

Ondřej Frinta

Law of Personal Status. Family Relationship. Marriage, Partnership and Cohabitation.



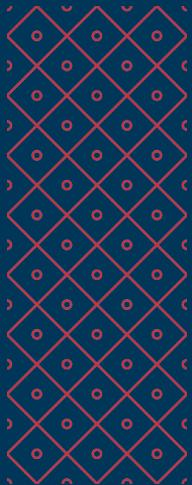
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Content

1. Law of Personal Status
2. Family Relationship
3. In-Law Relationship
4. Marriage
5. Partnership
6. Household
7. Cohabitation



Chapter 1

Law of Personal Status



Law of Personal Status

The law concerning the (personal) status of persons

Status law in the objective sense = a set of legal provisions that regulate

- 1) the **creation and extinction of a person** in the sense of law
- 2) the **legal relations** of this person towards other persons, i.e., rights and obligations between these persons, **insofar as they affect their legal status (i.e., rights and obligations especially other than property-related)**, including determining the conditions under which these persons interact with each other



Law of Personal Status

The law concerning the status of persons includes provisions on:

Every natural person:

- ▶ **Legal personality** (creation and extinction of a person in the sense of law), “passive component”, Sect. 15 para 1

- ▶ **Legal capacity**, “active component”, Sect. 15 para 2
(Legal personality and legal capacity see Lecture 03 on Natural Persons)

- ▶ **Age of majority / minors**, Sect. 30 et seq.



Law of Personal Status

Relationship between age and legal capacity

two possible solutions:

1) Fixed age limits

X

2) **Gradual** acquiring of legal capacity



Law of Personal Status

Minority / majority

Sect. 2 BGB:

Die Volljährigkeit tritt mit **der Vollendung des 18. Lebensjahres** ein.

*Majority begins **at the age of eighteen**.*

Sect. 104 at seq. BGB

Geschäftsunfähig ist: 1. wer **nicht das siebente Lebensjahr vollendet hat**, [...].

A person is incapable of contracting if: 1. the person has not yet attained the age of seven years, [...].

Sect. 106 BGB: Ein Minderjähriger, **der das siebente Lebensjahr vollendet hat**, ist nach Maßgabe der §§ 107 bis 113 in der **Geschäftsfähigkeit beschränkt**.

A minor who has reached the age of seven has limited capacity to contract under sections 107 to 113.



Law of Personal Status

Minority / majority

Sect. 21 ABGB

Those, who for want of years, infirmities of the mind, or other circumstances are themselves unable to take proper care of their affairs, stand under the peculiar protection of the laws. To this class belong: **children**, who have not yet reached **their seventh year**; those, who have not attained the age of discretion (**note: immatures**), namely **their fourteenth year**; **minors**, who **have not completed the twenty fourth** year of their life; then: raving persons, mad persons an idiots, who are either entirely deprived of the use of their reason, or are at least incapable of understanding the consequences of their actions; further those, whom the judge, as declared prodigals, has forbidden the further administration of their property; lastly persons, who are absent, and communities.



Law of Personal Status

Age of majority

ABGB: **24** years; after amendment by Act No. 447/1919 Coll.: **21** years

CC 141/1950: **18** years, marriage at **16** (or 17) years of age

CC 40/1964: **18** years, marriage at **16** (or 17) years of age

CC 2012: **18 years only**

(marriage at 16 years of age = full legal capacity, but still a minor, Sect. 30 para 2)

(granting legal capacity at 16 years of age = full legal capacity, but still a minor, Sect. 37)

(**X** adult = not used in CC)



Law of Personal Status

Age of majority **X DISTINGUISH**

X juvenile = who, at the time of committing the offense, **had reached the age of fifteen and had not exceeded the age of eighteen** [Section 2 para 1 letter c) of Act No. 218/2003 Coll., on Juvenile Justice]

X An adoptive parent is required to inform the adopted child of the adoption as soon as it seems appropriate, **but no later than by the start of school attendance**. Sect. 836 = usually at **6 years of life** (time span from 5 to 7/8)

X 12 years of life: consent of a child with adoption (Sects. 806, 807); right to information and to form and communicate an opinion (Sect. 867)



Law of Personal Status

Age of majority **X DISTINGUISH**

X 13 years of age: damage caused by a person who is unable to assess the consequences of their actions (Sect. 2920); **= tort liability!**

