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# Divided Co-Ownership and Matrimonial Property in Legal Regulations of Slovak Republic

***Summary***

*The objective of the study is to transparently outline a system of relations connected with two different forms of property right that are incorporated in Slovak legal system. In this study author dealt with principles of the divided co-ownership and matrimonial property which lead to the pointing up to the differences between these legal concepts. On the basis of analysis of the null and present rules of law author persuade to the conclusions which are evaluation of the present status and inevitability of the changes in the future.*

## Introduction

According to the article 20 of the Constitution of Slovak Republic, right to be in possession of the property is a human right. Also ownership as the most important right in rem is considered as the basic institute of the civil law.

In contrary to the legal regulations before the year 1990, pursuant to present constitutional state, property right of all proprietors has the same legal content and protection (article 20 subsection 1 Constitution of Slovak Republic).

Currently Constitution of Slovak Republic declares that ownership obligates. It cannot be trespassed to the detriment of the rights of the others or at variance of common interests protected by the law. Exercise of the property right can not harm human health, nature, cultural relics and environment beyond measure defined by the law (article 20 subsection 3 Constitution of Slovak Republic).

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## 1. Generally About Property Right

For definition of the common concept of property right it is necessary to deal with common concept of property, origination of the property right and relationship between property and property right.

Consistent scientific understanding leads to the distionction between concepts of property and property right. It arises from the finding that property means economical category, economical relation and property right is legal relationship, legal category of the property. In legal practice, legislation and also in legal literature are both concepts (property and property right) used alternatively but in both cases is the meaning the same, i. e. legal form of property is always represented whether in character of objective or subjective property right.

Exact definition of the property right does not exist in the legislation. In legal theory property right is defined as a right to handle with the thing by own power that is independent on present existence of the other to the same thing, as far as it is not defened by the law or the right of the other (Peceň, 1995: 18).

Common legal regulation of the property right is in the first part of the second section of the Civil Code, where are defined rights of the owner which indirectly define concept of the property right.

Property right can be apprehended in two lines and that as an objective and as subjective right. Objective property right is collection of the rules of law, which regulate discretions and duties of the owner, his protection as well as gaining and loss of the property right (Vojčík, 2006: 197).

Subjective property right is the broadest right in rem. Concept subjective property right can be defined as by objective right established possibility to of the owner to hold the thing, use the thing and dispose with it on the basis of own consideration and decision making and that by own power confirmes and protected by the law which is independent of the present existence of the power of anybody else to the same thing (Lazar, 2006: 403). Subjective property right then defines subctive discretions and duties subjects of the legal relationships that result from the objective law.

Content of the property right are discretions and duties that are defined by the Civil Code (CC). Paragraph 123 of the CC establishes that owner is within the law authorized to hold the object of his property, to use it, to enjoy its hay and utility and to dispose with it.

To the content of the property right belong except of the discretions also duties that hold down subjective property right. This duties and restrictions are bounded with concrete property relationships and most often arise from the concurrence with other property rights or in concrete case also with common interest (Lazar, 2006: 405).

### 1.1. Right to Hold the Thing (*ius possidendi*)

Discretions that create content of the property right are not legally defines. Right to hold the thing means to have the object of the property about one, to have the thing in actual power and to have right to use it or enjoy it (Vojčík, 2006: 198).

Concept of possession is in CC defined in paragraph 129 article 1 which declares that the possessor is the one that dispose with the thing as with one´s own thing. This provision of law defines possession as separate institute of the civil law different from the partial right of the owner of the thing.

Disposing with the thing is meant as actual disposing (*corpus possesionis*) that embodies in direct or indirect physical impingement that is manifestation of the owner ´s will to dispose with it as with own thing, what is the second obligatory character of the possession (*animus possidendi*).

Subject of the possession as the independent institute of the civil law is the possessor who is a person different from the owner of the thing however characteristic marks are the same for the possession as *ius possidendi* are the same.

