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COMPARATIVE ANALYSIS OF PROPERTY RIGHTS OF NON-MARITAL PARTNERS IN NORTH MACEDONIA AND SELECTED EUROPEAN UNION COUNTRIES

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ABSTRACT

In recent years in North Macedonia, there has been a noticeable and steady rise in the prevalence of non-marital unions or domestic partnerships, alongside a decline in the number of marriages and an increase in divorces. This trend mirrors developments seen across Europe, signaling significant shifts in the perception, function, and role of the institution of marriage and family over recent decades. Across European nations, various models of legal frameworks govern non-marital unions. These differences encompass conditions for existence and legal recognition, the legal consequences of domestic partnership, and procedures for its dissolution. While some countries require registration and fulfillment of specific criteria for legal recognition and effects of non-marital unions, others, like North Macedonia, do not impose such prerequisites.

In certain jurisdictions, the legal ramifications of non-marital unions closely resemble those of marriage, encompassing both personal and property rights between non-marital partners. However, in the Republic of North Macedonia, the law predominantly focuses on regulating property relations between such partners, granting them certain rights—a focal point of this research paper.

The legal framework governing the property relations of non-marital partners holds significant importance, particularly in safeguarding the financial security of economically vulnerable partners and ensuring the protection of any shared children.

The methods employed in this research include theoretical analysis and the comparative method, drawing upon the legal frameworks and practices of Croatia, France, and Italy alongside North Macedonia. Through these analytical approaches, we aim to elucidate the intricate dynamics of domestic partnerships and their implications for individuals and families in contemporary society.

Keywords: non-marital unions, non-marital partners, property rights, cohabitation.

INTRODUCTION

The increase in the number of people opting to live in non-marital unions and the percentage of children born to non-marital partners constitute significant phenomena of recent years. According to the population census of 2002 in North Macedonia, the official count of cohabiting couples was reported to be 6027. However, this number likely has increased significantly if we analyze other statistical data, such as the number of children born out of wedlock (Avirovikj, 2017). Over the last decade, this figure has hovered around 11%. In 2019 it reached 12.4% of the total number of births, in 2020 13%, in 2021 13.7%, while in 2022 the proportion of children born out of wedlock was 12.7% of the total number of live births (State Statistical Office of the Republic of North Macedonia, 2023). Nevertheless, this is a relatively small number compared to the number of children born out of wedlock in European Union countries. According to Eurostat, in EU countries from 1960 to 2006, the percentage of children born out of wedlock increased from 5.1% to 33.9%. However, there are significant differences between European countries in this regard. For instance, in southern European countries, the percentage of children born out of wedlock is relatively small, while in other countries, such as Scandinavian ones, this number exceeds 50% (Spirovikj-Trpenovska et al., 2013). In 2022 the proportion of live births outside marriage in EU countries was estimated at 42.2%. (Eurostat, Marriage and divorce statistics, 2022).

The increase in the number of non-marital unions has also been accompanied by a change in the nature of cohabitation. If in the past cohabitation was often a first step towards marriage, today it represents a genuine alternative to marriage, where many non-marital partners never marry but live in cohabitation that can last for years or even decades.

In contrast to countries in the region, where deep reforms have been implemented in all segments of family legislation to harmonize the legal regulation of family and marital relations with the transformations that have taken place in real life, North Macedonia has not undergone serious reform in family law since 1946. The Family Law Act (FLA) of 1992, although constituting a mini-codification of this sphere by uniting in a single text the regulation of four areas of family law: marriage, parental relations, adoption, and guardianship, basically did not bring any innovation because the legislator largely borrowed the old, existing arrangements of legal-family relations (Mickovikj & Ristov, 2016). Until the entry into force of the Law on Ownership and Other Real Rights (LOORR) of 2001, property relations between marital and extramarital partners were governed by the provisions of the Family Law Act of 1992. The FLA of 1992 also introduced several new provisions, among which the most important are: the equality of non-marital unions with marital ones in terms of the property created in the community, as well as the solution according to which, in the case of the division of the joint property of marital or non-marital partners, the partner to whom the children are given for custody and education should also receive the items from the joint property that serve the children (Articles 13 and 214 of FLA).

The 2001 reform in the regulation of spouses' property relations, which consisted of separating the regulation of these relations from the FLA and treating them within the LOORR, is an attempt by the legislator to "privatize" the spouses' property relations. However, there is still a lack of recognition of a higher degree of autonomy of the will of marital or non-marital partners in terms of regulating property relations between them, which would be fully compatible with the development of economic-social relations in Macedonian society, as well as with the legislation of the countries of the region and those of Europe. The goal of the legislator was to separate property relations from family law and treat them within the framework of civil law. But the primary drawback of such a decision pertains to the distinction between property relations and real legal relations, the latter being a narrower category. The LOORR focuses on regulating objects and their legal status, which constitutes only a fraction of the concept of "property," encompassing a set of rights and obligations of a property nature. In contemporary civil law, "property" denotes the entirety of subjective civil rights with a property character belonging to one or several legal subjects. Thus, within the property of marital or non-marital partners, in addition to real rights, compulsory, hereditary, copyright rights, etc., may also be encompassed.

