including property, acquired during the marriage, covered with statutory joint matrimonial property in terms of economic relations, are included in statutory property."[32]

In its justification to the resolution of 19 August 2009, III CZP 53/09,[33] the Supreme Court stressed that: "the objective of substitution as set forth in the regulations referred to is to preserve the value of separate property, despite changes to specific components thereof." A similar objective is specified in the doctrine. The inclusion of the acquired right in exchange for some other right in separate property, is due to – in the opinion of Zbigniew Radwański – an assumed rationality of the legislator that "strives to ensure the durability of separate properties established by it" as in the case, for instance, of spouses' personal properties (Article 33.10 FGC).[34] Therefore, the value of personal property should not change in the statutory system.

In its judgment of 12 May 2000, V CKN 50/00,[35] the Supreme Court stated that the substitution referred to in Article 33.3 FGC (now in Article 33.10 FGC) must meet two requirements: "firstly, one and the same event results in exclusion of an asset from separate property and acquisition of another asset, and secondly, the acquired asset must be obtained in an economic sense at the expense of separate property." Therefore, as stressed by the Supreme Court in its ruling of 18 Octobe1961, IV CR 957/60:[36] "substitution does not occur when an asset constituting separate property of a spouse was used, consumed, etc. or sold, the proceeds applied, and a new asset of the same kind and with the same economic application, was acquired with funds originating from the spouse's current income. Similarly, literature stressed basically two criteria of substitution: legal and economic. The substitution occurs when both criteria are complied with."[37] However, the view is not universal. Elżbieta Skowrońska-Bocian, analysing two premises underlying substitution, stresses that the second premise, i.e. economic, consisting in the acquisition of an asset at the expense of personal property raises no doubt.[38] The author has objections to the first premise relating to "one event". If both premises underlying substitution are complied with, then the acquired asset is to be classified as a spouse's personal property. There is no need to continue interpretation of regulations that would result in introducing additional requirements related to substitution.

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31 See also S. Breyer, S. Gross, *supra* n. 21, p. 167.

32 Cf. resolution of the Supreme Court of 5 September 2008, I CSK 60/08, Legalis.

33 LEX No. 511012.

34 See also Z. Radwański, *Prawo cywilne – część ogólna*, Warszawa 2005, p. 141.

35 LEX No. 52579.

36 LEX No. 106398.

37 Cf. J.S. Piątowski, *supra* n. 5, p. 378.

38 Cf. E. Skowrońska-Bocian, *supra* n. 4, p. 346.

In compliance with the currently applicable Family and Guardianship Code, the Supreme Court presented a similar stand in its ruling of 5 December 2014, III CSK 87/14. The ruling states that an asset acquired in any part from joint property – and when there is no matrimonial contract to the contrary – becomes a part of joint property, while personal property incorporates a claim for refund of outlays or expenditures.[39] In the view of the Supreme Court, an extension of substitution supports a solution to "preserve appropriate proportions between joint property and personal property of the spouses and will not result in a substantial extension of personal properties at the expense of joint property".

However, it should be noted that if funds are committed from personal property, there is no extension of personal property at the expense of joint property. It seems that the text of the ruling specified above was influenced by the type of asset, being an enterprise and a complex nature of the related financial settlements.

Recently, a view became popular in case law that an asset is acquired to personal property or joint property and the final classification is subject to the majority of funds originating from either property.[40]

It should be noted that representatives of jurisprudence are in favour of the solution and stated that it was appropriate in cases when there is a major disproportion between funds originating from personal or joint property.

The judgment of 12 May 2000, V CKN 50/2000,[41] held that "The substitution specified in Article 33.3 FGC consists in replacing one separate asset with another asset. The premises underlying such substitution include two requirements: firstly, one and the same event resulted in exclusion of an asset from separate property and acquisition of another asset, and secondly, the acquired asset must be obtained in an economic sense at the expense of separate property."

The ruling of 18 January 2008, V CSK 335/2007,[42] provided that "it is not possible to assign decisive importance to statements by spouses that the acquired part of a property does not belong to property generated in matrimony since such statement may not rule out the effects resulting from Articles 32–34 FGC when the spouses had statutory joint matrimonial property. Any restriction or exclusion therefrom is possible with a marital contract providing for the above and made in the form of a notary deed." The Supreme Court claimed that the judgments are consistent in stating that Article 32 § 1 FGC gives rise to a presumption that the assets acquired during the matrimony belong to the property generated during the

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[39] This stand was approved by some of the representatives of the doctrine, for instance M. Nazar, *supra* n. 13; M. Olczyk, *Komentarz do zmiany art. 33 Kodeksu rodzinnego i opiekuńczego wprowadzonej przez Dz.U. z 2004 r. nr 162 poz. 1691*, LEX 2005; or T. Sokołowski, *Komentarz do art. 33 Kodeksu rodzinnego i opiekuńczego*, [in:] H. Dolecki, T. Sokołowski (eds), *Kodeks rodzinny i opiekuńczy. Komentarz*, LEX 2013.

