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# COMMON LAW MARRIAGE IN THE LIGHT OF POSSIBILITIES OF LEGAL INHERITANCE

**Balsa Kascelan**

*Faculty of Business Studies and Law University „Union Nikola Tesla" Belgrade, Serbia*

**Abstract:** *This paper deals with the institution of the common law marriage. The author gives an overview of the position of the common law marriage in Family Law and compares it with the status of the common law marriage in the Inheritance law. The author speaks of the justification of introducing into the legal succession order of a spousal partner. Many extra-marital partners do not think about their rights because they perceive an extramarital community as a provisional way toward establishing a marriage. The paper presents the features of the extramarital community, the regulation of the out-of-wedlock community in comparative law and the reasons for changing and supplementing the legitimate position of the extra-marital partner.*

**Keywords:** *extramarital community, inheritance, justification.*

## INTRODUCTION

Through the history of human civilization, man as a social being has always had a need for communion, since the creation of a community of life was the path not only to the existence of a family as the basic cell of society, but the community was a way of promoting society itself. The community, above all between a woman and man, and then the development of the family was the answer of man to the numerous challenges posed before him by the emerging society. The community of life was a two-fold mirror through the institution of marriage and through the extramarital community. The beginnings of the institution of marriage date back to the original community.[1] According to the words of our academician Vladeta Jerotić, the appearance of the marriage at that time is not very clear, the big question is whether the marriage originated from a polygamous promiscuous society or from the very beginning it looked the way it is recognized by contemporary rights. What is certain is that both marriages and extramarital communities have been a way of connecting a man and woman to a spiritual and physical bond for the community of life, the birth of children

1 The marriage of a man and a woman was a significant step in the development of social, economic and family relations. From that marriage, what we nowadays call monogamous marriage has developed. See about development of the institution of marriage (Deretić, N. 2011).

and the expansion of the family. According to the Prof. Panova, the basic foundation of both marriage and extramarital community are a community of life that is "the legal framework in which various spiritual, aesthetic, ethical, emotional ... content can occur" (Panov, S. 2013).

The extramarital community followed the developmental path of the institution of marriage, appearing with more or less success through history as a pendant to formalism of the institution of marriage. There are no fundamental differences between these two institutions, and both are characterized *(or should be characterized as which is underlined by B.K.)*, mutual love, respect, loyalty, help and mutual forgiveness. In the modern world, an extramarital community is a generally accepted form of union between a woman and a man. It is somewhat widespread, and it is an alternative to marriage, and is sometimes seen as a temporary substitute or predecessor to a marriage. Perceived traditionally, extra-marital community is characterized by three things: informality of origin and cessation, element of sustainability and community of life of two persons of different sexes. The durability of a relationship between a woman and a man is a *conditio sine qua non* for the emergence of legal consequences that the equals extramarital community to marital community.

Even today, when a contemporary society is surrounded by rules and beliefs, the extramarital community experiences a renaissance, many spousal partners are unaware of their legal rights, many still think that their rights are less or just similar to the rights of spouses. Many extra-marital partners do not think about their rights because they perceive an extramarital community as a provisional temptation to establish a marriage.[2] And what is the situation regarding their rights in the positive legislation of Serbia? f we start from the fact that we have previously stated that living in an extramarital community is not materially different from marital life, then it is not surprising that our legislators extend the legal consequences of marriage to the extramarital community, not only in the family sphere. Namely, it is indisputable that the extramarital community is the dominant institution of the Family Law and that the legislator in the family sphere struck the seal and formed the institute of the extramarital community, but the legislator extended the legal consequences of marriage to extramarital community in many other areas of civil law as well.[3] Following this analogy of the legislator, the purpose of this paper is to raise the question of the justifica-

2 On the relationship between marital and extramarital community and the question of whether a modern marital union represents an alternative to marriage, see: (Hayward, J. and Brandon, G. 2011).

