CIVITAS, 2022, 12(2), 249-267
www.civitas.rs

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UDC 347.238.1(497.11)
Original Research Article
Received: 17/05/2022
Accepted: 18/09/2022

DISSOLUTION OF CO-OWNERSHIP IN SERBIAN LAW

Abstract: Co-ownership of property is a community in which co-owners are linked by property interests. When the property interests cease to exist, the co-owners can decide to dissolve the co-ownership. Co-ownership dissolution can occur by mutual agreement of the co-owners or in court proceedings. The consent of the co-owners or their agreement upon the method of division, is often not enough to carry out the partition by physical division. Co-owners often have to exercise the right to dissolve the co-ownership in court proceedings. The aim of this paper is to examine the basic features of co-ownership in Serbian legislation and comparative legislation, focusing on the issue of co-ownership dissolution and the problems that co-owners encounter when seeking to carry out a partition by physical division via a settlement before trial and become the sole owners of a part of real estate.

Key words: co-ownership, dissolution of co-ownership, building land partition

1. Introduction

Co-ownership exists when two or more persons hold the right of ownership to the same property, and the part of each of them is determined in proportion to the whole. The prevailing opinion in legal theory is that it is the right of ownership is divided among the co-own-

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ers, not property itself (Stanković & Orlić, 1996, p. 144). The right of ownership of two or more persons to one undivided thing represents a complex community of ownership (Cvetić, 2018, p. 1521). The complexity of co-ownership implies, on the one hand, an individual right to a share, and on the other hand, a commonality in the exercise of ownership rights over property, except for the right of disposal (possibility of selling or pledging the share), which is related exclusively to the co-ownership share. The disposal may occur with the co-owner's consent, in case of sales or any other legal business transaction, but also against the co-owner's will, if there is a merger of property, processing, etc. In the Serbian legislation, co-ownership is regulated by the Law on Basis of Ownership and Proprietary Relations (Serbian, *Zakon o osnovama svojinskopravnih odnosa* – "ZOSPO" (2005)), Articles 13-17. Since co-ownership is almost always a source of conflict (Lat. *Communio est mater rixarum*), co-owners may divide property and dissolve co-ownership. In practice, legal disputes often arise between co-owners because they cannot agree on the conditions of partition. Therefore, the issue of co-ownership dissolution is usually resolved by legal action. However, an interesting case in practice has shown that co-owners in the Republic of Serbia must go to court in order to dissolve their co-ownership, even if they agree about the method of division and co-ownership relations. In the following sections, we will compare the most important features of co-ownership in Austrian, German and Serbian law and then investigate the reasons why the authorities refuse to confirm the partition by physical division and encourage the parties to settle a Partition action prior to trial.

2. Co-Ownership and Property Division in Major Civil Codes

Since the 19th century, co-ownership has been the subject of the most significant codifications of civil law. Most major civil codes contain provisions on the concept of co-ownership and the method of division of jointly owned property. Although modern legislation makes a distinction between co-ownership and joint ownership, and co-owners are distinguished from joint owners by the share proportion owned,

major civil codes refer to co-owners as joint owners. This term is also sometimes used in Serbian positive law, as seen in Article 141 of the Law on Non-Litigation Procedure (Serbian, *Zakon o vanparničnom postupku* (ZVP (2022)).

The Austrian Civil Code (German: *Allgemeines Bürgerliches Gesetzbuch*) mentions co-ownership in Article 361, while more detailed provisions on this complex property community are grouped in Chapter Sixteen, which deals with property communities. The term "community" (German: *Gemeinschaft*) is used in this chapter. The Austrian Civil Code (Serbian: *Austrijski građanski zakonik* ("AGZ")) was the basis for drafting the 1844 Serbian Civil Code (Serbian: *Srpski građanski zakonik* ("SGZ"). As Nikolić (2011) states, "In 1842, instead of a draft of the original code based on the tradition and spirit of the Serbian people, Jovan Hadžić presented Prince Aleksandar with a text that was essentially a shortened and somewhat modified version of the 1811 Austrian Civil Code. Hadžić combined some provisions, leaving others out altogether. Thus, he managed to reduce the 1,502 paragraphs of the Austrian Civil Code to 950" (p. 319). However, the provisions on co-ownership were not included in the SGZ. Co-ownership is only mentioned in Article 215 of the Civil Code, and the provision reads: "One movable or immovable property can belong to several people, and then they are referred to as one person. And their right becomes a joint right, if no one of them has a special honour designated, which belongs exclusively to him."

