



## The Role of Family Contracts in the Regulation of Family Relations and Their Juridical Nature

Khurshida Khodjiakbarovna Saydivalieva

Head of Department, Doctor of Philosophy (PhD) in Law, Research Institute “Family and Women” under the State  
Committee of Family and Women of the Republic of Uzbekistan

E-mail: akbarova1982@inbox.ru

<http://dx.doi.org/10.47814/ijssrr.v5i12.863>

---

### **Abstract**

The article focus on the implemented state policy on strengthening the institution of the family, the specifics of family relations, as well as the role and importance of the contract in their regulation. In particular, the difference of family relations from civil legal relations is considered and the mechanisms for regulating family relations are analyzed. The author studied the practice of concluding a family legal contract and provided an analysis of the sections of the regions. Problems have also been identified with the development of the family legal contract as an independent institution in family law. The family code considers the classification of family legal contracts and their regulation of property and personal non–property relations, the types of contracts used in practice, although not specified in the legislation. In the family legislation of foreign countries, the types and importance of family legal contracts are studied. A definition of a family legal contract is given, indicating its different aspects from a civil legal contract.

**Keywords:** *Family Relations; Law; Obligation; Mutual Trust; Property Relations; Personal Non–Property Relations; Regulation; Contract; Law; Norm; Family Members; Subject; Object; Family Law; Civil Law*

### **Introduction**

The state policy aimed at strengthening the family institution in our country is aimed at ensuring its well–being and strengthening the health of the social and spiritual environment in the family. In particular, on March 7 of this year, President Sh. Mirziyoyev signed the Decree No. PD–87 “On measures to further accelerate the work on systematic support of families and women”, and in this document, in 2022–2026, women the National Program for increasing the activity of girls in all aspects of the economic, political and social life of the country and the comprehensive plan of measures aimed at its implementation were adopted. Through it, improving the legal foundations of strengthening the family institution, conducting fundamental, practical and innovative research on family issues, stimulating

demographic development and increasing the level of family well-being, strengthening the educational and educational potential of the family, preserving family values in society, improving the spiritual and moral environment in families, giving families more than twenty measures aimed at creating an effective system of effective methodical, consultative and practical assistance were determined. Among these measures, it is important to improve family legislation, especially today, in the process of globalization, social relations are changing under the influence of internal and external factors, and the mechanisms of family-legal regulation are changed and enriched accordingly.

In the regulation of family relations, family law provides an opportunity to use the contractual method of regulation of family relations. To date, the family-legal contract allows family members to determine aspects that cannot be regulated by law, the rights and obligations of the parties, and it is considered a unique mechanism for regulating family relations.

Among the scientists, it can be seen that there is still a scientific debate about the fact that family law is not a separate branch or branch, the uniqueness of the relations regulated by it, and regarding the contracts concluded between family members as civil legal contracts, in addition, the contract is a civil legal instrument of family legal regulation. It is also justified by a number of researchers that family law is an independent branch and has a regulatory methodology.

## ***The Main Part***

In our opinion, family-legal relations have several specific characteristics, and these characteristics distinguish them from other legal relations. In particular, it is continuous in nature, it occurs on the basis of legal facts such as marriage, birth, adoption, family relations are built on the basis of subject structure, trust.

The personal nature of family relations and their priority over property relations, the fact that property relations can also acquire a personal character, is reflected in the limitation of representation and the disallowance of legal succession.

The closeness of morality and law in the regulation of family legal relations makes all family legal relations, including those created on the basis of a contract, the content of family relations the rights and obligations regarding marriage, family, patronage and guardianship.

Here, civil legal relations differ from family relations. These differences are characterized by the fact that civil legal relations are constituted by any rights and obligations not prohibited by law, and civil legal relations are relations between legally equal, property-related entities that are organizationally determined.

Due to the fact that the private method of regulating family relations has been made possible to be widely used, the dispositive provisions and the right of subjects of family legal relations to regulate their family relations through various contracts have been expanded, and the improvement of family law in this regard indicates.