[40] See the Supreme Court judgment of 12 May 2000, V CKN 50/00, Legalis; the Supreme Court resolution of 18 January 2008, V CSK 355/07, Legalis; the Supreme Court resolution of 10 April 2013, IV CSK 521/12, MoP 2014, No. 7.

[41] LEX No. 52579.

[42] LEX No. 371389 and the ruling of 5 December 2014 III CSK 45/14 in which the Supreme Court stated as follows: "the classification of assets to spouses' joint property or to their personal properties is not decided by their statement that the acquired assets become components of any specific property since it is the applicable law that is decisive."

marriage when acquired by both spouses or by either of them, while the fact that certain assets belong to personal property has to be proven by the spouse concerned.[43] The fact that one spouse was a party to a contract is insufficient to presume that a share in a property acquired during the existence of statutory joint matrimonial property became a part of the property of the spouse who was the party to the contract.[44] A factual presumption that the asset was acquired by a spouse during the existence of statutory joint matrimonial property is the property generated during the matrimony (Article 32 § 1 FGC) may be abolished by specifying that the acquisition was made with funds constituting separate property.[45] The Supreme Court further stressed that the classification to a specific property should be subject to a comparison of the volume of funds originating from specific properties: some of the amounts should be much higher than the other, and thus be decisive for the classification of an asset to specific property.

Additionally, in the ruling of 10 April 2013, IV CSK 521/12,[46] the Supreme Court held that "The classification of an acquired asset to joint property or separate property shall be decided by a comparison of the volume of funds committed from those properties. As a result, the acquired asset may be classified to the property from which a major part of funds was committed. If the funds from the other property are insignificant, they are settled as an outlay in compliance with Article 45 FGC; if the criterion may not be applied since there is no major difference between the committed funds, then – unless the spouses decide otherwise – the acquired asset becomes a part of specific property items in fractional parts, proportional to the amount of committed funds."

In its ruling of 3 February 2016, V CSK 323/15, and in its judgment of 6 April 2016, IV CSK 385/15, the Supreme Court resumed the concept applied in earlier rulings accepting that the criterion decisive for classifying an asset to joint or personal property depends on the volume of committed funds. In the opinion of the Supreme Court, if the value of separate property "is materially larger", then the acquired asset will become part of such property.

There is an impression that also those cases were decided by the factual circumstances. In the first case, funds from personal property to purchase property accounted for 93% of the transaction value, while in the other case there was an exchange of an apartment personally owned by one spouse for another apartment, with a small additional amount paid from the funds coming from joint property. If seems that judgments on the subject do not reflect a uniform theoretical concept but are an effect of a functional interpretation searching for an optimum solution on the basis of specific facts.

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43 Cf. judgment of the Supreme Court of 11 September 1998, I CKN 830/97, unpublished; resolution of the Supreme Court of 6 February 2003, IV CKN 1721/00 unpublished; judgment of the Supreme Court of 29 June 2004, II CK 397/03 unpublished; judgment of the Supreme Court of 16 April 2003, II CKN 1409/00, OSNC 2004, No. 7–8, item 113; judgment of the Supreme Court of 30 June 2004, IV CK 513/03, unpublished.

44 Cf. resolution of the Supreme Court of 16 October 1997, I CKN 130/97, unpublished.

45 Judgment of the Supreme Court of 9 January 2001, II CKN 1194/00, unpublished.

46 LEX No. 1331353.

POSITION OF THE DOCTRINE

The literature on the subject related to the circumstances of acquisition of an asset with funds originating from joint property and personal property specifies three different options of resolving the problem.[47]

According to the first standpoint, the acquired asset is incorporated into both properties in fractional parts, corresponding to the amount of funds committed in the purchase.[48]

An argument against that standpoint indicates that a "hybrid ownership relationship" arises between the spouses, characterised by total co-ownership of a share (which is part of joint property) in the "superior" fractional co-ownership of the right: that generates unavoidable complications in managing such joint right and restrictions in cancelling such hybrid fractional co-ownership (Article 210 of the Civil Code and Article 35 FGC).[49]

Another argument against the concept was that it gave priority to joint property, and thus was contrary to FGC which does not introduce any preferences to any type of property when classifying an asset to either of them.[50]

It seems that the criticism of that standpoint is not convincing since such hybrid co-ownership is generated by each acquisition of a share in a right by the spouses during their statutory joint matrimonial property.