3 According to the applicable Civil Procedure Code, the extramarital partner is mentioned in the section dealing with the institution of exemption or exclusion of a judge. Accordingly, a judge cannot exercise judicial duty if his party, legal representative of the party or the proxy of the party is his spouse or extramarital partner. In addition, in the part dealing with evidence, the legislator stated that the witness may deny answers to certain questions if he, with his answer to those questions, presents a serious shame, substantial property damage, or the prosecution of his spouse or extramarital partner. See Articles 67 and 249 of the Law on Civil Procedure, ("Official Gazette of the Republic of Serbia", No. 72/2011, 49/2013 - CC decision, 74/2013 - decision CC and 55/2014); In the law of obligations in the part dealing with persons entitled to financial compensation in the event of death or serious disability, the legislator states that the compensation can also be awarded to the extramarital partner (in contrast to litigation, here the legislator uses the terminology of the extramarital partner). It also states that obsolescence does not run in an extramarital community as long as that community exists. See Articles 201 and 381 of the Law on Obligations, ("Official Gazette of the SFRY", No. 29/78, 39/85, 45/89 - CCY Decision and 57/89, "Official Gazette of FRY", No. 31/93 and "Official Gazette of SCG", No. 1/2003 - Constitutional Charter).

tion of the spread of the legal consequences of the extramarital community in the inherent legal sphere.

## REGULATION OF EXTRAMARITAL COMMUNITY

In our positive law, the extra-marital community, together with the marital community, has been presented as a constitutional category.[4] Thus, according to the current Constitution[5], it is stated that the extramarital community is equalized with the marital community in accordance with the law. This second part of the constitutional formulation "in accordance with the law" means that the constitutional provision is only the basis for regulating the legal consequences of the extramarital community, and that it leaves only the essential equalization to the relevant legal regulations.

The marriage law regulating the institute of marriage and extramarital community is the Family Law. In its text, the Law has regulated the extramarital community in a way that it is a more durable community of life for a woman and a man between whom there are no marital disturbances. The extramarital partners have the rights and duties of the spouse under the conditions stipulated by this Law.[6] We see that the Law on the existence of an extramarital community presupposes the existence of three key elements:

1. Community of life

2. Duration

3. The absence of marital interferences

The community of life includes the totality of relationships and needs that occur between a woman and a man. It must be based on the principles of equality and respect for extramarital partners, mutual help and emotional connection. (Kašćelan, B. 2014). It should be borne in mind that this is a community of two persons of the opposite sex, therefore the Law does not recognize the community of two persons of the same sex. The community of life produces different effects in relation to marriage, i.e., extra-marital community. Namely, the community of life is a condition for the emergence of an extramarital community; it cannot exist without it, unlike the marriage where the community of life arises as a result of marriage, but marriage can exist without a community of life.

Regarding the duration for the life of the community, our legislator decided that the term of the community should not be limited by the Law, but that the case law interprets[7] this legal standard in accordance with the circumstances of the case. Thus, by introducing the term, the legislator avoided determining what is to be considered under that term, which

4 Art. 62 Constitution of the Republic of Serbia, ("Official Gazette of the Republic of Serbia" No. 98/2006).

5 Unlike the 1990 Constitution of Serbia, which does not mention the extramarital community in its text, by the Constitution of 2006, the extra-marital union was elevated to the level of the constitutional category. This gave an open possibility to the family law of the family area, but also to all other related branches of law, to regulate this category more closely by legal regulations.

6 Art. 4 Family Law, ("Official Gazette of the Republic of Serbia", No. 18/2005, 72/2011 – st. law and 6/2015).

7 It is an interpretation of the legal standard "more durable": (Draškić, M. 2011).

in our opinion means that the period of time is not crucial, but it emphasizes the need for extramarital partners to declare their intention to the durability of their community. (Panov, S. 2010). In comparative law, we have an example of Croatia that introduced a timeframe of at least three years in a new family law and it is shorter only if a common child is born in the community. This temporal determination however, did not arise as a need to harmonize court practice, but, on the contrary, the legislator thereby confirmed the standard that was adopted in court practice. (Lucić, N. 2006).

Matrimonial interferences are identical as when disabling the conclusion of a valid marriage (marriage, inability to reason, kinship, guardianship, legal minors and lack of will). However, in the Draft of the Civil Code, this term is interpreted narrowly, so it is stated that the extramarital community will not exist if there is a marital interference between the spousal partners of kinship in prohibited degrees and marriage. [8] So, when it comes to extramarital partners who are close blood relatives or married, such a community will not produce any family legal effects, and all disputes related to the consequences of such a community will be resolved according to the rules of civil law. (Kovaček Stanić, G. 2002).