Interestingly, the 1888 General Property Code for Montenegro regulates co-ownership in detail through seven articles (103-109). Article 103 was related to the right to freely enjoy the joint property within the limits of one's share, as well as the right to bear the burdens and costs arising from the property according to one's co-ownership share. In the case of regular management of property, decisions would be made by the majority "counted not by heads but by shares" (Article 104). In the case of affairs beyond the scope of regular management, it was necessary for all co-owners to agree to it (Article 105). If one of the co-owners did not want to bear his/her share of the costs needed to maintain property, they had to compensate the other co-owners for the resources spent. If this was not possible, the co-owners could ask for a court injunction to

dispose of a share of that co-owner's income from the joint property or ask the court to sell a share of that co-owner at a public sale, so that the debt is settled from that sum of money, whereby cannot limit anyone's right of pre-emption (Article 106). Article 107 stipulated that during the sale of the co-owned share, the other co-owners have the right of first refusal. If the property can be divided, and its value is not reduced, each co-owner could request that the property be divided and that their share be given to them. This kind of partition was possible at any time, except during the time when such division may cause a damage to other co-owners (Article 108). If the property could not be partitioned physically, because it would be damaged or destroyed, the court would decide whether "the property will remain for one or several co-owners who offer a higher price, and the rest will settle with that money; or the share of the one requesting partition will be sold and the money will be given to him, and the other co-owners will remain so; or, finally, the joint property as a whole will be publicly sold, and the money will be divided according to the shares" (Article 109). Today both the AGZ and ZOSPO acts regulate the issue of co-ownership in a similar manner. The similarities can be observed in the following:

a) Rule on equal co-ownership shares

Pursuant to ZOSPO Article 13 para. 1, when several persons shall have the right of co-ownership over an undivided property, each person's part is defined as a proportionate share of ownership in comparison with the entirety (ideal share). According to ZOSPO Art. 13 para. 2, "if co-ownership share is not defined, it shall be presumed that they are equal". On the other hand, by the AGZ provision, the presumption of equal co-ownership shares was established for the purpose of dividing the common benefit that comes from the joint property, as well as assuming the obligations that arise from joint ownership. Therefore, according to AGZ Article 839, in the case of division of benefits and obligations originating from co-ownership of property, the co-ownership shares are considered to be equal, and whoever claims the opposite must also prove it.

b) Joint management of an undivided property

Pursuant to ZOSPO Article 15 para. 1, the co-owners shall have the right to joint management of a property. In the case of regular management, a majority of votes is required, which is determined by the size of the co-ownership share. The same rule applies to both Serbian and Austrian law (Article 15 para. 2 ZOSPO and Article 833 AGZ). However, in the case of activities beyond the scope of regular management, according to the Serbian law, i.e., ZOSPO Article 15 para. 4, the consent of all co-owners is required. On the other hand, AGZ states that the so-called important do not have to be agreed upon by all co-owners. If individual co-owners are outvoted, according to AGZ Article 834, they can demand insurance for possible future damage or, if they are denied this, they can demand to withdraw from the agreement. Only if the co-owner does not want to withdraw from the agreement or that withdrawal would be untimely, the court will decide whether such a change should be allowed (AGZ Article 835). In the Republic of Serbia, in all cases of regular management, if the consent required is not reached, where the management is necessary for regular maintenance of the property, the court shall decide on the matter (ZOSPO Article 15 paragraph 3). The possibility of co-owners entrusting the management of a property with a third person is provided for in both Serbian and Austrian law (ZOSPO Article 15 para. 5 and Article 836 AGZ).

