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The Concept and Historical Development of the Institution of Shared Ownership

Abstract

The institution of shared ownership holds a significant place in civil law, as it enables the distribution of property rights among multiple individuals within a legal framework. Issues related to the maintenance and preservation of property among the participants of shared ownership are also of great importance. Each owner is obliged to contribute to the protection and upkeep of the property, ensuring that their actions do not infringe upon the rights of other co-owners. The institution of shared ownership plays a crucial role, particularly in matters concerning the division, use, and protection of property held jointly by multiple individuals. It establishes the legal foundations necessary for the proper regulation of ownership relations and the prevention of disputes. Therefore, studying the origin and development of the institution of shared ownership is of vital importance for understanding property law.

Keywords: Ownership, Common Ownership, Shared Ownership, Joint Ownership, Communio, Condominium, Gesamteigentum

Paylı Mülkiyet Kurumunun Kavramı ve Tarihsel Gelişimi

Öz

Paylı mülkiyet kurumu, medeni hukukta önemli bir yer tutmakta olup, mülkiyet haklarının birden fazla kişi arasında hukuki bir çerçevede paylaşılmasına imkân tanımaktadır. Paylı mülkiyet ilişkisine dâhil olan katılımcılar arasında, ortak mülkiyete konu malın korunması ve muhafazasıyla ilgili hususlar da büyük önem taşımaktadır. Her bir malik, diğer maliklerin haklarını ihlal etmeden, ortak malın korunması ve bakımına katkıda bulunmakla yükümlüdür. Paylı mülkiyet kurumu, özellikle birden fazla kişi tarafından ortaklaşa sahip olunan malların bölünmesi, kullanımı ve korunmasıyla ilgili meselelerde temel bir rol oynamaktadır. Bu kurum, mülkiyet ilişkilerinin doğru biçimde düzenlenmesi ve uyuşmazlıkların önlenmesi için gerekli hukuki temelleri oluşturmaktadır. Bu nedenle, paylı mülkiyet kurumunun kökeni ve gelişiminin incelenmesi, mülkiyet hukukunun anlaşılması açısından büyük önem arz etmektedir.

Anahtar Kelimeler: Mülkiyet, Ortak Mülkiyet, Paylı Mülkiyet, Elbirliği Mülkiyeti, Communio, Condominium, Gesamteigentum

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Introduction

Common shared ownership refers to a situation in which a property is jointly owned by multiple individuals. Shared ownership ensures that several persons have rights over the same property. While each owner has the right to use and manage their respective share, the management of the property must be carried out in accordance with common rules. This type of ownership allows for the protection of the rights of its participants while also ensuring that the rights of other parties are taken into account and properly regulated. The legal regulation of this institution helps prevent legal disputes among property owners.

The Concept of Common Shared Ownership

Before examining the concept of common shared ownership, it is necessary to analyze the category of “ownership.” According to Article 152.1 of the *Civil Code of the Republic of Azerbaijan* (2024), ownership rights are defined as an absolute right recognized and protected by the state, allowing the subject to possess, use, and dispose of property (objects) as they see fit.

The key aspect here is the well-known triad that defines ownership rights through the powers of possession, use, and disposal. According to widely accepted views in legal literature, this triad originates from Roman private law. Indeed, sources of Roman law indicate that an owner is entitled to the following powers: *jus possidendi* (the right of possession), *jus utendi* (the right of use), *jus abutendi* (the right of disposal), *jus fruendi* (the right to derive benefits and income from use), and *jus vindicandi* (the right to demand the return of an object from someone who has actual possession of it) (Minkina, 2004). Thus, in its essence, ownership rights constitute the most comprehensive type of property rights, allowing the owner to determine the manner and direction of the use of their property and exercise full economic control over it (Firssova, 2010). It is well known that common ownership does not exist as a distinct form or type of ownership rights. Rather than being a separate category of ownership, common ownership is a legal structure that allows multiple individuals to jointly own the same property under ownership rights. It does not create a specific proprietary right; instead, it represents a complexity in ownership, meaning that the right belongs to multiple persons simultaneously. According to Article 213.1 of the *Civil Code of the Republic of Azerbaijan* (2024), an object owned by two or more persons belongs to them under common ownership rights. This provision highlights the most significant characteristic of common ownership: the property belongs to multiple persons at the same time. That is, it exists as a single object (or a set of objects) owned by two or more individuals. This model of ownership rights is justifiably

