

4. SOCIAL POLICY AND FAMILY LAW: MARRIAGE, DIVORCE AND PARENTHOOD

4.1 Marriage and cohabitation

Core elements of existing laws on cohabitation (emphasizing similarities and differences with the rights of married couples and any recent data on trends in cohabitation).

Austria
A law on cohabitation does not exist
Azerbaijan
N/A
Belgium
Instauration de la « cohabitation légale » (article 1475 et suivants du Code civil belge). - Les partenaires peuvent être de sexe différent ou de même sexe. - Les partenaires n'ont pas le droit d'être mariés ou liés par cohabitation légale à une autre personne. - La conclusion se fait par consentement écrit - dûment consigné au registre des naissances, décès et mariages. - Les partenaires peuvent spécifier dans un contrat les devoirs inhérents à leur relation. - L'union repose sur la séparation des biens. - Les partenaires peuvent établir leur régime patrimonial par contrat. La cohabitation légale n'a pas d'incidence sur les droits ni les devoirs personnels des partenaires.
Bosnia and Herzegovina
FBiH: Article 3 of the Family Law of FBiH prescribes that common law marriage, within the meaning of this law, is a union of a man and a woman who are neither married nor in common law marriage with another person, provided that the union lasts at least three years or shorter if a baby of common law spouses is born. BD: Common law marriage is a union of a man and a woman who are neither married nor in common law marriage with another person, provided that the union lasts at least three years if there are no children born, or shorter if a baby of common law spouses is born. Common law marriage is equal with marriage union as to the rights to mutual support and other property law relations. Costs arising from pregnancy and birth of a child out of wedlock are borne by parents according to their possibilities. In case of

dispute, the court is competent authority.

Bulgaria

The existing Family Code does not regulate cohabitation. For the first time in our civil legislation, the draft new Family Code provides regulation on cohabitation between a man and a woman. The basic situation provided for is that it has legal significance in cases mentioned in legislation. There is a differentiation between registered and usual (unregistered) cohabitation. The institutionalisation of the cohabitation of a man and a woman meets the social need and the widespread practice of recent years of joint family-like live without an actual marriage.

The Civil Registration Act has a provision regulating the procedure for the registration of cohabitation and the termination thereof. There is a requirement that cohabitation may not be registered until the existing registration is deleted.

There is a list of the main fields of family law at which the legal action of cohabitation appear. Chief amongst those is the settlement of the parentage of children whose birth comes from this cohabitation. The partner of the mother is considered father if the child is born during the registered cohabitation or before the expiration of 300 days after its termination. The assumption of fatherhood is not applied when the assumption of fatherhood of the spouse of the mother is in force. The assumption of fatherhood can be challenged by the partner of the mother in the registered cohabitation within a period of one year after learning of the birth, and by the mother – within one year after the birth, and by the child – after the completion of fourteen years of age and until the expiration of one year after reaching full age.

The legal meaning of this cohabitation also appears in case of adoption. In case of registered cohabitation, upon adoption by a partner of the parent the adopter or the adopted do not have to be listed in the registers for full adoption. It is also envisaged that child support is due if the partners have an agreement for this.

Croatia

The rights of cohabiting partners (extramarital relationship) are equal to the rights of a married couple in relation to a union of an unmarried woman and an unmarried man not living in any other extramarital union, that lasts for three years at least or shorter if they have a child.

To exercise the right of pension upon the death of an extramarital partner, it is necessary to prove the existence of the extramarital union in a legal action.

There is no available data on recent trends in cohabitation.

Cyprus

Free cohabitation is not legally recognised in Cyprus thus, no legal provisions exist covering the status of unmarried couples.

According to the last Census of Population (2001), only 0,2% of the population were cohabiting.

