SLOVENIA

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E. New Developments in the Field of De Facto Partnerships (since February 2015)

The Family Code

On 21 April 2017 the Republic of Slovenia adopted a new family law regulation - The Family Code (*Družinski zakonik,* Official Gazette of the Republic of Slovenia, no. 15/2017, 21/2018, 22/2019, 67/2019 – the FC). The FC has been applied from 15 April 2019, replacing the Marriage and Family Relations Act of 1977 (the Marriage Act).[1]

The FC regulates relations between both marital and extra-marital partners of opposite sex. The provisions on life communities of same-sex partners were excluded from the FC in the process of its preparation. Same-sex partnerships have been regulated similarly to marriages and extra-marital communities in the Civil Partnership Act of 24 February 2017 (Zakon o partnerski zvezi, Official Gazette of the Republic of Slovenia, no. 33/2016, see chapter 2 below).

An extra-marital community is regulated in a single article, as in the Marriage Act. Its definition remains the same as in the Marriage Act (art. 4 FC): No formal confirmation of the community is required for the creation of an extra-marital community. It is sufficient for its recognition that a man and a woman who are not married live together for an extended period (art. 4 FC). There must be no reason why a marriage between the partners would be invalid, for example relationships in prohibited degrees of consanguinity, an existing marriage with another person, or the permanent unsoundness of mind of a partner due to severe mental illness. An extra-marital community creates legal consequences only in relations between the partners. These are the same in the area of family law as in relations between spouses. In areas outside of family law, an extra-marital community creates legal consequences only if legislation in this area so provides.

Despite the unchanged definition of an extra-marital community, the legal consequences between extra-marital partners has changed because, under the FC, the

[1] See Novak B., Družinski zakonik z uvodnimi pojasnili 2, amended and supplemented edition, Uradni list Republike Slovenije, Ljubljana, 2020, Novak B. (ed.), Komentar Družinskega zakonika 1st impression Uradni list Republike Slovenije, Ljubljana, 2019.

legal consequences in relations between spouses has changed. This applies primarily to the housing protection of the partners and to the property relations between the partners.

Under the FC, spouses are guaranteed the right to housing protection for the duration of the marriage (the same right is therefore guaranteed to the partners in an extra-marital community during their life-union, art. 59 FC). The spouses must agree on the housing in which they will cohabit and which will be the home of children who live with them. If this housing is part of the joint property of the spouses, then they may only jointly and consensually dispose of, burden or rent this housing, or establish the right of easement or any other right that would impede its use. If only one of the spouses is the tenant of such housing, he may not terminate the rental relationship without the written consent of the other spouse. A court decides whether the spouse has refused consent without just cause. In its decision, the court will take into account the housing needs of the spouses, their legitimate interests, the needs and best interests of children living with them and other circumstances of the case.

Under the FC, spouses have guaranteed housing protection at the time of divorce (the same right is enjoyed by extra-marital partners in a case of separation). This gives each of the spouses the right to demand that the other spouse leave the housing in which the spouses live or lived together, or part of that housing. The court will decide on the surrender of housing to the use of a spouse, if the child's best interests so require. It also takes into account the housing needs of the spouses and their legitimate interests. At the time of divorce, the court can assign the housing (in full or in part) to the other spouse if the latter does not have other suitable housing or if otherwise, an exceptionally difficult situation would arise for the other spouse or for the children. This is possible when: only one of the spouses is the owner or holder of building rights or has the right to enjoy or use the land on which the housing is located, only one of the spouses is the floor owner of the housing or the beneficiary of easement of the dwelling, or when the said rights belong to one of the spouses together with a third person. The court grants the housing for use only and for the limited period of time required for the spouse and children to arrange new living conditions, with a maximum of six months. On the proposal of the spouse who demands the surrender of the housing for use, the court may extend assignment of the housing for a maximum of six months. If the court grants the housing for the use of a spouse, upon the demand of the other spouse it also determines the amount that this spouse must pay as compensation for the use of the housing, unless the spouse does not have sufficient resources for subsistence. The spouse who is obliged to surrender the housing for use by the other spouse must surrender everything without withholding anything which would make it difficult for the spouse to use or prevent use of the housing or its part.

If a spouse at the time of the divorce demands that the other spouse surrender to him for exclusive use the housing in which they live or have lived together, because of violence committed against him or their children by the other spouse, the law governing the prevention of domestic violence is used (art. 109 FC).

In the property field, the FC has eliminated the cogent property regime between spouses (and therefore also between extra-marital partners). Under the new law, the spouses may regulate their property relations by contract (contractual property regime). Only if they cannot or do not want to agree on their property relations does the property regime determined by law (statutory property regime) apply to them. The slightly modified current regime of joint property of the spouses applies as the statutory property regime.[2]

The spouses are entirely free in regulating their property relations. The legislation does not restrict them in their choice among lawfully available property models. Spouses may by mutual agreement regulate their property relations for the duration of the marriage, as well as in the case of divorce. Such a contract may be concluded before or after the marriage (in the case of an extra-marital community, a contract is only concluded after the establishment of the life community of the partners). A contract concluded before the marriage is effective from the date of marriage or on the day after the marriage is concluded, which the spouses specify in the contract. A contract concluded after the marriage is effective from the date of conclusion of the contract or from the date specified by the spouses in the contract (art. 85 FC).