The sole crucial innovation introduced by the new law pertains to the disposition of joint property of spouses, including the right of pre-emption reserved for one spouse when the other intends to sell their share of joint ownership. With the issuance of the LOORR, an attempt was made to further harmonize Macedonian legislation with contemporary standards. The legislator was guided by the principles of equality and solidarity between spouses in regulating their property relations, as well as in the rights and obligations arising from the administration and disposal of joint ownership. The LOORR regulates the property relations of spouses across a total of 15 articles (Articles 66-81). However, this superficial arrangement of these relations leaves room for significant dilemmas in practice.

Approximately 14 years ago, by Decision of the Government of Republic of North Macedonia dated December 28, 2010, a Commission was established for drafting the Civil Code of Macedonia, which would regulate legal-family relations under Book V. The drafting of the Civil Code was expected to comprehensively and systematically regulate all matters within civil law, similar to numerous European countries, thereby overcoming legal gaps, ambiguities, and contradictions existing in civil law regulations. The commission produced the initial version of the family legislation reform; however, all work on the Civil Code was halted for several years for unknown reasons. After a period of interruption, the Republic of North Macedonia has resumed the drafting of the Civil Law, which will incorporate family law as an integral component (Ristov & Sutova, 2022).

In contemporary societies, the concept of non-marital unions holds significance, as it serves not only as an alternative to marriage but also as a foundation for forming families. Its legal status varies depending on societal and familial values. Among the former Yugoslav republics, Macedonia was the last to formally recognize non-marital unions in 1992, defining them as lasting partnerships between a man and a woman enduring for more than one year. Traditional values and customs have contributed to Macedonia's relatively low rate of non-marital unions compared to other European countries (Ristov, 2014).

Non-marital union lasting more than one year is considered equivalent to marriage concerning the division of joint property and the mutual right to alimony (Article 13 of FLA). The FLA supports the concept of unregistered non-marital unions. Essential elements for the existence and validity of non-marital union include:

1. The existence of a life partnership between a man and a woman.

2. The duration of this partnership for at least one year.

Thus, Macedonian legislation recognizes and regulates only heterosexual non-marital unions. However, for their recognition, not only the duration is taken into account, but also the totality of the relationship between the partners, their quality, and the purpose of living together. In this context, temporary, short-term, and often casual relationships between a man and a woman cannot be considered non-marital union. Since non-marital unions are not registered, a common issue arising in court proceedings upon their termination is the verification of their duration. This problem results in prolonged and arduous legal proceedings, which undermine the crucial principle of legal certainty in property relations.

Regarding the right to inherit, the non-marital union is not recognized as a legal basis for inheritance under the provisions of the Law on Inheritance, meaning non-marital partners do not automatically inherit from each other. However, there are no restrictions preventing non-marital partners from being named as testamentary heirs of one another.

The legislator has overlooked a significant aspect in regulating the non-marital unions by failing to anticipate potential obstacles to their formation, akin to those encountered in marital relationships (Mickovikj & Ristov, 2012). This omission has led to numerous practical challenges, particularly in cases where the non-marital union yields legal consequences despite one or both partners being in a legally intact marriage. Consequently, in judicial practice, substantial difficulties arise in substantiating the share of non-marital partners in joint property, particularly when one or both remain legally married.

PROPERTY REGIME OF NON-MARITAL PARTNERS

Since non-marital partners who have cohabited for more than one year are considered equivalent to married spouses concerning joint ownership and its subsequent division, the same property regimes that apply to married couples also apply to non-married ones. The property regime established by the LOORR is a legal framework that cannot be altered based on the desires of marital or non-marital partners. Parties with a contract can only agree on the manner of administering and disposing of joint and separate ownership, as defined by this law (Articles 68 and 70 of LOORR). The legal property regime in North Macedonia comprises a combination of the joint ownership regime and the separate ownership regime of spouses or non-marital partners.

Joint ownership between spouses and non-marital partners is established according to specific cases and conditions stipulated solely by law. The parties do not possess the authority to establish joint ownership through an agreement, nor can it be established through a court decision or by any other state authority. Only when the conditions specified by law are fulfilled can it be determined whether the ownership right will become part of the joint ownership of the cohabiting partners. The LOORR delineates the conditions that must be satisfied for an item to be included in their joint property. Ownership of a particular item is acquired based on the general rules governing the acquisition of ownership rights. Firstly, to acquire ownership rights over the item, the general conditions for acquiring ownership rights must be met (e.g., ownership by the seller, a valid sales contract, and the delivery of the item into possession). Secondly, for the item to be considered joint property of the spouses or non-marital partners, it must have been acquired either through labor or during the duration of joint married life.

