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Uruguay : New Developments in the Civil Law of the Eastern Republic of Uruguay in 2019 and 2020

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NEW DEVELOPMENTS IN THE CIVIL LAW OF THE EASTERN REPUBLIC OF URUGUAY IN 2019 AND 2020

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I. CODE OF CHILDREN AND ADOLESCENTS

Law No. 19747 of April 19, 2019 introduced several important amendments to the Code of Children and Adolescents (Law No. 17823 of September 7, 2004), especially to articles 117 to 131. One of these amendments has been the change in the title of Section I, Chapter IX, now entitled "Protection of Children's and Adolescents' Threatened or Violated Rights."

The amendments, in keeping with the Code's objective of protecting children and adolescents, provide that:

> in administrative and court proceedings for the redress of threatened or violated rights, every child or adolescent has a right to: (a) be treated with dignity, considering their age and their special circumstances; (b) have their opinion, needs, and expectations taken into particular account, regardless of their age, with a view to the actual protection of their rights,

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> observing the principle of progressive autonomy whenever appropriate; (c) not to be discriminated against based on sex, age, ethnic origin, race, sexual orientation, gender identity, financial or social position, disability, or place of origin or residence; (d) be assisted and represented by a lawyer; (e) be always accompanied by an adult whom they trust; (f) have their private life, identity, and privacy respected; (g) be informed about the progress of the proceedings and the possible outcome; (h) receive full redress for any damage, by ordering the relevant agencies to take certain steps and actions to make up for the rights violated, including, without limitation, the treatment and rehabilitation of their psychological and physical health.

These provisions apply to children and adolescents whose rights provided for in general terms under the Code of Children and Adolescents have been threatened or violated. An example of this approach is article 8, which provides that their opinions and preferences must be considered and that they must be heard in all matters in which they are involved. Another example is article 15(b), which provides for the protection against any form of discrimination.

Article 120(2), in its new wording, provides: "Children and adolescents must be represented by lawyers. Children's and adolescents' opinions, as well as the opinions of legal representatives or persons in charge of their care, must be heard, paying special attention to expert reports."

Also, the new wording of article 119 of the Code provides:

> Notwithstanding other responsibilities inherent in the position, counsel for children and adolescents shall: (a) interview the child or adolescent at the outset of their relationship to learn about their situation, opinion, and needs; (b) inform and assist the child or adolescent regarding their rights; (c) hear and consider the child's or adolescent's opinion in all stages of the proceedings and especially when taking decisions which directly affect their living conditions; (d) file any legal actions necessary to reestablish, protect, and enforce the rights of the child or adolescent; (e) seek and take into account the opinions of professionals and other experts who have knowledge of or have taken part in the matter so that their representation be consistent with the individual

characteristics of the child or adolescent and their family and social context.

Article 120.1 provides for the application of the court-ordered and administrative measures involving children or adolescents established under the Convention on the Rights of the Child, which was adopted in the Uruguayan legal order through Law No. 16137 of September 28, 1990. Article 120.1, in keeping with the Convention, clarifies that the following steps will be especially considered: (a) preventing discrimination based on gender, age, ethnic or racial origin, sexual orientation, gender identity, and social and financial situation; (b) promoting life free from gender-based or domestic violence; (c) ensuring strict respect for the best interests of the child.

Article 120.4 includes a nonexhaustive list of steps that may be taken to protect beneficiaries: (a) registering the child or adolescent in the education system; (b) registering the child or adolescent in other education or recreational institutions; (c) providing healthcare treatment in coordination with government-funded and private healthcare services; (d) participating in financial-support programs; (e) participating in family-support programs with the Uruguayan Institute of Children and Adolescents (in their own family, in the extended family, or in a family that secures their development); (f) warning parents or other caregivers so that they address or prevent the threat or violation of the rights of children or adolescents under their care and demanding the performance of all obligations they have to protect any affected rights; (g) securing temporary social and family orientation, support, and follow-up provided by recognized government-sponsored or private programs; (h) providing outpatient, medical, psychiatric, or psychological treatment in government-funded or private healthcare institutions; (i) taking any other steps which benefit the comprehensive development of the child or adolescent. Also, it is established that the court must state the individual or agency responsible for taking those steps, and this will be supervised by specialized teams created for that purpose.

In addition to the steps described above, the law provides for the possibility that the child or adolescent whose right to life or physical integrity is seriously threatened may be placed under the care of a family selected by the Uruguayan Institute of Children and Adolescents which undertakes to provide comprehensive protection (article 120.5).