According to the second standpoint, an asset is incorporated to private or joint property subject to a comparison of the volume of funds committed to the acquisition thereof originating from such properties. The criterion of a majority part of the expenditure would be decisive in that approach. As a result, the acquired asset should be classified to the property from which a larger part of funds was committed.[51]

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[47] See, e.g. S. Breyer, *supra* n. 20, p. 19; A. Dyoniak, *supra* n. 6, pp. 161–163; Z. Gawlik, *supra* n. 8, pp. 411–412; M. Goettel, *Majątek*, *supra* n. 26, pp. 177–178; M. Goettel, *Glosa*, *supra* n. 26, p. 249; E. Kitłowski, *supra* n. 15, pp. 100–103; M. Nazar, *supra* n. 13, pp. 338–342; J.S. Piątowski, *supra* n. 5, pp. 380–381, 394; E. Skowrońska-Bocian, *supra* n. 26, pp. 72–73; A. Stępień-Sporek, M. Ryznar, *supra* n. 26, pp. 84–86; R. Trzaskowski, *supra* n. 26, pp. 248–251; A. Wolter, *supra* n. 26, pp. 113–115, and the literature and case law cited therein.

[48] See J. Biernat, *supra* n. 26, p. 672; E. Drozd, *supra* n. 26, pp. 422–427. See also E. Kitłowski, *supra* n. 15, pp. 101–102. Cf. J. Pietrzykowski, [in:] Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy z komentarzem*, Warszawa 1993, p. 214.

[49] Cf. M. Nazar, *supra* n. 13, pp. 340–341; M. Nazar, [in:] J. Ignatowicz, M. Nazar, *Prawo rodzinne*, Warszawa 2006, p. 149.

[50] A. Dyoniak, *supra* n. 6, p. 162 (however, the comments of the author were related solely to the practice of common courts, according to which even a small commitment of funds from joint property would exclude the possibility of applying the principle of substitution). Cf. M. Goettel, *supra* n. 8, p. 249 (in the author's opinion, the effects of substitution occur *ex lege* not only for the whole but also for a part of the acquired asset; it is not admissible to classify *a priori* the acquired asset to joint property without providing for the nature of funds committed to the purchase). Cf. also S. Szer, *Glosa do uchwały SN z dnia 13 listopada 1962 r., III CO 2/62*, OSPiKA 1963, No. 9, p. 537 (in the author's opinion, the effects of substitution occur *ex lege*, irrespective of the fact whether the funds from a spouse's personal property were used to apply to the asset in whole or a share in such asset and irrespective of the fact if the asset was acquired both with funds from the spouses' personal property and joint property).

[51] See A. Wolter, *supra* n. 26, p. 114.

Aleksander Wolter finds a standpoint that assumes the classification of shares in the acquired assets both to joint property and separate property as "theoretically most correct", further indicating that for practical reasons "it is hard to be enthusiastic about it".

The concept was partly approved by Stefan Breyer who indicated that it could be applicable when funds from one source "are disproportionately low versus the other source".[52]

The view was found as appropriate by Janusz Pietrzykowski,[53] however, if the criterion of majority funds fails, then a fractional co-ownership in the acquired asset is generated and the shares would be incorporated both to joint and separate property *pro rata* to the volume of funds generated from both property items.

However, the doctrine notes that the provisions of FGC do not provide the basis for such interpretation of Article 33.10 FGC which makes substitution (in terms of asset or value) subject to the proportion of funds from personal property and joint property. Neither linguistic, nor functional interpretation justify the above conclusion. The concept raises uncertainty in mutual economic relations between the spouses and in relations of the spouse with third parties. A binding identification of substitution would then be subject to a court ruling based on an imprecise criterion of "disproportion" or "material disproportion" of expenditures originating from various property of the spouses.[54]

Other arguments against the concept were that it did not provide for the will of the parties,[55] that it relies on imprecise qualitative criteria, would not resolve a situation when equal funds were committed to acquire assets, that the effects of applying the concept could generate incorrect solutions (e.g. when the proportion is 51% to 49%),[56] and additionally that there is no legal basis[57] or that it is contradictory to legal regulations.[58] It was stressed that the applicable regulations do not point to a criterion of a majority of funds spent on the asset as a decisive factor for assigning to a certain property, despite the fact that the solution has practical values.[59]

Finally, in accordance with the third concept, the commitment of funds to acquire an asset from joint property makes the asset included wholly in joint property.[60]

However, that position has gained approval neither of the doctrine nor jurisprudence.

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[52] S. Breyer, *supra* n. 20, p. 20.

[53] J. Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2003, Article 33, no. 25.