referred to as having a “complex structure” (Gonchiknimaeva, 2006). The nature of common ownership and the scope of ownership rights are similar to ordinary subjective ownership rights. The only difference is that, instead of a single owner, there are multiple owners. Therefore, the widely accepted doctrine holds that, unlike state, municipal, or private ownership, common ownership is not an independent form or type of ownership. Rather, it is simply a legal structure where multiple individuals hold ownership rights over the same property (Kozlov, 2008). Common ownership can arise from various legal grounds, including inheritance, marriage, the establishment of family (or farming) enterprises, privatization, joint acquisition of property, collective construction of residential buildings, the combination or mixing of objects, and other similar circumstances.

Based on the nature of the relationships between co-owners, common ownership is generally classified into two types: shared ownership (where each co-owner has a defined share) and joint ownership (where shares are not explicitly determined) (Sukhanov, 1991). The *Civil Code of the Republic of Azerbaijan* (2024) follows a similar classification. According to Article 213.2, property under ownership rights may be held in common ownership either with defined shares (shared ownership) or without defined shares (joint ownership).

Common shared ownership is characterized by the fact that ownership rights over a specific property belong jointly to multiple individuals in proportion to their shares. In other words, each participant in common ownership holds a specific share in the ownership rights over the property. However, the property itself is not physically divided. This approach fully aligns with the essence of common shared ownership, as multiple individuals are considered owners of the same property. If a specific property (such as a building or a plot of land) were physically divided, each participant would own a separate object, eliminating the concept of common ownership altogether (Sukhanov, 1991). In shared ownership, each co-owner holds a proportional share in every part of the property. In other words, what is divided in shared ownership is not the property itself but the ownership rights over it. If the property were physically divided among the co-owners in proportion to their shares, each person would own a distinct portion as an individual owner. In such a case, the concept of “shared ownership” would no longer apply, and it would instead be classified as full ownership, meaning individual ownership rather than common ownership (Süleymanlı, 2014). Like common shared ownership, common joint ownership also implies the collective possession of property by multiple individuals. In this case, the property belongs to several persons at the same time; however, their shares are not specifically determined. In other words, participants in joint

ownership have equal rights over the common property, but none of them holds a defined share of it. The key legal characteristic of joint ownership is the absence of shares. Shares are only determined when the common property is divided, meaning when joint ownership is terminated. Therefore, in joint ownership, only “real” shares can be discussed, while “ideal” shares do not exist. As long as joint ownership remains in effect, all co-owners possess completely equal rights over the entire property. This means that ownership rights are not divided into shares; instead, the property is fully owned simultaneously by multiple persons as a whole.

The Historical Development of the Common Shared Ownership Institution

The Emergence of Common Shared Ownership Rights

As is well known, early families expanded over time, eventually forming tribes. Many scholars recognize the tribal way of life as an early form of human society. Naturally, family interests required not only the pooling of efforts but also the joint use of property. In the initial stages of early civil life, land—considered the primary form of property—was not owned by individuals but was regarded as a collective resource of the entire community, much like air and sunlight.

The close ties among family or kinship members strengthened lineage bonds, which in turn led to the emergence of communal or tribal ownership, along with the right to joint use and management of such property. Many historians emphasize that the earliest forms of ownership were collective. For instance, V. V. Momotov asserts that “collective consciousness and pagan worldview did not consider it possible for land to belong to any individual.” Other scholars also do not doubt the existence of collective ownership in ancient times. A. V. Benediktov argues that “collective ownership directly expresses the inseparable rights of all members of the kinship-community within their unity.”

However, in our view, common ownership rights were not yet fully recognized as a legislatively defined institution at this stage. The earliest legal monuments—such as the *Laws of Hammurabi* and the *Arthashastra*—only broadly reflect the initial emergence of this institution. Although these legal texts do not explicitly define the concept and characteristics of common ownership, they do contain rules regarding the division of common property and the allocation of shares. This suggests the existence of early forms of legal regulation of common shared ownership. These observations highlight the initial phase of the legal regulation of common ownership in the ancient legal traditions of different peoples.