Czech Republic

Registered partnership

- partnership originates by the expression of will of the two persons of the same sex which is made in the form of a free and full declaration of agreement by these two persons that they enter into partnership

- persons entering into partnership make this declaration in person before the registry officer in the region which is competent to accept such declaration based on the place of residence of at least one of the persons entering the partnership



- the declaration is made before the registry officer on the basis of the question given to the persons who wish to enter into partnership, whether they wish to enter into partnership
- partnership cannot be entered into by the persons who are related in a directly line and siblings, or with a person who did not reach the age of 18, does not have legal capacity, or is married or entered into partnership previously or a similar relationship of the same persons concluded abroad, and that marriage or partnership or similar relationship continues to exist
- partners have the same obligations and rights within the partnership; partners have the mutual obligation to pay maintenance
- partnership expires by death of one of the partners, or by the declaration of one of the partners for dead or by dissolution by the court decision

Unmarried cohabitation (factual marriage) is not specifically mentioned in the Family Act, also for the reasons of our legal framework recognizing the family which is based on marriage, nevertheless the act does address this issue. This can be deduced mainly from the fact that the legal regulation of the relations between the parents and the children is in no way limited to the existence of marriage. The terms [male and female] companion are also mentioned in other legal (especially public law) areas. Unmarried cohabitation is most frequent in terms of social groups among the unemployed, in terms of age among the young, and in terms of income among the most poor and most rich, and in terms of the number of children among the childless and the families with many children. In 2006 11% of couples saw themselves in a factual marriage.

Denmark

A law on cohabitation does not exist

Estonia

Cohabitation is not legalised in Estonia. Cohabiting partners may conclude the contract of partnership in accordance to Law of Obligations Act. Partners are personally and solidarily liable for their property and transactions. The contract of partnership is in accordance with the commercial law principles.

Finland

A law on cohabitation does not exist at the moment. However, a draft bill on dissolution of joint household has been proposed by a working party in January 2009. The purpose of the proposal is to provide minimum protection for cohabitants upon the breakdown of the relationship. It contains the following core elements: separation of property, presumption of joint property concerning household goods, permission of temporary residence in the common home and refund of benefit by unjust enrichment. No registering of cohabitation would be required, and cohabitation would create neither inheritance rights nor any duty to provide maintenance for the family.

France

Institution of unmarried cohabitation (Article 515-8 of the French Civil Code)

- There is no regulated status, and the relations between the cohabitants are subject to the rules of ordinary law, particularly in the event of separation (possible complaints of unjustified enrichment).
- Institution by the law of 15 November 1999 (see Art 515-1 et seq. of the Civil Code) of the Civil Solidarity Contract (Pacs) defined as a contract concluded by two adult natural persons of the opposite or same sex to govern their life together.
- This contract creates obligations (pecuniary support and mutual assistance, and joint liability in respect of third parties for debts incurred by one partner for the needs of day-to-day life (manifestly excessive expenditure is excluded). Unless the partners choose

otherwise, the principle is the rule of separate ownership of property (Article 515-5 of the Civil Code).

- There is no specific provision for any emergency or protective measure as encountered in marriage or, where the contract is terminated, for compensatory payment or performance. By default, the partners do not inherit from each other, and the Pacs confers no entitlement to reversion or bereavement allowance.
- Finally, the Pacs has no effect on parental authority and the rules of paternity/maternity.
- 266 500 marriages were celebrated in 2007 and 77 362 Pacs were concluded in 2006 (70 000 in the first three quarters of 2007).

Germany

A law on cohabitation does not exist.

Greece

A law on cohabitation does not exist until now.
A Special law-making Committee of the Ministry of Justice has elaborated the plan of a contract of cohabitation between heterosexual couples that is now in the phase of social consultation.

Hungary

N/A

Iceland

(2, 3) Icelandic legislation makes a clear distinction between cohabitation and marriage and there is no special law on cohabitation comparable with the marital law, despite the fact that cohabitation of is a relatively common family form. Thus, cohabiting couples do not have a mutual legal obligation to provide for each other and the laws do not provide regulation on the dissolution of cohabitation. Furthermore cohabiting couples do not have automatic inheritance rights like married couples nor were they able to adopt children (until 1999). However rights of cohabiting couples are recognised to a certain extent in various laws. For instance, cohabitation was acknowledged in the context of the establishment of a child's paternity already in 1921. Furthermore both the tax laws and laws on social security gradually offered recognition of the rights of cohabiting couples, though the laws applied different definitions of what qualified as cohabitation. It is possible to register cohabitation with the authorities (Law on Legal Resident no. 21/1990). Same sex couples got the legal right to register their cohabitation in 2006.

