

NATIONAL REPORT: SLOVAKIA

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January 2015

A. General

1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.

The Slovak Family Act regulates that a relationship between spouses is created by the free decision of a man and a woman made in the form stipulated by statute. The Slovak Family Act regulates in detail the prerequisites and conditions of the formation and termination of marriage. It also deals with void and apparent marriage. The rights and duties of spouses of a personal nature are only generally regulated by the Slovak Family Act. The rights and duties of spouses with a property nature (coverage of family needs, mutual duty of maintenance and property relationships arising from common property) are regulated by both the Slovak Family Act and the Slovak Civil Code.

Marriage is defined in Art. 1 of the fundamental principles of the Slovak Family Act as a union between a man and a woman. Family law doctrine defines marriage as a permanent union of (one) man and (one) woman established by free decision, the formation and termination of which is regulated by statute. Under the Slovak Family Act, the purpose of marriage is to create a harmonious and permanent social union guaranteeing a due upbringing of children. Slovak law does not permit same-sex marriages or other alternative unions of same-sex couples (e.g. registered partnerships).

The supremacy of marriage was also recently manifested by the National Council (Parliament) of Slovakia. On 4 June 2014, the Council adopted a Constitutional Law (no. 490/2014) amending the 1992 Constitution, which entered into force on 1 September 2014. Article 41 of the law defines marriage as 'a unique union between a man and a woman'. The explanatory memorandum that accompanies the law explicitly states that same-sex couples will not have the possibility to enter into a marriage. Of the 123 members of Slovakia's Parliament who voted on the measure, only 18 voted against adopting the amendment. The amendment specifically denies same-sex couples the legal protection associated with marriage by specifying that 'it will be impossible for the rights and duties associated with marriage to be conferred in any way other than a legally recognised union between a man and a woman.'

2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a

marriage or registered partnership with another person, a partner's minority) which disqualify the couple?

Unlike German, Swiss, Austrian, Turkish, or Greek family law, Slovak family law does not regulate the legal institution of engagement (a promise to marry). The formation of a marriage is preceded by a factual engagement, but the act of engagement itself has no legal effects. Therefore in answer to the question: to what extent is the informal relationship between a couple regulated by specific Slovak legislative provisions, it could be stated that the Family Act partly provides legal recognition to a man and a woman entering into a marriage (the future spouses – a fiancé and a fiancée, *sbúbenec*). There are a few provisions in the Family Act (e.g. § 1, 2, 4) on future spouses' pre-marriage obligations. For example, they must file a marriage application with the competent civil registry office, the application needs to include personal details relating to the spouses, declarations by the spouses concerning their surname and the surname of their common children in marriage, and declarations by the spouses that they are not aware of any marriage impediments and that they are aware of each other's health situation. The documents enumerated in the Slovak Act on Civil Registries must be enclosed with the application.

3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases

§ 115 of the Slovak Civil Code defines the household (*domácnosť*). It consists of natural persons who live permanently together and share their living costs. There are many other references to the legal term 'household' in other provisions of the Slovak Civil Code. According to Slovak doctrine and the case law of the Supreme Court of Czechoslovakia it is not sufficient if the persons in question simply live together even if they equally share the costs for electricity, gas or other costs relating to the premises where they live.¹ The household is a common society. If both of the spouses live in a matrimonial household, the possibility of establishing that household with another person is *de facto* excluded. The intention of natural persons to live permanently together in a household needs to be expressed by the way in which they live together.

§ 116 of the Slovak Civil Code defines a close person (*blízka osoba*) as a relative in the direct line, a sibling and a spouse; other persons in a family or similar relationship shall be considered to be persons who are close to each other if an injury suffered by one of them is reasonably felt by the other person as an injury suffered by him or her. For the sake of this questionnaire merely the second half of the definition is relevant: other persons in a family or similar relationship shall be considered to be persons

¹ See Decision of the Supreme Court of Czechoslovakia No. 34/1960.

who are close to each other if an injury suffered by one of them is reasonably felt by the other person as an injury suffered by him or her.

In many of its provisions the Slovak Civil Code refers to the household or a close person. One of the relevant examples is the legal reference in the provisions on the law of inheritance.²

4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?

There is no legal definition of informal relationships between a couple.

5. Where informal relationships between a couple have legal effect:

a. When does the relevant relationship begin?

Informal relationships can be described using the sociological aspect of the legal definitions in § 115 and § 116 of the Slovak Civil Code: An informal relationship commences when the persons in question start living in a common household permanently together and share their living costs and also if they start to build up a moral relationship. A moral relationship could be understood as a relationship between persons where one of the partners would reasonably feel the injury suffered by the other partner as his or her own injury.

b. When does the relevant relationship end?

When the aspects mentioned in a) start to be absent.

6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?

The Constitution of the Slovak Republic as the fundamental act of the Slovak Republic (460/1992 Coll.) provides in Art. 19 Para. 2: Everyone has the right to protection against unauthorized interference in private and family life. Article 41 Para. 1 Provides: Marriage, parenthood and the family are under the protection of the law. The special protection of children and minors is guaranteed.

7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?

Slovak doctrine³ and the case law of the Constitutional Court of the Slovak Republic⁴ accept the broad concept of private and family life in accordance with the ECHR case

² See Question 47.

³ R. DOBROVODSKÝ, 'Europeizácia a internacionalizácia rodinného práva (Europeisation and internationalisation of family law)', in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 260-261.

law relating to Art. 8. This article protects the right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. There is therefore a zone of interaction between a person and others, even in a public context, which may fall within the scope of 'private life'.

8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.

There have been no major reforms of the rules regarding informal relationships between couples in Slovakia. Slovakian society perceives marriage as a very essential and non-derogable legal construction. Especially the conservative parties in the Slovak Parliament are even trying to buttress marriage unions. There is national consensus across the whole spectrum of political parties concerning the supremacy of marriage in family law as manifested by the legal concept of marriage in the Slovak Family Act. The supremacy of marriage was also recently manifested by the National Council (Parliament) of Slovakia. On 4 June 2014, the Council adopted a Constitutional Law (no. 490/2014) amending the 1992 Constitution, which entered into force on 1 September 2014. Article 41 of the law defines marriage as 'a unique union between a man and a woman'. The explanatory memorandum that accompanies the law explicitly states that same-sex couples will not have the possibility to enter into a marriage. Of the 123 members of Slovakia's Parliament who voted on the measure, only 18 voted against adopting the amendment. The amendment specifically denies same-sex couples the legal protection associated with marriage by specifying that 'it will be impossible for the rights and duties associated with marriage to be conferred in any way other than a legally recognised union between a man and a woman.'