[54] Cf. M. Nazar, *supra* n. 13, Legalis, p. 142.

[55] The argument is unjustified since Aleksander Wolter clearly indicated that the spouses, when entering into the transaction, may decide how they will assign the acquired asset, whether to joint property or separate property, see A. Wolter, *supra* n. 26, p. 115.

[56] A. Dyoniak, *supra* n. 6, p. 162; E. Kitłowski, *supra* n. 15, p. 103.

[57] See J.S. Piątowski, *supra* n. 5, p. 381, footnote 178; M. Sychowicz, *supra* n. 18, p. 169.

[58] Thus, E. Kitłowski, *supra* n. 15, p. 103.

[59] Cf. J.S. Piątowski, *supra* n. 5, p. 381.

[60] Cf. M. Nazar, *supra* n. 13, p. 341; T. Sokołowski, *supra* n. 39, p. 182; cf. also the resolution of the Supreme Court of 13 November 1962, III CO 2/62, OSNCP 1963, No. 10, item 217.

In the opinion of Mirosław Nazar,[61] subjective substitution is possible solely with funds originating from personal property; otherwise, such asset should be included in joint property and personal property should cover a claim for refund of the expenditure (financial substitution).[62] In the author's opinion: "The proposed interpretation covers the basic function of substitution (ensuring the integrity of the global value of the property subject to substitution), it refers to clear criteria of subjective or financial substitution, and excludes the generation of hybrid joint rights."[63]

The literature of the subject additionally presents a concept which may be treated as a synthesis of the first and second standpoints discussed above. The view is as follows: the assignment of an acquired asset to personal property or joint property should be done on the basis of a comparison of the volume of funds originating from each property: the asset shall be classified to the property from which a "core" part of funds was committed if funds from the other property were "negligible" (then such part is a contribution settled in accordance with Article 45 FGC).[64] If the criterion cannot be applied due to no "major difference" between the committed funds – and those are typical situations – when the spouses do not agree otherwise, the acquired asset is included in each property (from which the funds originated) in fractional parts proportional to the volume of the committed funds.[65]

The concept was accepted by the Supreme Court, which is indicated by the reasoning to justification to its ruling of 12 May 2000.[66] The court clarified that the substitution provided for in Article 33.3 FGC consists in replacement of one asset in separate property with another asset and the premises underlying such substitution include two requirements: firstly, one and the same event resulted in exclusion of an asset from separate property and acquisition of another asset, and secondly, the acquired asset must be obtained in an economic sense at the expense of separate property. The Supreme Court stated that if the first condition was complied with, but the purchase occurred only partly from funds originating from separate property "(...) two solutions arise. One solution provides that the acquired assets – proportionately to the funds committed from separate property and joint property – are incorporated in appropriate fractions to separate property (substitution) and to joint property (the principle of Article 32 § 1 FGC). The other solution requires a comparison of the volume of funds committed from each property and incorporation of the acquired assets to the property from which a majority of the price was covered; while the funds committed from the other property should be treated as a contribution to the property to which the asset was incorporated. The latter solution seems justified when the volumes of funds originating from separate property and joint property are materially disproportional."

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61 S. Breyer, S. Gross, *supra* n. 21, p. 167.
62 M. Nazar, [in:] J. Ignatowicz, M. Nazar, *supra* n. 49, p. 149.
63 *Ibid.*, pp. 149–150.
64 J. Pietrzykowski, *supra* n. 53, p. 364.
65 See R. Trzaskowski, *supra* n. 26, pp. 244–252; and J. Pietrzykowski, *supra* n. 53, p. 364.
66 V CKN 50/00, LEX No. 52579.

A similar standpoint was also presented in the justification to the ruling of the Supreme Court of 18 January 2008.[67] The Court stated (in the context of Article 33.3 FGC) that "(...) with a hypothetical (...) assumption that the purchase of an asset by a spouse was funded partly from joint property, most recent literature accepts it that in order to incorporate such asset to either personal or joint property, it is necessary to compare the volumes of funds committed from both property items and one of the parts has to be much higher and decisive with respect to which property the asset will be assigned to (...)."

However, it is hard to classify the standpoint of the Supreme Court expressed in its justification to the ruling of 20 June 2008,[68] referred to earlier, in which the court stated that when a tenant's right to residential premises constituting personal property of one spouse is converted into ownership right "the right being a continuation of the previous right to the premises shall remain a component of such personal property and any additional contribution made for the conversion from funds of their joint property shall constitute a contribution from the joint property to personal property, to be settled in compliance with Article 45 FGC." It should be noted that the court did not refer directly to the principle of substitution and the use of the term "continuation of the previous right" may suggest a slightly different legal construct, perhaps similar to the concept of substitution identified by certain authors, based on an "economic" relation between elements of such substitution (concepts of Stefan Breyer and Stanisław Gross), or perhaps relying on an assumption that in the case of a conversion, no new right is acquired.