c) Right to pledge and sell the co-ownership share

The co-owner has the right to possess and use the property in proportion to his/her share. Also, the co-owner has the right to pledge and sell his/her co-ownership share, without infringing the rights of other co-owners. AGZ allows the possibility of pledging or bequeathing the co-ownership share, which is not referenced in ZOSPO. The possibility of selling the co-ownership share exists both under Serbian and Austrian law. This right can be temporarily suspended if the co-owner is legally bound to the co-ownership agreement for a certain period of time. In case of sale, ZOSPO Article 14 para. 3, establishes the right of pre-emption in favor of the other co-owners, which AGZ does not reference.

d) Right to dissolve co-ownership

In the case of cessation of co-ownership, the partition of property can be done by mutual agreement or with the help of the court (ZOSPO Article 16 para. 4 and AGZ Article 841). AGZ recommends an out-of-court partition settlement (Maganić, 2008, p. 12). The out-of-court division is based on the private law agreement of the co-owners, which enables the parties to choose a method of distribution that could not be achieved in court proceedings (Maganić, 2008, p. 13). We can conclude that the agreement on the dissolution of co-ownership, which exists in Austrian law, is an alternative to the dissolution in a civil lawsuit or non-litigation procedure. The co-owner cannot claim the right to divide property during the time when such division may cause a damage to other co-owners or when it would be to the detriment of third parties (ZOSPO Article 16 para. 1 and AGZ Article 847). It is considered that the request for dissolution would be to the detriment of third parties if the co-owner's age was disregarded (e.g., in the case of a minor or a person of advanced age associated with an illness) or if imminent financial difficulties related to taxation were not taken into account (Maganić, 2008, p. 9).

e) Retention of real rights on another's property after partition

Pursuant to AGZ Article 847, the division performed should not have an impact on the exercise of lien rights, easement and other real rights belonging to a third party. While this is explicitly stated in AGZ, there is no provision in Serbian legislation that serves as a guarantee of the protection of real rights on another's property after the division of the property over which there is co-ownership. Theoretical findings indicate that solving this issue is important, but the decision on the easements after the partition is left to the court. Therefore, "if there is a physical division of immovable that represents privileged property, real easement still exists for the benefit of all parts [...]", and "if there is a physical division of real estate, real easements still encumber all parts of the immovable property" (Stanković & Orlić, 1996, p. 161), unless after division the owner of the property under easement exercises easement only on certain parts of the property. Then "the owners of the other parts can request that the easement cessation with regard to their parts" (Stanković & Orlić, 1996, p. 161).

Comparing the provisions of the German Civil Code (German: *Bürgerliches Gezetzbuch*) – "NGZ") with the ZOSPO provisions relating to co-ownership, where "in Germany, co-ownership as the ownership of several persons on a physically undivided thing can occur in the form of a community in parts or in form of joint ownership" (Maganić, 2008, p. 17), there are following similarities:

a) *Rule on equal co-ownership shares*

Similar to the provision from ZOSPO Article 13 para. 2, according to German law, i.e., NGZ Article 742, "in case of doubt, it is assumed that co-owners have equal shares".

b) *Right to use joint property*

The co-owner has the right to use the thing together with the other co-owners in proportion to his/her share, while he/she must not infringe the rights of the other co-owners. This provision in the same form (according to ZOSPO: "possess and use") exists in both Serbian and German law (ZOSPO Article 14 para. 1 and NGZ Article 743 para. 2).

c) *Joint management of undivided property*

Management of the common thing is a joint responsibility of the co-owners. If it is about undertaking work that falls within the framework of regular management, both according to ZOSPO and according to NGZ, it is enough that the majority of the co-owners agree on it. The majority of votes is determined according to the size of the co-owner's share (ZOSPO Article 15 para. 2 and NGZ Article 745 para.1). According to German law, each co-owner has the right to take measures to preserve things even without the consent of the other co-owners (NGZ Article 744 para. 2).

d) Right to sell the co-ownership share

Each co-owner can sell his/her co-ownership share and thereby dissolve the co-ownership. This possibility is guaranteed to co-owners by both Serbian and German law (ZOSPO Article 14 para. 2 and NGZ Article 747).

e) *Obligation of the co-owners to bear the costs of use, management and maintenance of the thing and other encumbrances related to the entire thing*