9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?

There are no recent proposals to reform the rules regarding informal relationships between a couple in Slovakia.

B. Statistics and estimations

10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.

⁴ D. KROŠLÁK, *Introduction to the Slovak Constitutional System*, Leges. Praha, 2014, at p. 111.

In 2013 a total of 25,491 marriages were concluded. Compared to 2003, there were 511 fewer marriages concluded in 2013. The average age of the spouses was men: 29.5, women: 26.5 in 2003 and in 2013 it was men: 32.9, women: 29.9.⁵

**11. How many couples are living in an informal relationship in your jurisdiction?
Where possible, indicate trends.**

There are no official statistics available.

12. What percentage of the persons living in an informal relationship are:

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

There are no official statistics available.

13. How many couples living in an informal relationship enter into a formal relationship with each other:

- a. Where there is a common child?
- b. Where there is no common child?

There are no official statistics available.

14. How many informal relationships are terminated:

- a. Through separation of the partners?
- b. Through the death of one of the partners?

There are no official statistics available.

15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?

There are no official statistics available on the average duration of an informal relationship before its termination. But according to official statistics concerning the average duration of formalised relationships (in Slovakia this means only a marriage) in 2013 more than 69.2% of divorced marriages had come to an end after more than 9 years of marriage.⁶

⁵ Statistical Office of the Slovak Republic: Slovak Statistics and Demography 2003-2013, at p. 6. Available at: www7.statistics.sk/PortalTraffic/fileServlet?Dokument=b653d111-8505-46ba-933b-7b2397a33bf3.

⁶ Statistical Office of the Slovak Republic: Slovak Statistics and Demography 2003-2013, at p. 21. Available at: www7.statistics.sk/PortalTraffic/fileServlet?Dokument=b653d111-8505-46ba-933b-7b2397a33bf3.

16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.

In 2013 54,986⁷ children were born in Slovakia (compared with 2003: 51,713).⁸

17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?

37% of children were born out of wedlock.⁹ But the statistical data do not provide exact data on children living in a so-called one-parent family (a nuclear family) or within an informal relationship between the child's parents.

18. How many children are adopted within an informal relationship:

a. By one partner only?

b. Jointly by the couple?

c. Where one partner adopted the child of the other?

There are no official statistics available.

19. How many partners in an informal relationship have been in a formal or an informal relationship previously?

There are no official statistics available.

C. During the relationship

20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:

a. Where there are no children in the household?

No, there is no duty to support each other.

b. Where there are common children in the household?

No, there is no direct duty to support each other even if there are common children in the household. The Slovak Family Act provides for the following maintenance duties:

- duty of maintenance by parents towards children,

⁷ Statistical Office of the Slovak Republic: Slovak Statistics and Demography 2003-2013, at p. 9. Available at: www7.statistics.sk/PortalTraffic/fileServlet?Dokument=b653d111-8505-46ba-933b-7b2397a33bf3.

⁸ Statistical Office of the Slovak Republic: Slovak Statistics and Demography 2003-2013, at p. 12. Available at: www7.statistics.sk/PortalTraffic/fileServlet?Dokument=b653d111-8505-46ba-933b-7b2397a33bf3.

⁹ Statistical Office of the Slovak Republic: Slovak Statistics and Demography 2003-2013, at p. 12. Available at: www7.statistics.sk/PortalTraffic/fileServlet?Dokument=b653d111-8505-46ba-933b-7b2397a33bf3.

- duty of maintenance by children towards parents,
- duty of maintenance between other relatives,
- duty of maintenance between spouses,
- contribution to the maintenance of a divorced spouse, and
- contribution to the maintenance of and the reimbursement of certain costs incurred by an unmarried mother.

In a situation where there is a common child in the household an unmarried mother can claim a contribution towards her maintenance and a reimbursement of certain costs incurred by her. The father of a child whose mother is not married to him has to provide adequate contributions towards the mother's maintenance costs and to contribute to her costs related to pregnancy and birth. The father has to provide these contributions for a period of no longer than two years after the child's birth.

c. Where there are other children in the household?

No, there is no duty to support each other.

21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?

No.

22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?

No.

**23. Are there specific rules on a partner's rights of occupancy of the home:
a. In cases of domestic violence?**

On 15th December 2008 the Slovak Law on the Amendment of the Police Force entered into effect and it introduced into the Slovak legal system the authority of police officers to make use of a restraining order (*vykázanie*) and to expel a violent person from the common household.¹⁰ This competence can be used based on legal grounds and in the situation where, on the basis of certain facts, it can be assumed that a dangerous attack against life, health or freedom is imminent. Using the order should prevent a violent partner from committing crimes such as: making death threats, bodily harm, abuse of a close person and a person in custody, extortion, rape, sexual violence, and sexual abuse. The aim of the police restraining order is to provide protection to a victim during the period between the escalation of violence

¹⁰ R. DOBROVODSKÝ, 'K inštitútu vykázania násilníckej osoby z obydlia a k iným zmenám pri ochrane obetí násillia páchaného v rodine (On the institution of the restraining order against violent persons in the common household and on other legal amendments for the protection of domestic violence victims)', *Justičná revue*, 2009, at p. 138 et seq.; M. DESET, 'Prevencia domáceho násillia inštitútom vykázania (Prevention of domestic violence using the restraining order)', *Bulletin slovenskej advokácie*, 2008, at p. 32.

and the day when a protective interlocutory judgment is delivered by the civil court. The protected person can be the partner of the violent person living in an informal relationship with him or her.

b. In cases where the partner owning or renting the home is absent?

