

The economic regime of marriage in Cuba and the status of the cooperative partner spouse

El régimen económico del matrimonio en Cuba y la condición del cónyuge de socio cooperativo



O regime econômico do casamento em Cuba e o estatuto do cónyuge de sócio cooperativo

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ABSTRACT

Cooperatives are one of the most common associative forms in humanity. An essential and constitutive compound of cooperatives is the personal element: the members. On the other hand, family life is basic in the human condition. The economic regime of marriage is the institution that from the Family Law organizes the economic relations of the spouses among themselves and of these with third parties. Taking into account that a person can hold the status of cooperative partner and be subject to a marital economic regime for possessing the marital status of married; important questions arise related to goods. This material is intended to argue the implications of the status of a person's cooperative partner in the economic regime of marriage in Cuba. This is based on the theoretical and normative analysis of the cooperative partner categories and economic regime of marriage in the Cuban legal system and then the relevant connections are established. In the analysis the materialistic dialectic was used as the guiding method. In addition, theoretical methods such as legal doctrinal and analysis-synthesis and empirical methods such as document analysis were used. In general, it is evident that the contributions of the members to the cooperatives can be at the expense of their own or common flow; while the benefits obtained from the cooperative generally benefit the community of property and the whole family.

Keywords: cooperatives; economic regime of marriage; cooperative partners

RESUMEN

Las cooperativas son una de las formas asociativas que más se han difundido en la humanidad. Un compuesto esencial y constitutivo de las cooperativas es el elemento personal: los socios. Por otra parte, la vida en familia es básica en la condición humana. El régimen económico del matrimonio es la institución que desde el Derecho de Familia organiza las relaciones económicas de los esposos entre sí y de estos, con terceros. Teniendo en cuenta que una persona puede ostentar la condición de socio cooperativo y estar sujeto a un régimen económico matrimonial, por poseer el estado civil de casado, surgen importantes interrogantes vinculadas a los bienes. El presente material se dirige a argumentar las implicaciones de la condición de socio cooperativo de una persona, en el régimen económico del matrimonio en Cuba. Para ello, se parte del análisis teórico y normativo de las categorías socio cooperativo y régimen económico del matrimonio en el ordenamiento jurídico cubano y luego se establecen las conexiones pertinentes. En el análisis, se utilizó como método rector el dialéctico-materialista. Además, se emplearon métodos teóricos como el jurídico-doctrinal y el de análisis-síntesis y métodos empíricos como el análisis de documentos. De forma general, se evidencia que las contribuciones de los socios a las cooperativas pueden ser a costa del caudal propio o común, mientras que los beneficios, que se obtienen de la cooperativa, generalmente favorecen a la comunidad matrimonial de bienes y a la familia toda.

Palabras clave: cooperativas; régimen económico del matrimonio; socios cooperativos

RESUMO

As cooperativas são uma das formas de associação mais difundidas na humanidade. Um elemento essencial e constituinte das cooperativas é o elemento pessoal: os sócios. Por outro lado, a vida familiar é básica para a condição humana. O regime econômico do casamento é a instituição que, a partir do Direito de Família, organiza as relações econômicas dos cônjuges entre si e destes, com terceiros. Tendo em conta que uma pessoa pode ter o estatuto de sócio cooperativo e estar sujeita a um regime econômico matrimonial porque tem o estatuto matrimonial de uma pessoa casada, surgem questões importantes em matéria de bens. O presente material visa discutir as implicações da condição de uma pessoa como sócio cooperativo no regime econômico do casamento em Cuba. Começa com uma análise teórica e normativa do sócio cooperativo e regime econômico do casamento no sistema jurídico cubano e depois estabelece as conexões relevantes. Na análise, o método dialéctico-materialista foi utilizado como método orientador. Além disso, foram utilizados métodos teóricos como os métodos legal-doctrinal e de análise-síntese, bem como métodos empíricos como a análise documental. Em geral, é evidente que as contribuições dos sócios às cooperativas podem ser à custa da sua própria riqueza ou da riqueza comum, enquanto os benefícios, que são obtidos da cooperativa, geralmente favorecem a comunidade conjugal de bens e toda a família.