CONCLUSIONS

In dogmatic terms, the first standpoint approved in the doctrine seems most appropriate: it provides that if an asset is acquired with funds committed from two properties, the asset is assigned to personal property or joint property as a result of a comparison of the volume of funds committed from the two properties – the major part of the spending would be the decisive criterion. The concept was also supported by the Supreme Court in the analysed resolution of 19 October 2018. The court stated that "It provides for an element of the will of the spouses carrying out a specific transaction as well as the strictly specified (in Article 31 § 1 and Article 33 FGC) principles of incorporation of specific assets during the existence of joint matrimonial property to either joint property of the spouses or their respective personal properties as well as the limits of substitution determined inter alia in Article 33.10 FGC, without any unjustified extension of joint property at the expense of personal property or vice versa. Unless the legal transactions made by the spouses require otherwise, there is no reason to make an arbitrary assumption that the spouses – committing joint funds and their personal funds to acquire an asset – in a sense resign from co-ownership accepting it that the acquired asset is

[67] V CSK 355/07, LEX No. 371389.
[68] IV CSK 60/08, LEX No. 453028.

incorporated in one property in whole, while the person who committed his/her own funds to the purchase is left only with a claim for refund of expenditures, in particular, if those were contributions from personal property to joint property settled only upon request."

The vagueness of the proposed criteria and dogmatic problems with justifying the concept do not seem sufficient to deny it is appropriate. It seems that the allocation of the acquired asset should be decided not only on the basis of proportions of the funds committed to the acquisition but also of the decision whether the funds from the joint property were overall material. Basically, a view can be defended that in an economic sense the acquisition of an asset in whole (and not a share in an asset) is made with "funds obtained in exchange for assets" from separate property only when at least a majority part of the funds comes from separate property (in that case, the objective economic burden of the acquisition lies with the separate property). Such interpretation is also supported with a subjective element usually accompanying the transaction. When there is no clear intention of the buyer to the contrary, an assumption may be made that committing a majority of funds from separate property to acquire a new asset, the spouse does not intend to contribute the funds to joint property and any commitment of funds from joint property is only a contribution (Article 45 FGC).[69] However, if the funds committed from joint property are quite material – even if much lower than funds from separate property – they should be treated (inter alia considering the welfare of the family) as funds which were not to be transferred to separate property with a potential prospect of settlement (Article 45 FGC).

The acceptability of the solution is supported with clarity and simplicity of the allocation of specific assets to the spouses' property (joint or personal) as well as the exclusion of any hybrid structures of joint rights acquired partly with funds from joint and personal properties. Thus, acceptance of such solution provides for much higher security in trading and in relations between the spouses as it simplifies the management of joint property and also regulates the functions of the property. An interpretation excluding the application of substitution in that case is a response to the postulate of systemic interpretation requiring a strict interpretation of regulations stipulating exceptions to the regulations set forth in other statutes. Especially so that a very broad extent of substitution justifies a conclusion that its further extension would result in depletion of joint property much in excess of what the legislator intended. Such interpretation is also supported by the Polish Constitution since it assigns the family and its welfare a rank of the highest value. An assessment of the acquisition of an asset with funds only partly committed from joint property should provide for the protection of the family postulated by the Constitution and the method of preserving it as specified in the Code by the establishment of joint matrimonial property with no individual shares identified and which is indivisible to provide for the needs of the family that contributed to the property. Certainly, the spouses are not deprived of the right to own, acquire and

[69] See R. Trzaskowski, *supra* n. 26, pp. 244–252.

dispose of personal property; however, in case of joint matrimonial property, that is restricted to instances explicitly specified in statute and is an exception.

On the other hand, it seems that the first of the proposed concepts may be appropriate – the concept in a most detailed way resembles the legal status of the real estate property, despite the hybrid complex ownership status.

The legislator, regulating in FGC the type of the spouses' properties, the methods of establishment and components thereof, did not rank them or did not give priority to any of them. The fact that in procedural proceedings joint property is subject to more intensive protection, since the court *ex lege* determines the composition and value thereof and settles contributions made from joint property to personal properties, does not necessarily mean that the generation thereof is also privileged. It seems ungrounded to allocate an asset acquired with funds coming from both types of properties only to one of them, while leaving the right to settle the expenditures for third-party assets. That would mean an extension of joint property at the expense of personal property, or vice versa. A presumption that the spouses acquiring an asset as if resign from joint ownership accepting that the acquired asset becomes incorporated only to one property in whole seems unjustified. Additionally, such solution is unfair for the spouse who was deprived of ownership and left only with a claim for refund of expenditures. Firstly, this is because the spouse is deprived of a share in ownership, and secondly, because the spouse has to take effort to obtain refund of the equivalent of the expenditures.