Based on the above, we can conclude that the development and formation of the common ownership rights institution were significantly influenced by ancient tribal unions,

communities, and families. It must be acknowledged that the tribal structure of communal life was initially based on the concept of collective tribal ownership (Gonchiknimaeva, 2006).

Common Shared Ownership in Roman Law

Common ownership (*communio*) in Roman law referred to a situation where the same property was owned simultaneously by two or more persons. The earliest form of common ownership was the joint ownership of undivided inherited property by heirs after the death of the *paterfamilias* (head of the family). This form of ownership was known as *consortium ercto non cito* (Gaius 3.154a). Under this system, each co-owner was considered the full owner of the entire property and could act on behalf of the group. However, their rights were limited by the veto power (*ius prohibendi*) of other co-owners. If a co-owner wished to terminate the joint ownership, they could demand the division of property through a special legal action (*actio familiae erciscundae*). This type of co-ownership was abolished in the early classical period.

In Roman legal terminology, co-owners were referred to as *socius* (meaning “partner”) or *dominus* (meaning “owner”). There were two main ways in which shared ownership could arise:

**Communio incidens* – accidental common ownership that occurred without the will of the owners, such as through inheritance.

**Communio cum societate* – voluntary common ownership, which resulted from an agreement between the parties, resembling a partnership (*societas*).

When multiple individuals simultaneously owned the same property, Roman jurists described it as *rem communem esse* (“the thing is jointly owned”). Although the term *communio* was widely used, the word *condominium*, in a technical and absolute sense, did not belong to the classical period (Keser, 2005). In the classical period, the term *communio pro parte indiviso* (D. 45.3.5 Ulpianus: “Ut intellegatur magis partim quam corpore”) corresponds to the modern concept of common ownership. During this period, the veto right (*ius prohibendi*), which allowed one co-owner to object to an action carried out by another co-owner, was recognized (Özcan, 2013). Generally, common ownership in Roman law is considered equivalent to the *dominium* concept. Therefore, just like in *dominium* cases, joint ownership is also regarded as an absolute real right over property, providing the owner with exclusive rights to dispose of and use the property. Additionally, this joint ownership was protected in the sense that co-owners could exercise their absolute rights without third parties being able to deprive them of their right to use it. However, since there were multiple co-owners, the rights of other co-owners within the condominium had to be safeguarded. To this end, they were granted the *ius prohibendi* right,

which allowed them to prevent actions that could potentially harm the interests of other co-owners (Van Warmelo, 1957). Increasing commercial activity and business partnerships led to the development of a new form of co-ownership known as *communio pro indiviso*, which was later referred to as *condominium* by medieval jurists. This type of common ownership could arise through joint purchase, inheritance, or testamentary disposition. Each co-owner held a specific share of the common ownership and had the right to use it, derive income from it, or transfer their share, but these shares did not necessarily have to be equal among co-owners.

This form of ownership was not affected by the death of a co-owner; their heirs would simply take their place. All revenues and expenses had to be divided among the co-owners proportionally to their shares. Each co-owner had the right to demand a partition of the property. Any agreement among co-owners to never divide the property was considered invalid.

To initiate the division of joint property, a co-owner could file a specific legal claim:

*If the co-ownership arose through purchase or testamentary disposition, the appropriate claim was *actio communi dividundo*.

*If it resulted from inheritance, the applicable claim was *actio familiae erciscundae*.

These legal actions empowered the judge to allocate all or part of the common ownership to one or more co-owners. Additionally, they were used to resolve other disputes arising from joint ownership, such as the proportional allocation of expenses, compensation claims, and other financial matters (Domingo, 2017).

Co-ownership in Islamic Law

In Islamic law, property rights are classified based on different criteria. From the perspective of subject matter, ownership is divided into three categories: *ayn* (tangible property), *manfa'a* (usufruct), and *dayn* (debt ownership) (Camalov, 2019).

**Ayn* ownership refers to having full ownership of a physical object, which includes the right to use and benefit from that property.