Palavras-chave: cooperativas; regime econômico do casamento; sócios cooperativos

INTRODUCTION

From the earliest times of mankind, there were tasks that man alone could not accomplish. To that limitation, he found the alternative of partnering to meet natural needs and achieve new goals that exceeded his particular possibilities. It can be affirmed then that "the associative phenomenon to undertake projects superior to the individual capacity is genetic condition of the human being" (Fernández Peiso, 2007, p. 308). Seen in this way, sociability cannot be separated from the nature of man.

The cooperatives are, of the associative forms, some of the ones that have been exhibited for a long time. Their first manifestations are located in the simple cooperative work that was developed in the primitive community. Today, the social trend has borne fruit and, as a result, millions of people in the world are grouped together in cooperative societies dedicated to various economic activities.

The cooperatives operate under principles that give them their own identity and constitute a different and unmistakable model of association of people who join voluntarily. This leads to the determination that, in this corporate form, the work or service in common, in solidarity and responsibility of the members is the means to achieve their ends, which consist of solving their own economic and social needs and those of the community in which they develop (Fernández Peiso, 2007).

In defining what is meant by a cooperative, Cruz and Piñeiro (2011) state that "it is a group or association of people who have voluntarily joined together to satisfy common economic, social and/or cultural needs and aspirations through a jointly owned, democratically controlled, autonomous and open enterprise" (pp. 25-26). On the other hand, Fernandez (2007), when carrying out a dialectical-materialistic analysis of the Leninist vision on the essence and content of the cooperative institution, summarizes a series of propositions in which the fourth one establishes: its existence, in the socialist society, means the personal integration to the collective, making converge the individual and the direct social interests.

So an essential and constituent element of cooperatives is the personal element: the members. Those subjects, before acquiring that quality, are common people who are part of the society, a family or a marriage; so both qualities coexist in them.

In the matrimonial sphere, once the marriage is formalized, a series of bonds arise between the spouses that start from the affective and become of the most varied natures. The union of the couple is so intimate and strong that it radiates from their person to their goods and, derived from personal matters, important financial consequences arise.

"When referring to the property effects of the marital bond, we must address the category of economic regime, by which is to be understood that set of rules whose purpose is to confer a special regime on the property interests of the spouses, both in their relations with each other and in their relations with third parties" (Molina, 2015, p. 527).

It is the institution that, from the point of view of family law, organizes the economic life of this group and "the most important patrimonial effect of marriage" (Quinzá Redondo, 2016, p. 99). It follows that one of the purposes of the financial marriage regime is to establish rules that facilitate the administration by the spouses of the assets that are contributed to the community of life by one or both of them, whether they were acquired before or during the marriage (Fajardo Montoya, 2016).

In Cuba, the marital economic regime corresponds to a community of property that is partially acquired for a fee and is unique, legal and obligatory. This means that, in the Cuban marriage, three estates coexist: the own one of each of the spouses and a common one formed by the mass of goods of the marital community.

The community property is the most important and indispensable financial resource that the family has to meet its needs. The set of goods that make up the community of property will constitute, on the one hand, the support for all the expenses and obligations that derive from life in common and, on the other hand, the patrimonial guarantee of third parties in the relations with the spouses.

Taking into account that a person can be a cooperative partner and be subject to a marital economic regime because of his marital status, important questions arise concerning the assets. Are the profits, advances and other remunerations that the member obtains in the cooperative of an own or common nature? Do the contributions made by the member to the cooperative have to belong to the private and personal property or can they be from the marital community of goods? Does one spouse need the consent of the other to operate the family estate in favor of the cooperative? What benefits does the spouse and the family in general obtain from the cooperative association of one of its members? etc.

Having admitted these questions, the present material is aimed at arguing the implications of a person's status as a social worker in the economic regime of marriage in Cuba. To this end, it starts with a theoretical and normative analysis of the categories of social and economic marriage in the Cuban legal system and then establishes the relevant connections between both institutions.

MATERIALS AND METHODS

In order to fulfill the proposed objective, the dialectical-materialistic method was used as a guide for all the analyses carried out, in accordance with the philosophical vision of the phenomena and the surrounding world that one has. Taking into account that the studies carried out are developed in the field of Law, the juridical-doctrinal method was used as a theoretical method, which was useful for the purposes of defining and explaining in all its magnitude and complexity the categories: cooperative partners and economic regime of marriage. This method made it possible to generalize the diversity of information and criteria consulted in order to shape the main theoretical foundations of the figures addressed and their integration in the research. In addition, the method of analysis-synthesis was used, which was useful to connect the condition of cooperative partner and the economic regime of marriage. As an empirical method, we resorted to

the analysis of documents, which allowed us to support the revision of different materials that returned authentic and reliable information of the studied categories.