An argument in favour of the concept is the acceptance of a structure of fractional acquisition of specific assets, in proportions corresponding to the committed funds, which supports a most comprehensive application of the respective regulations.[70] All the more so that, when relying on the literal wording, it is impossible to identify a criterion of a majority of funds spent on the asset as the decisive factor for assigning such asset to a certain property, despite the fact that the solution has practical values. Incorporation of an asset to joint property at all times when a portion of funds committed to acquire the asset originated from joint property is not convincing, especially when such funds cover only a small portion of the acquisition cost.

The argument contrary to the concept is not convincing; it refers to effects that are difficult to reconcile with an assumption of rational legislation. No acceptance should be given to the allegation of excessive complication of legal relationships when there are joint rights in ideal parts, applicable to one spouse or both spouses. This is observable primarily in problems with determining the governance rules of the asset subject to joint rights and identifying the admissibility of abolition of such joint right, and in particular the allegation of a breach by the resultant situation of the ban on claims to divide the joint property during the existence of joint matrimonial property if the joint right to an asset is abolished (cf. Article 35, first sentence, FGC). It should be noted that the joint right vis-a-vis a certain asset between one spouse and both spouses may *de lege lata* arise in connection with

[70] Cf., for instance, M. Sychowicz, *Komentarz do art. 33 k.r.o.*, [in:] K. Piasecki, *Kodeks rodzinny i opiekuńczy. Komentarz*, LexisNexis, 2011; M. Goettel, *supra* n. 8.

various legal events; thus, it is a construct admissible in Polish law, irrespective of the potential high complexity of the legal relationships related to the establishment thereof.

Acceptance of the above solution guarantees adequate protection of the spouses' interests in the economic sense and further ensures adequate protection for creditors of the spouses; that is due to a certain and immediate maintenance of relations between the value of assets in the specific properties that the spouses dispose of, and the value of the acquired shares in the assets. In the context of other concepts, certain disproportions may arise for which it is hard to find statutory justification. Although the disproportions may *a casu ad casum* be covered with claims for refund of expenditures from personal property to joint property or from joint property to personal property (Article 45 § 1 FGC), it should be noted that a claim for refund of expenditures is not necessarily successful materialisation thereof (cf. in particular Article 45 § 1, third sentence, FGC), while the materialisation as a rule is postponed (often materially) (cf. Article 45 § 2 FGC) and there is no certainty that it always will be complete.[71]

The standpoint is appropriately rooted in the applicable statutes. The acceptance of the standpoint supports spouses in the acquisition of a share in joint matrimonial property in compliance with the rule set forth in Article 31 § 1 FGC, while also applying the regulation implementing the substitution rule in the spouse's personal property (Article 33.10 FGC). This means that – contrary to the other concepts – the acceptance of the discussed standpoint does not exclude or restrict any of the specified statutory rules.[72]

Additionally, the above concept is free of the arbitrariness of the view resulting from the applied legal basis that refers to disproportionate values of specific assets as a criterion to determine the property to which the acquired asset is to be allocated. The arbitrariness raises even more doubts as it is based on an imprecise and internally contradictory identification of situations whereby the acquired asset is to be allocated solely to one property and, possibly, situations when such asset is to be allocated to various properties in fractional shares. That, in turn, may jeopardise the certainty and security of trading, not only at the time when the property (properties) is determined to which such asset is to be allocated, but also when determining if the statutory requirements have been complied with concerning correct conduct of legal transactions underlying the acquisition of such asset, in particular their validity and effectiveness.[73]

Acceptance of the above solution guarantees adequate protection of the spouses' interests in the economic sense and further ensures adequate protection for creditors of the spouses; that is due to a certain and immediate relation between the value

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[71] Cf. J. Biernat, *Glosa do postanowienia SN z dnia 10 kwietnia 2013 r. IV CSK 521/12*, LEX No. 1331353.

[72] Cf. A. Dyoniak, *supra* n. 6, p. 162; M. Goettel, *Majątek*, *supra* n. 26, p. 177; E. Kitłowski, *supra* n. 15, pp. 101–102; A. Stępień-Sporek, M. Ryznar, *supra* n. 26, pp. 85–86.