**Manfa'a* ownership pertains to the right to use another person's property without owning it. This type of ownership arises through contracts such as lease (*ijarah*), loan (*ariyah*), endowment (*waqf*), and bequest (*wasiyyah*).

**Dayn* ownership refers to the right to claim debts from others under Islamic law.

On the other hand, in Islamic law, property rights are categorized based on the extent of authority they grant to the owner. Ownership is classified into complete (*kamil*) ownership and incomplete (*naqis*) ownership.

*Complete ownership (*kamil milk*) occurs when a person possesses both the *ayn* (tangible property) and the *manfa'a* (usufruct) of an asset.

*Incomplete ownership (*naqis milk*) occurs when a person owns only the tangible property (*ayn*) or only the usufruct (*manfa'a*) of an asset.

Finally, based on the number of owners, property rights in Islamic law are divided into individual ownership (*mülk-i müstakil*) and co-ownership (*shirkah al-milk*) (Çevik, 2021).

*Individual ownership means that an asset belongs exclusively to one person.

*Co-ownership (*shirkah al-milk*) refers to property owned jointly by multiple individuals.

In Islamic legal literature, the term *shirkah al-milk* describes co-ownership that arises through:

Contracts such as sale (*bay'*), gift (*hibah*), inheritance (*miras*), bequest (*wasiyyah*), donation (*sadaqah*), or war spoils (*ghanimah*).

-The physical mixture (*ikhtilat*) or fusion (*imtizaj*) of two or more assets, making separation impossible (Çelen, 2010).

In this type of ownership, a person holding a specific share of a property—such as 1/3, 1/4, or 1/5—has ownership rights over the entire property in proportion to their share. Therefore, none of the co-owners can unilaterally claim ownership over a specific physical portion of the property based solely on their share. In Islamic legal terminology, the individual fractional shares in jointly owned property are called *musha*, while the undivided whole of the property subject to joint ownership is referred to as *hissa-i shayi'a*.

Islamic jurists have categorized common ownership from different perspectives. Based on whether the jointly owned property pertains to a tangible asset (*ayn*) or a financial obligation (*dayn*), joint ownership is divided into two types:

-*Shirkah al-'Ayn* – common ownership of a specific and physically existing asset by two or more persons.

-*Shirkah al-Dayn* – common ownership of a debt obligation owed by a third party to two or more creditors (Çevik, 2021).

Furthermore, depending on whether the co-owners' consent or actions played a role in its formation, common ownership is classified into two types:

-*Shirkah Ikhtiyariyyah* – A form of voluntary co-ownership that arises due to the intentional agreement or actions of co-owners, such as when two people jointly purchase a property or form a partnership.

-*Shirkah Jabriyyah* – A form of involuntary co-ownership, which occurs due to external circumstances beyond the control of the co-owners. This includes situations where:

*Multiple properties owned by different individuals become indistinguishably mixed.

*A property passes to multiple heirs through inheritance.

In general, common ownership in Islamic law can arise either from mutual agreement (contract) or as a result of circumstances beyond the parties' control. For example:

*Two individuals purchasing property together or forming a business partnership represents voluntary common ownership.

*The mixing of separate properties in a way that makes them inseparable results in involuntary common ownership (Kisbet, 2022).

Joint Ownership Rights in German Law

In legal scholarship, shared ownership is recognized as an institution originating from Roman law, whereas joint ownership is considered a feature of German law (Gonchiknimaeva, 2006; Şengöz, 2018). The origins of joint ownership in German law are closely linked to inheritance and family law. Historically, the earliest form of joint ownership in German law resembled the Roman legal concept of “consortium”, which applied when an inheritance passed undivided to the deceased's heirs. In such cases, a legal relationship was established between the heir assuming the deceased's role as family head and the other co-heirs. This was similar to what is now known as family property co-ownership. Throughout history, joint ownership has manifested in various forms. One notable example from the Middle Ages was the legal relationship known as “Erbverbrüderung”, under which noble families agreed not to dispose of their land independently. Another significant form of joint ownership existed between feudal lords and vassals. Over time, joint ownership became a distinguishing and essential element in marital property regimes, collective ownership, and limited partnerships (*Kommanditgesellschaft*). During the Middle Ages and early modern period, Roman legal principles were widely applied in German territories under the concept of “*Gemeines Recht*” (Common Law). This reception of Roman law influenced the interpretation of local legal institutions that created joint ownership relationships. As a result, joint ownership was not explicitly regulated in the German Civil Code (*BGB*) through a unified set of general rules. Instead, due to the strong influence of Roman legal scholars (Romanists), the *BGB* scattered provisions on joint ownership principles across different legal institutions, rather than codifying them under a single legal framework (Korkmaz, 2021). As noted, the Roman law concept of shared ownership (*communio pro indiviso*) is not the only possible model of co-ownership. In