## INHERITANCE-LEGAL STATUS OF COMMON-LAW PARTNER

The right of inheritance is one of the most important subjective rights. The inheritance inherent in itself implies the achievement of a wider social value, because inheritance achieves legal certainty. This means that the inheritance of material goods maintains the social stability of society, but inheritance law shows a wider significance because it also contains moral and psychological component acting within the family.

The inheritance includes legal relationships that are not quenched by the deaths of natural persons who were the bearers. On the contrary, inheritance regulates "the transfer of property and possibly other rights, from the testator, at the time of his death, to his successors". (Antić, O. 2009). In our positive law there are two grounds for inheritance: a person can inherit either by law or by the will.

Regarding legal inheritance, it should be emphasized that legal inheritance is based on two facts: the facts of kinship (blood and civil) and marital relation. Therefore, the person who pretends to be the legitimate successor of the testator must be either related to the testator or in a marital relationship. This raises the question of what is the legitimate position of the extramarital partner in terms of legal inheritance. The Constitution, let us remind, by equalizing the marital and extra-marital relationship, created the conditions for further action of the legislator in this field. In this regard, the marital law of the extramarital community is The Family Law, (after the adoption of the new Constitution), made equalization in the property and personal-legal sphere. On the other hand, the Law on Inheritance does not recognize the extramarital community and, as we have noted, when inheriting, only the fact of kinship or marriage is taken into account.[9] One can raise the question of the justification of this inherent legal solution, given that eleven years after the adoption of the Law

8 Article 2215 Draft of the Civil Code of the Republic of Serbia, 2015

9 The first legacy order is made by the descendant's offspring and his spouse. They inherit in equal parts. In certain cases, a spouse may also appear as a member of a second inheritance order. See: Art. 9 Law on Inheritance, ("Official Gazette of the Republic of Serbia", No. 46/95, 101/2003 - decision of the CCRS and 6/2015).

on Inheritance; the new Constitution came into force. Relationships that exist in marriage and the extramarital community do not essentially differ, and in either case the marital or extramarital relationship must be regarded as a strong basis for a hereditary-legal position. This attitude is a consequence of changed social circumstances, which no longer regard the extramarital community as an immoral and unacceptable community of life. In today's world, the extra-marital community and its property-law consequences must not be ignored and left to regulation through general rules of civil law.

Special attention should be paid to the frequency and presence of the extramarital community in our society. In this regard, it is especially important that the Republic of Serbia's Statistics Office for the first time in 2011[10] was taking into account the existence of an extramarital community. Thus, the statistics of the Institute contain data on persons living in the extramarital community and were obtained on the basis of statements by the persons about the factual marital status.

**Table 1[11]:** gives a cross-section of the population by age according to the areas of the Republic of Serbia living in the extramarital community:[12]

| REGION-AREA | TOTAL | 15-19 | 20-24 | 25-29 | 30-39 | 40-49 | 50-59 | 60-MORE | AVERAGE AGE |
|---|---|---|---|---|---|---|---|---|---|
| REPUBLIC OF SERBIA | 236063 | 5498 | 19534 | 34658 | 70663 | 48302 | 34619 | 22789 | 40 |
| BELGRADE REGION | 60029 | 871 | 3810 | 9329 | 19354 | 12366 | 8710 | 5589 | 40 |
| VOVODINA REGION | 78240 | 1736 | 6564 | 11207 | 22344 | 16354 | 11836 | 8199 | 40 |
| ŠUMADIJA AND WESTERN SERBIA REGION | 42938 | 1144 | 3684 | 5787 | 12295 | 8865 | 6893 | 4270 | 40 |
| SOUTH AND EAST SERBIA REGION | 54856 | 1747 | 5476 | 8335 | 16670 | 10717 | 7180 | 4731 | 39 |

As we can see in the table in total in the Republic of Serbia in 2011, there were more than 230,000 persons living in an extramarital community. The most of extra-marital partners were on the territory of the Region of Vojvodina and the least on the territory of the Region of Šumadija and Western Serbia. When it comes to age, the extramarital community is the most represented among extramarital partners who are between the ages of 30-39. It should also be noted that the average age of extra-marital partners is 40 years.

