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COHABITATION IN THE SLOVAK REPUBLIC: MYTH OR REALITY?¹

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Abstract

The following article deals with the issue of cohabitation in the Slovak Republic. An institute, that while does not formally exist in Slovak legal order, still has certain legal consequences. Slovak family law is facing a comprehensive transformation, so it is expected, that many of the issues outlined in the submitted article will be properly dealt with in the expected recodification of Slovak civil law, that will include family law as well. As far as the current legal framework however, it leaves much to be desired. There is no legal institute which would be an alternative to traditional marriage, nor an institute which would comprehensively cover the legal status, rights and duties of cohabitants. This is due to the traditional nature of Slovak family law, the way the institute of marriage and family are dealt with in our legal order. While a comprehensive legal framework of cohabitation is missing, it cannot be said that the Slovak legislation ignores cohabitation – there are many legal consequences in various fields of law that relate to the rights of cohabitants. The article highlights the gaps in these areas as well as potential opportunities for future legislation. The research was carried out within the framework of the Central European Professors' Network coordinated by the Ferenc Mádl Institute of Comparative Law.

Keywords

Protection of Families; Marriage; Matrimony; Family Law; Traditional Marriage; Cohabitation.

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1 Introduction

This work seeks to define the basic concepts in connection with the issue of cohabitation as an institute, which, despite the changing social trends, is only addressed in Slovak legislation marginally. The 21st century is an era of change, where we can see the changing attitudes of young people towards marriage and traditional family values, so the question rightfully arises – what is the future of marriage? Slovak family law in its essence is very traditional – it does not recognize same-sex marriages or non-traditional forms of marriages; it does not define or protect cohabitation (regardless of the gender of the cohabitants). In spite of the rapid social changes, the legislation remains unchanging – we seek to explore the reasons behind this and the possible future evolution of Slovak legislation in this matter.

The union of a man and a woman, recognized by authority or rite, is as old as civilization itself, and marriage in some form is found in virtually every society. Throughout the centuries, marriage has taken many forms, and, in some ways, it barely resembles the meaning it once held. The primary purpose of marriage thousands of years ago was to bind women to men, thereby guaranteeing that their common children were indeed their biological heirs. Through marriage, women became property of men. Early marriage in ancient societies was accompanied by the need to ensure a safe environment for the preservation of the tribe. In these early times, marriage was often without love and desire, because the main motivation to enter into a marital bond was social and economic stability. Marriage remained unchanged in its foundations for thousands of years and the first major transformation of this institute started with universal suffrage in the 20th century. The idea that marriage is a private relationship for the fulfillment of two individuals is very new and due to the rapidly changing society in the 20th century the institute of marriage has changed more in the past 50 years than in the 5 000 years before. Cohabitation is very often viewed as an invention of these past few revolutionary decades, as an alternative to marriage, however a deeper dive into history actually shows, that cohabitation in some forms has existed in all eras of human history. The legal regulation of this institute and the legal interpretation of cohabitation is indeed a new development.

Cohabitation is an institute, that although exists in the reality of the Slovak Republic, the law however only touches on it marginally. It is a phenomenon that is not specifically defined or protected in Slovak law, however there are certain claims of the cohabitants, that are recognized by Slovak law. The primary reason for this discrepancy between the reality of everyday life and the legal theory is the rather conservative nature of Slovak family law, which stems from its historical evolution.

2 Cohabitation in the Slovak Family Act

In recent years, we have seen what many refer to as the crisis of the traditional family based on a marital union of a man and a woman in Slovakia. This crisis is clearly apparent in the growing rate of cohabitations² and a relatively high divorce rate. At the same time, we have seen several unsuccessful legislative attempts to grant legal recognition to an institute that would be an alternative to marriage (be it heterosexual or same sex). Family law in Slovakia has very traditional foundations, and as such, it protects the institute of a traditional marriage above all. It does not mean that other unions are not protected at all, on the contrary, it does guarantee the protection of all families, regardless of their form, if they provide a sense of safety to their members, this includes stable long-term cohabitations.³

Family law relations in the Slovak legal system are regulated in our Act on the Family 36/2005 Coll. that entered into force on 1 April 2005 (further referred to as the Family Act)⁴. Since 1950, family law relations have been set aside outside the scope of the Civil Code and are still regulated by a separate law. In the future, however, the regulation of family relations is to be returned to the Civil Code as a separate part of it in the framework of the forthcoming codification of general private law in Slovakia.

