



## PROFESSIONAL (EDUCATIONAL) LEVEL AS AN OBJECT OF PROPERTY RIGHTS OF SPOUSES

Yana NOVOKHATSKA,

Associate Professor, Civil Law Department № 1  
Yaroslav Mudryi National Law University

### Summary

Professional (educational) Level as an Object of Property Rights of Spouses. The perspectives of developing a legal mechanism for considering tangible and intangible investments of spouses in education or professional development of one of them have been considered in the article. In many countries professional level has gone all the way from court practice to the law in its recognition as a subject of spouses' property rights. Currently it is taken into account for the division of marital property. The method of cost recovery of one of the spouses depends on the recognition of professional level (license) as an object of property. Although under the national family law it is premature to consider professional level as property, the mechanism of considering intangible, so-called «human capital» and particularly tangible investments of spouses into its acquisition is crucial today.

**Key words:** spouses, property relations, non-property benefits.

### Аннотация

В статье рассматриваются профессиональный (образовательный) уровень как объект имущественных прав супругов, а также перспективы развития механизма учета материальных и нематериальных вложений супругов в образование либо профессию одного из них. За рубежом профессиональный уровень в своем признании объектом имущественных прав супругов прошел путь от судебной практики до закона. В настоящее время, например, в большинстве штатов США его учитывают при разделе супружеского имущества. Способ возмещения затрат другого из супругов зависит от того, признается профессиональный уровень (лицензия) объектом права собственности в том или ином штате или нет. Хотя в рамках национального семейного права преждевременно рассматривать профессиональный уровень в качестве имущества, механизм учета нематериальных, так называемых за рубежом «human capital», и материальных вложений супругов в его приобретение необходим уже сейчас.

**Ключевые слова:** супруги, имущественные отношения, нематериальные активы.

Professional and other knowledge, skills (personal assets) constitute a person's capital that can be used for a certain period for the production of goods and services. In the modern world professional knowledge along with other intangible assets become the object of civil rights and as a result scientific research of their formalization, evaluation, ability to satisfy creditors' claims (including those that result from marital relations) is required. Thus, in accordance with national civil legislation professional and other knowledge, skills and abilities, as well as business reputation and business contacts are taken into account as a contribution of the participant to the common activities (common property). Under the tax laws, in particular, the management qualities as a component of intangible assets (goodwill) of a company are considered as having a certain value [1, p. 133–156].

The object of the paper is to study the prerequisites of developing a mechanism for considering both tangible and intangible costs born by a person for providing education or professional qualifications to a spouse.

In marriage one of the spouses, promoting career development of the other – getting a degree or professional qualification – provides his/her own, both tangible and intangible resources, including cash, other property, professional and other knowledge, skills. Spouses, investing in the education of one of them, usually rely on the fact that both of them will benefit from such decision. The rational basis of any investment is future income, including investment in education. With the assistance of his/her partner one of the spouses gets education, a license for professional activity, practice or membership in a professional association, which provides him an income, benefits, social security. In the event of divorce tangible and intangible costs to promote a partner will not be compensated, and the interests are not protected. This situation is also a thorny issue for families in which both spouses earn money, because the priority is likely to be given to the career of one of them [2, p. 848–849].

In many countries professional level has gone all the way from court practice to the law in its recognition as a subject

of spouses' property rights. Currently it is taken into account for the division of marital property. The method of cost recovery of one of the spouses depends on the recognition of professional level (license) as an object of property. In some cases, it is recognized as such an object and compensation is granted by awarding property. In other cases, it is not recognized as an object of property and compensation is granted in the form of alimony payments or by providing other spouse with similar opportunities for professional development. Sometimes compliance of parties in terms of property is achieved on the basis of combined approach.