X 15 years of age: *mortis causa* dispositions by public deed (public instrument) (Sect. 1526)

X 16 years of age: marriage with the consent of the court, granting legal capacity, inability to give consent to the adoption of a child

X 18, 20, and 70 years of age: transfer of lease (Sect. 2279); 70 years: Sect. 2301

X 25 years of age: declaration of death (Sect. 74 para 2)



Law of Personal Status

The law concerning the status of persons includes **family law** provisions on:

- ▶ Sex
- ▶ Determination and denial of parenthood (maternity and paternity) (see *lecture no 10: Determination of Parenthood. Surrogacy. Adoption*)
- ▶ Family Relationship
- ▶ Marriage, (registered) partnership (especially provisions on creation and termination)
- ▶ In-law Relationship
- ▶ Adoption (see *lecture no 10: Determination of Parenthood. Surrogacy. Adoption.*)
- ▶ Guardianship (see *lecture no 11: Parents and Children. Parental responsibility. Maintenance and Support Duty. Foster Care.*)
- ▶ ...



Law of Personal Status

The law concerning the status of persons includes family law provisions on: ► Sex

Sect. 29 para 1:

Sex change of an individual takes place by surgery while simultaneously disabling the reproductive function and transforming the genitalia. The date of the sex change is presumed to be the date indicated in the certificate issued by the health care provider.

CC Case No Pl. ÚS 52/23: first sentence repealed as of June 30, 2025

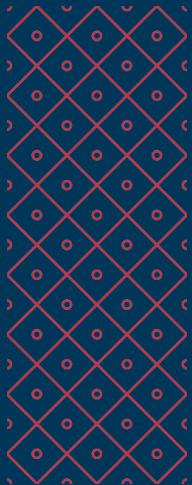


Law of Personal Status

The law concerning the status of persons includes **family law** provisions on: ► Sex

Sect. 29 para 2:

Sex change does not affect the personal status of an individual or his personal and property situation; **however, marriage or registered partnership terminate**. The rights and duties of a man and woman whose marriage terminated to their common child and their property rights and duties at the period following the termination of marriage are governed, by analogy, by the provisions on the rights and duties of divorced spouses to their common child and on their property rights and duties at the period following the divorce; a court shall decide, even of its own motion, on the care each of the parents will take of their common child thereafter.



Chapter 2

Family Relationship



Family Relationship

Sect. 771:

Family relationship is a (note: legal) relationship between persons based on consanguinity or adoption.

- 1) Consanguinity** = relationship based on the biological (natural) rules of human reproduction
- 2) Adoption** = relationship based on social facts, replacing missing biological (natural) relationship (= *adoptio naturam imitatur*)



Family Relationship

Sect. 772:

- (1) Persons are **relatives in direct line** (*note: linea recta*) if one is a descendant of the other.
- (2) Persons are **relatives in collateral line** (*note: linea collateralis*) if they have a common ancestor, but one is not a descendant of the other.

Q: explain Latin notions: “linea descendens” and “linea ascendens”



Family Relationship

Q: explain Latin notions: “linea descendens” and “linea ascendens”

linea descendens = from the ancestor to his descendants

= persons born **after** the person from whom they are viewed are his descendants in the descending line

linea ascendens = from the descendant to his ancestors

= persons born **before** the person from whom they are viewed are his ancestors in the ascending line



Family Relationship

Sect. 773:

The degree of relationship between two persons is determined by **the number of births**

which are between them if one is a descendant of the other in a **direct line**,

and

which are between both persons and their closest common ancestor in **collateral line**.



Family Relationship

- ▶ *tot (sunt) gradus, quod (sunt) generationes*
- ▶ *tot (sunt) gradus, quod (sunt) personae deemeda una*

Gradus autem dicti sunt a similitudine scalarum locorumve proclivium, quos ita ingredimur, ut a proximo in proximum, id est in eum, qui quasi ex eo nascitur, transeamus.

Degrees are so called from their resemblance to ladders, or places which are sloping, so that we ascend by passing from one to the next, that is, we proceed to one who, as it were, originates from another.

D 38.10.10.10 (Paulus I.S. de grad. et adfin.)