Labor, as a condition for the establishment of joint ownership, is explicitly mentioned in the family laws of all former Yugoslav countries with which North Macedonia shares a legal tradition. Conversely, the legislator in North Macedonia appears to have intentionally omitted the term "labor" from the definition of joint ownership, aiming for a broader and more inclusive definition of this institution, which encompasses contributions beyond the exclusive efforts of marital or non-marital partners. Their joint ownership also encompasses items acquired not only through labor but also through dedicated gifts to both partners or items obtained through aleatory contracts. However, labor, as a primary basis for the creation of shared wealth, is duly considered by judicial practice in North Macedonia, irrespective of its form, whether it yields direct financial returns or contributes to profit preservation. Furthermore, upon analyzing the definition of separate property of spouses provided by Article 68 of the LOORR, which states: "*property possessed by a spouse at the time of marriage or acquired during marriage through gift, inheritance, bequest, etc., constitutes their separate property,*" we ascertain that separate ownership excludes values generated by labor, encompassing only those acquired through other legal bases outlined by law. Consequently, earnings from labor form part of the joint ownership of marital or extramarital partners.

Cohabitation serves as the second requisite for the establishment of joint ownership among marital or non-marital partners. Only property, property rights, and obligations acquired during their shared life are deemed joint property. Conversely, property acquired subsequent to the permanent termination of the shared life partnership, regardless of whether it was

obtained during the existence of marriage or non-marital union, constitutes separate property of the spouses, akin to property acquired before the commencement of their shared life. Thus, the sole criterion is the existence of the shared life community at the time of property acquisition.

The primary characteristic of joint ownership among marital or non-marital partners lies in the fact that all objects of ownership, whether movable or immovable, belong jointly to both partners in undivided parts, neither in reality nor in concept. Therefore, their ownership rights extend to all assets created through labor during their shared life. Joint ownership is subject to a distinct regime until its division.

Although the LOORR does not explicitly delineate which items belong to joint ownership and which belong to separate ownership, legal theory and decades of court practice in implementing provisions related to joint ownership, commencing from the Basic Law on Marriage (1946) through to the Law on Marriage of the Socialist Republic of Macedonia (1973) and the Family Law Act of the Republic of Macedonia (1992), supported by the LOORR (2001), enable the identification of jointly owned objects, including:

- 1) movable and immovable items acquired during the duration of the marital union or cohabitation;
- 2) income generated from jointly owned items;
- 3) funds saved within the marital or non-marital community;
- 4) items purchased using income earned from the sale of jointly owned items or items exchanged for jointly owned items;
- 5) compensation for items taken or destroyed from joint ownership;
- 6) items facilitating the professional activities of marital or non-marital partners;
- 7) items that serve to meet the common needs of partners;
- 8) items that serve to meet the personal needs of one of them and
- 9) items acquired by non-marital spouses who later marry.

The LOORR does not address the relevance of income earned by one spouse from intellectual property. This gap is addressed by Article 8 of the Law on Copyright and Related Rights, which stipulates that "*copyright is not part of the common property of the spouses, while the financial benefits derived from copyright are considered joint property of the spouses.*" However, the Law on Industrial Property lacks a similar provision regulating the ownership of industrial property rights, including patents, industrial designs, trademarks, geographical indications, and indications of origin.

The division of joint ownership between marital or non-marital partners can occur in three ways:

- 1) through agreement between the partners, both during the duration of the marriage or a non-marital union and after its termination;
- 2) by the court in a non-contentious procedure or
- 3) in a contentious procedure.

Upon the termination of a non-marital union, it becomes necessary to resolve the issue of dividing the joint property, which naturally entails legal consequences in the property relations of the non-marital partners. Disputes between partners regarding the division of ownership, which may involve their joint parental role or affect the interests of third parties, often lead to protracted and contentious disputes. Such disputes can encompass various issues, ranging from disagreements regarding the administration and disposal of joint ownership to disputes over the fulfillment of obligations by one partner through joint ownership, and even challenges to the legal assumption stipulating that the shares of partners from joint ownership are equal (Article 75/2 of the LOORR).

In cases where marital or non-marital partners fail to reach an agreement regarding the division of joint property, the division will be carried out by the court upon the request of one of them (Article 75/1 of the LOORR).

The right to request the division of joint property is not explicitly prescribed as it constitutes a subjective civil right with an absolute character (Article 63/1 of LOORR). The division of joint ownership in court can be conducted through a non-contentious procedure

(Articles 213-227 of the Law on Non-Contentious Procedure) or a contested procedure, the latter occurring when partners cannot agree on the method of division or the allocation of shares (Article 217 of the Law on Non-Contentious Procedure).