Police officers are not obliged to examine (evidence of) the legal validity of a common home.¹¹ Police officers do not have to distinguish whether the violent partner owns or rents the home or whether the premises are common property or matrimonial property.

24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:

In general within the limits of the law, the owner may: be in possession of his or her property (*ius possidendi*), use it and benefit from its proceeds (*ius utendi et fruendi*), and dispose of it (*ius disponendi*) (§ 123 Slovak Civil Code).¹² All owners have the same rights and duties and are granted the same legal protection (§ 124 Slovak Civil Code). According to the Slovak Civil Code an asset may be co-owned by more than one owner and the home can also be jointly owned by the partners.

Co-ownership may be divided or undivided. Undivided co-ownership may arise only between spouses (§ 136 para. 2 Slovak Civil Code).

a. Where the home is jointly owned by the partners?

In divided co-ownership (joint ownership), the co-owners have specific shares in the common asset (§ 137 para. 2 Slovak Civil Code). The shares specify the extent of the rights and duties resulting from the co-ownership of the common asset. Unless provided otherwise by statute or agreement, the shares of all co-owners are equal (§ 137 para. 2 Slovak Civil Code). All co-owners are jointly and severally entitled and obliged by juridical acts relating to the common asset.

Decisions concerning the management of the common asset are taken by a majority of votes determined according to the size of the shares (§ 139 para. 2 Slovak Civil Code). If the votes are equal or if no majority or agreement can be achieved, the courts will decide. Moreover, if there is an important change to the common asset,

¹¹ For more details see R. DOBROVODSKÝ, 'Procesné a hmotnoprávne predpoklady slovenského občianskeho práva k ratifikácii Dohovoru Rady Európy o predchádzaní násiliu na ženách a domácomu násiliu a o boji proti nemu (The civil procedural and substantive law regulation in Slovakia and the legal conditions for the ratification of the Council of Europe Convention on preventing and combating violence against women by Slovakia)', *Psychológ medzi právnikmi. Pocta profesorovi Gustávovi Dianiškovi k 75. narodeninám*, Trnavská univerzita v Trnave, Právnická fakulta, Trnava 2015.

¹² See principally J. LAZAR, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 463-464.

the minority co-owners may request a court decision as well (§ 139 para. 3 Slovak Civil Code). An 'important change' is not defined by the Slovak Civil Code, although doctrine has interpreted an important change to mean, for example, a rebuilding of the common home.¹³

If the share is transferred, the co-owners have a right of pre-emption, unless the share is transferred to a relative (§ 140 Slovak Civil Code). The co-owners may agree on the cancellation of co-ownership and on a mutual settlement. The settlement agreement must be made in writing if it concerns immovables. In the case of movables, it need not be made in writing, but each co-owner must give the other co-owners a written confirmation of the settlement if requested to do so (§ 141 Slovak Civil Code). If the co-owners cannot reach an agreement, the co-ownership will be cancelled and will be settled by the courts upon a petition by any of the co-owners (§ 142 Slovak Civil Code). In this respect, the court will take into account the size of the shares and the use of the asset in question. The settlement may take various forms. If the common asset can be divided, it will be divided between the co-owners. If a new immovable is created by this settlement, the court may establish an easement in favour of the owner of the new immovable. If a division of the common asset is not possible, the court may grant ownership of the common asset to one or several co-owners against compensation. If none of the co-owners wants the asset, the court will order that the common asset be sold and the proceeds will be divided according to the size of shares.

However, if there are specific reasons (e.g. an elderly person is a co-owner of a house where he or she has lived for most of his or her life), the court will not cancel and settle the co-ownership by granting ownership of the asset to one or more co-owners against compensation or by selling the common asset and dividing the proceeds between them.

b. Where the home is owned by one of the partners?

There are no specific rules on transactions and no generally applicable rules for this legal situation.

c. Where the home is jointly rented by the partners?

The rules on the joint leasing of an apartment by the partners (a so-called co-tenancy: *spoločný nájom bytu*) do not generally prescribe any formal requirements for a valid conclusion of a contract. It may be concluded orally, implicitly or in writing, which is indeed recommended, as the lease contract is normally meant to regulate long-term relations.¹⁴ Only the partners who have jointly concluded a contract have a direct

¹³ See J. LAZAR, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 503.

¹⁴ See M. JURČOVÁ and J. ŠTEFANKO, 'TENLAW: Tenancy Law and Housing Policy in Multi-level Europe. Tenant's Rights Brochure for Slovakia', available at: www.tenlaw.uni-bremen.de/Brochures/SlovakiaBrochure_31052014.pdf, at p. 8.

right to use the apartment and the services connected therewith. Specifically, the members of the tenant's household (persons who live together permanently and together cover the costs of their needs) are expressly permitted to be the co-users of the apartment.

The law anticipates that ex-partners will agree on who will continue the lease of the common apartment as a tenant and who will leave. Such an agreement between the ex-partners will bring the joint lease to an end. If, however, the ex-partners cannot reach an agreement, either of them may apply for a court decision to terminate the right of co-tenancy and the court will then select the future tenant.

d. Where the home is rented by one of the partners?

The partner who is the tenant of the apartment will be able to continue to use the apartment without the need to provide replacement housing or other duties towards the co-habiting ex-partner. If, on the other hand, the partners are using the apartment as co-tenants, the fact that they have separated does not lessen their individual rights under the lease contract and they would both be able to continue the lease.

25. Under what circumstances and to what extent can one partner act as an agent for the other?

It is possible for one partner to be represented by the other partner acting on his or her behalf. According to Slovak Civil Law this representation allows natural and legal persons that are not legally competent or cannot or do not want to act in person for any other reason to be represented by representatives acting on their behalf. With regard to the resulting legal effects, direct and indirect representation may be distinguished.¹⁵ A direct representative expresses his will in the name of the principal. The representative's juridical acts directly establish the rights and duties of the principal. An indirect representative expresses his or her will on the principal's behalf. Subsequently, an indirect representative has to transfer the rights and duties acquired by him or her to the principal by means of another juridical act. The General Part of the Slovak Civil Code only deals with direct representation (§ 22 et seq. Slovak Civil Code). With respect to the legal title of representation, the Slovak Civil Code distinguishes statutory and contractual representation.