Family Relationship

- ▶ *tot (sunt) gradus, quod (sunt) generationes*
- ▶ *tot (sunt) gradus, quod (sunt) personae deemed una*
= *roman way of computation*

X

old german law way of computation

= *defines degrees of kinship according to the number of generations (generatio, parentela, Parentel), combining all relatives of the same lineage who are equally distant in kinship into one group and treating them as a single entity.*
= *siblings are in 1st degree, cousins are in 2nd degree, their children are in 3rd degree etc.*



Family Relationship

Q.: Determine the line and degree of (roman law way of computing):

- a) brother and sister
- b) uncle and niece
- c) you and your great-grandparent
- d) cousins
- e) you and a child of your cousin



Family Relationship

Q.: Determine the line and degree of (roman law way of computing):

- a) brother and sister = collateral line, 2nd degree
- b) uncle and niece = collateral line, 3rd degree
- c) you and your great-grandparent = direct line, 3rd degree
- d) cousins = collateral line, 4th degree
- e) you and a child of your cousin = collateral line, 5th degree



Family Relationship

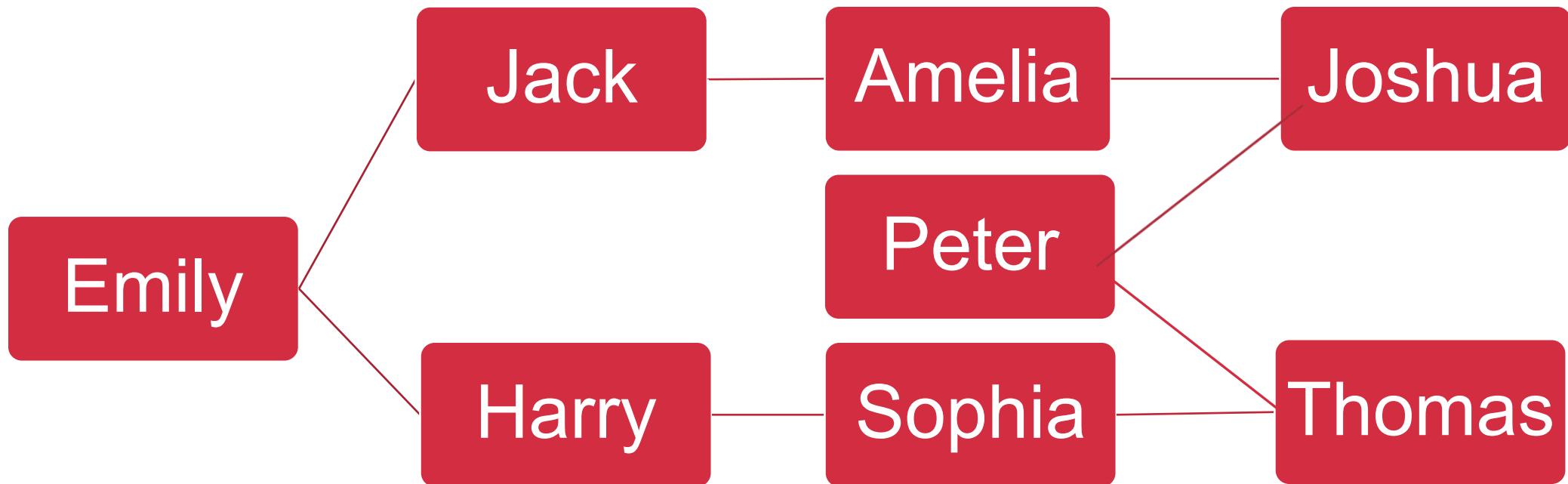
Q.: Determine the line and degree between Joshua and Thomas (roman law way of computing):

Emily had two sons, Jack and Harry. Jack had a daughter, Amelia, and Harry had a daughter, Sophia. Amelia married Peter, and they had a son, Joshua. However, Amelia died tragically in a car accident shortly thereafter. After some time, a relationship developed between the widowed Peter and Sophia, Harry's daughter. Peter eventually married Sophia, and they had a son, Thomas.



Family Relationship

Q.: Determine the line and degree between Joshua and Thomas (roman law way of computing):





Family Relationship

Q.: Determine the line and degree between Joshua and Thomas (roman law way of computing):

- 1) Concerning their father, Joshua and Thomas are related in collateral line, 2nd degree.
- 2) Concerning Emily (their great-grandmother), Joshua and Thomas are also related in collateral line, in 6th degree.