F.M. Otakhojaev defines the family as a legal relationship in the legal sense, that the legal nature of family relations regulates their relations with legal norms, influences the behavior of family members with the mandatory rules of the state, and helps to develop the family on the basis desired by society states that family law has a dispositive and imperative character.

The commonality between civil law and family law is that civil law regulates property and personal non-property relations related to it, is based on equality, property freedom and freedom of participants.

In the theory of legislation and family law, there are some factors that prevent the development of contractual legal regulation of family relations.

In particular, it should be mentioned that the theory of family contract has not been developed in the systematization of family legal contracts and the doctrine of family law. The issue of family legal obligations and family legal liability due to their non-fulfillment has also not been resolved.

As O.N. Nizamieva noted, the family law does not contain the principles of contractual regulation of family-legal contracts that apply to all, the rules for concluding, canceling, and changing family-legal contracts. The provisions of the civil law on securing obligations or changing the terms of the contract cannot always be applied to the family-legal contract.

A family contract allows family members to determine aspects that cannot be regulated by law, the rights and obligations of the parties, and is considered a unique mechanism for regulating family relations. Family contracts differ from civil contracts in terms of their subject scope, form, principles of contract conclusion and execution, and responsibility.

Family contracts can be concluded only by family members themselves, that is, in this regard, it can be observed that the number of contract subjects and the possibility of choosing other persons as parties to the contract are limited.

In the Family Code of the Republic of Uzbekistan, contracts that can be concluded by family members in the contractual legal regulation of family relations are divided into two large groups:

The first group contracts are aimed at regulating property relations. These are division of common property of husband and wife (Article 27), marriage contract (Article 29), agreement on creation of common property by parents and minor children (Article 92), agreement on payment of alimony (Articles 100, 118, chapter 17).

The second group includes agreements that regulate personal property relations: giving a child a name, patronymic by agreement of the parents (Articles 69, 208), determining where the children live when the parents live separately, according to the agreement of the parents (Article 75), agreement on the procedure for the exercise of parental rights of parents living separately from the child (Article 76), agreement on bringing up children into the family (Article 195).

Today, there are other types of contracts and agreements that are not included in this list. For example, in practice, the contract of surrogate motherhood is drawn up, there is a debate on this matter in theory and practice can be mentioned. Also, the analysis of family law shows that the legal expert calls some of the family-law contracts “agreement” and some “agreement”. It is necessary to justify this designation based on the legal nature of the contracts.

If we look at the practical analysis, in 2020, a total of 1,004 marriage contracts were signed in the Republic, while the number of marriage contracts signed in 2021 increased by 2.7 times and reached 2,749. Overall, although the number of concluded marriage contracts has increased, it is still very low compared to the total number of concluded marriages.

In particular, marriage contracts concluded in 2020 correspond to 0.3% of total marriages (296,751), and in 2021 to 0.9% of total marriages (305,211). Taking into account the regions, the largest number of marriage contracts in 2021 correspond to Tashkent city (991), Namangan (711), Fergana (326)

regions, while the lowest figures are Bukhara (11), Syrdarya (11), Navoi (12), Khorezm (19) regions, recorded in the Republic of Karakalpakstan (12). The lowest growth rates compared to 2020 were observed in Bukhara, Syrdarya (no increase in both regions), Navoi regions, Republic of Karakalpakstan (increased by only 4 in both regions). Alimony agreements are also rarely concluded in practice.

In 2021, a total of 77 such agreements were formalized in Uzbekistan, in the Navoi and Kashkadarya regions, no alimony agreement was signed at all, and in the Khorezm and Samarkand regions, only 1 alimony agreement was signed. Here, it is observed that citizens use less the mechanism of regulating their family rights and obligations through the contract.

Studying the family law of foreign countries shows that in these countries, family–legal contracts provide an opportunity to regulate both property and personal non–property relations between husband and wife. In particular, according to the German Federal Law of February 16, 2001 “On registered civil partnership”, “marriage and family relationships that must be registered can be derived from a contract. It is regulated by norms 1409–1563 of the German Civil Code. In 1955, the court precedent adopted by the London High Court also states: “an agreement may be made jointly by husband and wife regarding their care and communication with the children, including the naming of the child and any other matter”, it is noted.