A. Right to use and to enjoy the thing (*ius utendi et fruendi*)
Right to use the thing involves also right to enjoy its hay and utilities. Ius utendi et fruendi means discretions to use the use value of the things. In spite of similarity of these concepts ius utendi justifies to use the things for personal needs of the owner whereas ius fruendi means usurping of the hay and utilities of the thing and disposing with them. Right to enjoy the thing is possible only by the fructiferous thing that gives natural (fruits) or civil hay (interest).

B. Right to dispose with the thing (*ius disponendi*)
Right to dispose with the thing means discretion of the owner to utilize exchange value of the thing and that mainly through the legal atcs. Right to dispose authorizes owner to alienation of the thing, what means to alienate property right to the other person but also to dispose with the thing so that property right stays conserved (lease). Specific cases of the disposing with the thing are dereliction of the thing and its destruction (only in cases that law does not defend that).

## 2. Forms of the Property Right

Thing can occur in the property of one person but there are also situations when the same thing belongs to several persons at the same time. Co-ownership can be then defined as property right of several persons to the same thing, who regarding to this thing conduct in the face of each other as co-owners.

In the matter of the co-ownership, it is distinguished between divided co-ownership and matrimonial property.

### 2.1. Divided Co-Ownership

Divided co-ownership can originate between any subjects of the civil law that means that certain thing can by in co-ownership of several natural persons or several corporate bodies eventually can be in co-ownership of natural person and corporate body or also in property of natural person and the state or coporate body and the state and in the practice

there is also not outcastes case when certain thing will be in the property of natural person, corporate body and the state.

Substance of divided co-ownership vests in that certain thing is in co-ownership of several persons, whereas their relationship is determinate by the shares. Share represents certain degree by which co-owner participates on the exercise of the discretions and duties which arise from the co-ownership. This has its meaning also in relationship between co-owners but also in the relation to the third persons.

Object of the divided co-ownership can be all things which can be object of the property. It is not important whether the thing is capable to service for accommodation of the eeds only one of the co-owners or whether it can service to the accommodation of needs of more co-owners.

Along with divided co-ownership originate three circuits of legal relationships:

**a) Mutual discretions and duties between co-owners**, which refer to the exercise of the rights arising from the co-wner relationship. It is concerned of determination of relationship in in which owners will exercise right of use to the common thing. The basic criterion is size of the shares which represents in common degree in which co-owners participate on the exercise of the discretions and duties.

**b) Discretions and duties to the other persons**, which refer to the object of the property. To this category of discretions and duties belong mostly their rights to dispose with objects of the co-ownership and right to claim protection in the case of encroachment of the third persons to the co-ownership.

**c) Discretions and duties which refer to the possibility of disposing with co-owner´s share.** Disposing possibilities with co-owner´s share are as to its transmission to the other persons considerably limited by first option of the other co-owners. It is co-called legal first option.

Caducity of divided co-ownership can occur for the same reasons as caducity of the property. Individual mean of the caducity of co-ownership represents agreement between co-owners, or cancellation of the co-ownership by adjudication. In both cases is with cancellation of the co-ownership connected mutual settlement.

### 2.2. Matrimonial Property

Concept of the matrimonial property presents nowadays the basic regulation of the property relations between the spouses. According to § 143 matrimonial property is created by everything what can be subject of the property and what was gained by one of the spouses during the matrimony except of the things obtained by the succession or donation as well as things which with regard to their character subserve to individual needs or exercise of a profession only of the one of the spouses and except of the things extradited according to the rules on restitution to the one of the spouses who had the thing extradited before contracting a marriage and to whom was the thing extradited as the legatee of the original proprietor.