A division of joint ownership through a non-contentious procedure occurs when there is no dispute between partners regarding the allocation of shares for each joint asset, yet they cannot agree on the method and conditions of division (Article 75/1 of the LOORR, Article 213/1 of the Law on Non-Contentious Procedure). Conversely, if there is no dispute regarding the method and conditions of division, the division is executed by a notary through a notarial deed (Article 213/2 of the Law on Non-Contentious Procedure). The involvement of notaries in this process reflects the legislator's intent to streamline the work of the courts by handling non-contentious cases outside the judicial system, thereby enhancing judicial efficiency.

The division of joint property in a contentious procedure occurs when marital or non-marital partners dispute the extent of their shares in the joint property or the manner and timing of their contributions.

The contentious procedure is initiated solely through the claim of the plaintiff who is actively legitimized (Article 175 of the Law on Contentious Procedure). Each partner has the right to request, via a lawsuit, that the court determine their respective share of the joint property. This right can be exercised at any time during the marriage or after its termination (Article 74/1 of the LOORR). The court determines the portions of joint ownership based on data pertaining to movable and immovable property constituting joint ownership, submitted in the lawsuit by the plaintiff partner. Although the court generally operates under the legal assumption that joint ownership is divided equally between the partners, with each owning a ½ ideal part of the joint ownership (Article 75/2 of the LOORR), each partner retains the right to challenge this presumption and demonstrate that their share is greater than the other partner's. Upon request, the court may assign a larger portion of jointly owned items to a partner if it is proven that their contribution to the profits of joint ownership significantly exceeds that of the other partner (Article 75/3 of the LOORR).

When assessing each partner's contribution to joint ownership, the court considers not only their financial contributions but also other forms of support, such as familial responsibilities, child-rearing and household maintenance. Thus, the court evaluates any form

of assistance or contribution by the partners to the growth of joint property or to prevent its decline beyond what it would be without such contributions.

MAINTENANCE OR ALIMONY OBLIGATION BETWEEN NON-MARITAL PARTNERS

The maintenance obligation is not only a legal requirement (as stipulated in Article 11 of the Family Law Act) but also a constitutional obligation (as outlined in Article 40/3 of the Constitution). Even in terms of the maintenance obligation between non-marital partners, the provisions of the FLA that deal with maintenance between spouses are applied analogously. Alimony (legal maintenance) is a crucial institution of family law, grounded on the principle of solidarity in family relations, obliging family members to support each other before seeking financial assistance from the state through social welfare programs. The Law on social protection outlines the state's obligation to provide necessary means for the support of uninsured family members in situations where support can't be provided by other family members. However, family solidarity must take precedence over social solidarity, which acts only as a fallback when the former is absent. In this context, it is advisable for capable individuals to provide for their own needs, while those unable to do so should initially seek assistance from family members, spouses, non-marital partners, or other relatives.

Despite its significance, the Family Law Act lacks a comprehensive definition of the term "alimony," which is defined as the right and obligation of family members and other relatives to support each other (Article 178/1 of FLA). According to judicial practice, alimony entails providing necessary material means for individuals entitled to it, covering expenses for food, clothing, medical care, and, in the case of children, educational expenses (Spirovikj-Trpenovska et al., 2013). Thus, the obligation to provide alimony has a significant financial dimension.

Between the provider and the recipient of alimony, obligations arise as stipulated by the law, akin to those between a debtor and a creditor. However, the relationship arising from alimony differs from other obligatory relationships, primarily due to the goal it aims to accomplish. Therefore, the legislator has established imperative norms to achieve the goal derived from alimony. These rules serve as the foundation for distinguishing this obligation relationship from any other type of legal-property relationship. One of the main characteristics of alimony is its personal nature. The debtor and the creditor in the alimony obligation are not individuals motivated solely by economic interests; they are connected by a bond of life

partnership or marriage, influenced by feelings and mutual respect. The personal character of this obligation is manifested in various ways, with a significant aspect being the prohibition on the transfer of rights and obligations. In the event of the death of either party - the recipient or provider of alimony - the obligation ceases, and the rights and obligations do not transfer to the heirs. Consequently, upon the death of the creditor, their heirs cannot claim alimony since it was intended to meet the deceased's living needs, which no longer exist.

The obligation for alimony is imperative, and the state regulates it with mandatory norms, insisting on its fulfillment. Therefore, the recipient of alimony cannot waive this right (Article 178/3 of the FLA). As per Article 362/3 of the Law on Obligation Relations (LOR), the right to alimony defined by law cannot be time-barred. Thus, alimony can be claimed as long as the legal prerequisites exist. However, accrued and unpaid obligations are time-barred for three years, as per Article 361 of the LOR.

According to Article 330/1, point 5 of the LOR, the claim arising from the legal obligation for alimony cannot be terminated by compensation. Thus, compensation is not possible if the debtor of the alimony obligation becomes a creditor of their own creditor under another legal basis.