[73] See M. Nazar, *Odpłatne nabycie własności do majątku wspólnego małżonków*, [in:] E. Drozd, A. Oleszko, M. Pazdan (eds), *Rozprawy z prawa prywatnego, prawa o notariacie i prawa europejskiego ofiarowane Panu Rejentowi Romualdowi Sztykowi*, Kluczbork 2008, pp. 232–234, 237–246.

of assets in the specific properties that the spouses dispose of and the value of the acquired shares in the assets.[74]

Additionally, neither linguistic nor purposive interpretation of the provisions of Article 31 § 1 and Article 33.10 FGC justify a thesis that the application of the substitution principle to the spouse's personal property may take place only when the asset is acquired solely with funds originating from the spouse's personal property to which the principle applies.

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[74] Cf. J. Biernat, *supra* n. 71.

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COMMENTS IN RELATION TO THE RESOLUTION OF THE SUPREME COURT OF 19 OCTOBER 2018, III CZP 45/18

Summary

The analysis of the resolution was to determine which property will cover an asset acquired by a matrimony as a result of a legal transaction in exchange for funds in part coming from matrimonial property and in part for funds coming from one of the spouses' personal property (spouses' personal properties) that are subject to the principle of substitution. Sharing the arguments of the Supreme Court, in dogmatic terms, the first standpoint approved by the representatives of the legal doctrine seems most appropriate: it provides that if an asset is acquired with funds contributed from two funds, the asset is assigned to personal property or joint property as a result of a comparison of the volume of funds coming from both properties – the major part of the spending would be the decisive criterion.

Keywords: joint matrimonial property, principle of substitution, allocation of assets, financial settlement, joint property, separate properties

UWAGI NA TLE UCHWAŁY SĄDU NAJWYŻSZEGO Z 19 PAŹDZIERNIKA 2018 R., III CZP 45/18

Streszczenie

Przedmiotem analizy objętej glosowaną uchwałą było ustalenie, w skład jakiego majątku wchodzi przedmiot majątkowy nabyty przez małżonków w drodze czynności prawnej, częściowo w zamian za składniki majątkowe prowadzące do nabycia do majątku objętego wspólnością majątkową małżeńską, częściowo zaś w zamian za składniki majątkowe pochodzące z majątku osobistego małżonka (majątków osobistych małżonków), co do których ma zastosowanie zasada surogacji. Podzielając argumentację SN, pod względem dogmatycznym najbardziej prawidłowy wydaje się przyjmowany w doktrynie pogląd, który zakłada, że w przypadku nabycia przedmiotu ze środków mieszanych, o zaliczeniu przedmiotu majątkowego do majątku osobistego lub wspólnego decyduje porównanie wartości przeznaczonych na jego nabycie środków pochodzących z tych majątków – decydujące miałoby być w tym ujęciu kryterium przeważającej części wydatku.

Słowa kluczowe: wspólność majątkowa małżeńska, zasada surogacji, przynależność przedmiotów majątkowych, rozliczenia majątkowe, majątek wspólny, majątki odrębne

COMENTARIOS DE ACUERDO DEL TRIBUNAL SUPREMO DE 19 DE OCTUBRE DE 2018, III CZP 45/18

Resumen

El objeto de análisis del acuerdo comentado ha sido determinas, a cuál patrimonio entra objeto patrimonial adquirido por los cónyuges mediante el negocio jurídico en parte a cambio de componentes patrimoniales que conlleven a su adquisición a bienes gananciales y en parte a cambio de componentes patrimoniales provenientes del patrimonio personal del cónyuge (patrimonio personal de los cónyuges), a los que se aplica el principio de subrogación. Aprobando los fundamentos del Tribunal Supremo, desde el punto de vista dogmático la postura más correcta presentada en la doctrina consiste en que en caso de adquisición de objeto con fondos mixtos, sobre la inclusión de objeto patrimonial al patrimonio personal o a bienes gananciales decide la comparación de valores destinados a su adquisición procedente de estos patrimonios. El criterio de mayor gasto sería en este caso el elemento decisivo.

Palabras claves: bienes gananciales, principio de subrogación, inclusión de objetos patrimoniales, liquidaciones patrimoniales, patrimonio común, patrimonios individuales

КОММЕНТАРИИ ПО ПОВОДУ ПОСТАНОВЛЕНИЯ ВЕРХОВНОГО СУДА ОТ 19 ОКТЯБРЯ 2018 ГОДА, III CZP 45/18

Резюме

Постановление, принятое судьями Верховного суда, касается вопроса, частью какого имущества является предмет имущества, приобретенный супругами в ходе правовой сделки частично в обмен на элементы имущества, предусматривающие совместное владение приобретаемым предметом,

а частично в обмен на элементы личного имущества супруга (личного имущества супругов), к которым применим принцип замещения. Следует согласиться с аргументами Верховного суда, основанными на догматическом подходе к вопросу. Действительно, в правовой доктрине принята точка зрения, согласно которой, в случае приобретения предмета за смешанные средства, включение приобретаемого предмета имущества в состав личного либо совместного имущества супругов зависит от размера средств, выделенных на его приобретение из соответствующих имуществ. С этой точки зрения решающим критерием должна быть преобладающая доля в расходах на приобретение.