German law, a distinct form of joint ownership has been developed with the following characteristics:

- Co-owners do not have predefined ideal shares in the property.
- Management is carried out either by law or by a representative authorized by a majority vote of the co-owners.
- Partition claims are either completely prohibited or allowed only under specific conditions. This type of joint ownership is known as *Gesamteigentum* (Gonchiknimaeva, 2006).

Joint Ownership Rights under the Legislation of the Republic of Azerbaijan

During the short-lived Azerbaijan Democratic Republic (ADR), proclaimed on May 28, 1918, significant legislative activities were undertaken in various fields of law. However, due to the challenging political and social conditions, it was not possible to adopt a Constitution or a Civil Code within the 23-month lifespan of the republic. On April 28, 1920, Bolshevik Russia occupied Azerbaijan, overthrowing the democratic republic and establishing the Azerbaijan Soviet Socialist Republic (Azerbaijan SSR). One of the first measures taken by the Azerbaijan SSR Revolutionary Committee, the de facto supreme legislative and executive authority, was the abolition of private ownership of land. A decree issued on May 5, 1920, ordered the confiscation of land and property owned by landlords, khans, beys, as well as religious institutions such as mosques, churches, and monasteries, and transferred them to the working people. As a result, the people of Azerbaijan lost their freedoms, their property was seized, private ownership was abolished, and all wealth was nationalized. In general, the early Soviet civil legislation in Azerbaijan was consistent with Lenin's ideology, which proclaimed: "We do not recognize any private property; for us, nothing in the economy is private—everything is public." On June 16, 1923, during the second convocation, third session of the Azerbaijani SSR Central Executive Committee (*MIK*), the first Civil Code of the Azerbaijan SSR was adopted and came into force on the date of its announcement. Subsequently, on September 8, 1923, the Civil Code was published in the "*Bakinskiy Raboçiy*" journal (Khalilov, 2022). According to Article 52 of the Civil Code of the Azerbaijan SSR of 1923, property was classified into state property (nationalized and municipalized), cooperative property, and private property. Articles 61–65 of the Code regulated issues related to common ownership. According to the Code, ownership rights could belong to two or more persons jointly in shares (common ownership). The possession, use, and disposal of common property had to be carried out with the unanimous consent of all participants; in case of disagreement, decisions were made by a majority vote. Each participant in common ownership was required to contribute to all payments and taxes

related to the common property, as well as to cover expenses for its management and maintenance, in proportion to their share. If any participant wished to sell their share to an external party, the other owners had the preemptive right to acquire that share, except in cases where the sale was conducted through a public auction. Every owner had the right to demand the division of their share from the common property, provided that such a division did not contradict the law or any existing agreements. If an agreement on the method of division could not be reached, the property would be divided in kind by court decision, provided that such division did not impair its economic purpose. Otherwise, the withdrawing owner would receive monetary compensation equivalent to their share. As can be seen, the Civil Code of the Azerbaijan SSR of 1923 did not distinguish between the types of common ownership, such as shared and joint ownership, a distinction that later appeared in the Civil Code of 1964 (Civil Code of the Azerbaijan SSR (1923), Civil Code of the Azerbaijan SSR (1964), 2013). On September 11, 1964, the Supreme Soviet of the Azerbaijan SSR adopted the republic's second Civil Code, which came into force on March 1, 1965. According to Article 88 of the 1964 Civil Code of the Azerbaijan SSR, property was classified into socialist and personal property. Socialist property included state (national) property, kolkhoz-cooperative property, and property of trade unions and other public organizations. The basis of citizens' personal property was their labor-derived income, and personal property was considered a means of meeting individuals' needs.