In 2008 67.3% of families were married (47% of them with children), 16.6% were couples in cohabitation (75% of them with children), lone parents were 16.1% of families.

Ireland

Unmarried cohabitation is not regulated under Irish law but legislation in this area is currently being prepared.

Italy

A law on cohabitation does not exist
- non-marital relationships can be seen as 'formazioni sociali' with the underlying principle of solidarity
- partners can regulate the relationship within the scope of their private autonomy by contract

Latvia

A law on cohabitation does not exist.

Lithuania

Chapter XV of Lithuanian CC (Art. 3.229-3.235) adopted in 2000, regulates legal aspects of common property of persons who are living together without registered matrimony, if they relations are regulated by the Law on Cohabitation. Unfortunately, till 2009 there is no special law which regulates such relations.

Luxembourg

Loi du 9 juillet 2004 relative aux effets légaux de certains partenariats.

On entend par partenariat « une communauté de vie de deux personnes de sexe différent ou de même sexe, ... qui vivent en couple et qui ont fait une déclaration [prévue par l'art.3] » (art.2).

Conditions préalables:

- ne pas être liées par un mariage ou un autre partenaire (cf. bigamie)
- ne pas être parents ou alliés au degré prohibé conformément aux art.161 à 163 et à l'art. 358 alinéa 2 du code civil : cette obligation est la même que pour le mariage.
- être capable de contracter conformément aux articles 1123 et 1124 du code civil : le partenariat est uniquement un simple contrat qui doit être déposé par écrit (au contraire pour le mariage les deux époux doivent être personnellement présent) auprès de l'officier de l'état civil de la commune du lieu de leur domicile ou résidence commun; après vérification de la déclaration de partenariat et si elle est conforme aux conditions légales l'officier de l'état civil remet une attestation aux deux partenaires mentionnant que leur partenariat a été déclaré.
- résider légalement sur le territoire luxembourgeois si un des partenaires est un ressortissant non-communautaire.
- facultativement : présenter une convention entre partenaires. Il n'existe pas de régime à l'instar des régimes matrimoniaux mais les biens acquis conjointement se trouvent en indivision.

Effets:

en principe uniquement patrimoniaux.

Mais chacun des partenaires reste seul tenu des dettes nées en sa personne, avant ou pendant le partenariat sous réserve que la contribution aux charges du partenariat est faite par les deux partenaires à proportion de leurs facultés respectives de sorte que les



partenaires sont tenus solidairement, même après la fin du partenariat, à l'égard des tiers des dettes contractées par eux ou par l'un d'eux pendant le partenariat pour les besoins de la vie courante de leur communauté domestique et pour les dépenses relatives au logement commun. La solidarité n'a pas lieu, néanmoins, pour les dépenses manifestement excessives, eu égard au train de vie du partenariat, à l'utilité ou l'inutilité de l'opération, à la bonne ou la mauvaise foi du tiers contractant. Elle n'a pas lieu non plus pour les obligations résultant d'achats à tempérament, s'ils n'ont été conclus du consentement des deux partenaires (comparez art. 220 c.civ. pour les époux).

Surtout dans le droit social, les partenaires sont assimilés aux époux et en droit fiscal (successoral) dans ce dernier cas le partenariat doit avoir duré 3 ans.

Cessation du partenariat

Les causes de cessation du partenariat sont les suivantes :

- décès d'un partenaire
- par mariage
- déclaration conjointe
- déclaration unilatérale ou répudiation. Pour que cette déclaration à déposer devant l'officier de l'état civil soit valable, il faudra que le partenaire qui veut faire une telle déclaration la signifie préalable à son autre partenaire. Cette signification doit être faite par acte d'huissier.

Malta

There are no existing laws on cohabitation.

Moldova

Not mentioned

Monaco

Néant.

Montenegro

There is no separate law regulating this meter; therefore it is regulated by the Family Law of Montenegro.