= double relationship (double kinship)



Chapter 3

In-Law Relationship



In-Law Relationship

Sect. 774

Upon the formation of marriage, an **in-law relationship is created between one spouse and the relatives of the other spouse**; the line and degree of the relationship of a person to one spouse determines the line and degree of his in-law relationship to the other spouse. If a marriage terminates by the death of a spouse, in-law relationship shall remain unaffected.

= not a relationship among relatives of husband and relatives of wife

X marriage is terminated by divorce = in-law relationship terminates



In-Law Relationship

Sect. 774 = *stricto sensu* in-law relationship

X

in-law relationship in broader sense includes relationships among relatives of husband and wife

= **social** (note: not legal) in-law relationship



Chapter 4

Marriage



Marriage

Concept:

Marriage is **a permanent union of a man and a woman** formed in a manner provided by this Act.

Purpose:

The primary purpose of marriage is **the foundation of a family**, proper upbringing of children and mutual support and assistance.

(Sect. 655 para 1)



Marriage

98. Reviewing the situation in 2002, the Court observes that Article 12 secures the fundamental right of a man and woman to marry and to found a family. The second aspect is not however a condition of the first and the inability of any couple to conceive or parent a child cannot be regarded as *per se* removing their right to enjoy the first limb of this provision.

ECtHR: Christin Goodwin v the United Kingdom, Application no. 28957/95 (11 July 2002)



Marriage

100. It is true that the first sentence refers in express terms to the right of a man and woman to marry. The Court is not persuaded that at the date of this case it can still be assumed that these terms must refer to a determination of gender by purely biological criteria (as held by Ormrod J. in the case of *Corbett v. Corbett*, paragraph 21 above). There have been major social changes in the institution of marriage since the adoption of the Convention as well as dramatic changes brought about by developments in medicine and science in the field of transsexuality. The Court has found above, under Article 8 of the Convention, that a test of congruent biological factors can no longer be decisive in denying legal recognition to the change of gender of a post-operative transsexual.

Christin Goodwin v the United Kingdom, Application no. 28957/95 (11 July 2002)



Marriage

Q.: What are the legal consequences of entering into marriage?



Marriage

Q.: What are the legal consequences of entering into marriage?

- a) change of personal status from an unmarried (“free”, “single”; widow, widower; divorced) to “married”
- b) prohibition to enter into another marriage
- c) possibility to file a petition for a divorce to a court
- d) change of a surname in previously agreed form
- e) establishment of a specific property regime
- f) easy way to determine the fatherhood of children
- g) mutual maintenance and support duty



Marriage

Formation

Sect. 656:

(1) **Marriage is formed by free and full affirmative expressions of will** by a man and woman (hereinafter “fiancés”) having an intention to enter into marriage.

(2) A wedding ceremony is public and festive; it is **held in the presence of two witnesses**.

= not necessarily by using words (speech)

= **two witnesses** ► **Council of Trent** (1545-1563) (24th session: validity of marriage dependent upon the wedding taking place before a priest and two witnesses; + condemns concubinage)



Marriage

Way of Formation

1) civil marriage **only**

e. g. Austria, Belgium, Estonia, France, Hungary, and Romania (+ then celebration according to the rites of religion/belief)

2) church marriage **also valid for the state**

e. g. Cyprus, Denmark, Estonia, Finland, Italy, Sweden and **the Czech Republic**

*(possible **option** between civil and church, both valid for the state)*



Marriage

Way of Formation – the Czech Republic

Only **churches and religious societies** that have been **granted special rights** may perform marriages.

Act No. 3/2002 Coll. on freedom of religious belief and the status of churches and religious societies and on amendments to certain acts (Act on Churches and Religious Societies)

Special rights:

- a) teach religion in state schools
- b) to perform clerical services in the armed forces of the Czech Republic, in places where detention, imprisonment, preventive detention, protective treatment, and protective education are carried out,
- c) perform ceremonies at which church marriages are concluded
- d) establish church schools
- e) maintain the obligation of confidentiality by clergy in connection with the exercise of the seal of confession or the exercise of a right similar to the seal of confession, if this obligation has been a traditional part of the teachings of the church and religious community for at least 50 years