RESULTS AND DISCUSSION

Cooperatives and cooperative partners, their manifestation in Cuba

The sector of doctrine, which has been devoted to the study of cooperatives, has not been homogenous in relation to its conceptualization. Nevertheless, many recognize the existence of two key elements: the social element, delimited by the group of people who share certain needs that they need to satisfy, and the economic element, defined by the enterprise through which those needs are to be channeled (Mendoza Pérez et al., 2018).

For the purposes of this study, the concept of Rodríguez Musa (2017) is used, which clearly brings together the two elements mentioned above. In this regard, the aforementioned author states:

"(...)cooperatives are, first of all, entities made up of groups of people with a common objective, which will be fulfilled on the basis of their own efforts and mutual help, giving rise to an associative space, particularly conducive to promoting their own ethics" (p. 39).

The cooperative movement is organized and operates under a set of principles that are based on universal values of cooperation and responsibility. The first cooperative principles were created in contemporary times with the Rochdale cooperative. These served as a model for the classic principles to be regulated by the International Cooperative Alliance in 1937. Years later, at the International Cooperative Alliance's Assembly in Manchester on 23 September 1995, the principles in force today were approved (Mendoza Pérez et al., 2018).

Of the seven internationally recognized cooperative principles, those that are most useful for the purposes of the analysis are taken up again. This does not mean that we do not know that all of them could have at least an indirect involvement in the subject under analysis:

Voluntary and open association

This principle underlines the importance that membership of cooperatives, whether by choice or not, is what will lead members to make a cooperative commitment. It cannot be a forced process, but there must be an awareness of the values for which they exist and the economic advantages that they promote, and from there, to assume the decision. In addition to being voluntary, membership of the cooperative is open. In the cooperative, the principle of open doors shows the humanist essence of the phenomenon.

In relation to this principle, the members have duties towards their cooperatives, which essentially include the exercise of the mechanisms of collective management and control over the enterprise and the contribution of capital where appropriate. These duties require special consideration because they could result in important benefits for the members, their families and for the functioning of the association.

Economic participation of the associates

This element defends the idea that the cooperative should be considered as a sui generis enterprise. In this organization, capital is placed at its service, but it does not dominate it. The profits resulting from its activities are allocated to common purposes or distributed among the members, in proportion to their operations with the entity and not in proportion to the capital paid in.

Concern for the community

Cooperatives, like any other socio-economic actor, have a responsibility to ensure that the economic, social, cultural and environmental development of their communities is sustainable. This responsibility is inherent to them by the very fact that their interests coincide with those of the community. By using the resources of a given community where it is located, its activity directly influences the socio-economic development of the area. The contribution to the community is not a task that the members can ignore. This principle is an exaltation of the public or general interest, as opposed to individual interests that oppose it.

As stated above, there is no doubt about the role of the member within the cooperative. In relation to the capital, the members are those who make their contribution with the intention of providing the society with the material resources necessary for the realization of its object. Membership is acquired through the necessary subscription of the mandatory contribution to the share capital.

"The economic participation of the members shows that, by being part of a cooperative, the people, together with their willingness to associate, also put at the service of the organization those resources that it needs to function or, at least, to do it better" (Campos Pérez, 2018, p. 175).

Cooperatives in Cuba can be divided into two large groups: agro livestock and non-agro livestock. This is how their regulatory framework manifests itself. On the one hand, Decree Law 365 of 2018 "On agro livestock cooperatives" with its respective regulations, Decree 354 of the same year and, on the other hand, Decree Law 366 "On non-agro livestock cooperatives" with its regulations, Decree 356, both of 2018 as well.

In all cases, the role of the member in the cooperative is highlighted; thus, article 2, paragraph 3, of Decree Law 365 states that agro livestock cooperative "are constituted on the basis of the contribution of goods and work of their members. On the other hand, article 2.1 of Decree Law 366 states that cooperatives "are constituted voluntarily on the basis of the contribution of goods and rights and are supported by the work of their members".