Netherlands

There is no law on cohabitation.

NB: The registered partnership, a form of unmarried cohabitation is however regulated by law (articles 1:80a up to and including 1:80g Civil Code). Most provisions applying to marriage also apply to registered partnerships (for example, see article 1:80b Civil

Code). The most important difference between registered partnership and marriage is that the mother's partner is not automatically recognised as the legal parent of any child born during a registered partnership. However, as with marriage, they will automatically exercise joint responsibility for the child from birth (article 1:253aa Civil Code).

Norway

There is no general equal treatment between cohabitants and spouses in the legal framework. Cohabitants are treated the same way as spouses in some areas, and like single persons in other areas.

Recent data on trends in cohabitation The proportion of cohabitants in relation to all couples has not increased in recent years. Cohabitation is most common among persons between 20 and 40 years of age. Young women in their twenties are more likely to cohabit than men at the same age.

The proportion of cohabitants in relation to married couples is one in four. This is unchanged from the last survey, which was carried out in 2002-2004. In the period 1993-1995, about one in five was cohabiting. The figures above include women and men age 20-79.

Until 2004, there was an increase in the proportion of cohabitants in most age groups for both women and men. Up to the mid-1980s there was an increase in all age groups except young women (20-24). Since then the figures for most age groups have become more stable.

According to interview data from 2005-2007, the total number of cohabitants is estimated to about 300 000 couples. This is a higher estimate than figures based on registers. Stricter requirements with regard to legal residence address imply that cohabitants must have the same residence address in order to be classified as cohabitants in the register based statistics, as opposed to interview surveys.

Poland

A law on cohabitation does not exist.

Portugal

In 1999, there was a vigorous debate on the issue of the legal protection of cohabiting partners (heterosexual and homosexual). In Portugal, couples "living together as husband and wife" (only heterosexual, not same-sex partners) are recognized in legislation, but their rights and duties are different from those of "married couples". The underlying principle is that cohabiting partners are entitled to a type of union different from marriage. Compared to married persons, legal obligations between cohabiting partners are therefore more limited. In the Revised Family Law of 1977, there are no mutual obligations for maintenance and support, with one exception: a surviving partner can, on the partner's death, claim maintenance rights on the inheritance of the deceased. The issue of the legal protection of cohabiting partners or of their access to social benefits was frequently discussed during the 1990s. In 1994, regulations were established concerning the entitlement of cohabiting spouses (heterosexual) to survivor's pensions, the funeral allowance, and a family care benefit (claimants have to prove they have been cohabiting for a minimum of two years). The issue was taken up again in 1999 by the Young Socialists, with the presentation of a new bill on the protection of cohabiting partners. Same-sex consensual unions were initially included in this proposed law, a fact that led to much controversy and criticism from many sectors of society. The problem of the legal protection of homosexual unions was eventually set aside from the 1999 Young Socialist's bill.

The new law, Decree 135/99, 28 August, on the Protection of Cohabiting (heterosexual) Couples was discussed and passed by Parliament after a vigorous debate in which the Socialist proposal was strongly criticized and members of gay organizations listening in on the discussion were expelled from Parliament. The law established the right of cohabiting couples to adoption, entitled them to be taxed jointly and gave the surviving partner more rights to the joint home in the event of death (usufruct rights, for a period of



five years, to the home owned by the deceased partner) (see also Decree 7/2001, 7 May which replaced Decree 135/99 on the protection of cohabiting couples). Same-sex unions continued to be an issue hotly debated after the approval of the above-mentioned decree. New bills introduced by the Young Socialists and other left-wing parties eventually led to the approval, by a narrow margin, of a new Law on the Legal Protection of Same-Sex Unions (Decree 56/VIII, 15 March 2001). It establishes rights similar to those granted to heterosexual cohabiting partners, but excludes the right to adoption.