Marriage

Ostensible marriage

Sect. 677 para 1: **A marriage is not formed** if, regarding at least one of the persons who intended to enter into marriage, the elements in the expression of will to enter into marriage, or in or in connection with a wedding ceremony, have not been fulfilled **and the fulfilment of such elements must be unconditionally insisted on for the marriage to be formed.**

e. g. *two persons of the same sex; children under 16 years of life*

church marriage:

- entering into marriage before a body **of an authorised church.**
- **a certificate** of the registry of births, deaths and marriages proving that the fiancés have met all statutory requirements for entering into marriage and that the certificate **has not been issued more than six months before** the entering into marriage (except direct threat to life of one of the fiancés)



Marriage

Ostensible marriage

- = no community property established
- = the presumption of paternity of husband will NOT apply
- = court decision on ostensible marriage is **declaratory**



Marriage

Invalid marriage

Sect. 680: If a marriage has been entered into despite the existence of a **legal impediment**, the court shall declare the marriage invalid on the application of anyone having a legal interest therein, unless the marriage was impeded by limited legal capacity.



Marriage

Invalid marriage – legal impediments

1) age (*aetas*); Sect. 672

(1) Marriage may **not be entered into by a minor lacking full legal capacity.**

(2) A court may, in exceptional cases, allow a minor who lacks full legal capacity and has reached sixteen years of age to enter into marriage, if justified by important grounds.

2) limited legal capacity; Sect. 673

A person whose legal capacity to enter into marriage has been limited may not enter into marriage.



Marriage

Invalid marriage – legal impediments

3) other marriage or similar relationship (*vinculum prioris matrimonii*); Sect. 674

Marriage may not be entered into by a person who has previously entered into marriage or a person who has previously entered into a registered partnership or another similar union abroad while this marriage, registered partnership or other similar union entered into abroad still lasts.

4) family relationship; Sect. 675

Marriage may not be entered into between ancestors and descendants or between siblings; the same applies to individuals whose family relationship was created by adoption.



Marriage

Invalid marriage – legal impediments

5) relationship of dependence; Sect. 676

Marriage may not be entered into **between a tutor** (note: Sect. 928 et seq.) **and person under tutorship**, **between a child and the person to whose care the child has been entrusted** (note: Sect. 953 et seq.), **or between a foster** (note: Sect. 958 et seq.) **parent and the child placed in foster care**.

X not a guardianship (Sect. 943 et seq.)



Marriage

Invalid marriage – consequences

A marriage **is considered** valid until declared invalid. If a marriage has been declared invalid, **it is considered** never to have been entered into.

- = property community of spouses arises
- = 1st presumption of paternity (husband of mother is presumed to be a father) is applied
- = court decision on invalidity is **constitutive**

► The rights and duties of a man and woman whose marriage has been declared invalid to a common child and their property rights and duties at the time after the marriage has been declared invalid are governed, **by analogy, by the provisions on the rights and duties of divorced spouses** to a common child and on their property rights and duties at the time after the divorce. (Sect. 686 para 1)



Marriage

Rights and duties of spouses

1) of personal nature

living together, being faithful to each other

2) of personal-property nature

mutual legal representation

3) of property nature

community property;

+ joint lease of flat, + succession law etc.



Marriage

Community property (Sect. 708 et seq.)

1) statutory regime (Sect. 709 et seq.)

= no modification has been made by spouses (or fiancés) by public deed (instrument)

2) contractual regime (Sect. 716 et seq.)

- ▶ a separate property regime,
- ▶ a regime reserving the creation of community property as of the date the marriage terminates,
- ▶ a regime constituting an extension of the scope of the statutory regime of community property
- ▶ a regime constituting a reduction of the scope of the statutory regime of community property

3) regime established by a court decision (Sect. 724 et seq.)



Marriage

X cf. BGB Sect. 1363 et seq. BGB

1) statutory regime: community of accrued gains unless they agree (*Zugewinngemeinschaft*);
- at the end of marriage: *Zugewinnausgleich* (equalisation of the difference between initial and final value of property) Sect. 1372 et seq.