Under article 120.6, all children and adolescents have the right to voluntarily access 24-hour treatment, care, and accommodation programs. If the parents or caregivers challenge this, without prejudice to the immediate adoption of measures to protect the right of children and adolescents, the court with competent jurisdiction will make the final decision, considering the opinion and the best interests of the child or adolescent.

The institutionalization of children or adolescents against their will shall only be adopted by court decision based on specialized opinions by experts in the matter, as the last resort, and whenever it is essential to preserve the life or integrity of the children and adolescents in question. The maximum institutionalization term shall be for thirty days, which may be extended for periods of the same duration (article 120.7).

In articles 123 *et seq.* of the Code of Children and Adolescents, under the title "Measures Against Sexual Violence and Abuse," several options are given to protect the beneficiaries of these measures. Article 123 provides:

> Sexual violence or abuse against children or adolescents means any kind of physical, psychical, or humiliating harm, damage, or punishment, negligent disregard or treatment, sexual abuse or exploitation in any modality, occurring within the family, in an institution, or in the community. Abuse against children and adolescents also includes their exposure to gender-based violence against their mothers or other caregivers.

To protect children and adolescents, all precautionary measures may be taken which are intended to terminate any sexual-violence abuse situation, to prevent any possible retaliation or threats, and to

ensure the permanence of the child or adolescent with family members whenever possible. For that purpose, all measures considered under article 10 of Law No. 17514 of July 2, 2002, aimed at eliminating all forms of domestic violence, may be taken, especially the following: (a) restricting the alleged perpetrator from communicating, being in contact with, interviewing, or in any other way accessing the alleged victim or the person who reported the event; (b) granting the provisional custody of the child or adolescent to close relatives or any other persons with whom the child or adolescent has a good relationship; (c) provisionally ordering any persons who are under the obligation to pay child support to do so; (d) ordering the removal of the alleged perpetrator from the common home, if any; (e) referring the matter to the Uruguayan Institute of Children and Adolescents. Any such measures shall be ordered without prejudice to any other measures that the court with competent authority on criminal matters may order with respect to the alleged perpetrator.

II. CHANGES INTRODUCED BY LAW REQUIRING URGENT DEBATE NO. 19889 OF JULY 9, 2020

The 2019 Uruguay general elections produced a change in presidential administration, as well as the election of new members to the Senate (31 members) and House of Representatives (99 members). As none of the candidates for president obtained a majority of votes in the general election held on October 27, 2019, a presidential runoff took place in November between the two tickets that had received the most votes (i.e., the *Frente Amplio*, which ran on a left-wing platform and had been in office since 2005, and the *Partido Nacional*, which ran on a conservative platform). The *Partido Nacional* obtained the majority in the run-off, and Luis Lacalle Pou became president for the 2020–2025 term. Lacalle now governs with the legislative support of the so-called *Coalición Multicolor* (Multicolor Coalition), which includes the *Partido Nacional* (also known as *Partido Blanco*) as well as the *Partido Colorado*, the *Partido*

Cabildo Abierto, the *Partido de la Gente*, and the *Partido Independiente*.

After the electoral victory, the president-elect promoted the adoption of new legislation requiring "urgent debate" by Congress, with the purpose of streamlining the exercise of his office. That piece of legislation, passed by both legislative chambers with the support of the Multicolor Coalition, was ultimately signed into law on July 9, 2020 as Law No. 19889.

This new law amends many aspects of the Uruguayan legal order: public safety, education, payment systems, among others. Below is a comment of the main changes in the realm of private law, including adoption, leases, and prescription.

A. Changes in Adoption

The Uruguayan Code of Children and Adolescents (CCT) was originally enacted as Law No. 17823 of September 7, 2004 and has been amended multiple times. Changes to the adoption laws had already been introduced by Laws Nos. 18590 of September 18, 2009 and 19092 of June 17, 2013, both of whose provisions had been incorporated into the CCT.

Now, Law No. 19889, in articles 403 to 406, has incorporated several new amendments relative to the adoption regime.

The Uruguayan adoption system provides for the decisive role of the Uruguayan Institute of Children and Adolescents (*Instituto del Niño y Adolescente del Uruguay,* INAU). This institute was originally tasked with selecting adopting families; any other way of choosing the adopting family was null.