In the case of agro livestock cooperatives, Decree Law 365 recognizes eleven guiding principles (article 8). Although all of them may have a more or less evident relationship with the object of analysis, it is worth pointing out the most involved ones: voluntariness (free disposition of natural persons to join and remain in agricultural cooperatives); economic self-sustainability (agro livestock cooperative must cover their expenses with their income and obtain profits for their development and the welfare of their members); and welfare of the members and their families (the work of agro livestock cooperatives aimed at achieving the rational satisfaction of the material, social, educational, cultural, and spiritual needs of the members and their families)

Decree Law 366 establishes eight guiding principles (article 6) for non-agro livestock cooperatives. For the purposes of this study, the following are the most involved: voluntariness; autonomy and economic sustainability (the cooperative is economically independent, disposing of its patrimony within legal limits, covering all obligations with its income; paying the corresponding taxes; creating funds and reserves and generating profits to be distributed among its members in proportion to their contribution to the work) and social responsibility (contributing to the planned development of the economy and the well-being of the members and their families. Members work to meet their material, training, social, cultural, moral and spiritual needs, as well as those of their families and the community).

Agro livestock cooperative in Cuba, in turn, can be of three types: Basic Units of Cooperative Production (UBPC), Agro livestock Production Cooperatives (CPA) and Credit and Trade Cooperatives (CCS). They are basically distinguished by the contributions they make at the time of joining the cooperative and the ownership of the means of production.

The Basic Unit of Cooperative Production is made up of individuals who join voluntarily and contribute their work or the goods they own (Article 5 Decree Law 365). In this case, they have a real right of usufruct over the land. For UBPC members, the powers of possession, use, enjoyment and disposition do not operate strictly. They only have the right to demand that the obligations inherent to the position and the specific activity they carry out be fulfilled and the duty to do so. They are similar to other salaried workers, from whom they are distinguished by having elective rights (Fernández Peiso, 2016).

The Agro livestock Production Cooperative is made up of small farmers who voluntarily contribute their land or other property to the cooperative's assets. In addition, other individuals may join the cooperative who, once their probationary period has ended, are admitted by the cooperative's General Assembly (Article 6, Decree Law 365). In these, the members are only owners of their labor force (Fernández Peiso, 2016).

Credit and Service Cooperatives are formed by the voluntary incorporation of small farmers who retain ownership or usufruct of their land and other assets and of the production they obtain. In addition, there are the relatives of the referred farmers who are linked to the land (article 7.1 Decree Law 365).

Non-agro livestock cooperative are made up of individuals who wish to join voluntarily, making monetary contributions or using the means of production from the State's assets that they decide to manage as a cooperative).

To constitute a cooperative it is not enough with the altruistic intention of joining, efforts are needed to satisfy common needs or solve common problems. It is also required that the members manage this objective through the organization and operation of their own economic enterprise, which is in a position to compete, coexist or replace the other enterprises, depending on the economic-political environment that surrounds it. Being the members of the cooperative, the co-owners of the cooperative enterprise become fully responsible for the management, the sharing of the benefits and the assumption of the risks corresponding to it; this implies the identification of the workers with the common enterprise and the consequent incentive for productivity.

Economic status of marriage in Cuba

Cuba is one of the countries in Latin America that has legislative autonomy in the area of family law, as it has a separate Civil Code that has been in force since 1975. The Cuban Family Code of 1975 authorizes a single economic regime for marriage, which it calls community of property; in the words of Mesa Castillo (2010, p. 29) "identical to that of the community of property". The provisions regarding the economic matrimonial regime are found in the aforementioned legal body, in articles 29 to 42, referring to the nature of the goods, the charges, obligations and administration of the community of property, as well as the dissolution and liquidation of the same.

The marital community, as our economic regime, is constituted from the moment the non-formalized marital union is declared to have been judicially initiated or the marriage is formalized before a notary public or civil status registrar. The economic matrimonial regime in Cuba corresponds to a partial or limited marital community; that is why not all the goods acquired before, during or after the marriage are considered common goods. To this end, Articles 30 and 32 of the Family Code define what is to be considered common property and what is to be considered personal property. As is logical, the former are susceptible to division when the community is liquidated. The regulation of the nature of the assets is enriched by the correct conception of the principle of the presumption of community (article 31).

According to article 30.1 of the Family Code, income received by one or both spouses from work or social security shall be considered common. These are the so-called common goods by nature.

"Work is understood as any activity aimed at obtaining an economic return, generally in money; although it does not always have to be in money, and so if the work activity is paid partly in money and partly in kind, both will be gainful" (Serrano Alonso et al., 1991, pp. 67-70).