A representative is a person authorized to act instead and on behalf of someone else, whereby his acts directly establish the rights and duties of the principal. A representative may be a natural person or a legal person.

Any representative has to meet the following general requirements:

- the representative has to be competent to perform the juridical act covered by representation,

¹⁵ See principally M. JURČOVÁ, in: M. JURČOVÁ et al. (eds.), *Zastúpenie v súkromnom práve* (Representation in Private Law), C.H. Beck, Praha, 2012.

- the representative's interests must not be in conflict with those of the principal, and
- the representative has to act in person; he or she may only appoint another representative (a delegate) if this is provided by statute or is agreed by the parties.¹⁶

One partner as a principal may grant a power of attorney to a representative (the other partner) on the basis of a representation agreement (e. g. a contract of mandate). A power of attorney is a unilateral juridical act by which a principal expresses his or her will to authorize a representative to perform juridical acts on his or her behalf.¹⁷ A power of attorney may also be granted to several representatives at the same time. It may be granted orally or in writing, or indeed in any other form as long as this does not result in unclarity. A power of attorney must be granted in writing if the juridical act covered by the representation requires a written form or if the power of attorney covers multiple juridical acts (§ 31 para. 4 Slovak Civil Code). As far as its contents are concerned, a power of attorney has to include at least the identification of the representative and the scope of his or her authority. Any instructions given to the representative and not included in the power of attorney do not affect the legal effects of the representative's acts, unless such instructions are known to the other party involved in the juridical act performed by the representative. If the acts of a purported representative are not in compliance with the power of attorney granted by a principal, two situations are distinguished by statute with respect to legal effects of such acts:

- the representative has exceeded his or her authority arising from the power of attorney. In this case the principal is only legally bound by such acts if he or she approves the excess power of attorney (ratification) with retroactive effect (*ex tunc*) on the juridical acts performed. An irrefutable legal presumption¹⁸ is established by statute, according to which the principal is deemed to have approved the excess power of attorney, unless the principal notifies his or her disapproval to the party to the juridical act performed by the representative without any delay once the principal becomes aware of such an act;
- the representative has exceeded his or her authority to act on the principal's behalf or the representative has acted on someone else's behalf without any power of attorney. The person having performed such an act is legally bound by this act. The irrefutable legal presumption of the principal's approval does not apply in this case; the principal may only be legally bound by such a juridical act if he or she actually approves it. A third party may require from the person having performed such an act either performance or damages provided that this party has acted in good faith, i.e. was unaware of the lacking power of attorney (§ 33 para. 2 Slovak Civil Code).

¹⁶ M. JURČOVÁ, in: M. JANČO et al. (eds.), *Introduction to Slovak Civil Law*, C.H. Beck, Plzeň, 2012.

¹⁷ See M. JURČOVÁ, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 171.

¹⁸ See M. JURČOVÁ, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 175.

A contractual representation will terminate in certain given cases (§ 33b Slovak Civil Code). These cases include the performance of the act covered by the representation, the revocation of the power of attorney by the principal, the termination of the power of attorney by the representative, the representative's death and, in principle, also the principal's death.

26. Under what circumstances can partners in an informal relationship become joint owners of assets?

The acquisition of assets within divided co-ownership (joint ownership) is subject to generally applicable rules on acquisition. Ownership may be acquired *inter vivos* (by transfer) or *mortis causa* (by succession). In the process of the transfer of ownership (the acquisition of assets), two elements may be distinguished:

- the title of acquisition (*titulus acquirendi*), and
- the mode of acquisition (*modus acquirendi*).¹⁹

The title of acquisition is the title recognized by statute as a valid reason for acquiring ownership.

According to Slovak law the partners in an informal relationship can become the joint owners of assets by titles of acquisition such as:

- a contract of sale,
- a donation contract
- and other contracts,
- succession,
- a decision by a state authority,
- acquisitive prescription,
- accession,
- processing and other facts stipulated by statute.

The mode of acquisition is the mode recognized by statute as a valid way of acquiring ownership. If movables are transferred on the basis of a contract, ownership is acquired by handing over and accepting the asset (tradition), unless the partners have agreed or stipulated otherwise. However, if immovables are transferred on the basis of a contract, ownership is acquired by registration in the Cadastre of Immovables. The Cadastre of Immovables is a special registry which registers ownership rights and other rights pertaining to immovables.

A specific title of acquisition of property is acquisitive prescription. A legitimate possessor (partners in an informal relationship) becomes the owner of the asset in his or her possession after 3 years of possession in the case of movables and after 10 years of possession in the case of immovables (§ 134 para. 1 Slovak Civil Code). The period of possession must not be interrupted. However, it also includes the period of the legitimate possession of the possessor's legal predecessors.

¹⁹ See J. LAZAR, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 483.

It is not possible for partners to acquire ownership of an asset that is lost, hidden or abandoned. According to Slovak law if the partners find a lost object, it must be returned to the owner. If the owner is not known, the finder must hand it over to the competent state authority (§ 135 para. 1 Slovak Civil Code). If the lost object is not claimed by the owner within one year, ownership will pass to the state. The partners as the finders have a right to the reimbursement of necessary expenses and to a reward corresponding to 10% of the value of the object found (§ 135 para. 2 Slovak Civil Code).

If the partners have acquired assets within divided co-ownership (joint ownership) the co-owners have specific shares in the common asset (§ 137 para. 2 Slovak Civil Code). The shares specify the extent of the rights and duties resulting from the co-ownership of the common asset. Unless provided otherwise by statute or otherwise agreed, the shares of all co-owners are equal (§ 137 para. 2 Slovak Civil Code). All co-owners are jointly and severally entitled and obliged by juridical acts concerning the common asset.

27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.

There are no specific rules governing acquisitions (transactions) in respect of household goods. Therefore for acquisitions (transactions) in respect of household goods the provision of § 137 para. 2 Slovak Civil Code is applicable. It determines that unless provided otherwise by statute or otherwise agreed, the shares of all co-owners are equal.

28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?

No, there are none.

29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?