Assumption of the matrimonial property is existence of the matrimony (even if invalid). Matrimonial property creates besides other common property rights of the spouses (joint tenancy of the flat by the spouses, joint tenancy of the premises not

subserving for living, rights of the intellectual property) real property basis by which is realized common satiation mostly creature comforts of the spouses. It is concept which allows spouses to realize in the market economy the use value and exchange value of the goods which belong to the matrimonial property to the spouses.[6i]

Concept of the matrimonial property arises from the economical equality of the spouses. According to § 145 every of the spouses is allowed to handle common issues concerning communal estate, however in the rest issues is needed consent of the both spouses, otherwise is the legal act invalid. Civil Code does not define what is meant as a "common" or "rest" issue. According to the adjudication R 42/1972, pgs. 124-125 it is assumed that it does not have to be acts that concern disposing with property, although these will be probably the most often. It will be necessary to arise from the appropriate determined circumstances of the particular case while considering if it is a common issue. These circumstances (e. g. range of the matrimonial property, sort and value of the goods which are part of the matrimonial property) can be various. The right to heard the non-validity of a legal act because of the missing consent to this legal act id the property right and according to § 100 et sequentes underlie to forfeiture.

During the matrimony both spouses have right to bill the court to adjudge in case there will be a disagreement about rights and duties arising from matrimonial property between the spouses (§ 146 Civil Code). They have this right also in case that it came to end of the matrimony but the matrimonial property wasn't settled yet. Right to demand the protection according to § 146 has every of the spouses not only in case that there was disagreement while common usage of the thing, but also in case when one of the spouses willfully holds the other spouse from the usage of common thing (adjudication R 42/1972, pgs. 124).

Presumption for settlement of the matrimonial property is its caducity. According to §149 CC if matrimonial property ceases, its settlement comes into effect according to the principles defined in §150 CC. From mentioned arises that legal act does not keeps on the will of the spouses whether there will be settlement of the matrimonial property but directly imposes that this co-ownership will be settled and defines also manners by which can be settled. In spite of mentioned, proceedings at law are bounded ba the bill. According to the adjudication R 42/1972 (pgs. 143) proceedings on settlement of the matrimonial property (§149 article 3) can be started only on the base of the bill of the one of the spouses but courts are not bounded by this bill and that not even when it is concerned with range of the property not even when it is concerned with manner of its settlement.

To the caducity of the matrimonial property happens according to the law by termination of marriage, and that can be by

a) divorce,

b) pronouncing a nullity of marriage,

c) death of one of the spouses, as well as

d) final judgment on declaration of death of one of the spouses.

During the existence of the matrimony can matrimonial property be cancelled only in these exceptional cases:

a) court can cancel matrimonial property on the proposal of one of the spouses especially if the further duration of the matrimonial property was against good manners (§ 148 Civil Code);
b) court will cancel matrimonial property in case when one of the spouses gains capacity to enterprise activities;

Other cases when it comes to the caducity of the matrimonial property during the existence of the marriage is its caducity by law according to these rules of law

a) with declaration of insolvency bankrupt's matrimonial property ceases (§53 of the act number 7/2005 collection of law about bankruptcy and restructuring);
b) with final judgment on forfeiture of property matrimonial property ceases (§ 59 article 3 act number 300/2005 collection of law – Penal Code).

Matrimonial property can be settled only by manners defined in the Civil Code and these are:

a) agreement,
b) adjudication or,
c) legal presupposition, or by lapse of time.

**2.2.1. Settlement of the matrimonial property by agreement**

According to the § 149 article 2 CC when it comes to the settlement of the matrimonial property by an agreement, spouses are on demand of the other spouse obliged to deliver written confirmation how was the property settled. According to the adjudication R 70/1965 agreement about settlement of the matrimonial property can spouses conclude only after the cease of this property because before its cease they do not know exact range of the matrimonial property. From mentioned arises that if spouses concluded agreement about settlement of the matrimonial property with condition that it will come to divorce, it is evident that of this agreement would be only property which was part of the matrimonial property in the time of conclusion of the agreement and that would be contrary to provision of a law (§ 148 article 2 and § 149 CC).

Agreement about settlement of the matrimonial property cannot be concluded also in case when matrimony and matrimonial property ceased by death of one of the spouses or by declaration of death of one of the spouses.