Within the products of work, are included then the salaries, wages, fees, remunerations, prizes, retirements, pensions, compensations, among others derived from the physical or intellectual activity deployed.

Article 30.2 of the Cuban Family Code recognizes the principle of real subrogation, together with the onerous essence of community property. Therefore, burdensome acquisitions made during the marriage, at the expense of the common wealth, whether for one of the spouses or for the community, are considered common. Acquisition may be by sale, exchange or replacement.

Finally, article 30.3 states that the fruits, income or interest received or accrued during the marriage are communal. It does not matter in this case whether they come from own or common property.

The family rule leaves to judicial interpretation any decision on the nature of the property for personal use, which is exclusive to each spouse. The absence of greater precision in this regard makes the solution of the disputes more complex when the goods involved are own, in accordance with Article 32.5 and have been acquired with the common wealth. The doctrine coincides in considering as property for the exclusive personal use of each spouse the clothes and instruments necessary for the exercise of a profession or trade. According to comparative family law, if these goods are of extraordinary value, they are considered common and if not, they are owned (Mesa Castillo, 2010).

The regulations on the economic regime for marriage in Cuban family law are significantly consistent with the gender equality advocated in article 43 of the Constitution and ratified in articles 1 and 2 of the Family Code, hence the provisions on the administration and disposal of property. The administration of the community is entrusted to both spouses without distinction, and either of them may perform acts of this nature and acquire property whose nature or purpose is conducive to the normal development of the family (article 35). Acts of ownership, inasmuch as they involve more extensive powers, require the consent of both the wife and the husband; neither spouse alone may perform acts of ownership in relation to community property without the prior authorization of the other (article 36).

With respect to disposition businesses, Cuban family law omits the due distinction between domesticated acts for free and those for consideration, a classification that influences the determination of their legal effects. In comparative family law, in relation to the economic regime of marriage, the execution of free Dominican acts by one spouse, without the consent of the other, generates the nullity of the act. On the other hand, if they are onerous, they can be annulled (Mesa Castillo, 2010). In the Cuban case and in accordance with its unitary regulation, any type of dispositive act, performed by one spouse without the consent of the other on a common good, is considered null and void.

In addition, article 29 of the Family Code, in relation to article 38, provides that community property ends with the extinction of the marriage and that common property shall be divided in half between the spouses or between the survivor and the heirs in the event of the death of one of the spouses. In the event that the marriage bond is terminated by annulment, the spouse, who acted in bad faith, shall have no share in the community property.

The liquidation of the community can be done by mutual agreement or by court ruling. In the latter case, it is optional for the court acting to provide that certain domestic assets, necessary for the education and development of the children, be awarded to the

spouse who will have custody and care of the children, which has similar effects to the institution of family property.

The legal nature of the economic regime of marriage in Cuba in terms of its origin and effects

In the Cuban case, we are dealing with an economic regime for marriage, which is legal and obligatory since the law does not give any margin to the spouses to act on this matter. Nor is there any obstacle in considering that this is a partial or limited community of onerous acquisitions (Mesa Castillo, 2010).

Also in accordance with the provisions of the doctrine and regulations of our Family Code, under this economic regime, a separate and distinct estate is created from that of the spouses themselves; but over which they have a full right without possible material or ideal division into quotas. This thesis has been ratified by Opinion 9 of 18 December 2008 of the Directorate of Notaries Public and Civil Registries of the Ministry of Justice of Cuba, which conceived the marital community of property as:

"the system of organization of the economic regime of marriage, in which a common mass is formed with all the assets of the spouses, whose income is affected by the expenses of the family and which, upon the extinction of the marriage, is distributed among the former spouses or their heirs".

It is then a Germanic community, without quotas or in common hand (*eigentum zur gesammte hand*).

As for the ownership of the goods and rights that form the common patrimony, it corresponds to both spouses and it is in their name that all the acts that involve them will be carried out. This common patrimony is separated from the private patrimony of each member of the couple and gives rise to a right over each individual property and over the entire estate as a whole. For this reason, the marital community of property is not considered to have independent legal personality; it is not possible to bind oneself or act in the name of the marital community but in the name of each spouse or of both. No property is to be registered in the name of the community because it is not a legal person and, therefore, cannot be recognized as having attributes specific to persons.