What do these figures show us? Firstly, these figures must be the starting point for the legislator when addressing the legitimate issues of extramarital partners. In this sense, such a significant number of persons living in an extramarital community points to the need to settle their right of inheritance. If the content of the relationship in an extramarital community has all the characteristics of the marital community, on the basis of equity, inherited rights should be recognized to the extramarital partners.

In previous jurisprudence, there were cases where courts had to decide whether the

10 Statistical Office of the Republic of Serbia, Census of Population, Households and Flats in 2011 in the Republic of Serbia, p. 15.

11 The table was made on the basis of the data contained in the 2011 Census of Population, Households and Dwellings.

12 The 2011 Census of Population, Households and Flats was done without taking into account the Region of Kosovo and Metohija.

surviving extramarital partner had the right to succeed his/her deceased partner. Thus, in one case[13] the surviving extramarital partner complained about the inheritance decision by which the testator's property was given based on the inheritance to the deceased's mother. The Court of Appeal, however, correctly noted that the appeal by the surviving extramarital partner was illegal because it did not fall within the legal order of the heir. We think that this attitude is right, and that interested persons cannot refer to the provisions of the Family Law and the Constitution. First, because the Family Law equated marital and extra-marital partners only in terms of common property and in terms of support, but not in terms of inheritance. Also, referring to constitutional provisions is lacking, because although the Constitution guarantees their equivalence, it does not enter into the content of this guarantee. This means that the Constitution only recommended the relevant laws to determine the content of that right. Accordingly, the Inheritance Law did not recognize hereditary rights to the extramarital partner.

When standardizing an extra-marital community, the legislator should take into account the trend of increasing the popularity of this community, the reasons why people decide to set up an extramarital community and, accordingly, regulate their relations in all areas of law. First of all, this refers to the Law on Property Tax and the Law on Pension and Disability Insurance. The Law on Property Taxes in Article 21 lists persons who are not taxpayers of inheritance tax and in which cases the inheritance tax is not paid. (Kašćelan, B. 2016). These persons are the successors of the first order, the spouse and the parent of the testator. It should be noted that tax exemption is done only completely; therefore, the law cited does not recognize the term tax exemption. Tax exemptions have in mind the classification of legal successors under the inheritance law which, as we have said, does not recognize hereditary rights to the extramarital partner. Accordingly, the opinion of the Ministry of Finance[14] stating that there are no grounds for exempting the obligation to pay the inheritance tax and the gift between the extramarital partners. Also, according to the provisions of the Law on Premises on Property, the extramarital partner does not have the right to exemption from the tax when purchasing the first apartment. In other words, the Law envisaged the possibility of exempting the tax on the transfer of absolute rights to the first-time purchaser of an apartment as well as to members of his family household, but according to Article 31a of that Law, the extramarital partner is not considered a member of the family household.[15] According to the Law on Pension and Disability Insurance,[16] the extramarital partner does not have the right to family pension, as the Law does not recognize him as a family member of the deceased insurer. Namely, Article 27 of the Law states that the right to a family pension can be realized by the extramarital partner of insured person in addition to other family members. A divorced spouse also has the right to a family pension, provided that the right to support was granted by a court decision. However, the Law did not recognize this right to the extramarital partner of the insured.

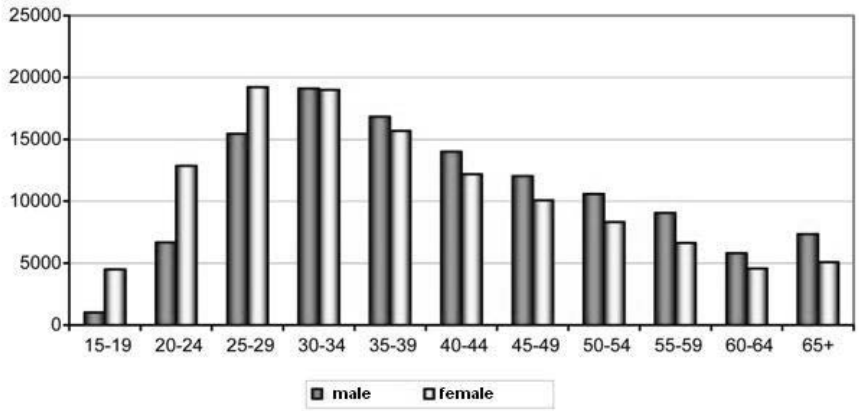
13 Decision of the District Court in Čačak, Gz. 454/2007.