The Family Code of Ukraine of 2002 (hereinafter – FC) introduced a provision, which made account of the fact that one of the spouses had no opportunity for getting education, professional qualifications or relevant position in the marriage, performing duties in the interests of the family at the expense of personal growth (p. 4 Art. 76 FC). Child rearing, housework, caring for family members, illnesses are mentioned among circumstances preventing professional development. Since the list is not exhaustive,



the circumstances also include the performance of family duties in accordance with hereditary contracts, lifelong maintenance. A spouse, who acquired the professional level in part due to the efforts of the other, is obliged to provide allowance over three years since the date of dissolution of marriage. For the first time the law has directly protected the interests of economically dependent party in marriage by providing compensation of its non-material costs. In this case, the right to an allowance is not associated with the ability to work.

Legal research sources suggest diametrically opposed assessments of the norm. Some researchers regard this provision as one of the most progressive provisions of the FC, while others question its appropriateness and timeliness. However, it took on and is applied in practice. Undoubtedly, reforms in Ukrainian family law in this direction should be recognized as positive.

If Ukrainian legislation has chosen the option of compensating investments of one of the spouses in education and other professional development by paying an allowance, obviously, it would be reasonable to consider separate property costs in this case as well. In Ukraine most students pay for their education. In marriage spouses spend substantial sums on training and professional development often overlooking their belonging with common or separate means. Young couples who dissolve their marriage, usually have little property, since a large portion of their income is spent to finance the study of one of the spouses. Therefore, intangible assets of this kind essentially constitute family possessions.

The FC comprises a number of rules which takes into account how the couple invests their common and separate funds, that is, the direction of their use. Depending on this, the legal regime of the acquired property is either determined or changed. Thus, according to p. 7 Art. 57 of the FC, the part of the spouses in the acquired property, which conforms to the amount of personal funds contributed by one of the spouses is his personal private property. In accordance with Art. 62

of the FC, significant investment of one of the spouses or their common investment in the separate property of the other spouse should also be taken into account. In this case, the separate property can be recognized by the court as common property and be subject to the division. Both monetary and labor costs are considered. Significant amount is the key issue in this case. If the costs are not significant, a spouse is entitled to demand compensation.

Thus, the FC prevents receiving benefits as a result of marriage by one spouse at the expense of efforts or property of the other. No additional payments are provided for if their common property is spent or replenished. Whether they invest in the common property or spend it – the source of revenue and the direction of use of common resources is not considered. Regarding the professional level, the main difficulty lies in the fact that as a result of investments of the other spouse, intangible benefits are gained. Although intangible benefits that have terms of value, is nothing new for civil and family law, in this case there is a significant specificity – the professional level is inseparable from the subject (from the personality of one of the spouses). In addition, the very terms “education” and “professional level” are alien to the national legislation.

However, the FC comprises a provision that stipulates compensation of costs born by a person for the development of professional skills and efficiency of his marriage partner (p. 3 art. 57). It is enforced by a court decision granting the right to a part of the premium received by the latter for personal merits. In this case it is, first and foremost, a matter of reimbursement of intangible nature. The provision clearly stipulates that promotion can imply child-rearing and housework, though other activities are not excluded. I would like, however, to emphasize another aspect. This provision refers to investments by certain actions in the intangible benefits, which are also inseparable from the subject – the personality of one of the spouses, and the current family law recognizes the need and the ability to compensate for costs incurred in this case.

Therefore, it seems that consideration of both intangible and tangible costs of one spouse for the acquisition of professional skills by the other spouse is possible. Its inherent inalienability is only relevant for the choice of appropriate methods and mechanisms of their compensation. Which of them would be optimal under the national law – is a separate issue that requires careful examination, taking into consideration accepted concepts and legislation in force. While updating the current legislation, we should take into consideration, that personal assets are not subject to independent, separate from the subject identification, they are not alienated, not transferable, can not be accurately assessed, among other things by virtue of its dynamic character.