Principles informing the economic regime of marriage in Cuba

In general, the principles are regulated in Cuban family law, so their theoretical study is reinforced with the appropriate regulatory support. Although their analysis is carried out independently, this is only for teaching purposes, since they must be conceived as interconnected and intertwined. These principles are then systematized with the corresponding regulation in the Cuban Family Code.

- **Presumption of community:** this principle can be considered as a starting point for determining the nature of the spouses' assets. It contains a *iuris tantum* presumption in favor of the common nature of the goods, so that whoever claims the contrary is obliged to prove it. It is endorsed by article 31 of the Family Code.

- Hardship: it derives from the consideration of the marital community of goods as a community of onerous acquisitions and has certain limits related to the moment in which the acquisition was made and the origin of the money with which it was done. It implies that onerous acquisitions made during the marriage, as well as the fruits and income obtained, are integrated into the community. It is regulated by articles 30.2 and 3 of the Family Code.
- Persistence of the character of the assets: it guarantees stability and security to the character of the assets on which the marriage is based and during its validity. The character of the property is maintained for the duration of the bond. It follows from the definitions in articles 30 and 32 of the Family Code.
- Real subrogation: it tends to preserve the integrity and state of a heritage, after the continuous acts of disposition in relation to it. It includes subrogation by employment, when the acquisition is made through the purchase of the property, and automatic subrogation that takes place when the acquisition is the result of the exchange or swap of one property for another. The purchase, replacement or exchange of an item causes the new item to be entered with the same nature as the replaced or exchanged item or the money used in the transaction. Referred to in articles 30.2 and 32.2 and 3 of the Family Code.
- Right to reimbursement: distinguishes between what must be borne by the common estate and what must be assumed by one's own estate. This is set out in Articles 32.2, 33, 34 and 39 of the Family Code.
- Equality of administration and disposition: an expression of the equality between men and women achieved in the Cuban revolutionary process and protected by Cuban laws, specifically the Constitution of the Republic and the Family Code. This principle advocates the same rights for men and women in the marital community. It is supported by articles 35 and 36 of the Family Code, the first and second articles of the Constitution and articles 42 to 44 of the Constitution.

The cooperative partner in Cuba and the economic status of marriage

As mentioned above, there are several types of cooperatives in Cuba, which may or may not be agricultural. Regardless of the form they take, in all cases the incorporation of the member into the cooperative is expected to be by means of monetary contributions, goods or even his own work. This is one way of participating in the economy of the cooperative.

"The members of a cooperative participate economically in two ways: first, by contributing to the patrimony of the cooperative and then by benefiting from the economic management developed by the cooperative. The contribution is the contribution of a certain patrimonial benefit that the member must fulfill to form the social capital of the cooperative and to acquire its condition of such" (Campos Perez, 2018, p. 185).

With regard to contributions, in cases where the persons making the contribution are not legally married, there are no useful questions for the purposes of this study. The goods, whose ownership is held by the member, are at his free disposal and he may or may not incorporate them into the cooperative, exercising over them all the faculties recognized by the right of ownership. Namely: use, enjoyment, possession and disposal, according to Article 129 of the Cuban Civil Code.

Even in the case of a person who is united in a formalized marriage, if his or her contributions are made at the cost of his or her own wealth, no intervention by the other spouse is required. It has already been said that, within the marriage, three estates coexist: those of each spouse and the common estate, and it is only in the latter case that mutual intervention by the couple is required.

In the case of the Agricultural Production Cooperatives, the original contributions of land and agricultural goods by the peasants are materialized through a purchase-sale operation by means of three modes of payment: total, deferred or lifetime pension (Fernández Peiso, 2016). Similarly, if the peasant is not subject to the economic regime of a marriage, no useful analysis is sustained for this study. Otherwise, the principle of real subrogation of property that governs the economic regime of marriage in Cuba would operate. The money obtained from the sale of the land and other agricultural goods contributed to the marriage retains the same character of own or common property as the goods it replaced.

In the case of non-agricultural cooperatives, if there are married state members who contribute goods that belong to the common patrimony, they must present the deed of authorization of the other spouse. This is deduced if we take into account that we are dealing with a dispositive act and a case that falls under the regulations of article 36 of the Family Code. If the assets being contributed are real estate or motor vehicles, the title deed and certification of their registration in the corresponding registry is also required (Pérez Díaz, 2018).