14 Opinion of the Ministry of Finance, no. 430-00-00007/2013.

15 Opinion of the Ministry of Finance, no. 413-00-0187/2007.

16 Law on Pension and Disability Insurance, ("Official Gazette of RS", no. 34/2003, 64/2004 – decision of CCRS, 84/2004 - st. law, 85/2005, 101/2005 - st. law, 63/2006 – decision of CCRS, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014 and 142/2014).

**Table 2:** contains the review of persons living in an extramarital community by age and gender:




What is very interesting and what we see from the table is the relationship in an extramarital community between a woman and a man according to age. We see that in an extramarital community, when the age of a person is between 15 and 30, as a rule, a woman is an older extramarital partner, while for those aged between 30 and 65 and older, the elderly extramarital partner is a male. From these figures, we see that in practice, the extra-marital community follows the principle of monogamy, that it represents a living community of two persons.

Regarding the inherent legal position of the extramarital partner in the domain of legal inheritance, due to all of the foregoing, we consider that the inheritance law should be changed in the domain of the legal successor in a way that the extramarital partner would be recognized as the successor of the first and second legal inheritance order. A provision in the Inheritance Law that would regulate the position of an extramarital partner should also define the concept of extramarital community. Unlike the Family Law, we think that the definition should include the precise duration of the community without the introduction of a legal standard "more permanent". Consequently, we suggest that the definition of extramarital community is considered to be a woman and a man who lasted at least three years or less if there is a common child and there are no marital disturbances. It is undoubtedly that such a community must last longer in order for there to be a serious intention of extramarital partners at all. How long it is "longer" is for the legislator to decide, but the difference must be made within the duration, and consequently the extra-marital community in which a common child exists may last for less than three years.[17] This would deprive the court of an arbitrary interpretation of the legal standard "more durable", which, irrespective of possible criticism, would nevertheless affect legal certainty. (Svorcan, S. 1999). The question can be posed as to how the court practice responds to the three-year deadline, bearing in mind the provisions of the Family Law. There is no doubt that the Family Law is lex specialis in relation to the Inheritance Law, but the amended Law on Inheritance would be lex posterior,

17 A common child is the best example of the intention and determination to build a community of life between extramarital partners, so the durability is therefore shorter.

which should be an indicator for both the courts and public notaries who are conducting the process of inheritance.

The extramarital partner would have the same hereditary rights as the marital partner under the conditions stipulated by this Law. In this sense, a spouse would enter the circle of legal successors, both of the first and second inheritance order. The common law partner would have the same rights as the descendants of the testator, which means that the testator would be inherited by his children (natural and civil) on equal parts, i.e. the extramarital partner. Also, an extramarital partner would also be called upon to inherit in the second hereditary order along with the parents of the testator. Just like with the spouse, the rules for increasing or reducing hereditary benefit would apply to the extramarital partner. Regarding the loss of the legitimate inheritance of the spouse, the legislator made it clear that the inheritance of the spouse ceases in the event of divorce or in the event of the annulment of the marriage, since the marital relationship disappears which is one of two grounds for entering the circle of legal successors. Consequently, the common-law partner would lose the right to inheritance in the event that his community of life with the testator was permanently stopped. The community of life is the goal and way of survival of the common-law community, and its termination would lead to the disappearance of a link that allows the extramarital partner to enter the circle of legal heirs.

In order not to ignore any other basis for calling upon inheritance, it should be said that even under the current positive law, a common-law partner may be an heir, but only in the case of testamentary inheritance. In our right, apart from the law, there is also a testament[18] as the basis of inheritance, so that the testator could appoint as its successor the extramarital partner. Therefore, if a person is older than fifteen, it can divide the property by the testament in a different way than the law stipulates, because the status of the heir is not influenced by either blood relation or marital relationship, but only by the will of the testator itself.[19] The testator is free to change what he stated in the testament provisions later on, thanks to which his testament is always his last will.