In order to analyze the concept of a family contract more deeply, we found it necessary to distinguish its different aspects from a civil contract. A family contract has the following specific features:

- It is distinguished by the purpose and direction of the contract. If the civil legal contract binds the mutual obligations of two strangers through a certain agreement, the family contract aims to prevent disputes that may arise when relationships based on mutual trust are undermined between related persons and to protect the relations between family members from deterioration. At this point, lawyers emphasize that rather than the regulatory function of the family contract, it is preventive in nature. The goals of a family contract cannot be the goals of a civil contract, such as raising a child, supporting a family member in need of help, fair distribution of property, and exercising the right to raise a child in a family.
- According to the interests of the subjects of the contract. Since the parties to a civil contract are often owners, entrepreneurs, the subjects of this contract enter into a contract with the aim of obtaining more commercial and entrepreneurial benefits. The subjects of the family contract aim to settle family disputes on the basis of agreement and to have equal rights and obligations, partly to regulate personal property relations.
- One of the main principles of a civil contract is its formation based on the will of the parties. The parties may enter into agreements of their own free will based on economic benefit, which are not defined by the law, but within the framework of its general instructions. In family contracts, the principle of freedom is not of primary importance and the freedom of contract is limited. In the family law contract, the family law has chosen the party itself. The range of subjects of a family–legal contract is limited, that is, citizens who are family members who have mutual family rights and obligations can conclude a family contract. Regulation of personal property relations should be carried out only within the framework defined by the Family Code. Contractual legal regulation of family relations should be carried out in the interests of minor family members, family members in need of help, disabled family members, from the point of view of principles of humanity and justice. Limitation of the freedom to conclude a contract, the interests of the subjects of public law in the regulation of family relations, the limitation of defining the terms of the contract, the absence of the possibility of concluding contracts not provided for in the family legislation can be pointed out.

The family legal contract is considered as the basis for creating family obligations. In family law, contracts are not considered an independent basis for creating family relationships, they can only change and cancel existing family relationships. It also does not appear as an independent legal fact.

O.N. Nizamieva defines the contractual legal regulation of family relations as a type of individual legal regulation of determining the model of behavior required by family members on the basis of the law and concluding contracts and agreements in the field of family property relations outside its borders.

In the contractual legal regulation of family relations, several branches of the field of law reflected in the contract may be taken into account. Contractual legal regulation of family relations shows the aspects of family law related to other areas of law.

It is worth noting separately that the provisions of civil law on contracts universally and generally apply to family legal contracts, but analysis shows that this institution should be regulated separately.

Judging by the specific features of the family law, the contract is not considered an independent legal fact in family law, it can change or terminate the existing family relationship or coordinate the rights and obligations of family members. In family law, the freedom to enter into a contract is very limited, and the freedom is manifested only in terms of concluding or not entering into a contractual relationship or not entering into a contractual relationship. The terms of the family contract do not deviate from the framework defined by the family law. Not all family contracts create family-law obligations.

### **Conclusion**

In conclusion, it should be said that the development of the institution of family-legal contracts, a deeper analysis of their legal nature, their classification and study, the contracts concluded by family members in practice, and their desire to conclude a contract, and studying their knowledge in this regard, remain relevant.

### **References**

- Александров И.Ф. (2004) Правовое регулирование семейных отношений: соотношение семейного и гражданского права. Автореф...дис. канд. юр. наук. (Legal regulation of family relations: the ratio of family and civil law, Abstract...dis. candidate of legal sciences), Самара.
- Абдуллаев Ж. (2022) Суррогат оналик шартномаси нима? (What is a surrogate maternity contract?) // *Хуқуқ ва бурч*.
- Гаврилов А.М. (2011) Договорное регулирование семейных отношений как сфера взаимодействия семейного права с иными правовыми отраслями. (Contractual regulation of family relations as a sphere of interaction of family law with other legal branches) "Actual problems of economics and law". 168-171 б.
- Елисеева Г.В. (2014) Правовые основы регулирования семейных отношений в РФ // (Legal bases of regulation of family relations in the Russian Federation) *Bulletin of the Siberian Institute of Business and Information Technologies*. № 3 (11).
- Кокова Д.А. (2017) Содержание семейных правоотношений. (The content of family legal relations) *Дисс.канд.юр.наук*. Москва.