Law No. 19889 maintains INAU's important role in the Uruguayan adoption system, but the tendency of the legislation is to weaken its primacy to some extent. A new article 132.6, CCT, provides that when the court orders the placement of a child or adolescent with a family, whether temporarily or within a definitive separation process, the family shall be selected by INAU. The court may

only depart from INAU's selection if it provides reasons, which must have support from the social workers of the Judiciary, the Forensic Technical Institute, and other experts of the family courts with specialized jurisdiction. In any such case, the court shall ask that the INAU experts make a new selection in the same terms and with the same conditions as in the first case. The most important change is that the court may now ignore the selection made by the experts of the INAU Adoptions Department. In this case, the court shall issue an exceptional decision with grounds when the child or adolescent is fully integrated in a family, having generated so significant bonds that cutting such bonds would entail a violation of the child's or adolescent's rights, provided that the custody has been lawful from the beginning, always prioritizing the best interests of the child or adolescent in the case. In these cases, the court shall require social and psychological reports from INAU experts or the Judiciary. After obtaining favorable reports, at the discretion of the court, the parties may file for the definitive separation and full adoption. The law establishes that if there are any siblings in the same condition, all efforts shall be made so that they are jointly adopted.

B. Changes in Leases and Evictions

Articles 421 to 459, Law No. 19889 incorporate into the Uruguayan legal order a new regime for the lease of properties destined to habitation. The key feature of this regime is that the lessee is not required to present any kind of security for the performance of their obligations.

The new regime is added to the one established under Decree-Law No. 14219 of July 4, 1974, which is still in force, albeit with multiple amendments since its enactment.

The new law also provides that evictions in leases of properties without any security are subject to substantially shorter terms than the ones in force in the ordinary regime.

For the contract to fall within the new Law No. 19889, the following requirements need to be met: (a) the property must be used primarily for habitation, although it is permissible to manage a small household business, not exceeding two employees, as well as practice a profession requiring a university degree or similar qualification, on the premises, provided that such activities do not adversely affect the neighborhood by creating emissions, vibrations, annoying noise, and do not cause damage to the property, and providing that the activity complies with any municipal regulations; (b) the contract must not provide for any security of any nature in favor of the lessor; (c) the contract must be in writing; (d) the contract must expressly include the lease term and price; (e) the parties must express their will to have the lease agreement regulated by the new law.

If any of the requirements mentioned above are not met, the provisions of Decree-Law No. 14219 continue to apply, and this means, among other things, longer eviction terms than the contract incorporated in Uruguayan law.

The rent may be agreed upon in national or foreign currency, or in readjustable or indexed units. Unless agreed otherwise, the rent shall be due every month and shall be paid within the first ten days of each month, at the place and according to the payment method agreed upon by the parties. Under no circumstance shall the lessor demand more than one month of rent in advance (article 422).

Under article 427, "unless otherwise provided in the lease agreement, the lessee shall be responsible for the payment of any consumption, common expenses, or services incidental to the lease." If the lessee fails to pay, and the lessor pays two or more months of national or municipal taxes, consumption, common expenses or any other incidental services whose payment has been provided for under the law or the contract as a responsibility of the lessee, the new debt shall be considered indivisible with the existing rent, and the lack of payment thereof shall amount to default on the rent itself.

Article 430 establishes a special summary action for eviction based on the expiration of the term in the contract: "the court shall

order eviction of the property, within thirty days from the day after the judgment has been served on the lessee." Under article 431, the lessee shall have six business days to file any defenses. Once the eviction order has become final and unappealable and the lease term has lapsed, the lessor may at any time demand eviction of the lessee who has not surrendered the property voluntarily, which eviction shall become effective within fifteen business days from the service on the lessee of the eviction order. The eviction term may be extended only once provided that the request for extension be filed at least two business days before the day set for the eviction and the lessee provides grounds by authentic means of the existence of an event of force majeure. Any such extension cannot exceed seven business days.

If the lessee is evicted for failure to pay, the court shall order the eviction with a term of six business days, beginning from the day following the day the judgment was served on the lessee (article 439). After the judgment ordering the eviction becomes final, the eviction shall be effective after five business days since the date when the judgment has been served on the lessee (article 442). In that case, an extension of the eviction may also be prayed for, which may only be granted for a term not to exceed five days.

C. Changes in Prescription

From the beginning, Uruguayan law has followed the trend in other legal systems and identified two kinds of acquisitive prescription according to their defining elements: (a) "ordinary" or "abbreviated" prescription, and (b) "extraordinary" or "extended" prescription.

Ordinary prescription requires possession, which is the structural element in any case of acquisitive prescription, along with good faith and just title. When these elements are present, prescriptive terms are shorter (before Law No. 19889, three years were

required for movables and ten or twenty for immovables, depending on whether the parties were present or absent persons).