## THE POSITION OF A COMMON-LAW PARTNER AS A LEGAL SUCCESSOR IN COMPARATIVE LAW

Here we will only look briefly and look at the solutions of the countries in the region when it comes to the position of the extramarital partner as a legal successor. As examples we will take inheritance solutions in Croatia, Montenegro and Macedonia. In modern legal systems of European continental law, the legislator prescribing provisions relating to legal inheritance takes into account different facts and creates a circle of persons who can legally inherit the testator on the basis of them.[20] The foundation of the institution of legal inheri-

18 "The inheritance testament creates rights and obligations that can always be expressed proprietary directly or indirectly". (Antić, O. and Balinovac, Z. 1995).

19 Even in Roman law, Law 12 tables declared the will of the testator for the law. At that time, freedom of testing is generally accepted, but this does not mean that there were no "extraordinary mechanisms: religion, morale, public opinion, censorship notes and they are sufficient to ensure respect for some generally accepted principles." (Stanojević, O. 1998).

20 See the impact of the fact of kinship, marital relations, extramarital community, support, and so on. to the legacy hereditary rights in Serbian and European law. (Vidić, J. 2005).

tance has long been a blood relation. However, the circle of legal heirs does not coincide with the circle of the deceased's blood relatives for two reasons. First, the circle of legal heirs is narrower because not all blood relatives are simultaneously the legal heirs of the deceased. Second, today, along with blood, there is also a civil bondage, and the marital relationship and the extramarital community also play a significant role in creating a circle of legal successors. To conclude, contemporary European rights in determining which persons can legally inherit the deceased primarily derive from kinship (blood and civil), marital relationship with the deceased and permanent marital community of a woman and a man.

The Law on the Inheritance of Croatia foresaw the entry of an extramarital partner into the circle of legal successors. In order for the deceased's extramarital partner to inherit, he must, at the moment of the death of the deceased, be with him in an extramarital union. Also, the Law provides for certain conditions[21] that the community must fulfill. One of these conditions is the legal standard "for a longer time", the legislator leaving the possibility of arbitrary interpretation to court practice.

According to the Law on Inheritance of Montenegro, legal successors are divided into hereditary ranks, taking into account the degree of kinship and marital relationship, or the common-law community. Unlike the Serbian Inheritance Law, in Montenegro, the number of hereditary orders is limited to four. The common law partner appears as the successor to the first and the successor of the second order. This means that in Montenegro, the common law partner in terms of legal inheritance is equal in full with the spouse. (Antić, O. and Kadić, Lj. 2012). In Montenegro as well, the legislator also foresaw the fulfillment of the necessary conditions in order for one community to be considered as a common law community.

According to the Law on the Inheritance of Macedonia, there are three hereditary orders, and the spouse appears as a member of the first and second order. In relation to inheritance, the Macedonian law equaled extramarital and marital kinship, but did not recognize the right to the extramarital partner be a legal successor in the determination of hereditary orders. Since the extra-marital community does not produce the hereditary-legal consequences, the extramarital partner may become the successor to the surviving partner only in the event of a will. (Mickovik, D. and Ristov, A. 2011).

## JUSTIFICATION OF THE INTRODUCTION OF THE EXTRAMARITAL PARTNER INTO THE CIRCLE OF LEGAL SUCCESSORS

In this part of the paper we will pay attention to the justification of the proposed amendments to successive legislation. First we have to start from the non-conformity of parts of civil law in our legal system. This means that with these changes we open the issue of non-conformity or harmonization of the hereditary with other branches of civil law.

### 1. Harmonization of civil law

Harmonization comes from the Greek word *Harmonia*, which indicates the conformity

21 For the purposes of this Law, the non-marital union of a single woman and an unmarried man, which lasted for a long time, ceased to exist with the testator's death, provided that the conditions required for the validity of the marriage were met. (Gavella, N. and Belaj, V. 2008).