2) contract regime:

- separation of property (*Gütertrennung*, Sect. 1414 BGB)
- community of property (*Gütergemeinschaft*, Sect. 1415 et seq. BGB)
- Wahl-Zugewinngemeinschaft (Deutsch-französischer Wahlgüterstand) (Sect. 1519 BGB)
(Elective community of property (German-French elective matrimonial property regime)
(exception: immovables will owned at the beginning of marriage will not be subject to *Zugewinnausgleich*)



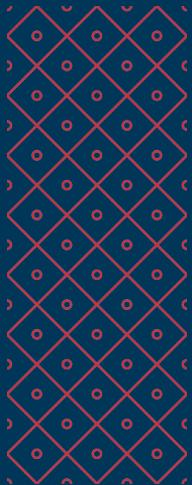
Marriage

Termination

1) divorce (Sect. 754 et seq.)

2) dead

3) change of sex (Sect. 29)



Chapter 5

Partnership



Partnership

(civil union, civil partnership etc.)

formal relationship of

1) same-sex couples only (e.g. Italy, Hungary, Czech Republic, Croatia)

or

2) both for different-sex couples and same-sex couples (e. g. France, Netherlands, Belgium)

X marriage for same-sex couples (e. g. Spain, Belgium, Germany, France)



Partnership

165. However, Article 8 of the Convention **has to date not been interpreted as imposing a positive obligation on the States Parties to make marriage available to same-sex couples**. [...]. This interpretation of Article 8 coincides with the Court's interpretation of Article 12 of the Convention, since it has consistently held to date that Article 12 cannot be construed as imposing an obligation on the Contracting States to grant access to marriage to same-sex couples [...].

ECtHR: Fedotova and Others v. Russia, Applications nos. 40792/10, 30538/14 and 43439/14 (17 January 2023)



Partnership

188. Nevertheless, as is already apparent from the Court's case-law (see *Schalk and Kopf*, § 108; *Gas and Dubois* § 66; *Oliari and Others*, § 177; and *Chapin and Charpentier*, § 48, all cited above), the **States Parties have a more extensive margin of appreciation in determining the exact nature of the legal regime to be made available to same-sex couples, which does not necessarily have to take the form of marriage** (see paragraph 165 above). Indeed, **States have the “choice of the means”** to be used in discharging their positive obligations inherent in Article 8 of the Convention (see *Marckx*, cited above, § 53). The discretion afforded to States in this respect relates both to the form of recognition and to the content of the protection to be granted to same-sex couples.

ECtHR: *Fedotova and Others v. Russia*, Applications nos. 40792/10, 30538/14 and 43439/14 (17 January 2023)



Partnership

While it is true, as recalled in paragraph 69 above, that Member States enjoy a margin of discretion as regards the procedures for recognising marriages concluded by Union citizens when exercising their freedom of movement and residence within another Member State, the lack of a procedure for recognition equivalent to that granted to heterosexual couples constitutes discrimination on grounds of sexual orientation prohibited by Article 21(1) of the Charter. It follows that where a Member State chooses, within that margin of discretion, to provide, in its national law, for a single procedure for recognising marriages concluded by Union citizens in the exercise of their freedom to move and reside within another Member State, such as, in the present case, the transcription of the marriage certificate in the civil register, that Member State is required to apply that procedure without distinction to marriages between persons of the same sex and to those between persons of the opposite sex.

CJEU: C-713/23, Wojewoda Mazowiecki (25 November 2025)



Partnership

Article 20 and Article 21(1) TFEU, read in the light of Article 7 and Article 21(1) of the Charter of Fundamental Rights of the European Union, **must be interpreted as precluding legislation of a Member State which, on the ground that the law of that Member State does not allow marriage between persons of the same sex, does not permit the recognition of a marriage between two same-sex nationals of that Member State concluded lawfully in the exercise of their freedom to move and reside within another Member State, in which they have created or strengthened a family life, or the transcription for that purpose of the marriage certificate in the civil register of the first Member State, where that transcription is the only means provided for by that Member State for such recognition.**

CJEU: C-713/23, Wojewoda Mazowiecki (25 November 2025)



Partnership

Act 115/2006 Coll., on **Registered Partnership** and on Amendments to Certain Related Acts

Sect. 1:

- (1) A registered partnership is a **permanent union between two persons of the same sex** established in the manner specified by this Act (hereinafter referred to as "partnership").
- (2) **A partner** in this Act means a person who has entered into a partnership.