With the adoption of the new Civil Code in 1964, not only were common shared and joint ownership distinguished, but also several new provisions regarding common ownership were introduced. Article 111 stated that property could belong under common ownership to two or more kolkhozes, cooperatives, or other public organizations, or to the state and one or more kolkhozes, cooperatives, or other public organizations, or to two or more citizens. There were two types of common ownership: one with known shares (shared ownership) and another without defined shares (joint ownership).

A characteristic feature of the 1964 Civil Code, compared to the previous code, was the emergence of clearer regulations that more thoroughly defined the rights and responsibilities of common property owners. The law determined the implementation of ownership rights both concerning the common property and the individual shares of co-owners. Chapter 11 of the Code (Articles 111–126) was entirely dedicated to common ownership.

In common ownership with known shares, possession, use, and disposal of the property were carried out with the unanimous consent of all owners. In cases of disagreement, disputes

were resolved by the court upon the claim of any participant in shared ownership. In cases of inter-kolkhoz, state-kolkhoz, or other state-cooperative ownership, management of the property, including possession, use, and disposal, was conducted in accordance with the charter (statute) of the respective organizations.

Each participant in common ownership with known shares had the right to receive income proportional to their share in the common property and was responsible for obligations related to the common property towards third parties. Additionally, each participant was required to contribute to the costs of maintaining and managing the common property.

Article 113 of the Civil Code granted each participant in common ownership with known shares the right of first refusal to purchase the share of the property held in common. When the share in common ownership was sold to an outside party, the remaining participants in the common ownership had the right to purchase the share at the same price and under the same conditions, except in cases where the share was sold through an open auction. If the right of first refusal was violated when the share was sold, the remaining participants in common ownership could file a claim in court, demanding that the right to purchase and the related obligations be transferred to them.

Each participant in common ownership with known shares had the right to demand the separation of their share from the common property. If no agreement was reached on the method of separation, the property could be divided in a manner that did not harm its intended use, based on the claim of any participant. If this was not possible, the participant separating their share would receive a monetary compensation equivalent to their share. The rights of the state, citizens, kolkhozes, or other cooperative or public organizations regarding common ownership with known shares would be terminated within one year of the right's establishment in the following ways:

- If division was possible, the property would be divided equally;
- If the state, kolkhoz, or other cooperative or public organization purchased the shares of citizens;
- If the shares of the state, kolkhoz, or other cooperative or public organization were sold to citizens;
- If the entire property was sold, the proceeds would be divided among all participants in common ownership according to their shares. The method of termination was determined in agreement with the relevant state authority, kolkhoz, or other cooperative or public organization. If no agreement could be reached, the matter was decided by the court (Civil Code

of the Azerbaijan SSR (1923), Civil Code of the Azerbaijan SSR (1964), 2013). On December 28, 1999, the Civil Code of the independent Republic of Azerbaijan was adopted, and it came into effect on September 1, 2000. The provisions related to the subjects of property rights in the Civil Code were aligned with the requirements of Article 13 of the Constitution of the Republic of Azerbaijan (property can be of state ownership, private ownership, or municipal ownership). The 10th chapter of the Code, covering Articles 213–225, is titled “Common Ownership” and contains provisions based on both Roman and German legal norms related to common property. Unlike previous versions, the new Code is more comprehensive and provides detailed rules regarding the concept of common ownership, its formation principles, the costs of maintaining property in joint ownership, the right of first refusal in purchases, the common property between spouses, as well as the determination of shares in joint ownership, possession, use, and disposal of property in joint ownership, division of jointly owned property, and the termination of rights in common ownership, among other aspects.