No, there are no rebuttable presumptions concerning the ownership of assets between partners in an informal relationship. For the internal relationships between partners as co-owners the rules on decisions concerning the management of assets are applicable. Decisions concerning the management of the common assets are taken by a majority of the votes determined according to the size of the shares (§ 139 para. 2 Slovak Civil Code). If the votes are equal or if no majority or agreement can be achieved, the courts will decide. Moreover, in the case of an important change to a common asset, the minority co-owners may request a court decision as well (§ 139 para. 3 Slovak Civil Code). An 'important change' is not defined by the Slovak Civil

Code, although doctrine interprets an important change as meaning, for example, a rebuilding the common home.²⁰

30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?

Generally there is a rebuttable presumption that the possessor is the owner of the assets in question (§ 130 para. 2 Slovak Civil Code). Possession is a factual issue recognized and protected by law. A possessor is defined as a person who holds an asset as his own or who exercises a right for him or herself (§ 129 para. 1 Slovak Civil Code). Possession concerns not only objects, but also rights allowing permanent or repeated use or actions. Two elements of possession may be distinguished:

- *corpus possessionis* – the factual possession of an asset and
- *animus possidendi* – the possessor's will to hold it as his or her own.²¹

Possession requires both elements, i.e. both the factual possession of the asset and the possessor's will to hold it as his or her own. If the second element (will) is missing, the holder of that asset is a detainer and his holding (detaining) of the asset is characterized as detention. Unlike a possessor, a detainer holds the asset not as his own, but as someone else's (e.g. a lessee). Possession may be legitimate or illegitimate. A legitimate possessor is a possessor who possesses the asset or the right in good faith with regard to all the circumstances. In case of doubt, possession is presumed to be legitimate (§ 130 para. 1 Slovak Civil Code). Unless stipulated otherwise by statute, a legitimate possessor has the same rights as the owner; in particular, he or she is entitled to benefit from the proceeds from the asset which arise during his or her legitimate possession. Moreover, he or she has the same rights of protection against any infringements of his or her right to possess the asset as the owner (§ 126 para. 2 Slovak Civil Code).

The legitimate possessor may claim from the owner any costs reasonably incurred concerning the asset during his or her legitimate possession to the extent corresponding to the valorisation of the asset at the moment when it was returned. However, the usual expenses connected with the maintenance and operation of the asset are not reimbursed (§ 130 para. 3 Slovak Civil Code).

On the other hand, an illegitimate possessor must always surrender the asset to its owner together with all its proceeds and compensate any damage that has arisen due to the illegitimate possession. However, he or she may deduct any necessary costs for the maintenance and operation of the asset. Moreover, the illegitimate possessor may separate anything which has led to the asset being improved or in its value appreciating if it is possible to do so without impairing the asset.

²⁰ See J. LAZAR, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 503.

²¹ See I. FEKETE, *Občiansky zákonník I. a II. - Veľký komentár* (Slovak Civil Code I and II - Major Commentary), Eurokódex, Bratislava, 2011, at commentary on § 129.

31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?

In the case of divided co-ownership, the co-owners (partners) have specific shares in the common assets. All co-owners are jointly and severally entitled and obliged by juridical acts concerning the common asset (§ 139 para. 1 Slovak Civil Code). Legal doctrine interprets the term 'juridical acts concerning the common asset' as being broader than juridical acts in general. Those juridical acts are the acts of every partner which lead to a common obligation (*spoločné záväzky*).²² In simple obligations, on each side of the relationship there is only one person. In common obligations, there are several persons on one or both (or more) sides of the legal obligation relationship.

Common obligations can be classified as follows:

- active common obligations (on the creditor's part), and
- passive common obligations (on the debtor's part).

Passive solidarity is regulated in § 511 of the Slovak Civil Code. It may be established by an agreement between the parties, by a judicial decision, by statute or by the nature of the performance (in the case of undivided solidary obligations). A statute also means § 139 para. 1 Slovak Civil Code.²³ There are several persons on the debtor's side. Each of the solidary debtors has to provide the same performance towards the creditor; the scope of their obligation is not limited by their shares of the debt in their internal relationship. The creditor can require the performance of the entire debt or a part thereof from any solidary debtor. Once the creditor is satisfied by the performance provided by one of the solidary debtors, the obligation of all co-debtors is extinguished. With respect to the regulation of passive solidarity, the duty of notification and preventive and subsequent regress have to be pointed out. The duty of notification applies if one of the solidary debtors is requested by the creditor to provide performance to a greater extent than determined by his or her share in the internal relationship between the co-debtors, in which case this debtor has to notify the other debtors of this (§ 511 para. 2 Slovak Civil Code). Preventive regress constitutes the right of this debtor to request the other co-owners to discharge the debt according to their respective shares or otherwise to discharge him or her from the debt before providing any performance. Subsequent regress entitles the debtor having completely discharged the debt to require compensation from the other co-debtors according to their respective shares (§ 511 para. 3 Slovak Civil Code).

32. On which assets can creditors recover joint debts?

²² See I. FEKETE, *Občiansky zákonník I. a II. - Veľký komentár* (Slovak Civil Code I and II - Major Commentary), Eurokódex, Bratislava, 2011, at commentary on § 139 para. 1.

²³ All co-owners are jointly and severally entitled and obliged by juridical acts concerning the common asset.

Creditors can recover joint debts by executing not only the assets in the divided co-ownership of the partners. They can recover joint debts against assets belonging exclusively to one of the partners.

33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.

No, there are no specific rules governing the administration of assets jointly owned by the partners in an informal relationship. But there are generally applicable rules on decisions concerning the management of common assets. Decisions are taken by a majority of the votes determined according to the size of the shares (§ 139 para. 2 Slovak Civil Code). If the votes are equal or if no majority or agreement can be achieved, the courts will decide. Moreover, in the case of an important change to the common asset, the minority co-owners may request a court decision as well (§ 139 para. 3 Slovak Civil Code). An 'important change' is not defined by the Slovak Civil Code, although legal doctrine has interpreted an important change as meaning, for example, the rebuilding of the common home.²⁴

D. Separation

34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?