This obligation is imposed on co-owners in both Serbian and German law (ZOSPO Article 15 para. 6 and NGZ Article 748). Co-owners have the obligation to bear the costs of using, managing and maintaining property and other encumbrances related to the entire property in proportion to the size of their parts.

f) *Right to dissolve co-ownership*

The dissolution (termination) of the co-ownership is referenced in NGZ Article 749, according to which each co-owner can always request the dissolution of co-ownership. Unlike in Serbian and Austrian law, the right to terminate co-ownership can be waived by mutual agreement not only temporarily, but also permanently, with the exception that even in that case co-owners can request dissolution if there is a justified reason (NGZ Article 749 para. 2). If the physical division of the item is not possible, the item will be sold. NGZ does not mention the role of the court in deciding on the sale of things, as is the case in Serbian law (see NGZ Article 753 and ZOSPO Article 16 para. 5).

3. Dissolution (termination) of co-ownership community in Serbian law

When co-owners no longer wish to remain in the co-ownership community due to disagreements or for property reasons, they are legally allowed to divide. In judicial practice, it is held that "no one can be kept in the co-ownership community against their will, because it is a question of conversion right, on the basis of which each of the co-owners has the right to request and receive a change in the existing situation [...] with the aim of ending the co-ownership community that existed until the partition" (Decision of the High Court in Subotica, 284/2016(1) dated 07/15/2016). Forcing co-owners to a "permanent co-ownership community" has not been in the spirit of positive law, as well as judicial practice, for several decades. Decision of the Federal Supreme Court,

Rev. 666/60 of October 29, 1960, states that "the obligation to a permanent co-ownership community does not exist and the right to divide the co-ownership community is not subject to statute of limitations" (Stanković & Orlić, 1996, p. 158). According to Serbian law, i.e., Article 16 para. 1 ZOSPO, the suspension of this right is temporarily allowed if one of the co-owners requests a partition in an untimely manner, until the conditions for the partition are met, which can be carried out without causing damage to the other co-owners, as well as if the co-owners have waived their right to request a partition for a certain period, after which they may again demand division. According to Article 16 para. 3, the contract whereby a co-owner permanently waived his/her right to division of a thing shall be considered null and void. With the request for dissolution, the co-owners, as holders of rights to the ideal share of the undivided thing, demand to become the exclusive owners of the real share.

3.1. **Dissolution of co-ownership based on the co-owners' agreement**

The division of things can always be requested and each of the co-owners has the right to do so. There should be an agreement not only on the division, but also on the method of division. In order for the division of property to end with the agreement of the co-owners, there must be unanimity among the co-owners regarding the method of division. If an agreement cannot be reached, the court decides on the method of division (see ZOSPO Art. 16 para. 4).

Observed in comparative law, the dissolution of co-ownership based on the agreement of the parties always has priority over the dissolution in court proceedings. The differences regarding the agreed termination of the co-ownership are reflected in the form of the legal act on the basis of which the agreement is implemented. According to Austrian and German law, the agreement on the dissolution of the co-ownership community does not have to be drawn up in a certain form, while in Croatian law the agreement on the dissolution of the co-ownership community of real estate must be in writing, but if a formally invalid contract is executed, it will produce legal consequences (Maganić, 2008,

pp. 13, 23, 30). According to the Serbian judicial practice, for dissolution of co-ownership based on mutual agreement, it is sufficient for the co-owners to reach an oral agreement on the physical division of the co-owners' immovable property because "for the division of property (division into physical parts so that each of the co-owners becomes the owner of the real part) no special form is required, so oral agreement is also allowed" (Decision of the Appellate Court in Nis, 1347/18 of 11/13/2018). It is important that there is no dispute between the parties to the agreement, neither regarding the size of the share nor regarding the factual situation. Therefore, in this case it would be unnecessary, but also in accordance with ZOSPO Article 16 para. 4, to require the parties to the agreement to submit a request for dissolution of co-ownership to the court.