- Корецкий А.Д. (2001) Теоретико–правовые основы изучения о договоре (Theoretical and legal foundations of the doctrine of the contract).
- Вихарев А.А. (2020) О классификации договоров (соглашений) в семейном праве России (On the classification of contracts (agreements) in the family law of Russia) // “Правопорядок: история, теория, практика”: №2 (25). – с. 113–120.
- Кудрявцева Л.В., Мосная Е.И. (2021) Проблема соотношения гражданского и семейного права (The problem of the correlation of civil and family law) // Аграрное и земельное право. №3 (195).
- Кравченко Е.П. (2015) Правовое регулирование договорных отношений в семейном праве. (Legal regulation of contractual relations in family law) // Актуальные проблемы юриспруденции в России и зарубежом // Сборник научных трудов по итогам международной научно–практической конференции. (Actual problems of jurisprudence in Russia and abroad // Collection of scientific papers on the results of the international scientific and practical conference), Новосибирск. – с. 80–82.
- Муканова М.Ж. (2009) Договор как способ регулирования семейных отношений. (Contract as a way of regulating family relations). Retrieved from [www.rusnauka.com/5\\_nitsb\\_2009/pravo/41395.doc](http://www.rusnauka.com/5_nitsb_2009/pravo/41395.doc).
- Муканова М.Ж., Арутюнян Е. (2009) Договоры и соглашения в семейном праве. (Contracts and agreements in family law), Вестник КапГУ.
- Некрасова Е.В. (2018) Договорное регулирование семейных отношений: проблемы субъектного состава. (Contractual regulation of family relations: problems of the subject composition) // Вестник Саратовской государственной юридической академии, № 1 (120).
- Низамиева О.Н. (2011) К вопросу о перспективах развития договорного регулирования семейных отношений. (To the question of the prospects for the development of contractual regulation of family relations) // Ученые записки Казанского университета. – с. 100–106.
- Низамиева О.Н. (2005) Договорное регулирование имущественных отношений в семье. (Contractual regulation of property relations in the family), Казан: Изд–во “Таглитмат”, Института экономики, управления и права.
- Лушников А.М., Лушникова М.В., Тарусина Н.Н. (2008) Договоры в сфере семьи, труда и социального обеспечения (цивилистическое исследование). Учебное пособие. (Contracts in the sphere of family, labor and social security (civil research). Study guide, Ярославль. – с. 35–40.
- Отахўжаев Ф.М. (2000) Ўзбекистон Республикаси никоҳ тўғрисидаги қонунларининг ривожланиши ва уларни такомиллаштириш муаммолари. (Problems of development and improvement of marriage laws of the Republic of Uzbekistan), дисс.ю.ф.доктори. Тошкент. 136–137–б.
- Чашкова С.Ю. (2004) Система договорных обязательств в российском семейном праве. (The system of contractual obligations in Russian family law), Автореф... канд.юр.наук.
- Ўзбекистон Республикаси Президентининг 2022 йил 7 мартдаги “Оила ва хотин–қизларни тизимли қўллаб–қувватлашга доир ишларни янада жадаллаштириш чора–тадбирлари тўғрисида” ги ПФ–87–сон фармони (Decree of the president of the Republic of Uzbekistan dated March 1, 2022 No. 146 PD “On the organization of the activities of the state committee for family and women).



Ўзбекистон Республикаси нотариал палатаси маълумотлари асосида. 2022–йил. 2/1–334–сонли хат.

<https://www.gesetze-im-internet.de/lpartg/BJNR026610001.html>.

### Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).