For the current relationship between family and civil law, the return to the dual structure of private and public law after 1989 means that the regulation

2 SPROCHA, B., B. VANO a B. BLEHA. *Prognóza vývoja rodín a domácností na Slovensku do roku 2030*. Vydavateľstvo EKONÓM, 2014, p. 52. ISBN 978-80-225-3961-6.

3 KRÁLÍČKOVÁ, Z. *Autonomie vôle v rodinném právu v česko-italském porovnaní*. 1. vyd. Brno: Masarykova univerzita, 2003, 264 p., p. 81. ISBN 80-210-3093-3.

4 Act No. 36/2005 Coll. on Family and on amendment of some other acts.

of personal and property conditions in the family and marriage is closely linked to general civil law. The integration of both subsystems of private law is evident even now, especially in §111 of the Family Act, which provides for the general subsidiarity of the Civil Code for legal relations regulated by the Family Act. Thus, unless the Family Act provides otherwise, the provisions of the Civil Code shall apply to family relationships. The currently applicable legal act to family law in Slovakia is the new Family Act No. 36/2005 Coll., that replaced the previous Family Act No. 94/1963 Coll. Originally the legislator only planned to amend the act from 1963 to reflect the fundamental changes that have taken place in society since 1963. While the Family Act was very modern for its time and was in force for over 40 years, it is undeniable, that it was not able to respond to the dynamic changes of family relationships in the 21st century, so the legislator in the end decided for the adoption of completely new legislation to account for the dynamic developments in family law.

The new legislation from 2005 already reacts to the Convention on the Rights of the Child as well as to the legislative intention to recodify the Civil Code, which will also include the integration of family law into the Civil Code.⁵ In the preparation of the new Family Act a comparison with foreign legal systems (Hungary, Germany, the Czech Republic, etc.) was also partially used. According to the explanatory notes of the new Family Act from 2005, the changes introduced by the new legislation effective from 1 April 2005 concern in particular the grounds for invalidity and non-existence of marriage in circumstances excluding marriage, the possibility of regulating the child's contact with close persons, distinguishing between guardianship and wardship institutes. Compared to the previous regulation, the rules for monitoring the method of performance and evaluation of the effectiveness of institutional education, educational measures, evaluation of the performance of the function of guardian, guardian for the administration of the child's property are tightened. The issue of foster care regulation was also included in the new law. Although it has public law

⁵ DULAKOVA JAKUBEKOVA, D. Aktuálna stav práv na rekodifikácii súkromného práva v Slovenskej republike a jeho vízie. In: *Magister Officiorum*, 2020, Vol. 4, no. 2, p. 10. ISSN 1338-5569.

elements, by its nature it is mainly a private law institution of substitute family foster care.

Based on the provisions of § 1 of the Family Act, marriage is the oldest social institution and can be defined as the relationship of one man and one woman legally connected for life, with the aim of fulfilling obligations to each other as well as to society and as such, is founded on gender differences. Thus, in accordance with nature, tradition, morality and social consent, Slovak law regulates marriage so that it serves the individuals of society and fulfills its natural, biological, personal, moral, family and social tasks or missions. This provision of the Family Act is also strengthened and ensured by the Constitution of the Slovak Republic, namely Art. 41 (1), which states at the highest normative level that: *“Marriage is a unique union between a man and a woman. The Slovak Republic broadly protects and promotes its good. Marriage, parenthood and the family are protected by law.”*⁶ The special protection of children is guaranteed, which means that the marriage, as well as the family, is given the highest level of protection and the constitutional legal obligation of the state to assist this institution and to implement legislation that benefits marriage.

The previous version of the Constitution only stipulated, that *“matrimony, parenthood and the family shall be protected by law”*. In 2014 however describing marriage as the union of one man and one woman was elevated to the constitutional level by amending Article 41 of the Constitution of the Slovak Republic. Since the creation of the independent Slovak Republic, there have been two attempts at providing legal protection of same-sex registered partnerships. The general public has rejected these attempts, but the early 2010’s meant the population started to warm up to the idea of registered partnerships. However, this public perception swiftly changed to a more conservative one after the ruling of the European Court of Human Rights in the case of *X and Others vs. Austria* 53 ILM 64 in 2013. This ruling was the first recognition of the right of unmarried same-sex couples to second-parent adoption in European States that are a party to the European Convention on Human Rights. The ruling, while celebrated in many EU Member States, had an adverse effect in the more traditionally inclined Slovakia, where the

⁶ Constitution of the Slovak Republic of 1992 (460/1992 Coll.).

idea of same-sex couples being allowed to adopt children was not accepted well by the public. Upon societal pressure the Constitution was amended to state *“Marriage is a unique union between a man and a woman. The Slovak Republic broadly protects and promotes its good. Marriage, parenthood and the family are protected by law.”* This principle had already existed in the aforementioned Family Act from 2005, however elevating it to the Constitution means a much stronger protection of this principle. While the principle had existed in our legal order before, it is granted constitutional protection only from 2014.