According to Article 213 of the Code, property belonging to two or more persons is subject to common ownership rights. The property can be in common ownership either with the shares of the owners being defined (shared ownership) or without such shares being defined (joint ownership). Common ownership of property is, in principle, partitioned ownership unless otherwise specified in the legislation. Common ownership arises when undivisible property (indivisible property) or property that is not to be divided under the provisions of the Code is owned by two or more persons. The common ownership of divisible property arises under conditions specified in the Code or in contracts (Civil Code of the Republic of Azerbaijan, 2024). With the agreement of the participants in common ownership, or in the absence of an agreement, based on a court decision, the shares of these individuals in the common property can be determined. Each owner in common ownership has the right to assert claims against third parties regarding the common property. Each owner in common ownership can only claim the property for the benefit of all co-owners. The property in common ownership can be pledged or otherwise encumbered for the benefit of one of the co-owners with the agreement of the other co-owners. The costs of maintaining and servicing the property in common ownership, unless otherwise specified in the Code or the agreement, are equally shared among the owners.

Article 214 of the Code outlines the procedure for determining shares in partitioned common ownership. If the shares of the co-owners in shared ownership cannot be determined based on the Civil Code and have not been agreed upon by all the owners, the shares are considered equal. With the agreement of all co-owners, the procedure for determining and

modifying their shares can be established based on the contributions each owner made to the creation and increase of the common property. If a co-owner has made improvements to the common property at their own expense, and those improvements cannot be separated from the property, they have the right to have their share in the common property increased accordingly. Unless otherwise agreed upon by the co-owners, improvements made to the common property that are separable from the property belong to the owner who made them.

Ownership and use of property in shared ownership are carried out based on the agreement of all co-owners. If no agreement is reached, the procedure is determined by the court. A co-owner has the right to possess and use the portion of the common property corresponding to their share, and if this is not possible, they can demand compensation from other co-owners who are using the property for the portion they are entitled to. Co-owners in shared ownership can agree on the terms of possession and use of the common property. However, they cannot waive or limit the right of each co-owner to demand actions necessary to preserve the value and usability of their portion of the property. If such actions are not taken, they can request the court to enforce these actions. Additionally, co-owners have the authority to independently take urgent measures to prevent potential harm to the property or any damage that could occur due to the property's condition, at the expense of all shared owners.

Each co-owner has the right to possess, use, and dispose of the property in a manner consistent with the rights of the other co-owners. However, alienating, encumbering, or changing the purpose of the property requires the unanimous agreement of all participants unless they have agreed otherwise in a separate arrangement. If there are mortgages or encumbrances on the shares of the property, the co-owners cannot encumber the property with those rights. The disposal of the property in shared ownership can only be done with the agreement of all co-owners. A co-owner can sell, donate, bequeath, pledge, or take any other action regarding their share. In shared ownership, if there is no separate agreement among the co-owners, any benefits, products, or income derived from the use of the property are considered part of the common ownership and are distributed among the co-owners in proportion to their shares.

Article 218 of the Civil Code grants the participants in shared ownership a right of first refusal. When a share in common ownership is being sold to a third party, the remaining co-owners have the right to purchase the share at the same price and under the same terms, except in cases of public auction. The seller must notify the remaining co-owners in writing about their intent to sell the share, including the price and terms of the sale. If the co-owners of the shared

ownership refuse to purchase the share or do not act within 45 days from the notification regarding real property or within 15 days for movable property, the seller may sell the share to anyone. If the right of first refusal is violated, any co-owner has the right to petition the court within three months for the transfer of the buyer's rights and obligations.

Shared property may be divided according to the agreement between co-owners. A co-owner has the right to request the separation of their share from the common ownership. If the co-owners cannot agree on the method and terms of the division of the property or the separation of the share, the co-owner may request a court order for the division in kind. If physical separation of the share is not possible, or if it would cause disproportionate damage to the common ownership, the co-owner has the right to receive compensation for their share from the other co-owners. The compensation must be in a corresponding monetary amount or another form of compensation if the share cannot be physically separated. If compensation is agreed upon instead of physical division, the co-owner's rights to their share in the common ownership are extinguished upon receiving the compensation. In cases where the co-owner's share is minimal and cannot be practically separated, or where they have no significant interest in using the common ownership, the court may impose a duty on the remaining co-owners to compensate the co-owner without their consent. Upon receiving compensation, the co-owner loses their rights to the share in the common ownership.