Alimony is awarded for the future; hence, if the non-marital partner entitled to claim alimony does not do so for an extended period, it will be presumed that there was no need for it. Consequently, alimony cannot be retroactively claimed as it would contradict the purpose of alimony and impose a significant burden on the other partner as the debtor. Given that alimony is granted for the future, determining the commencement of future provision becomes pertinent. In judicial practice, it is generally considered that alimony is granted from the date of filing the lawsuit. This reinforces the idea that alimony should be provided when the need for it arises, and the court decision merely confirms the transformation of need into the right to receive alimony. Compensation for the time already elapsed can only be requested under three circumstances: a) if the alimony was given by someone not obligated to provide it; b) if it was given by someone not scheduled to provide it; c) if the alimony was given by someone not obligated to provide the entire amount, but only a portion thereof (Article 181 of FLA).

The right to alimony cannot be the subject of enforcement and securing claims.

Alimony possesses several important characteristics, which can be summarized as follows:

- Alimony between spouses or non-marital partners is a reciprocal legal obligation (Article 11 and 178 FLA) arising from family ties resulting from marriage or cohabitation lasting over one year. It arises according to the law at the establishment of these relations.
- The alimony obligation is fulfilled without compensation.
- The right and obligation for alimony are personal (*intuitu personae*) and non-transferable both by the giver and the receiver of alimony and cannot be inherited (according to the Law on Inheritance).
- Waiver of the right to alimony has no legal effect (Article 178/3 of FLA).
- Monetary means paid for alimony are not reimbursed because alimony is based on the principle of solidarity. Therefore, there is no obligation to return paid alimony if the recipient earns income.
- Generally, alimony is granted only for the future (*nemo pro praeterito allitur*) according to Article 312/2 of the Law on Contentious Procedure, but according to judicial practice, it is granted from the day when the judicial process commenced.
- The right to legal alimony is not time-barred (Article 362/3 of LOR), but the payment of specific installments can be time-barred within three years (Article 361 of LOR). However, the statute of limitations does not apply between marital or non-marital partners as long as the marital or non-marital relationship persists (Article 370 points 1, 3, 4 of LOR). This means that the person entitled to alimony can exercise this right at any time as long as the conditions for alimony are met.
- The amount of previously established alimony may change if the circumstances based on which the previous decision was made have changed (Article 201 of FLA).
- Alimony cannot be included in forced execution, and there is priority in payment during the enforcement procedure according to the Law on Enforcement.
- Alimony cannot be offset with the obligations of the recipient (Article 330/5 of LOR). Therefore, if the debtor of the alimony obligation becomes a creditor of their creditor under another legal basis, there can be no deduction of the obligation.

It should be emphasized that alimony between spouses or non-marital partners is not an unconditional right. The primary condition for realizing the right to alimony is that the partner is not financially secure and lacks the necessary means of living. The maintenance obligation exists both during marriage or non-marital union and after its termination. During marital and non-marital unions, spouses and non-marital partners have the obligation, within their means, to contribute to their maintenance and that of other family members. However, if one of them lacks sufficient means of living, is unable to work, or is unemployed through no fault of their own, they have the right to alimony from the other partner proportionate to their means (Article 185/1 of FLA). This is a temporary right, lasting a maximum of five years from the dissolution of marriage or termination of the non-marital union.

PROPERTY RIGHTS OF NON-MARITAL PARTNERS IN CROATIA

Croatian legislation was among the first to legally recognize cohabitation as an informal relationship in the late 1970s when it was still part of the former Yugoslavia. The Marriage and Family Relations Act of 1978 provided cohabiting couples with property and alimony rights equal to those of married spouses. Since gaining independence, Croatia has steadily expanded the rights and protections of informal relationships, including the recognition of same-sex couples through a 2003 law on unregistered same-sex partnerships. This law guaranteed rights similar to those of heterosexual cohabiting partners to homosexual partners who had cohabited for at least 3 years, particularly in terms of inheritance and financial support. This law has since been replaced by the Life Partnership Act, effective from September 1, 2014.

Thus, Croatian legislation regulates two forms of informal relationships:

- cohabitation of persons of opposite sex and
- partnership of persons of the same sex.

Cohabitation, as defined by Article 11/1 of the Family Act, pertains to heterosexual couples – a life community between an unmarried man and an unmarried woman. Family legislation stipulates that cohabitation must endure for at least three years, except in cases where the partners have common children or when cohabitation is followed by marriage, in which instances the duration requirement may be shorter. While the law does not specify additional prerequisites, case law indicates that the conditions for a valid marriage must be met. Cohabitation is not subject to registration; instead, courts decide on a case-by-case basis whether the conditions for its existence have been fulfilled. Legally, cohabitation carries the same effects as marriage regarding property rights, personal rights, and the right to maintenance

(alimony). It also has implications under other laws, such as those governing inheritance, social security, and pensions, each with varying conditions, from the duration of the relationship to the need for a notarial declaration.