Recent trends in family formation and dissolution in Portugal

In common with the rest of Europe, statistics show a pattern of later and less popular marriage, more marriages preceded by cohabitation and extra-marital childbearing, and rising rates of divorce and remarriage. Compared to the previous decades, the last fifteen years reveal a more pronounced development in some of these indicators: the marriage rate declined from 7.3 in 1991 to 5.7 in 2001 and 4.5 in 2006; women's mean age at first marriage rose from 24.4 to 28.1 (2006); Catholic marriages dropped from 72% to 55% (2005) and the percentage of births outside marriage and of cohabiting couples, albeit lower than in Northern European countries, increased strongly – births outside marriage now represent 32% (2006) of all live births (up from 16% in 1991) and cohabiting couples almost doubled (from 3.9% in 1991 to 7% in 2001 of the total number of couples). Together with the changes that have taken place in the life of couples, divorce has also increased steadily: the divorce rate rose from 1.1 in 1991 to 1.8 in 2001 and to 2.2 in 2006.

Romania

At present, the Romanian legislation does not regulate cohabitation. The rights over the assets acquired by the two persons involved during cohabitation are governed by the rules regarding shared ownership of joint property.

Russian Federation

In Russian legislation there exists no laws on cohabitation.

Serbia

Spurious community is a longer life community of a man and a woman, between who there are no marriage difficulties (spurious partners). Spurious partners have the rights and obligations of marriage partners. From above stated it can be concluded that marriage and spurious unit in Republic of Serbia are equal.

Slovakia

In the Slovak Republic a law on cohabitation does not exist.

The most frequent debates in 2005 within the National Council of the Slovak Republic approval procedure were regarding the implementation of the registered partnership between human beings of same sex. This initiative was however turned down and the new Family Code stipulates in its very beginning as the Basic Principle No. 1 that:

"Marriage is the bond between a man and a woman. The society protects this unique bond with every means and helps to its wellness. Husband and wife are equal in their rights and obligations. The basic principle of marriage is the foundation of a family and proper raising of children."

Slovenia

Status of the common law union (persons living together as unmarried couple). According to the Constitution, relations within marriage and within a common law union are regulated by law. The Marriage and Family Relationship Act thus stipulates that under family law the consequences of cohabitation for a man and a woman who have lived together for a long time but have not entered into marriage are, under certain conditions, the same as those defined by law for spouses. These consequences are: interest in property acquired during their common law union and duty of maintenance after the end of their union. The common law union also has consequences in other areas, such as the law of inheritance, housing law, tax law and criminal law.

Spain

A law on cohabitation does not exist regards to the Spanish CC.

- However Law 21/1987 of November 11 that modifies the Spanish CC on adoption and family fosterage, in its additional disposition 3 gives to couples in cohabitation equal consideration as to married couples "The references of this Law to the capacity of the spouses to adopt a child simultaneously will also be applicable to the man and the woman that live together as a stable couple within a relation of affection similar to that of marriage".
- Twelve of 17 Autonomous Communities – Regional Governments- have created a law on cohabitation.
- Couples in cohabitation have to register as such to qualify for pensions or other benefits in case of separation or death of partner.

Sweden

Cohabitation defined in the Cohabitees (Joint Homes) Act (SbL, Section 1, para 1)

- the Act is not applicable to a married person
- cohabitation needs to be permanent
- consequences on the property of the common residence and inventory

Switzerland

Pas de réglementation spécifique.

Turkey

There is no existing law on cohabitation. The cohabitation without children has no similar provisions with marriage. But children born in cohabitation has the right as being naturally lineage to mother. But father has no right in this regard. To have it, father has to recognize the child at notary public office or the mother could bring a patternship case before the court.



Ukraine

Similarities rights

United Kingdom

England and Wales: No law on cohabitation

The Family Law (Scotland) Act 2006 allows a cohabitant to apply for financial provision if the couple separate. The courts may award this on considering whether the defender has derived economic advantage from contributions made by the applicant, and/or the applicant has suffered economic disadvantage in the interests of the defender; or any relevant child.

The Act also states a presumption that each cohabitant has a right to an equal share in household goods acquired (other than by gift or succession from a third party) during the period of cohabitation.

There is no definition of who would be considered cohabitants; the courts are expected to consider the nature of a couple's relationship, the duration for which they have been living together, and any financial arrangements.