The termination of the right to common ownership can occur through physical division, voluntary sale, or auction, and the sale proceeds are divided, or the entire property is registered in the name of one or more participants, with the remaining participants receiving compensation. If the co-owners cannot agree on the method of termination, the property will be divided physically by the court's decision. If physical division is not feasible without significantly reducing the value of the property, it may be sold at public auction or through an auction among the participants. Physical division can be combined with compensation for uneven shares in monetary form.

Conclusion

The institution of shared ownership has undergone significant development from ancient times to the present. As a type of common ownership, shared ownership is associated with Roman and Islamic legal systems, whereas joint ownership is characteristic of the German legal system. Roman jurists based their approach on the principle that multiple individuals could not fully manage the same object, but they could hold ideal shares in ownership rights (*Communio pro partibus indivisis*). This principle formed the basis of classical shared ownership, where

each co-owner possesses a specific share, can sell their share without the consent of other owners, and has the right to withdraw their share at any time. In contrast to the Roman model, German law developed the concept of joint ownership (*Gesamteigentum*), where precise ideal shares do not exist, and co-owners use and manage the property collectively. Disposition over the property is only possible with the unanimous consent of all co-owners, and division of the property through legal action is either impossible or strictly limited by legal conditions.

According to Article 29 of the Constitution of the Republic of Azerbaijan, the right to property consists of the owner's right to own, use, and dispose of property, either individually or jointly with others. Similarly, Article 152 of the Civil Code of the Republic of Azerbaijan provides a comparable definition of ownership. It is widely accepted that property rights are an absolute right that grants the owner full control over an object, including possession, usage, and disposition according to their will. Ownership means that a person has complete legal rights over an object, allowing them to manage, use, and dispose of it as they see fit (e.g., sell, gift, or lease it). Shared ownership, on the other hand, implies that an object belongs to multiple individuals based on specific shares. In such cases, each owner can independently possess their share; however, the use and management of the shared property require agreement among all co-owners. Therefore, studying the institution of shared ownership is of great importance in the context of exercising property rights.

The legal nature of the share in common ownership represents one of the most complex and debated categories of property law. The comparative analysis carried out in this study demonstrates that the institution of common ownership has developed through the interaction of several legal traditions, including Roman, German, and Islamic law. In Roman law, the concept of the share initially reflected a material participation in a tangible object. However, over time, this notion evolved into the concept of the “ideal share,” which marked a crucial step in transforming common ownership from a factual relationship into a legal construct. This transition ensured the preservation of the unity of ownership while allowing each participant to possess a clearly defined scope of rights.

German legal doctrine further refined this idea by conceptualizing the “idealized share” as an integral element of property relations, thus systematizing the Roman heritage and adapting it to the needs of modern civil law. This theoretical evolution influenced many civil law systems, including those of Russia and Azerbaijan. In contrast, Islamic law approached common ownership through the prism of social justice and communal balance, emphasizing

moral responsibility alongside economic rights. Therefore, the evolution of the share in different legal systems reveals its dual nature as both a legal and socio-economic institution.

In the civil legislation of the Republic of Azerbaijan, particularly within the Civil Code, these classical principles are synthesized and reflected in a modern form. Nonetheless, the correct legal interpretation of the share, the maintenance of balance between co-owners, and the regulation of the share's circulation as an independent object of rights remain pressing issues in legal practice. The enduring doctrinal question—whether the share represents a portion of the right or a portion of the thing—continues to generate theoretical debate.

In light of these findings, further development of this legal institution should focus on several directions: the clarification of legal terminology by defining concepts such as “share,” “ideal share,” and “share right” in a coherent and consistent manner; the improvement of normative mechanisms regulating the division, transfer, and renunciation of shares; and the unification of judicial practice regarding disputes on the legal regime of shares in common ownership. Moreover, deeper scholarly research is necessary to reconsider the legal nature of the share within the broader framework of ownership relations, taking into account contemporary civil law trends and comparative insights. Ultimately, the institution of common ownership should be perceived not merely as a technical legal category but as a reflection of the social and economic foundations of property relations. Its proper regulation ensures the stability of civil turnover, the protection of property rights, and the equitable balance among all participants.

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