In contrast, informal relationships among homosexual couples are governed as informal partnerships rather than cohabitation. An informal partnership is a family living arrangement between two individuals of the same sex who, despite meeting the criteria for a valid and registered same-sex partnership, have not entered into such a partnership (Article 3/1 of the Life Partnership Act). This partnership must endure for at least three years and must meet the criteria of a valid registered partnership from the outset, which align with the personal requirements for a valid marriage. The legal consequences of an informal partnership closely resemble those of a registered partnership and cohabitation, including property rights, personal rights, and the right to maintenance (alimony), though adoption rights are excluded. These legal effects extend to other areas of law, such as inheritance and pension rights.

Property relations between partners in a life partnership and informal life partnership follow a regime analogous to that of joint ownership and separate ownership of spouses. Joint property encompasses assets acquired through joint efforts during the partnership or accumulated from such property, while property owned by a partner before marriage remains separate (Article 36 of the Family Act). Spouses are presumed to have equal shares of joint property unless a contract dictates otherwise. These same rules apply analogously to cohabiting partners or partners in life partnerships and informal life partnerships.

PROPERTY RIGHTS OF NON-MARITAL PARTNERS IN FRANCE

Cohabitation, as an unregistered partnership, is recognized but not regulated by the Civil Code, whereas registered partnerships (civil partnerships – PACS) are governed by the Civil Code. Thus, cohabitation constitutes a *de facto* community characterized by shared life, representing stability and continuity between two individuals, whether of different sexes or the same sex, who live as a couple (Article 515-8 of the Civil Code). The Civil Solidarity Pact (PACS) is a contract entered into by two adults, regardless of gender, to organize joint living (Article 515-1 of the Civil Code). Initially established on November 15, 1999, by Law no. 99-944 on Civil Partnerships, PACS underwent significant reform in 2006, altering its content and structure. PACS registration is obligatory and is conducted before a notary or registrar responsible for the birth records of each partner, albeit in a much less formal manner than

marriage. PACS entails personal commitments, including cohabitation and mutual assistance, and property implications similar to those of marriage, such as mutual financial support and joint liability for debts incurred during the partnership. Unless otherwise agreed, financial assistance is proportionate to each partner's respective means.

To streamline asset management for partners, the law of June 23, 2006, established a unique property regime exclusively for PACS. This regime, known as the separate property regime under Article 515-5 of the Civil Code, allows partners to maintain individual ownership of properties acquired before entering into a PACS. Consequently, upon PACS termination, each partner reclaims their individual properties, provided they can prove ownership if disputes arise. However, if partners fail to prove exclusive ownership, the assets are deemed indivisible or shared. While adherence to the divided assets regime precludes partners from disputing ownership based on unequal contributions, establishing indivisibility during acquisition or purchase prevents such disputes.

Partners in a civil partnership are jointly and severally liable for debts incurred by either partner to meet daily needs, except for clearly excessive expenses (Article 515-4 of the Civil Code). Each partner enjoys administration, use, and disposal rights over their personal assets and is accountable for their individual debts. These rules regarding divided assets apply only when partners have not stipulated otherwise regarding ownership. Property whose ownership is not specified is presumed to be jointly owned (Article 515-5 of the Civil Code).

Partners are not obliged to subject their property to the separate-assets regime; they may instead enter into an indivisibility agreement encompassing all assets acquired post-PACS (Article 515-5-1 of the Civil Code). This agreement, either concluded immediately after PACS registration or as an amendment drawn up simultaneously, dictates that properties acquired thereafter are jointly owned. However, certain assets must remain separate, including cash earnings not used to purchase assets, created assets and accessories, personal belongings, assets related to a partner's previous apartment purchase, and assets purchased with cash from donations or inheritances (Article 515-5-2 of the Civil Code).

According to Article 515-7 of the Civil Code, PACS terminates under four circumstances:

- 1) upon the death of one of the partners;

- 2) upon the marriage of the partners or one of them;
- 3) by joint declaration of the partners; or
- 4) by the unilateral decision of one partner.

After the termination of the PACS, the partners must divide their assets. Currently, there is no law governing the division of assets after the termination of PACS. Therefore, every separation should be amicable and tailored to the specific situation of the partners. If the partners have opted for the statutory property regime applicable to PACS, they are subject to the separate-assets regime. This means that assets acquired by one partner before and during cohabitation remain the exclusive property of that partner. Consequently, during the separation, each partner will retain their own assets. However, there is an exception: if one partner has improved the personal property of the other by providing financial contributions, the contributing partner can request reimbursement for these amounts. If the partners did not wish to be subject to the legal regime, they could have entered into an agreement to consider their assets undivided. In such cases, the property would belong to both partners equally. However, dividing items that are part of undivided assets (*indivision*) is often difficult or impossible because not all items can be divided equally. Therefore, in practice, one partner typically acquires ownership of the entire asset, compensating the other partner with an amount equal to half the value of the asset (*soulte*). If neither partner wishes to own the asset, they can sell it and divide the proceeds equally (Metaj-Stojanova, 2019).