Slovak law does not grant maintenance to a former partner.

35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:

- a. The creditor's needs and the debtor's ability to pay maintenance?
- b. The creditor's contributions during the relationship (such as the raising of children)?
- c. The standard of living during the relationship?
- d. Other factors/circumstances (such as giving up his/her career)?

Slovak law does not grant maintenance to a former partner.

36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?

Slovak law does not grant maintenance to a former partner.

37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?

Slovak law does not grant maintenance to a former partner.

²⁴ See J. LAZAR, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 503.

38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?

Slovak law does not grant maintenance to a former partner.

39. Is the maintenance claim extinguished upon the claimant entering:

- a. Into a formal relationship with another person?**
- b. Into an informal relationship with another person?**

Slovak law does not grant maintenance to a former partner.

40. How does the creditor's maintenance claim rank in relation to:

- a. The debtor's current spouse, registered partner, or partner in an informal relationship?**
- b. The debtor's previous spouse, registered partner, or partner in an informal relationship?**
- c. The debtor's children?**
- d. The debtor's other relatives?**

Slovak law does not grant maintenance to a former partner.

41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?

There are no specific rules which are applicable to determine the ownership of the partners' assets. For such cases the general rules of the Slovak Civil Code are applicable: The co-owners (partners) may agree on the cancellation of co-ownership and on mutual settlement (§ 141 para. 1 Slovak Civil Code). The settlement agreement must be made in writing if it concerns immovables. In the case of movables, it need not be in writing, but each co-owner must give the other co-owners written confirmation of the settlement if requested to do so (§ 141 para. 2 Slovak Civil Code). If the co-owners cannot reach an agreement, the co-ownership will be cancelled and settled by the courts upon a petition by any co-owner (§ 142 para. 1 Slovak Civil Code). In this respect, the court will take into account the size of the shares, the use of the asset and any violent behaviour by one of the partners (§ 142 para. 1 Slovak Civil Code). The settlement may take various forms. If the common asset can be divided, it will be divided between the co-owners. If a new immovable is created by this settlement, the court may establish an easement in favour of the owner of the new immovable (§ 142 para. 3 Slovak Civil Code). If a division of the common asset is not possible, the court may grant ownership of the common asset to one or several co-owners against compensation. According to Slovak doctrine and the case law of the Supreme Court of Slovakia, compensation should be understood

as an amount which corresponds to the market price for similar assets on a particular market.²⁵

If none of the co-owners wants the asset, the court will order the sale of the common asset and divide the proceeds according to the size of the shares.

However, if there are specific reasons (e.g. an elderly person is a co-owner of a house where he or she has lived for most of his or her life), the court will not cancel and settle the co-ownership by granting ownership of the asset to one or more co-owners against compensation or by selling the common asset and dividing the proceeds between them. The case law defines 'specific reasons' as cases which satisfy the principle of good morals (good faith and fair dealing).²⁶

42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?

There are no specific rules.

43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?

The partners have no preferential rights regarding their home and/or the household goods.

44. How are the joint debts of the partners settled?

For the settlement of the joint debts of the partners, the creditors have to be involved in the settlement process. § 488 of the Slovak Code characterizes legal obligation relationships as legal relationships establishing the creditor's right to performance (a claim) by the debtor and the debtor's duty to fulfil the obligation (a debt). An legal obligation relationship must have at least two parties – a creditor and a debtor – since a claim cannot exist without a debt and a debt cannot exist without a claim.²⁷

The settlement of the joint debts of the partners is possible using the legal framework for the modification of legal obligation relationships laid down in the Slovak Civil

²⁵ See Decision of the Supreme Court of Slovakia No. 43/1997; for more details about compensation see J. LAZAR, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 511; I. FEKETE, *Občiansky zákonník I. a II. - Veľký komentár* (Slovak Civil Code I and II – Major Commentary), Eurokódex, Bratislava, 2011, at commentary on § 142.

²⁶ V. ČEČOTOVÁ, *Dobré mravy v slovenskom súkromnom práve* (Good morals in Slovak private law), EPOS, Bratislava, 2005.

²⁷ See K. KIRSTOVÁ, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 12.

Code. Slovak Civil law distinguishes between a modification of the subject matter (content) and a modification of the parties to legal obligation relationships. Modifications to the content of legal obligation relationships are primarily based on the agreement between the parties.

In the case of separating partners we assume that the partners will try to settle their joint debts by an assumption of debt. Under the heading 'Assumption of debt' (*prevzatie dlhu*), the Slovak Civil Code regulates two agreements. The first is the assumption of debt in the form of a privative intercession regulated by § 531 para. 1 of the Slovak Civil Code. By this written agreement between the old debtor and the new debtor, the debtor is substituted, provided that the creditor approves of this agreement.²⁸ No specific form of the creditor's approval is required. The debt assumption agreement can be approved before or after it is made, in oral or written form, but also in an implied form. Security pertaining to the claim once it is assumed by a third party will continue to exist, but only if the persons providing security agree that the debtor can be substituted. The second agreement is the assumption of debt in the form of a cumulative intercession regulated by § 531 para. 2 of the Slovak Civil Code. It is a written agreement between the creditor and the new debtor who assumes the debt and becomes a debtor alongside the old debtor. The original debtor's approval is not required.

45. What date is decisive for the determination and the valuation of:

a. The assets?

Not a relevant question for the Slovak legal system.

b. The debts?

In the case of the assumption of debt it is the date of the conclusion of the written agreement between the old debtor and the new debtor and also the date of the creditor's approval of such an agreement.

46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?

Not a relevant question for the Slovak legal system.

E. Death

47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?

²⁸ K. KIRSTOVÁ, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 68.

- Law of succession in general:

Inheritance is acquired at the moment of the deceased person's death (§ 460 Slovak Civil Code). Succession may be based on a will, on a statute, or on both (§ 461 para. 1 Slovak Civil Code). If inheritance is not acquired by any testamentary heirs, these are substituted by statutory heirs. Inheritance not acquired by any heir passes to the state (§ 461 para. 2 Slovak Civil Code). The Slovak law of succession is based on the principle of universal succession; therefore an entire inheritance can be rejected by the heir. If the heir rejects only part of the inheritance or rejects it with reservations or conditions, the inheritance is not rejected. If the heir does not reject the inheritance, he becomes the universal successor of the deceased person both with respect to his assets and liabilities. However, the heir is only liable for the deceased person's liabilities to the amount corresponding to the inherited assets (§ 463 Slovak Civil Code).