One of the criticisms addressing the Family Act from 2005 is that it does not address the issue of cohabitation at all. Neither the Civil Code, nor the Family Act define, regulate or protect cohabitation currently in Slovakia, however the institute does have certain legal consequences in our legal system.

3 Cohabitation Beyond the Slovak Family Act

The family can be characterized as a social group formed by individuals bound by marriage, blood relationships or adoption. Family members follow established patterns of behavior, each family member fulfilling a certain social role. According to the Slovak Family Act, the family is the basic cell of society and is established by marriage as a union of a man and a woman, which arises on the basis of their voluntary and free decision to enter into marriage after the fulfillment of the conditions laid down by law. The purpose of marriage is to create a harmonious and lasting community of life that will ensure the proper upbringing of children. At present, there is no precise universal legal definition of the term family. As far as the case law of the European Court of Human Rights is concerned, it is based on the broader concept of family, which is not only a community based on marriage.

During the societal evolution, the views on marriage and family continue to evolve and change. Lately, our society is witness to a declining motivation of young people to enter into marriage, but even today, marriage retains a high value. From the point of view of marriage, it is interesting that some heterosexual couples do not enter into marriage, which they present for several reasons, on the contrary, homosexual couples demand legalization

of their relationship. Lately we can see a trend of various alternative forms of marriage gaining popularity and while the Family Act might not reference these forms of relationship or provide them with legal protection, it is clear, that the law will have to catch up and provide a regulatory framework to these types of relationships as well. The fact is that in the Slovak Republic, in addition to the traditional marriage, the number of couples in cohabitation is rising. Given that unmarried relationships – such as a cohabitation - are not legally regulated as a marriage, it is important to recognize that these relationships require certain protection, especially if we look at the field of social security law or insurance law.

3.1 Legal Consequences of Cohabitation in Other Areas of Law

As mentioned above, while the Family Act does not recognize cohabitation, there are other areas of Slovak law, where we might find certain protection and even various legal consequences of a cohabitative relationship.

One of the areas worth mentioning is the field of social insurance, where a deeper dive into the legislation unveils certain gaps. An important component of social insurance is health insurance, through which persons are financially secured in the event of a social event such as illness, injury, the need to care for a person, pregnancy or maternity⁷. The benefits tied to the health insurance are dependent on the occurrence of the illness or injury regardless of if the persons involved are married, unmarried or single.

As an example, we could mention the need to treat a sick person, an event that conditions the entitlement to one of the health insurance benefits, namely nursing care. The provision of this allowance is regulated by Act no. 461/2003 Coll. on Social Insurance, as amended (hereinafter referred to as the “Social Insurance Act”)⁸. Pursuant to this Act, an insured person is entitled to nursing allowance if they care for a sick child, sick husband,

⁷ DOBOS, I. Verejné zdravotné poistenie v podmienkach Slovenskej republiky. In: *Budúcnosť práva – právo budúcnosti*. 1. vyd. Bratislava (Slovensko): Paneurópska vysoká škola. Fakulta práva, 2021, p. 207. ISBN 978-80-89453-72-6.

⁸ Act No. 461/2003 Coll. on Social Insurance as amended by later regulations. Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/67708/70279/F-1973848846/SVK67708%20Svk.pdf> [cit. 15.5.2021].

sick wife, sick parent or sick parent of a spouse whose health condition, according to the certificate of the relevant doctor, necessarily requires treatment by another person. It follows from the above that the provision of this benefit is conditioned by an indirect and adverse social event, which in most cases is the illness of a person defined by the Social Insurance Act.

Nursing benefit, as an obligatory cash benefit of health insurance from the point of view of married and unmarried couples, belong only to the insured person who treats a sick spouse. In case of unmarried persons, even if they have a common household, if one of them becomes ill, the other is not entitled to nursing allowance. The exclusion of these couples living in a cohabitation from the circle of eligible persons was caused by the new legislation, which, from 1 January 2004. The negative impact of this legislative change is very apparent in case of couples living in a cohabitation. If for example, an insured person lives in the same household as the mother of his children in an unmarried relationship. In this case, unlike married spouses, if the mother or father becomes ill, the other insured person is not entitled to nursing allowance. We believe that in the legislative amendments to the Social Insurance Act, there should certainly be an expansion of the range beneficiaries entitled to this benefit.