In the current family law of Ukraine the protection of the interests of spouses is provided through a variety of means, and first of all through the award of property. Thus, the direction of the use of funds by spouses is considered to determine the procedure of marital property division. If the common assets were used by one spouse to the detriment of the interests of the family, that is, for the purposes which run counter to the family needs, or any other, the court may depart from the principle of equality of the spouses' shares, awarding one of them the major part of the property. In turn, the use of personal property for the benefit of the partner to pay for his/her education, professional development, training, obtaining a license for private practice is the expenditure of property, of course, in the interests of the family. In the course of property division it is also reasonable to consider this direction of the use of property belonging to one of the spouses by the right of personal private property, as distinct from the natural right established by the legal regime.

Therefore the problem of recovery of expenses of one of the spouses for the acquisition of similar intangible assets by the other spouse seemingly can be resolved by awarding the latter the major part in the division of marital property introducing into practice of p. 2, Art. 70 of the FC. These expenses, undoubtedly, belong to the category



of circumstances that are essential for solving a dispute between spouses, along with other circumstances directly listed in the provision. Therefore, they should be considered as a sufficient basis for an increase in the amount of property awarded to a spouse. Taking into account such investments from personal funds does not contradict the legal regime of community and presumption of community of the marital property. Ignoring them, by contrast, violates the principle of equality of spouses in marriage. There are precedents for solving common marital property disputes and other property disputes not directly related to them in the Family legislation. Thus, the method of awarding property by increasing the share of one of the spouses solves the problem of insufficient alimony payment if children were to live with that spouse (p. 3 Art. 70 of the FC).

It can be quite difficult to determine the value of personal assets (educational, professional level) and choose adequate assessment methods. Correct assessment guarantees a fair amount of recovery to the spouse who contributed to their acquisition. So far no conventional method has been developed in this sphere. Some experts offer their compensation schemes, but they are not universal. Courts evaluate the professional level, considering expenses born for its achievement, income received and the potential wage.

In foreign legal literature there are different opinions – both in favor and against recognition of educational and professional levels (license) as a type of marital property. Some authors emphasize that these objects are acquired by spouses during the marriage, like real and personal property, requiring considerable material costs. Sometimes, a family spends the major part of its income on education and professional development. If under these circumstances the professional level is not included in the property to be divided, the principle of equality will be defied in favor of one of the spouses. Other researchers, refusing to recognize the professional level as marital property, suggest other arguments: marriage is not a commercial

project involving a settlement on its completion.

Professional level can not be considered property in the traditional sense, as it is a personal achievement of an individual. The award of fixed amounts for assistance in its acquisition may adversely affect the decision-making of a spouse in the course of his/her professional activities.

The national family law cannot avoid such discussions either. Nevertheless, the tendency to recognize career of one of the spouses is a product of marriage partnership is increasing over the years. There is legislative experience, allowing the possibility of establishing a treaty regime of professional level (license). Furthermore, if investments in education or practical training of one of the spouses were significant and substantially improved his/her ability to earn money, and the divorce took place immediately or shortly after, the professional level is considered as unreasonable gains. Educational and professional levels (license) are not taken into account when marital property is divided and recovery of expenses of the other spouse is not provided only if the parties remained married after their acquisition for a long time (at least 10 years). The so-called presumption of “benefit sharing” is applied in this case.

It is assumed that the other spouse has already received a beneficial effect from the partner’s career and enjoyed all the benefits from it during their life together. In court practice, this rule has been called the “double-recovery argument”.

Although under the national family law it is premature to consider professional level as property, the mechanism of considering intangible, so-called «human capital» and particularly tangible investments of spouses into its acquisition is crucial today.

#### List of reference links:

1. Willoughby S.E. Professional Licenses as Marital Property: Responses to Some of O’Brien’s Unanswered Questions / S.E. Willoughby // *Cornell Law Review*. – 1987. – Vol. 73. – P. 133–156.

2. Klebanoff S. To Love and Obey Till Graduation Day – the Professional Degree in Light of the Uniform Marital Property Act / S. Klebanoff // *American University Law Review*. – 1985. – Spring. – P. 848–849.