Upon termination of the PACS, the partners must settle all debts incurred jointly during their partnership. Additionally, they must reimburse each other for any outstanding obligations between them. For instance, if the partners had agreed to contribute jointly to family expenses but one partner has not fulfilled their contribution at the time of PACS termination, they must reimburse the other accordingly. In the event of a dispute regarding debt repayment, the partners may seek resolution from a family court judge, who will decide on the division of assets.

When a PACS is terminated due to the death of one partner, the rules for inheritance of PACS partners differ from those for married couples. Surviving civil partners do not automatically inherit from their deceased partners as surviving spouses do. However, partners may enter into agreements during their lifetime that dictate inheritance provisions, thereby allowing the surviving partner to inherit. There are two possibilities for civil partners to inherit

from each other. First, they may choose to hold their assets under the regime of undivided assets (*indivision*) rather than separate assets. This allows the surviving partner to inherit the deceased partner's share of the property, becoming the sole owner. However, certain assets, such as those acquired before entering into the PACS, cannot be divided. Another option is through a will, although the surviving partner may not always inherit the entire estate of the deceased partner (Metaj-Stojanova, 2019). Legal heirs, such as children, are entitled to a portion of the inheritance, known as the legal reserve (*la réserve*), which cannot be bypassed. For example, if the deceased partner has children and leaves a will in favor of the surviving partner, the surviving partner can inherit the remaining portion of the estate that is available for distribution to others. This part is defined as "*the portion of an inheritance that can be transferred to individuals other than legal heirs*" (Metaj-Stojanova, 2019, p. 157).

PROPERTY RIGHTS OF NON-MARITAL PARTNERS IN ITALY

Law no. 76/2016, "On the regulation of civil unions between persons of the same sex and cohabitations", which sparked considerable controversy in Italy, introduces civil unions between homosexuals as distinct social formations for the first time and regulates the *de facto* cohabitation of homosexual couples, as well as heterosexual ones.

De facto cohabitants are two adult individuals permanently united by emotional ties as a couple and by mutual moral and material assistance, who are not related by blood or adoption and have not entered into marriage or a civil union (Article 1/36 of the Law no. 76/2016).

Law no. 76/2016 brought changes to Italian family law by expanding the private autonomy of cohabitants, including both heterosexual and homosexual couples. Under the new law, they are allowed to freely define the personal and non-property aspects of their relationship. However, regarding the property aspects of these relationships, the reform seems somewhat disappointing (Oberto, 2016).

The main provisions on property relations are contained in paragraphs 50-64 of the sole article of this law, which state that "*de facto cohabitants can regulate the property relations related to their common life by signing a cohabitation contract*" (Article 1/50 of the Law no.76/2016). This provision attributes a pragmatic nature to the relations between cohabitants for the first time, allowing for the overcoming of old beliefs that considered the behaviors of cohabitants as merely incidental and thus not legally binding. However, this provision can only be applied if the cohabitation meets the conditions outlined in paragraph 36 of the law; the

absence of any of these conditions will result in the invalidity of the contract. In essence, the cohabitation contract is not a constitutive element of cohabitation, but it cannot exist if cohabitation does not exist (Alpa, 2016).

Nevertheless, most legal scholars uphold the legitimacy of this agreement, contending that while it falls outside the parameters of cohabitation as defined by the legislator and thus exempt from the stipulations of paragraph 36, it conforms to the legal framework outlined by the legislator. Consequently, its validity should not be dismissed outright, as it may adhere to the customary principles governing contracts. (Bianca, 2002). So, according to this thesis, it seems possible that the typical contract concluded by cohabitants who fall under the definition of paragraph 36 of Article 1 of the law, can be opposed to an atypical contract.

The typical cohabitation contract is a formal, legal agreement with predetermined property content (Balestra, 2014), characterized by causes of invalidity and hypotheses for its solution that are entirely specific and optional (Nonne, 2017). In any case, the use of this tool does not allow for complete adjustment, because it does not include the personal and hereditary relations of relations between them (Rizzi, 2017). This is based on the provision of the Civil Code, according to which any contract for the disposition of inheritance is invalid (Article 458).

Italian legal doctrine has deeply explored the issue of the possibility of including in the cohabitation contract some aspects related to the termination of cohabitation. In this regard, paragraph 56 of Article 1 of this law is considered by some as an obstacle, considering that through the declaration that "*the cohabitation contract cannot be subject to conditions or deadlines,*" it prevents the parties from including provisions that would apply in case of termination of the cohabitation relationship. Some others exceed the limit set by paragraph 56, arguing that such provisions are legal because they are not classified as conditions but as means of regulating any eventual development of the relationship (Rizzi, 2017). This is very valuable, considering that it is an innovation compared to the previous rules on *more uxorio* cohabitation and significantly increases the legal protection of cohabitants through the recognition, for example, of the maintenance obligation (alimony) (Perfetti, 2016), as an instrument that protects the financial expectations of the subject in economic need in the event of the breakdown of the relationship (Coppola, 2016).