There are several methods of division. Physical or natural division is usually carried out, when the co-owners physically divide the thing, i.e., civil division (division by value), when the co-owners decide to sell the thing and divide the obtained value in proportion to the size of the share (Stanković & Orlić, 1996, p. 159). It is also possible to divide by payment of shares, when the thing belongs to one co-owner who then has the obligation to pay the others (Stanković & Orlić, 1996, p. 159). The third way would be division with an additional payment, which is applied when, during the physical division, the part of the thing that should belong to one co-owner does not correspond to the value of his share, so he is given the difference in money (Stanković & Orlić, 1996, p. 159). In all the above-mentioned situations, if there is unanimity among the co-owners, there is no need for the parties to go to court for the division of the property over which there is co-ownership.

3.2. **Dissolution of co-ownership in court**

If physical division is impossible or possible only with a significant depreciation of the property, according to the law of the Republic of Serbia, the court will decide on the division. In that case, the court will decide that the division should be executed by selling the property (see ZOSPO Article 16 para. 5). The court decides on the division in

a non-litigation procedure, and only when the "method of division of common things or property" is disputed among the co-owners (called joint owners in ZVP). The need for a court decision on the division also arises when there is a dispute between the co-owners about the subject of the division and co-ownership relations. In those cases, it is necessary to make a court decision in civil proceedings. Additionally, "if the court, acting according to the proposal, determines that the right to things that are the subject of division or the right to property, a share in common things, that is, property, or it is disputed which things, that is, rights are part of the common property, is disputed between the co-owners, it will stop the proceedings and instruct the proposer to initiate litigation within a certain period" (see ZVP Art. 150 para. 1). If there is no dispute between the co-owners about any of the above-mentioned circumstances, then there is no need for a court decision on the dissolution of co-ownership, either in litigation or in non-litigation proceedings.

3.3. **Partition decision instead of the confirmation of parcellation – possibility or obligation?**

In practice, however, in order to change the land registry status in the event of dissolution of co-ownership, possession of a partition decision is required, which should be obtained in a non-litigation procedure, although the confirmation of the subdivision project in the administrative procedure would essentially have the same effect. There are multiple advantages to disbanding co-ownership by confirming the project of subdivision, i.e., pre-parcellation. First of all, co-owners can terminate co-ownership much faster and with less costs and become sole owners of their part of the real estate. We consider it unnecessary to oblige the parties to go to a non-litigation court in a situation where there is no dispute between the co-owners about any circumstance that requires a court decision. The legal possibility should not be imposed on the parties as an obligation.

4. Parcellation or pre-parcellation of building plots for the purpose of co-ownership dissolution

According to the Rulebook on general rules for parcellation, regulation and construction (2015), parcellation, i.e., pre-parcellation, is the process of forming building lots by dividing or joining all or parts of building lots (see Article 4). The 2021 Law on Planning and Construction (Serbian: *Zakon o planiranju i izgradnji*, "ZPI") defines a building plot as "a part of construction land, with access to a public traffic area, which has been built or is planned for construction, which is defined by the coordinates of the turning points in the state projection" (Art. 2 para. 1 item 20). As construction land, according to ZPI Art. 84 para. 1, can be in all forms of ownership (private, public and cooperative), this paper examines practical problems related to co-ownership of real estate that is entirely privately owned.

The legal basis for co-ownership on a building plot can be a purchase agreement, a gift agreement, an exchange agreement, etc. In addition to the appropriate legal basis, for the creation of co-ownership on a construction plot, registration in the land register is also required, as a relevant method of acquisition. Acquiring co-ownership through a legal transaction implies the joint investment of a certain amount of money in order to acquire ownership rights to things, but persons can also become co-owners by purchasing an ideal share from a previous co-owner, whereby the new co-owner takes the place of the previous co-owner in this relationship. The property of co-owner can be acquired and maintained, "if one person buys a co-owner share (or acquires legal ownership in another way), and at the time of purchase did not know and could not have known that the person from whom he buys the share is not a co-owner, and if at the same time the period that is needed to maintain such things" (Stanković & Orlić, 1996, p. 157). A co-owner in an already existing co-ownership community can become a third party if one of the co-owners does not use his legally guaranteed right of pre-emption. Although, historically, the right of pre-emption of co-owners was not recognized by co-owners (Stanković & Orlić, 1996, pp. 146–149), today in Serbian law, the right of pre-emption of co-owners is an accepted institute, which is regulated in detail in Articles 5–10 of the Law on Real Estate Transactions (2015).