If there is only one heir, his inheritance will be confirmed by the courts. If there are more heirs, they may agree on how the inheritance will be divided between them. If their agreement is not contrary to a statute or good morals, it will be approved by the courts. If no agreement is reached, the court will confirm the inheritance of the heirs whose right of inheritance is established according to their inheritance shares. These shares may be determined by the deceased person's will (testamentary succession) or by statute (statutory succession).

If, after the inheritance proceedings are closed, it is discovered that the true heir is different from the heir whose inheritance was confirmed (apparent heir), the apparent heir must restore any property acquired from the inheritance to the true heir in compliance with the rules on unjustified enrichment. If someone acquires, in good faith, property from an apparent heir whose inheritance was confirmed, he is protected as if the property had been acquired from the true heir. The same applies to cases where the inheritance has passed to the state.

There are four prerequisites of succession:

- the deceased person's death,
- inheritance (property to be inherited),
- a succession title, and
- an eligible heir.²⁹

Succession may be based on two succession titles: the deceased person's will or a statute. If there are no testamentary heirs, the statutory order of succession is used.

If we want to compare the right of a partner to inherit after the other partner's death with the right of a surviving spouse, we need to look at the provisions of the Slovak Civil Code regulating the statutory devolution of successions (§ 473 et seq. Slovak Civil Code). It is based on four heir groups divided into heir classes. These groups and classes determine both statutory heirs and their shares.

²⁹ D. GANDŽALOVÁ, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 621.

In the first group, the succession devolves to the deceased person's children and his or her spouse in equal shares (§ 473 para. 1 Slovak Civil Code). If any of the deceased person's children do not inherit, their inheritance share passes to their children in equal shares (§ 473 para. 2 Slovak Civil Code). If these children do not inherit either, they are substituted by their descendants in equal shares. The principle of descendants being substituted by their respective descendants is called representation.³⁰ If the deceased person's descendants do not inherit, the succession devolves, in the second group, to the deceased person's spouse, parents, and persons having lived with the deceased person in a common household for 1 year before his or her death, looking after the common household or being dependent on the deceased person with respect to maintenance, in equal shares (§ 474 para. 1 Slovak Civil Code). However, the spouse's share is at least one half of the inheritance (§ 474 para. 2 Slovak Civil Code).

If the deceased person's spouse or either of his or her parents does not inherit, the succession devolves, in the third group, to the deceased person's siblings and persons having lived with the deceased person in a common household for 1 year before his or her death, looking after the common household or being dependent on the deceased person with respect to maintenance, in equal shares. If any of the deceased person's siblings do not inherit, their share passes to their children (representation). If no heir inherits in the third group, the succession devolves, in the fourth group, to the deceased person's grandparents in equal shares, and if none of them inherits, the succession devolves to their children in equal shares (representation).

48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?

No.

49. Are there specific rules dealing with the home and/or household goods?

No.

**50. Can a partner dispose of property by will in favour of the surviving partner:
a. In general?**

Testamentary succession is based on the deceased person's will. A will is a unilateral and revocable juridical act, by which the testator disposes of his property, to take effect after his death. A will must be drafted by the testator in writing and it must include the names of the heirs and the date (day, month, and year) when it was signed (§ 476 para. 2 Slovak Civil Code). It may also include the shares of the

³⁰ D. GANDŽALOVÁ, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 621.

respective heirs or assets and the rights they are to inherit. If the shares of the heirs are not specified in the will, they are deemed to be equal (§ 477 Slovak Civil Code).

b. If the testator is married to or is the registered partner of another person?

A testator's liberty in disposing of his or her property is not limited with respect to a surviving spouse as is the case with the testator's descendants (see c).

c. If the testator has children?

However, the testator's liberty in disposing of his or her property is limited with respect to descendants. His or her minor descendants must receive at least their statutory shares and his or her major descendants must receive at least one half of their statutory shares, unless they are disinherited³¹ (§ 479 Slovak Civil Code). If the will is contrary to these statutory requirements, this part is voidable (§ 479 Slovak Civil Code).

51. Can partners make a joint will disposing of property in favour of the surviving partner:

a. In general?

Testamentary succession is based on the deceased person's will. A will is a unilateral and revocable juridical act, by which the testator disposes of his or her property, to take effect after his or her death. Wills may only be individual; common wills by several testators are invalid (§ 476 para. 3 Slovak Civil Code). Therefore a joint will disposing of property in favour of the surviving partner is not valid.

b. If either testator is married to or is the registered partner of another person?

A joint will disposing of property in favour of the surviving partner is not valid.

c. If either testator has children?

A joint will disposing of property in favour of the surviving partner is not valid.

³¹ An heir is eligible unless he is: unworthy of inheriting (an ineligible heir) or disinherited. An heir is unworthy of inheriting if he has committed an intentional crime against the deceased person, his or her spouse, children or parents or a reprehensible action against the deceased person's will. However, such an heir may inherit if the deceased person had forgiven him. Disinheritance may only apply to the deceased person's descendants. The deceased person may disinherit a descendant if he or she:

- did not provide, contrary to good morals, necessary assistance to the deceased person in sickness, old age or other serious cases,
- did not show a true interest in the deceased person that he or she, as his or her descendant, ought to show,
- had been sentenced to imprisonment for at least one year for an intentional crime, or
- lives a permanently inordinate life (§ 469a Slovak Civil Code).

52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:

a. In general?

The Slovak law of inheritance acknowledges only two titles of succession: a person's will (testamentary succession) or a statute (statutory succession). Agreements as to succession or gifts upon death are not recognized as titles of succession.

b. If either partner is married to or is the registered partner of another person?

See answer to a).

c. If either partner has children?

See answer to a).

53. Is the surviving partner entitled to a reserved share³² or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?

No.

54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?