However, regardless of the agreements expressed between the parties, in paragraph 65 of the law, the legislator protects the interests of the cohabitant in need, providing that in case

of termination of actual cohabitation, the judge decides the right of the cohabitant to receive alimony from the other cohabitant, if they are in a state of need and unable to provide for their own support. In such cases, the maintenance obligation is determined for a period proportional to the duration of cohabitation, and to the extent determined according to the rules of the Civil Code.

On the other hand, clauses related to the payment of monetary penalties in case of termination of the cohabitation relationship are invalid (Achille, 2017), because this may force one of the parties to continue the relationship against their will in order to avoid financial sanctions.

The cohabitation contract is invalid in any case when:

- there is a marriage relationship, civil union, or another cohabitation contract;
- it involves persons who have not reached the age of majority, or persons related by blood, adoption, marriage, or civil union;
- one of the parties has been prohibited by a court decision;
- one of the parties has been convicted of the murder or attempted murder of the partner's spouse.

A condition for the validity of the cohabitation contract is that it must be drawn up in written form as a public act or as a private agreement with signatures certified by a notary or a lawyer, who certify compliance with imperative norms and legal order (Article 1/51 of the Law no. 76/2016). Therefore, the rules on marriage contracts apply analogously (Bianca, 2014).

The cohabitation contract must contain the address indicated by each party, to which communications related to the contract must be made. The contract may include: 1) residence; 2) modalities of contribution to the needs of common life in relation to the possibilities of each and the abilities of each to perform professional activity or household work; 3) the property regime of the community¹ regulated in the Civil Code (Section III of Chapter VI of Title VI of Book One of the Italian Civil Code).

¹ Romanist legal systems employ the concept of "*comunione dei beni*", which translates to "community of goods," originating from Latin where "*communitas*" signifies community.

This content defines the limits of the private autonomy of cohabitants only in terms of typical contracts (Tassinari, 2016). Clauses related to children are also considered acceptable; those stating that in case of illness or loss of the ability to understand, the partner will have the right to assistance and visits; clauses stating that one partner will appoint the other, again in case of incapacity, as their representative with full or limited powers; and finally, clauses providing for the appointment of the other partner as a supporting administrator (Rizzi, 2017).

Like any other contract, the cohabitation contract can be terminated. Article 1/59 of the Law no. 76/2016 provides for the termination of the contract through:

- agreement of the parties;
- unilateral withdrawal;
- marriage or civil union between cohabitants or between one cohabitant and another person;
- the death of one of the contracting parties.

The property regime of the community also applies to civil unions, unless the partners have agreed otherwise by contract. And for them, as well as for married spouses, there is the possibility of choosing the regime of separate assets. Law no. 76/2016 extends the application of provisions related to legal inheritance, incapacity, etc., to civil unions as well (Article 1/21 of the Law no. 76/2016).

CONCLUSIONS

The legislator in North Macedonia has made a serious omission in the regulation of non-marital unions, failing to anticipate that cohabitation may encounter obstacles similar to those in marriage. This oversight has led to numerous practical problems, as there are instances where non-marital partnerships have legal ramifications even when one or both partners remain legally married. Consequently, significant difficulties arise in judicial proceedings when attempting to determine the respective shares of non-marital partners in joint assets, particularly when one or both partners remain married.

To address these issues, it is advocated that concrete policy recommendations be implemented:

- **Introduction of Optional Cohabitation Registration:** Given the complexities surrounding the dissolution of cohabitation and the verification of its duration, it is

recommended that optional cohabitation registration be established. This registration process could be facilitated through a bilateral notarial declaration filed with a notary, marking the commencement of cohabitation. This would provide legal clarity and certainty to the property rights and obligations of cohabiting partners.

- **Inheritance Rights for Cohabiting Partners:** Cohabiting partners who have maintained long-term relationships and shared children should be entitled to inherit each other's assets. Currently, the Law on Inheritance in North Macedonia recognizes individuals who have been in stable unions exceeding 5 years with the deceased as legal heirs. However, this provision is not consistently observed in comparative legal systems. Therefore, it is recommended to formalize inheritance rights for cohabiting partners who have lived together for an extended period, such as more than 5 years. Additionally, the duration required for inheritance rights could be shortened to 3 years if the partners have children together, aligning with the recognition of stable unions in inheritance laws.

By implementing these policy recommendations, North Macedonia can address the legal uncertainties and complexities surrounding non-marital unions, ensuring fair and equitable treatment for cohabiting partners in property rights and inheritance matters. These reforms would contribute to the establishment of a more inclusive and just legal framework that reflects the evolving dynamics of contemporary relationships.

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