of certain things or regulations. "In the essence of harmonization, there is a fact of accepting the value criteria that are in the right with which the harmonization is to be carried out, and the harmonization, i.e. the acceptance of certain principles that should be adopted in certain areas, is the only way or technique for the realization of the value dimension of the law." (Aleksic, S. 2013). As we noted in our paper, the Family Law as the fundamental law of the common law community provides for the equalization of the legal capacity of extra-marital partners and spouses. Following the legal logic from Family Law, and based on the need to harmonize civil law, i.e. the need to adopt regulations that will contain the same values, this equalization of extra-marital partners should be implemented in the Inheritance Law. Moreover, to the Inheritance Law immanent is an alliance of personal and property law philosophy (defining the closeness of kinship and marital status and the quantum of the rights to universal succession). Consequently, if Family Law has already won freedom for extra-marital partners in the property and personal sphere, then it is quite logical that this same principle applies to the Inheritance Law. In this paper, we also looked at the applicable rules of the Civil Procedure and Obligation Law that recognize and provide protection to the institution of the extramarital community. If so, then this conformity must exist in the Inheritance Law which shares the closest relationships and values with the Family Law. The axioms are not proven in the law (either).

## 2. Coherence of civil law

In the past, the Inheritance and Family Law were studied together in a single case. The reasons were many, and family rules were of great importance for hereditary right, but also because of the coherence[22] the Inheritance Law is a natural extension of Family Law. In this sense, inheritance is a social function on the basis of which there is a set of property relations that were created outside of the family, but the fact that the testator's relations continue within the family community. This unbroken thread is reflected through two legal statuses of a particular subject, *inter vivos* and *mortis causa*. The subject of these relationships should enjoy the same degree of protection in one and the other legal sphere as it requires discipline of legal logic. In the Family Law there is a full equality of the common law community in legal capacity with marriage. However, in the legal environment of the *mortis causa*, such equilibrium does not exist. For both spouse and a common law partner, the relevance of a legal relationship exists for both *inter vivos* and *mortis causa* relationships. If there is such logic, then it is to be expected that the extramarital partner has the rights that he has achieved in the sphere of *inter vivos* also in the sphere of *mortis causa*. But the expected step of the legislator in the inheritance area is absent. On the contrary, the institution of the extramarital community is almost ignorant to the following law. The legal status of extramarital subjects in the sphere of relationship of *mortis causa* is therefore unjustly dissonant in relation to the legal position of extramarital spouses *inter vivos*. There is no legal or life logic, that freedom of choice is allowed at one stage, and in the next time interval, without justifying additional facts, it is denied, that is, ignored.

## 3. Essential sameness

If we leave aside the formal framework for the realization of the community of life, we will see that the fundamental characteristic from which the source of the rights and obliga-

22 Coherence, connectivity, natural connection, be connected, bound, etc. (Vujaklija, M. 1980).

tions of spouses is derived is the realization of a community of life. Marriage can formally exist, but if there is no community of life, the substance of marriage is not realized. When it comes to extramarital community, we see that it requires the same fundamental element that exists in marriage. Consequently, the law not only needs but also needs to justly regulate the rights and duties of extramarital partners. Justification implies that the legislator has the right to give each subject the right he deserves and, in that he or she in essentially the same situations is treated in the same way. Today we are witnessing that the number of extramarital communities is increasing either as a predecessor to a marriage or a replacement for a marriage. Therefore, this significant number of extra-marital partners requires socially responsible workers to legally regulate their legitimate interests, their justified legal and life aspirations.

## CONCLUSION

There are no fundamental differences between marriage and common law community, both of which are characterized by mutual love, respect, loyalty, help and mutual forgiveness. In the modern world, an extramarital community is a generally accepted form of union between a woman and a man. It is somewhat widespread, and it is an alternative to marriage, and is sometimes seen as a temporary substitute or predecessor to a marriage. The Family Law as the Marriage Law and the Basic Law, in which the common law community is located, provides for the equalization of the legal capacity of extra-marital partners and spouses. Following the legal logic from Family Law, and based on the need to harmonize civil law, i.e. the need to adopt regulations that will contain the same values, this equalization of extra-marital partners should be implemented in the Inheritance Law. In both marriage and common law community, the essential characteristic from which various rights and obligations of spouses/extramarital partners spring is the realization of a community of life. Regarding this, the legislator should not only but also needs to justly regulate the rights and duties of extramarital partners. Justification implies that the legislator has the right to give each subject the right he deserves and, that he or she in essentially the same situations is treated in the same way. Today we are witnessing that the number of extramarital communities is increasing either as a predecessor to a marriage or a replacement for a marriage. Therefore, this significant number of extra-marital partners requires socially responsible workers to legally regulate their legitimate interests, their justified legal and life aspirations.

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