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PROPERTY RELATIONS IN EXTRAMARITAL UNIONS IN THE FAMILY LAW OF THE REPUBLIC OF SERBIA

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The subject of the doctoral dissertation of Dr Aleksandar Ivanović is “Property Relations in Extramarital Unions in the Family Law of the Republic of Serbia.” The subject of the doctoral dissertation is very current, socially significant and scientifically justified, because the institution of marriage is understood flexibly everywhere in the world, except for some traditional regions, and there are more and more extramarital unions in different variants and legal relations. Although it is significant, we are witnesses that this topic has been insufficiently touched upon in scientific research and has rarely been scientifically processed. In particular, the legal foundations of establishing a common life of extramarital partners in various shades of their manifestation have rarely been touched upon.

The subject of research in the doctoral dissertation represents an original research idea, significant for the development of the narrow scientific field of civil law, mainly the scientific disciplines of family law, social law, international private and international family law, and partly the law of obligations. In the continuation of this presentation, we provide a summary of the author’s views on the property of extramarital partners in the family law of the Republic of Serbia.

Although the new Family Law of the Republic of Serbia (FL) almost entirely equalizes marital and extramarital unions concerning family and property relations, the law does not contain provisions detailing these relations for extramarital partners. This lack of detailed provisions in practice results in extramarital partners having to fulfill certain conditions for their property rights based on extramarital unions to be recognized, unlike marital partners. This is particularly evident concerning the acquisition and division of extramarital property and the enforcement of maintenance rights.

Regarding property rights, FL stipulates that property acquired by extramarital partners during the duration of their cohabitation constitutes shared property. It also states that the legal provisions regulating property relations between spouses apply to property relations between extramarital partners. By prescribing the application of FL provisions regulating property relations to extramarital partners, the legislature introduces a legal property regime for extramarital partners, allowing them to modify this regime through the conclusion of an agreement regulating their property relations concerning existing or future property.

According to Family Law, a marital agreement is a written agreement between spouses

or future spouses regulating their property relations concerning existing or future property. Based on existing legal regulations, extramarital partners can conclude an agreement to divide property acquired through joint work during the duration of their cohabitation without court proceedings. If no agreement is reached, the division of property acquired during the extramarital cohabitation would be decided by the court in a property dispute filed by one of the extramarital partners or their legal successors if one of the partners dies before filing a lawsuit, as the right to division of extramarital property is inheritable.

In such a dispute, the duration of the cohabitation is a relevant preliminary issue for the court's decision regarding the recognition of rights to the acquisition and division of extramarital property. Since each cohabitation of a man and a woman does not necessarily constitute an extramarital union under the Family Law, it is essential to establish with certainty its beginning and end. If the starting moment of the extramarital union is disputed, proving it in such a dispute would be much more complex than in the case of a marital union, which has legal presumptions related to the moment of marriage.

However, in the event of the termination of the extramarital union, proving it may not be more complex than proving the termination of the union of marital partners, which does not necessarily coincide with the termination of marriage. In both cases, the moment of the termination of the cohabitation of two individuals is relevant for the court's decision on the extent of their contribution to the acquisition and division of shared property.

The Family Law provides a legal framework for the relationships of extramarital partners. Within this legal framework, a distinction is made between shared property and separate property. According to Article 15, paragraph 1 of the Family Law, property acquired by extramarital partners during the duration of their cohabitation constitutes their shared property. Shared property in the property regulations of extramarital partners is characterized by the

fact that the shares of extramarital partners in it are not predetermined.

Extramarital partners' rights extend to all property acquired during the duration of their cohabitation. Although the Family Law allows spouses or future spouses to regulate their property relations through a marital agreement and thereby exclude the application of the legal regime to existing or future property, such a possibility is not explicitly provided for extramarital partners who live in a long-term cohabitation and do not intend to marry.

We believe that such a legal solution does not hinder extramarital partners from regulating their property relations differently through such an agreement and excluding the application of the legal regime to property acquired during the duration of their extramarital union. In support of this view, the fact is that property relations of extramarital partners are equalized with the property relations of spouses according to the existing legal regulations.

To determine the concept of shared property of extramarital partners, according to the legal definition, two conditions must be met: a long-term cohabitation and joint work of extramarital partners. A long-term cohabitation constitutes an economic and factual community of life in which extramarital partners maintain a common household that takes into account the needs of spouses, family members, and other individuals living in the household.

The Family Law does not specify what constitutes a long-term cohabitation. It is a legal standard whose precise meaning and scope are determined by judicial practice. In a considerable number of court decisions, it is expressed that an extramarital union is defined as a long-term cohabitation of a man and a woman without marital impediments, lasting several years, with the birth of children in the union, or when the partners express their intention to establish a long-term cohabitation.

Since there are no appropriate registers for non-marital partnerships in which they would be recorded, when determining the property owned by a non-marital partner before the commencement of the non-marital

partnership, its beginning must be reliably established. If there is no agreement on this, the court will determine that moment in a dispute arising from the property relations of non-marital partners.

In addition to the more lasting life partnership, another condition for recognizing the right to contribute to the acquisition of joint property is the work of non-marital partners. Apart from work resulting in earnings, the maintenance of existing property or contribution to its increase is significant for the acquisition of joint property. In the regime of joint property, non-marital partners jointly manage and dispose of it by mutual agreement.

Based on all of the above, it can be concluded that in the legal system of the Republic of Serbia, the non-marital partnership is equated with marriage, primarily based on the Constitution and the Family Law, which regulate marriage and family relations and personal status of citizens. Non-marital partners can also exercise rights from social security, such as the right to family pension and the right to compensation for non-material damage in the event of the death or severe disability of a close person.

Outside of these cases, a non-marital partner is not equated with a spouse in inheritance law and in certain rights related to employment. The current Law on Inheritance does not include the non-marital partner in the circle of legal heirs, but such current legal solution does not exclude the possibility that in the future, considering societal trends, there may be a change in the legal regulation of this issue in terms of equalizing their inheritance rights. The same applies to other areas of legal regulation where the non-marital partnership is not equated with marriage.

The entire presented research material in the doctoral dissertation confirms the complexity of the research on Property Relations in Extramarital Unions in the Family Law of the Republic of Serbia, and proves the justification of the applied scientific methods, techniques and instruments in the research of the subject topic of the doctoral dissertation, which was one of the significant scientific and social goals in the preparation of the doctoral dissertation.