No, there are no statistics or estimations.

55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?

No, there are no statistics or estimations.

56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?

No, there are no statistics or estimations.

F. Agreements

57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?

³² See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

No, there are no specific rules concerning agreements between partners in an informal relationship. In answering this question we could point to the general rules of Slovak civil law. Legal doctrine defines Slovak civil law as a branch of law which generally regulates property relationships and personal relationships associated with property relationships. In civil-law relationships, the parties enjoy an equal position and autonomy.³³ The Slovak Civil Code indirectly lays down the principle of freedom of contract in § 2 para. 3. The principle of freedom of contract consists of 'the freedom to contract or not to contract' (*zmluvná voľnosť - sloboda*).³⁴ Freedom of contract is recognised as being limited by the general provisions of the Slovak Civil Code. These are the general provisions on the voidability of a legal transaction that violates a statutory prohibition, unless the law implies otherwise, and on the voidability of a transaction which is contrary to good morals. In an objective sense, good moral protection is perceived as being the method which is used to moralize contractual relationships, and to temper the inequalities that could result from the dogma of the autonomy theory (autonomy of will). In a subjective sense, good morals aim to protect the mistaken belief of one contracting party, and to give effect to appearances. The primary cause of uncertainty remains, even today, the general absence of a definition in Slovak civil law. The concept of good morals seems to generate more interest based on its function than on its definition. The protection of good morals is therefore usually said to be an open norm, a norm the content of which cannot be established in an abstract way but which depends on the circumstances of the case in which it must be applied, and which must be established through concretisation. It is the judge in Slovakia who can determinate the content of good morals. It is the judge who can balance the 'harmony' between autonomy and good morals. The balancing depends on the circumstances of the case and on the personality of the judge deciding the case.

Generally, unlawful contracts are considered to be void. This means that the unlawfulness or immorality of the agreements between the partners in an informal relationship can be sanctioned by declaring that the acts which are contrary to legal mandatory provisions and morality are void. It is therefore the concept of morality, understood in a specific sense, which constitutes an important limit on the freedom of contract.

58. Are partners in an informal relationship permitted to agree on the following issues:

a. The division of tasks as between the partners?

Yes. In divided co-ownership (joint ownership), the co-owners have specific shares in the common assets (§ 137 para. 2 Slovak Civil Code). The co-owners may agree on the cancellation of co-ownership and on a mutual settlement. The settlement agreement must be made in writing if it concerns immovables. In the case of

³³ Under the European meaning of autonomy (freedom) See principally M. JANČO, in: M. JANČO et al. (eds.), *Európske súkromné právo* (European Private Law), EUROIURIS, Bratislava, 2012, at p. 178.

³⁴ J. LAZAR, in: J. LAZAR et al. (eds.), *Občianske právo hmotné* (Substantive Slovak Civil Law), Iuris Libri, Bratislava, 2014, at p. 18.

movables, it need not be in writing, but each co-owner must give the other co-owners written confirmation of the settlement if requested to do so (§ 141 Slovak Civil Code). If the co-owners cannot reach an agreement, the co-ownership will be cancelled and settled by the courts upon a petition by any co-owner (§ 142 Slovak Civil Code).

b. The contributions to the costs and expenses of the household?

Yes.

c. Their property relationship?

Yes.

d. Maintenance?

This is very questionable because Slovak law does not grant maintenance to a former partner. It is possible that a judge in Slovakia could declare that such a contract is an unlawful contract and therefore void.

e. The duration of the agreement?

Yes.

59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?

Yes.

60. Are the agreements binding:

a. Between the partners?

Yes.

b. In relation to third parties?

No.

61. If agreements are not binding, what effect, if any, do they have?

The agreements have no effect because they are not binding.

62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?

There are no special legislative provisions permitting partners to either opt in or opt out.

63. When can the agreement be made (before, during, or after the relationship)?

Referring to Question 57: within the framework of autonomy (freedom - autonomy of will) the agreement can be made before, during, or after the relationship.

64. What formal requirements, if any, govern the validity of agreements:

a. As between the partners?

There are no formal requirements governing the validity of agreements.

b. In relation to a third party?

There are no formal requirements governing the validity of agreements in relation to a third party.

65. Is independent legal advice required?

No.

66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?

There are no official statistics available.

67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?

There are no official statistics available.

G. Disputes

68. Which authority is competent to decide disputes between partners in an informal relationship?

The Courts.

69. Is that the same authority as for spousal disputes?

Yes.

70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?

Yes the courts may scrutinise an agreement made by the partners in an informal relationship. As far as the scope of this scrutiny is concerned, the judge can determine whether the nature of a legal transaction violates a statutory prohibition or whether the nature of a transaction is contrary to good morals. In Slovak law the

protection of good morals is usually said to be an open norm, a norm the content of which cannot be established in an abstract way but which depends on the circumstances of the case in which it must be applied, and which must be established through concretisation.³⁵ In Slovakia it is the judge who determines the content of good morals. It is also the judge who can balance the 'harmony' between autonomy and good morals. This balancing depends on the circumstances of the case and on the personality of the judge hearing the case. The consequence of a judge's scrutiny can be the nullification of an agreement.

71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?

No.

72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?

There are no alternative dispute-resolution mechanisms with regard to disputes arising out of informal relationships. The mediation service³⁶ can be used by partners.

73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?

According to Art. 15 para. 2 of the Slovak Act on Mediation a written mediation contract is binding on the parties to a contract and can be used as a title for execution.³⁷

74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?

There are no official statistics available.

³⁵ V. ČEČOTOVÁ, *Dobré mravy v slovenskom súkromnom práve* (Good morals in Slovak private law), EPOS, Bratislava, 2005.

³⁶ See the Act on Mediation (420/2004 Coll.). Zákon č. 420/2004 Zb. z 25. júna 2004 o mediácii a o doplnení niektorých zákonov.

³⁷ See principally M. BUDJAČ, in: M. BUDJAČ, K. ŠIMONOVÁ and J. LAZÍKOVÁ, *Zákon o mediácii - komentár* (Act on Mediation - Commentary), Wolters Kluwer Bratislava, 2014.