According to Article 65 para. 1 and 2 ZPI, the owners of cadastral plots are allowed to establish one or more construction plots on several cadastral plots based on the pre-parcellation project, as well as to establish several building plots on one cadastral plot that can be divided by subdivision up to the minimum determined by the rules on subdivision or consolidated by sub parcellation. This should be in line with the planned or existing construction, i.e., the planned or existing purpose of the building plot, based on the subdivision project. In order to determine the dimensions and boundaries of the newly formed construction plots, the co-owners initiate the development of a cadastral plot subdivision project at an authorized company, i.e., another legal entity or entrepreneur registered in the appropriate register (usually a design bureau). The geodetic marking project is an integral part of the subdivision project, i.e., pre-parcellation. The preparation of the subdivision project is managed by the urban architecture professional in charge (see ZPI Article 65 para. 3).

Building plots that are formed by subdivision on one cadastral plot must meet the conditions established in the planning document. If the planning document has not been adopted, the conditions stipulated in the Rulebook on general rules for subdivision, regulation, and construction (2015) will apply. These are the conditions on the minimum area of the construction plot, on access to the public traffic area, the height and distance of the buildings, which are prescribed by the planning document for that zone. If the project of parcellation, i.e., pre-parcellation, is done in accordance with the valid planning document, i.e. the Rulebook on general rules for parcellation, regulation and construction, such a project will be confirmed by the authority of the local self-government unit responsible for urban planning within ten days. Otherwise, they will provide the applicant with a notice explaining why the project was not approved. The applicant can submit an objection to the said notification to the municipal or city council within three days from the day of delivery (see ZPI Art. 65 para. 4-6).

Parcellation and pre-parcellation, based on requests, is carried out by the authority responsible for state surveying and cadastre affairs. The condition for the implementation of the change in the competent cadas-

tre is that the project of parcellation, or pre-parcellation, has been confirmed by the body responsible for urban planning of the local self-government unit, for which proof (decision) must be submitted. In addition, proof of resolved property-legal relations for all cadastral parcels is also submitted (ZPI Art. 66 para. 2). As appendices to the request for the implementation of changes resulting from parcellation, re-parcellation or correction of the boundaries of cadastral parcels, the National Geodetic Institute (2021) requires the submission of the statement of the geodetic organization on the acceptance of the execution of geodetic works in the field, the elaboration of the geodetic works, prepared and certified by the authorized geodetic organization , and the record of the field inspection that was signed by the applicant and the holder of legal interest.

Upon receiving a request for the implementation of pre-parcellation or parcellation, the authority responsible for state survey and cadastre issues a decision on the formation of cadastral parcel(s). A copy of the decision is also submitted to the competent authority that confirmed the pre-parcellation project, i.e., the subdivision. An appeal can be filed against the mentioned decision within eight days from the date of delivery of the decision. The authority responsible for the state survey and cadastre submits the legally binding decision on the formation of the cadastral plot(s) to the tax administration in the territory where the subject immovable property is located (see ZPI Article 66, para. 4-7).

If the conditions stipulated by the planning document, i.e., the Rulebook on general rules for subdivision, regulation and construction, are not met, the authority of the local self-government unit responsible for urban planning, in the notice delivered to the applicant, will explain why the project was not approved. However, according to ZPI Article 106 para. 6, when creating a subdivision project for the purposes of disbanding the co-ownership community in court proceedings, the stated conditions, i.e. the provisions on the minimum area of the construction plot, on access to the public traffic area, the height and distance of the buildings, which are prescribed by the planning document for that zone, do not have to be applied. The question arises: do the mentioned conditions have to be applied if parcellation pre-parcellation of the building plot is carried out for the purposes of breaking up co-ownership based

on the agreement of the parties (out of court)? In theory, there is an opinion that any subdivision for the purpose of breaking up co-ownership is allowed against planning documents (Petrović, 2019, p. 214). As the procedure for the dissolution of co-ownership is initiated by the competent court only if the co-owners cannot agree on the formation of the cadastral parcel (unanimity), by analogy the same provision can be applied to the dissolution of co-ownership by mutual agreement (out of court).