Sect. 22 para 1 CC: A close person is a relative in the direct line, sibling and spouse or a partner under another statute governing registered partnership (hereinafter a "**partner**"); [...].

► partner **≠** cohabitant



Partnership

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Partnership

Act 115/2006 Coll., on **Registered Partnership** and on Amendments to Certain Related Acts

- ▶ (ex)partners have mutual maintenance and support duty
- ▶ partner is entitled to represent second partner in their day-to-day affairs
- ▶ partners inherit in the position of spouse (1st and 2nd class of intestate succession)
- ▶ (from 2016) can adopt a child as a single person (NOT together)
- ▶ partners are close person *ex lege*
- ▶ NO joint property regime for partners
- ▶ NO joint lease of flat *ex lege*
- ▶ NO “ad-adoption” of a child
- ▶ second part (book) of CC on Family Law **does not apply** on registered partnership



Partnership

Act No. 123/2024 Coll. amending Act No. 89/2012 Coll., the Civil Code, as amended, and other related acts

► **introduces Partnership unde Sect. 655 para 2 CC**

from 1st January 2025:

Registered partnerships **pursuant to Act No. 115/2006 Coll.** remain in force, but new ones cannot be established

Art. XI of Act No. 123/2024 Coll: Persons who entered into a registered partnership prior to the effective date of this Act **may enter into a partnership under the Civil Code**; the registered partnership shall thereby cease to exist.



Partnership

Act No. 123/2024 Coll. amending Act No. 89/2012 Coll., the Civil Code, as amended, and other related acts

► **introduces Partnership under Sect. 655 para 2 CC**

A partnership is a permanent union between two people of the same sex, which is entered into in the same way as a marriage. Unless otherwise provided by law or other legal regulation, the provisions on marriage, the rights and obligations of spouses, widows, and widowers apply mutatis mutandis to partnerships and the rights and obligations of partners.



Partnership

Partners under Sect. 655 para 2:

- ▶ YES: joint property regime for partners
- ▶ YES: joint lease of flat *ex lege*
- ▶ YES: in-law relationship
- ▶ YES: “ad-adoption” of a child (see below)



Partnership

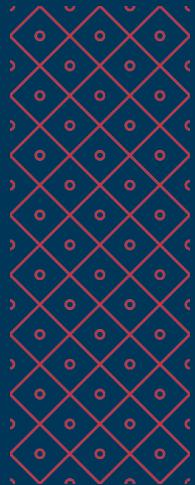
Partners under Sect. 655 para 2:

- ▶ YES: “ad-adoption“ of a child

Sect. 800 para 1 Adoptive parents may be spouses or one of the spouses, **or a partner** may also become an adoptive parent **if the other partner is the child's parent**. In exceptional cases, another person may also adopt; in such cases, the court shall also decide to remove the entry concerning the other parent from the register.

“osvojení“ = adoption (= ad + optio)

“přiosvojení“ = ad-adoption (= ad + ad + optio) (strange word)



Chapter 6

Household



Household

A household consists of individuals who live together permanently and jointly cover the costs of their needs.

Sect. 115 CC 1964

X

CC 2012 **does NOT define** “household“, but uses this concept:

“household“

“common (shared) household“

“family household“



Household

“Household“

= household as a place, even single person can live there

Sect. 1840: The provisions of this Subdivision do not apply to contracts [...] g) for the supply of foodstuffs, beverages or other goods intended for everyday consumption **supplied to the consumer's household or another place** designated by the consumer.

Sect. 2272: A lessee has the right to receive anyone into his **household**. [...].



Household

“Common Household“

= at least two people, who live together

- ▶ share their living
- ▶ ▶ share income and costs of living, not only costs of housing

- ▶ **no statute of limitations among them** (a limitation period neither commences nor runs while the living in common household lasts) (Sect. 646)
- ▶ **no acquisitive prescription among them** (acquisitive prescription period neither commences nor runs while the marriage lasts while the living in common household lasts) (Sect. 1098)

- ✗ two students rent a flat to lower costs for living, but each of them has his own household there



Household

“Family Household”

consists of:

- a) spouses
- b) (registered) partners (of same sex)
- c) at least one parent and his child
- d) parent, his child and other member of household cohabiting with parent

Sect. 885: cohabitant is involved in the care for and upbringing of the child

Sect. 886: the child shall also participate in the care of the household (if is properly cared for)



Household

“Family Household“

“**Usual Family Household Equipment**“ (Usual Equipment of Family Household)

Sect. 698:

(1) **Usual family household equipment** consists of a set of movable things which normally serve for **usual essential needs** of life of the family and its members; whether individual things belong to both spouses or just one of them is not decisive.