Extraordinary prescription does not require good faith or just title, so the term to acquire ownership by prescription is extended (before the new law: six years for movables and thirty years for immovables).

Law No. 19889 did not modify the required terms or conditions for acquiring ownership over movables by prescription, but many changes were introduced in connection with immovables. These were the main changes:

(a) The possession term for "extraordinary" or "extended" prescription was reduced from 30 to 20 years (current wording of article 1211, Civil Code, as amended by article 463, Law No. 19889).

(b) The possession term required to acquire with just title and in good faith for the "ordinary" or "abbreviated" prescription is now 10 years (current article 1204, Civil Code). Based on this change, the Uruguayan legal order no longer distinguishes between present and absent persons for the purposes of prescription. The old system considered whether the person against whom the prescription was asserted was located in the country or was abroad. As a result, article 1205, distinguishing present and absent persons, was repealed.

(c) Article 467, Law No. 19889 includes a temporary provision stating that any prescription actions which had been brought by the date when the law became effective would follow the provisions of the new law. It is also provided, however, that any prescriptions which are running which, due to the reductions established by the law, have run or shall run before the two-year term since the date stated in the section above, shall only run after such term finishes.

Another change was the amendment of article 1206, Civil Code, regarding "accession" of possessions: "The current possessor may complete the term needed for prescription, adding to their possession the possession of the previous owner of that thing, by universal or particular title, onerously, provided that both have started to possess in good faith." That provision was a source of doubt for

doctrinal authors, specifically regarding whether or not it was applicable only to the abbreviated prescription or also to the extended prescription. A third section was added to the article, according to which that provision is only applicable to ordinary or abbreviated prescription, and not extraordinary or extended prescription. Therefore, to cumulate the possessions of the multiple possessors to acquire ownership by prescription, in the case of extended acquisitive prescription, there is no need for all to start possessing in good faith, i.e., with the belief that the person who transmits the possession is the owner.

Other changes include amendments to articles 1151, 1215, and 1216 of the Civil Code.

Under the new article 1150(1), "The action to demand the partition of the inheritance expires after twenty years against the coheir who has possessed the entirety or part of the inheritance in their own name or as the sole owner." It is clear that the provision, which used to require a thirty-year term, now allows a party to ask for the partition of an inheritance (even if the provision applies to any kind of indivision) up and until the time when the coheir who has inheritance property acquires such property by prescription. The logic underlying the reduction of the term is clear: as the terms for extended prescription of immovables were reduced, the term to request the partition was reduced accordingly.

Under the new article 1215, Civil Code, "Any real action prescribes after twenty years," which significantly reduces the term, as the term used to be thirty years. However, the provision makes an express exception from that term with respect to servitudes, which are extinguished by nonuse for ten years (article 643(2)) and when acquisitive prescription has run, in which the action to recover the possession of the thing from which the owner was deprived, ceases after the term has run for the prescription of the thing (articles 1204, 1212, and 1214, Civil Code).

At the same time, the new wording of article 1216(1), in connection with the extinctive prescription of credit rights, establishes

that "Any personal action for a debt due prescribes after ten years, without prejudice to any specific provisions of special laws." This provision reduces by a half the twenty-year term that Uruguayan law used to require.

D. Other Amendments to the Civil Code

Law No. 19889 introduced two changes in the law of succession. First, article 809(9), Civil Code, was repealed. This section had provided that "persons who are not domiciled in the Department" could serve as witnesses to a testament. As the article did not detail whether the domicile referred to was that of the testator or the place where the testament was executed, the choice was made to repeal the provision.

Article 462, Law No. 19889 amends article 1075, Civil Code, which is about the express renunciation of the inheritance. The provision stated: "An inheritance must be renounced by notarial record executed by a civil-law notary of the domicile of the renouncing party or of the deceased." The new wording no longer requires that the notarial record be executed by a civil-law notary of any of these domiciles, so the record may be executed by any civil-law notary of the country, regardless of their domicile.

Article 1561 was also amended by the new law—now, the article adopts a unanimous position in the doctrine, which embraced an interpretation contrary to the provisions of the legal text. The provision on the absolute nullity established that "absolute nullity cannot be cured by the parties' ratification or by a lapse of less than thirty years." However, commentators believed that the nullity could not be cured even by a lapse of thirty years or more, although during that term the thing that was intended to be acquired through an absolutely null contract could still be acquired through acquisitive prescription. As a consequence of the changes made, the last part of article 1561, Civil Code, now provides that absolute nullity "cannot be cured."