The issue of access to the public traffic surface could be analyzed in particular, as one of the conditions for confirming the subdivision project. In accordance with the provisions of the Rulebook on general rules for subdivision, regulation and construction, the building plot must have an exit to the public traffic area, in accordance with the rank and rules for the smallest permitted width of the regulation zone by type of streets: 1) collector streets - 10.00 m; 2) residential streets – 8.00 m; 3) roads in rural settlements - 7.00 m; 4) car passages - 5.00 m; 5) private passages - 2.50 m (see Art. 14, para. 3). According to Article 32 para. 2, the width of the private passage for plots that do not have direct access to the public traffic surface cannot be less than 2.50 m, which supports the fact that construction plots do not have to have direct access to the public traffic surface, although in practice applicants for approval of the subdivision project generally requires it. Also, in practice, the established right of passage on foot and by vehicle over the servient property in favour of the parcel that is the subject of subdivision, as a privileged property, is not interpreted in the sense of "access to the public traffic surface", and in those cases, confirmation of the subdivision project by the competent authority is denied. for urban planning affairs of the local self-government unit, which also should not be the rule.

5. Conclusion

Co-ownership is a property community in which co-owners are connected by property interests. When the property interests no longer exist, the co-owner has the right to demand a partition at any time except during the time when such division may cause a damage to other co-owners. This right does not fall under the statute of limitations. The

position of judicial practice is that no one can be kept in a co-ownership community against their will. However, the co-owners are often forced to stay in the co-ownership community if they do not want to go to court, although there is a will to leave the community by division of things and agreement regarding the method of division, the size of the share and the factual situation.

Dissolution of the co-ownership community is possible based on the agreement of the co-owners or in court proceedings. Physical division of things by co-owner agreement should have priority. Only if the co-owners cannot agree on the method of division, the decision should be made by the court. However, in practice, the parties are unnecessarily instructed to exercise the right to dissolve the co-ownership community in court proceedings, which is especially pointless in a situation where there is a possibility that by confirming the subdivision project by the administrative authorities, they can reach the goal in a simpler and more efficient way.

On the other hand, if we take into account the conditions that the existing building plot must fulfil in order to confirm the subdivision project, it may be questionable whether the authority responsible for urban planning affairs of the local self-government unit should have the authority to demand that the parcels created by subdivision fulfil the above conditions, if it prevents the co-owners from exercising their right to dissolve the co-ownership community. By insisting on strict fulfilment of the conditions, the rule that no one can be kept in the co-ownership community against their will is rendered meaningless. As the legislation of the Republic of Serbia stipulates that for the subdivision project for the purposes of dissolution of the co-ownership community in court proceedings it is not necessary to fulfil the conditions that are required in other cases, the same criteria should be applied when the confirmation of the subdivision project for the purposes of dissolution of the co-ownership community is required, as a result of the agreement parties (out of court).

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RAZVRGNUĆE SUVLASNIČKE ZAJEDNICE

Rezime: Suvlasnička zajednica je imovinska zajednica u kojoj suvlasnike povezuju imovinski interesi. Kada imovinski interesi prestanu da postoje, suvlasnici se odlučuju na razvrgnuće suvlasničke zajednice. Razvrgnuće suvlasničke zajednice moguće je na osnovu sporazuma suvlasnika ili u sudskom postupku. Saglasnost suvlasnika, odnosno jednoglasnost o načinu deobe često nije dovoljna da bi se izvršila fizička deoba stvari. Suvlasnici su često primorani da pravo na razvrgnuće suvlasničke zajednice ostvaruju u sudskom postupku. Cilj ovog rada jeste analiza osnovnih karakteristika suvlasničke zajednice u Republici Srbiji i uporednopravno, uz poseban osvrt na pitanje razvrgnuća suvlasničke zajednice i probleme na koje suvlasnici nailaze kada sporazumno (vansudski) nastoje da izvrše fizičku deobu i postanu isključivi vlasnici dela nepokretnosti.