Prior to conclusion of the contract, the spouses must inform each other about their property status, otherwise the contract may be challenged. The contract must be drawn up in the form of a notarial protocol and entered in the register of contracts, which is administered by the Chamber of Notaries of Slovenia as a computer database (art. 90 FC). A third party may only discover from the register that there is a contract on the regulation of property relations between the specified spouses and which notary keeps it; they cannot see the content of the contract (art. 91 FC). The content of the contract may only be examined and a transcription requested by a person specified by the law governing notaries. Under these rules, this is only the parties to the legal transaction, not third persons. A court may also examine the content of a contract when a decision depends on this (art. 68 FC). A contract that is not entered in the register has no effect

[2] See Novak B., New Slovenian family code. International family law, 4/2018, p 266-274; Novak B., Slowenien. In: Bergmann A.(Hrsg.), Ferid M. (Hrsg.), Henrich D. (Hrsg.). Internationales Ehe- und Kindschaftsrecht: mit Staatsangehörigkeitsrecht. 6. Aufl. Frankfurt am Main; Berlin: Verlag für Standesamtwesen, 2020, p 1-157; Novak B., Das neue slowenische Familienrecht. Zeitschrift für das gesamte Familienrecht, 2017, p 1479-1484.

on third parties, in relation to whom it is considered that the spouses are subject to the statutory property regime.

The spouses may later alter the contract on the regulation of property relations by dividing the joint property created up to that point and establishing a new contractual arrangement for the future, or by deciding that, after the division of the property, the statutory property regime will apply between them. If the contract is void or unclear to the degree its content cannot be understood, the statutory property regime applies between the spouses (art. 89 FC).

The statutory property regime is a community of property regime for the joint property of the spouses and separation of property regime for the individual property of each of the spouses (art. 66 FC). According to the FC, joint property is property acquired by the spouses through work (e.g., salary, honoraria), as well as property acquired during the marriage against payment (art. 67 FC).

Property that a spouse brings to a marriage and property he receives free of burden during the marriage, for example by inheritance or by gift, is considered his individual property. Regardless of the origin or the method of acquisition, the individual property of a spouse also includes items of lesser value intended exclusively for his personal use (art. 77 FC). Individual property is owned exclusively by the spouse who acquired it (art. 78 FC), while joint property is owned jointly (art. 68 FC).

Joint property of spouses is managed and disposed of jointly. The FC presumes that a spouse has the consent of the other spouse if he disposes of movable property of small value or if he performs the business of regular management (art. 69 FC).

Spouses may divide joint property during the course of the marriage or at the time of divorce on the basis of a notarial protocol in the case of agreement or on the basis of a court decision in the case of dispute. The division of joint property may also be demanded by a creditor. In the division of joint property, it is assumed that the shares of joint property are equal. Spouses may prove that they have contributed to total property in a different ratio but, under the FC, an insignificant difference in the contribution of each spouse to joint property is disregarded (art. 74 FC).

Under the new regulation, cohabitation is no longer necessarily a coercive community in which legal consequences occur independently of the will of the partners, since the partners can exclude by contract the most important legal consequences of cohabitation: the duty to support and divide joint property. They can do so by a contractual renouncement of maintenance, which has been permissible since the 2004

amendment to The Marriage Act, or by a separate property agreement, which is only allowed by the FC. The new regulation provides the partners with all the necessary legal certainty, which they can exclude (opt-out system) if they do not want it.

The Civil Partnership Act

The Civil Partnership Act (*Zakon o partnerski zvezi*, Official Gazette of the RS, No 33/2016) entered into force on 24 May 2016. The Act, which regulates registered civil partnerships and unregistered civil partnerships of same-sex partners, has applied from 24 February 2017. From the day of application of this law, the Registration of Same-Sex Civil Partnership Act ceased to apply.

The Civil Partnership Act regulates the legal consequences and the end of a registered life partnership of two women or two men (i.e. registered civil partnership) in the same way as the law that regulates marriage (art. 4 of the Civil Partnership Act). A registered civil partnership is also equated in legal consequences with a marriage in all other fields. The only exception is in relation to joint adoption and access of partners to procedures of fertilisation with biomedical assistance (art. 2 of the Civil Partnership Act).

An unregistered civil partnership is a life community of extended duration of two women or two men, who have not registered a (formal) partnership and there is no reason by which a civil partnership between the two of them would be invalid. Such a partnership, in relations between the two partners, has the same legal consequences under the Civil Partnership Act as if they had registered a civil partnership. In those legal fields in which an extra-marital community has legal consequences, an unregistered civil partnership has the same legal consequences as an extra-marital community, unless the Civil Partnership Act specifies otherwise. Partners from an unregistered civil partnership may not adopt a child together and are not entitled to procedures of fertilisation with biomedical assistance.