**2.2.2. Settlement of the matrimonial property by adjudication**

Proceedings on settlement of the matrimonial property are bounded by a bill of one of the spouses. This manner of settlement of the matrimonial property is possible only in the case when there was not matrimonial property settled by an agreement. Fact that spouses (ex-spouses) did not put an effort to conclude an agreement about settlement of the matrimonial property, does not entitles the court to vote down a proposal as prematurely handed up.

In proceedings on settlement of the matrimonial partial adjudication cannot be issued (Rè 10/1994). Settlement must concern all property which in time of the caducity of the matrimonial property belonged to this co-ownership as common.

**2.2.3. Settlement of the matrimonial property legal presupposition, or by lapse of time**

It is inevitable to fullfil these presumtions by settlement of the matrimonial property by lapse of time:

a) Cacucity of the matrimonial property
b) Not conclusion of the agreement about settlement of the matrimonial property or not handing a bill on its settlement in time of three years from the caducity of the matrimonial property
c) Both spouses must be alive or from the caducity of the matrimonial property to the death must lapse three year time
d) Existence of the property that belongs to the matrimonial property

Three years time that arises from the presumptions for this manner of the settlement is of substantive law character and it is foreclosure period.

In this case of settlement of the matrimonial property exercises provision of Civil Code in according with which it is defined that as it concerns to movable assets, it is supposed that spouses settled in accordance with state in which each of them things from matrimonial property for own needs, needs of his/her family and household as owner uses. Other movable assets and real chattels it is supposed that they are in divided co-ownership and the shares are the same. Likewise are viewed other proprietary rights which are common for the spouses.

Civil Code in the provision of § 150 establishes rectification fro settlement of the matrimonial property which takes place after caducity of the matrimonial property by an agreement or adjucation whereas these principles will be applied also in case of matrimonial property ceased by competition, imposition of sentence or declaration of death or within the inheritance proceeding. These principles are important for all manners of settlement of the matrimonial property but in case of agreements spouses are not bounded by these principles in accordance to dispositional principle. It is evident that principles will not be applied in case matrimonial property ceased by lapse of the time.

By settlement these legal principles are applied:

a) Shares of both spouses are the same,
b) Each of the spouses is authorized to demand to be payed what from his/hers was investes on matrimonial property,
c) Each of the spouses is obliged to pay all what was investes on his/hers property from matrimonial property,
d) By settlement will be taken into account above all:
   • Needs of the juvenile children,
   • How each of the spouses took care of the family,
   • How each of the spouses deserved for gaining and retaining things.

In case of settlement of the matrimonial property it is possible to state that change of the legal regulations is needed to knot on the necessary new conception of this institute in Slovak legal regulations. New regulation should be not only partial but complex and the change itself should start woth change of the name of the institute. In Czech republic was matrimonial property already updated by the legal act number 91/1998 Collection of law where matrimonial property was replaced by the institute of common property. This

term was used because while to the matrimonial property belonged only things and rights, to the common property belong also liabilities which to one or to the both spouses originated during the matrimony except of the liabilities concerned with the property which belongs only to one of the spouses a liabilities which range exceed range adequate to the proprietary relations of the spouses which one of the spouses adapted without consent of the other (§ 143 article Czech Civil Code). Similar denomination could be used also in Slovak legal regulations.

## Conclusions

Property right represents one of the basic institutes of civil codes. Modernization trend of the civil codes is most evident rightly in post-communist countries which have passed through important social changes. Likewise Slovak republic and even more intensively precede also other transforming countries of middle and Eastern Europe. In Czech Republic already have prepared statutory text of new Civil Code. Lithuania and Russia already have new civil codes.

Slovak Republic should intensify recodification works and respect hten not only intranational changes but also codification trend of surrounding countries.

## References

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## Formy prawnych regulacji własności w Republice Słowacji

### *Streszczenie*

*Celem artykuły jest przedstawienie dwóch form własności występujących w systemie prawnym Słowacji. Analizowano podobieństwa i różnice pomiędzy tymi formami. Na tej podstawie podano argumenty przemawiające za szybkimi zmiananmi legislacyjnymi w zakresie prawa cywilnego i gospodarczego.*