When we look at the nursing benefits with relation to a child, we can see the same gaps in legislation. For the purposes of the Social Insurance Act a child is the child of the insured person, or the adopted child of his or her spouse, or a child entrusted to the insured person in care replacing parental care by decision of the competent authority.⁹ In the absence of adoption or entrustment to care replacing the care of the parents on the basis of a decision of the competent authority, the insured person is also not entitled to nursing care for the child of an unmarried partner, even if they live in the same household.

When it comes to pension insurance, it can be stated that there are also some disparities between married and unmarried persons. The main role of pension insurance is to ensure sufficient income for individuals during adverse social situations, mostly of a long-term nature such as old age, disability and loss of the breadwinner of the family. While there are no differences in claiming

⁹ Ibid.

any of the basic pensions for married and unmarried persons, for survivors' pensions, for widows' and widowers' pensions, the existence of a marriage is required. This follows from the provision of the § 74 the Social Insurance Act, according to which a living spouse is entitled to a widow's pension (for a deceased husband) and a widower's pension (for a deceased wife). If the persons are not married and live in the same household for a long time and possibly also have children together, if one of these persons dies, the right to a survivor's pension does not arise, which in our opinion is debatable and we believe that even in this case, it would be desirable to extend the circle of beneficiaries of these persons. Such legislation would not be an exception, as in many jurisdictions the circle of persons entitled to a survivor's pension is wider, as it is based on a closer family involvement and a higher dependency on income in the wider family and therefore the entitlement arises e.g., also to the parent, grandson, sibling, companion or divorced wife of the deceased.¹⁰ According to the Slovak Health Care Act when it comes to the medical file, only the spouse has the right to access the medical file after the death of their spouse.¹¹ The same goes for an adult living in the same household with the deceased at the time of their death, but only if there is no surviving spouse, child or parent of the deceased.¹²

If we look at tax law, we can see more areas of discrepancies between partners in a cohabitation and married spouses. According to the Income Tax Act, the tax base calculated from the income of a person shall be reduced by tax allowance per spouse.¹³

3.2 Cohabitation in the Social Reality of the Slovak Republic

An overview of the legal situation in Europe shows that the traditional image of the family has changed significantly in the last few decades. Traditional family structures are often no longer viable or compatible with the lifestyle of the younger generation. This can be explained by the delay

¹⁰ TRÖSTER, P. et al. *Právo sociálneho zabezpečení*. 6. ed. Praha: C. H. Beck, 2013. p. 173.

¹¹ KOVAC, P. and A. ERDOSOVA. Právo na informácie o zdravotnom stave vo vybraných otázkach aplikačnej praxe. In: *Bulletin slovenskej advokácie: Slovenská advokátska komora*, 2020, Vol. 26, no. 10, p. 13. ISSN 1335-1079. – TUITPR signatúra E003463.

¹² Act No. 576/2004 Coll. on Health Care.

¹³ Act no. 595/2003 Coll. on Income Tax.

in the residential independence of the younger generations, especially their access to housing, with unemployment also having a significant impact. The younger generations have great difficulty in obtaining two main preconditions for adult life: an independent income and a place to live.

From a social point of view, the average age of marriage for both women and men has increased in Europe, as well as Slovakia.¹⁴ While women have their first child at an older age, the fertility rate itself is declining. The economic autonomy of young people is increasingly lagging behind. Young people's dependence on their family of origin takes two different ways. On the one hand, there are those who are completely dependent on their family, on the other hand, there are those whose main source of income is their work, but who need additional economic help from their families. The lack of housing, at affordable prices for young people, is an important aspect that is often mentioned in explaining the delay in housing independence. Another significant contributing factor to this trend is the increased autonomy of women.¹⁵ The ideas and values about family, and marriage that today's mothers pass on to their daughters are changing dramatically. All of these socioeconomic factors add to the incentive to settle down later in life or in a relationship with lesser formalization, thus making cohabitation an increasingly popular option among younger generations. Various studies of cohabitation tend to start with a reference to its historical origins. Over the last 100 years, Europe, as well as the rest of the world, has undergone great changes, whether economic or political, but also a society-wide transformation. While in the first half of the last century the population was greatly affected by the two world wars, in the second half the population of Europe was affected by the political order. This has also led to major changes in the behavior of the population, which has meant the emergence of new demographic trends.