Ключевые слова: совместная собственность супругов, принцип замещения, принадлежность предметов имущества, имущественные споры, совместное имущество, отдельное имущество

ANMERKUNGEN ZUR ENTSCHEIDUNG DES OBERSTEN GERICHTSHOFS DER REPUBLIK POLEN VOM 19. OKTOBER 2018, III CZP 45/18 III CZP 45/18

Zusammenfassung

Gegenstand der Analyse der ergangenen Entscheidung war die Bestimmung, zu welchem Vermögen ein Vermögensgegenstand gehört, der von Ehegatten im Wege einer Rechtshandlung erworben wurde, zu einem Teil im Austausch gegen Vermögenswerte, die zum Erwerb von Vermögenswerten führen, die von der ehelichen Gütergemeinschaft abgedeckt sind, und teils im Tausch gegen Vermögenswerte, die aus dem persönlichen Eigentum von Ehegatten stammen (persönliches Eigentum der Ehepartner), für die das Surrogatsprinzip gilt. Teilt man die Argumentation des obersten polnischen Gerichtshofs in dogmatischer Hinsicht, scheint die Ansicht der Doktrin am zutreffendsten zu sein, nach der beim Erwerb eines Gegenstands, der aus verschiedenen Quellen finanziert wird, über die Zurechnung des Vermögensgegenstands zum persönlichen oder gemeinschaftlichen Eigentum ein Vergleich der Werte der für seinen Erwerb aus diesen Vermögenswerten eingesetzten Mittel entscheidet. Bei diesem Ansatz käme dem Kriterium des überwiegenden Teils der Ausgaben dann entscheidende Bedeutung zu.

Schlüsselwörter: eheliche Gütergemeinschaft, Surrogatsprinzip, Zugehörigkeit von Vermögensgegenständen, vermögensrechtliche Abwicklung, gemeinschaftliche Vermögenswerte, getrennte Vermögen

COMMENTAIRES CONCERNANT LA RÉSOLUTION DE LA COUR SUPRÊME DU 19 OCTOBRE 2018, III CZP 45/18

Résumé

L'objet de l'analyse couverte par la résolution votée était de déterminer quels biens comprenaient les biens acquis par les époux par un acte juridique en partie en échange d'actifs menant à l'acquisition d'actifs couverts par la communauté de biens des époux, et en partie en échange d'actifs provenant des biens personnels du conjoint (biens personnels des époux), auxquels s'applique le principe de substitution. Lorsque l'on partage les arguments de la Cour suprême en termes dogmatiques, l'opinion la plus correcte semble être l'opinion de la doctrine selon laquelle, dans le cas de l'acquisition d'un bien provenant de fonds mixtes, la comparaison de la valeur des fonds provenant de ces actifs affectés à l'achat d'un actif décide de classer cet actif

en tant que propriété personnelle ou conjointe – dans cette approche, le critère de la majorité des dépenses serait déterminant.

Mots-clés: communauté de biens des époux, principe de substitution, appartenance des biens, règlements de biens, biens communs, biens propres des époux

OSSERVAZIONI SULLO SFONDO DELLA DELIBERA DELLA CORTE SUPREMA DEL 19 OTTOBRE 2018, III CZP 45/18

Sintesi

Oggetto dell'analisi della delibera promulgata è la determinare in che patrimonio viene inserito un bene acquisito dai coniugi mediante un negozio giuridico, in parte in cambio di elementi patrimoniali che portano all'acquisizione nel patrimonio compreso nella comunione coniugale dei beni, e in parte in cambio di elementi patrimoniali che provengono dal patrimonio personale di un coniuge (dai patrimoni personali dei coniugi) per i quali si applica il principio di surrogazione. Condividendo l'argomentazione della Corte Suprema sotto l'aspetto dogmatico sembra più corretta l'opinione assunta dalla dottrina che considera che in caso di acquisizione di un bene con mezzi misti, per l'assegnazione dell'elemento patrimoniale al patrimonio personale o comune è decisivo il confronto del valore dei mezzi provenienti da questi patrimonio utilizzati per la sua acquisizione: in questo caso sarebbe decisivo il criterio della parte maggiore di spesa.

Parole chiave: comunione coniugale dei beni, principio di surrogazione, appartenenza degli elementi patrimoniali, liquidazioni patrimoniali, patrimonio comune, patrimonio distinto

Cytuj jako:

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