The contributions relating to intangible property deserve special mention. Mendoza (2018) reflects on this:

"Let us think that a self-employed person has been granted the registration of a trademark at the Industrial Property Office (OCPI) and decides to join others who, in the same way, carry out the same activity to establish themselves as a cooperative. This one already has a preponderant position in the market and a wide portfolio of clients. Will he be able to contribute to the social capital, in addition to his work, of course, his brand to identify the activity that the cooperative will carry out? Intangible industrial property assets are currently where both technology and advertising of great importance to the market have been developed, providing legal certainty to the business activity it carries out".

Cuban legislation is not explicit about the possibility of these contributions. However, since there is no express prohibition on this matter, they are perfectly admissible under the Romantic maxim that "where the law does not distinguish, it is not possible to distinguish".

Nor do the provisions of the Family Code help to clarify the nature of the contributions made to cooperatives and associated with intellectual property. It was a mistake on the part of the Cuban legislator to forget to include among the assets belonging to each of the spouses, the assets and property rights relating to intellectual property that are inherent to its owner. The doctrine considers that the products obtained from such

creations, during the validity of the marriage, should be included among the common goods, as long as they are considered as fruits (Mesa Castillo, 2010).

As for the economic retribution, the cooperative partners participate in the benefits through the advance, the return or profits and the social funds. "The first two constitute personal benefits, since they are configured in the interest of the individual in particular, but not in the third of the ways that is configured as a form of collective benefit" (Campos Pérez, 2018, p. 186).

With regard to those assets received by the members because of their affiliation to the cooperative: the category of advance or profit is not expressly mentioned in Article 30 of the Family Code; but their character as common assets is unquestionable under paragraph 1 of that precept. According to the concept of work offered above, these assets are the result of the work carried out by the member in the cooperative. They may be assumed as "consideration" for the work contributed. "The member receives for his work a so-called advance -and perhaps profit- which is objectively a salary" (Fernández Peiso, 2016, p. 163).

Also resulting from the employment relationship with the cooperative are the incentives or economic aid received by the members or other benefits agreed upon by the General Assembly, according to Article 56(i) and (n) of Decree 354/2018. These will therefore also be common property, in accordance with article 30.1 of the Family Code, and therefore at the service of the whole family.

As for the liquidation of the community property, if the marriage bond is dissolved, in the case of land and other agricultural property, a complex situation is generated for the liquidation. Neither the notary nor the court, let alone the spouses themselves, can decide how to carry out the corresponding liquidation. In this regard, Opinion 440 of the Governing Council of the People's Supreme Court of 19 February 2014 established that, when there are rural properties or agricultural assets proposed to be liquidated through judicial channels, the courts will hear the opinion of the Ministry of Agriculture through its territorial delegations, within a period of five days, by sending a communication and a copy of the complaint submitted. Only the territorial delegate of agriculture may, by means of a reasoned decision, authorize the division of the land, thereby creating two independent estates if so authorized. This is only exceptional and in the interests of society, and must be duly justified, as article 6 of Decree Law No. 125/91 is interpreted broadly in this case. Otherwise, the marital community of property would be extinguished, because the bond would have been dissolved, constituting, since it could not be liquidated, a co-ownership by quotas (McCormack Bécquer, 2007).

Generally speaking, it is clear that members' contributions to cooperatives may be at the expense of their own or the common wealth. In the first case, without the consent of the non-member spouse, and in the second case, his or her authorization is required because it is an act of ownership. In contrast, the benefits obtained from the cooperative generally favor the marital community of goods and the whole family. Their character as common goods, as they are considered to be the result of the work of the members, puts them at the service of the entire family group. Even the very essence and principles that govern cooperatives imply that the social object of these is aimed at satisfying the needs and interests of the members and their families. This is why the benefits obtained

are not only of a monetary or material nature, but also extend to education, culture, spirituality, etc.

The study carried out makes it possible to clarify the position that a spouse should assume when he or she wants to make contributions to a cooperative in which he or she is or intends to become a member, taking into account the nature of the assets he or she wishes to dispose of. This makes it possible to illustrate the need or not for the authorization of the other spouse for such an act. Likewise, it clarifies the nature of the profits, advances, remunerations and other benefits obtained by the partner spouse, derived from his or her activity as a cooperative member. The common nature of these assets brings them into the marital community and places them at the service of the family needs, which are liquidable at the time of the dissolution of the bond.

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Conflict of interest:

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The authors have participated in the writing of the paper and the analysis of the documents.



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