Cohabitation is a form of sharing a household between two adult partners, who live together for a long period of time, and form a union without

¹⁴ BLEHA, B. and B. VANO. Pokračujúca demografická transformácia na Slovensku a jej spoločenské dopady. In: 17. *Slovenská demografická konferencia. Zborník abstraktov*. 2019. ISBN 978-80-88946-85-4.

¹⁵ SOBOTKA, T. Overview Chapter 6: The diverse faces of the Second Demographic Transition in Europe 2008. *Special Collection 7: Childbearing Trends and Policies in Europe*. Available at: <http://www.demographic-research.org/special/7/> [cit. 15.5.2021].

actually being married. Informal partnerships have spread massively in most postindustrial societies as a result of the transformation of social and moral norms and it is directly linked to the postponement of marriage to a later age. Cohabitation is a phenomenon that has been rising steadily in the Slovak Republic, this can be concluded from the continuously rising percentage for children born out of wedlock in the country. While at the time of the Velvet Revolution in 1989 the percentage of children born out of wedlock was under 10 %, today it is over 37 % and is gradually rising. Compared to Western European countries, this share is relatively low. The highest values of this indicator are reached by the countries of Northern Europe (Denmark 44.6 %, Norway 49.3 %, Sweden 55.3 %).¹⁶

Most EU countries have moved to making cohabitation part of their legal systems and recognize various forms of it, registered partnerships or civil unions. The differences between Member States are rather large, EU member states largely differ on their interpretation of cohabitation and the rights and responsibilities that come with it. Slovakia belongs to the handful of EU member states that do not provide for registered partnerships alongside Latvia, Lithuania, Poland and Romania.

From the number of classifications and types of cohabitations, most commonly two types emerge in Slovakia:

- a) Premarital cohabitation as a form of partnership in which the partners have agreed to live together and with some probability their relationship will be formalized by marriage. According to the intensity and development of partnerships, the authors distinguish two subtypes: cohabitation as a test partnership (“trial marriage”) and cohabitation as a precursor to marriage, where stronger ties and beliefs about a future marriage are characteristic.
- b) Cohabitations - long-term purposeful cohabitations, in which the partners have a common household and do not intend to formalize

¹⁶ TYDLITÁTOVÁ, G. Pluralizácia rodinných foriem na Slovensku ako predmet demografickej analýzy v regionálnej optike. *Sociológia*, 2011, Vol. 43, no. 1, pp. 28–56. ISSN 1336-8613.

their relationship by entering into a marriage, have consciously renounced the formalization of their union.¹⁷

4 Conclusion

By comparing the legal status of partners in a cohabitation partners and the legal status of married spouses, we encounter theoretical as well as practical issues. Should a non-marital partnership, based on the current legislation, where family law forms a separate branch of law, governed by legal norms under civil law or under family law? And if this institute should be governed by family law, should it be understood according to the model of the institute of marriage, or should it be defined and characterized based on its differences from a marital relationship? Obviously, the discussion has many variables and is becoming more and more pressing to provide some kind of legal framework that would account for the social evolution. And while changes in society cannot be ignored, the importance of marriage should not be forgotten. Although the dominant relationship type remains a family based on the marriage of a woman and a man, in addition to the classic type of family behavior, there are other types of family households. Within the framework of legal protection, we can state that natural persons are secured in various social situations and at a relatively good level. However, there are certain benefits tied to a formalized marital relationship. We believe that in further legislative changes, it would be appropriate to reflect on this fact and consider the possible adoption of legislative measures to mitigate the negative effects of adverse social situations on people who are not formally married. Slovakia has long been facing challenges in connection with the growing trend of extramarital cohabitation, but also in connection with other forms of cohabitation, which completely deviate from the traditional understanding of the family model.

It is clear, that the institute of traditional family is undergoing a transformation world-wide. A country like Slovakia, with a very traditional stance on family values and family law, in general is understandably more cautious

¹⁷ MLÁDEK, J. and J. ŠIROČKOVÁ. Kohabitácie ako jedna z foriem partnerského spoluzitia obyvateľstva Slovenska. *Sociológia*, 2004, Vol. 36, no. 5, pp. 423–454. ISSN 1336-8613.

in implementing major changes hastily – when it comes to such sensitive topics as registered partnership, same sex marriage or even cohabitation. The ongoing debate is already very heated and polarizing. We believe most of these questions will have to be tackled within the framework of the expected recodification of Slovak civil law, which will include family law.

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