(2) A spouse **needs the consent** of the other spouse to dispose of a thing which is a part of the usual equipment of a family household; this does not apply to things of negligible value.

(3) A spouse may **invoke invalidity** of a juridical act whereby the other spouse disposed of a thing that is part of the usual equipment of the family household without his consent.



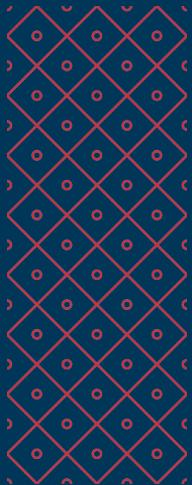
Household

“Family Household”

“Basic Family Household Equipment“ (Basic Equipment of Family Household)

Sect. 1667:

The surviving spouse shall acquire the right of ownership in **movable things which form the basic equipment of a family household even where he is not an heir**. This does not apply if the surviving spouse, without serious reasons, did not share the **family household** with the decedent.



Chapter 7

Cohabitation



Cohabitation

- = people living together like spouses but not being married (registered etc.)
 - **long-term (permanent)** living together
 - **sharing costs of their needs**
- = *de facto* relationship, *de facto* marriage, *de facto* partnership

social and legal reflection depends on the degree of social development, historical context, tradition, moral climate, location and intensity of its occurrence

3 stages of reflection:

socially undesirable deviation (even moral depravity) ► tolerance (neutrality) ► full social and legal recognition



Cohabitation – Typology

- a) **Cohabitation due to infidelity:** cohabitants cannot enter into marriage because one or both of them are already bound by an existing marital bond (or other status union).
- b) **"Libertine" cohabitation:** cohabitants wish to retain freedom, incl. the option to end such cohabitation at any time.
- c) **Quasi-marriage:** marriage is not entered into because one of the cohabitants refuses it for social, hierarchical, or prestige reasons.
- d) **Youth cohabitation ("trial marriage"):** usually replaced by marriage with the arrival of the child(ren).
- e) **Senior cohabitation:** sometimes motivated by the receipt of certain pensions and social security benefits, which are lost upon remarriage.



Cohabitation

not a complex regulation in the Czech Republic

only particular provisions across Civil Code and public law
number of households composed od two-parent families:

Year of census	Marriage	De facto marriage	Civil partnership	De facto partnership
1991	2,356,347	83,845	X	X
2001	2,138,836	121,661	X	X
2011	1,857,997	234,346	632	4,056
2021	1,748,068	509,535	1,964	5,773



Cohabitation

Sect. 22 para 1: A close person is a relative in the direct line, sibling and spouse or a partner under another statute governing registered partnership (hereinafter a “partner”); **other persons in a familial or similar relationship shall, with regard to each other, be considered to be close persons if the harm suffered by one of them is perceived as his own harm by the other.** Persons related by affinity and persons permanently living together are also presumed to be close persons.

Sects. 646, 1098 (common household members: statute of limitation, acquisitive prescription)
see above



Cohabitation

Representation by a household member

Sect. 49:

(1) If a mental disorder prevents an adult who has no other representative to make juridical acts, he may be represented by his descendant, ancestor, sibling, spouse or partner, **or a person who had lived with the person represented in a common household before the creation of representation for at least three years.**

► **qualified** cohabitation



Cohabitation

Sect. 885:

Where only one of parents cares for a child, the parent's spouse or partner is involved in the care for and upbringing of the child if he lives in the family household with the child. **This also applies to a person who lives with the child's parent without having entered into marriage or registered partnership with him, provided that the person lives in the family household with the child.**

= cohabitant is not a parent

X

both cohabitants are parents = they have equal duties and rights (like spouses)

= no difference between children born inside ("legitimate") and outside ("illegitimate") wedlock



Cohabitation – Law of Succession

Sect. 1476: (legal titles of succession)

Inheriting takes place on the basis of an

- 1) **inheritance contract** (sect. 1582 et seq.),
- 2) **testament** (sect. 1494 et seq.) **or**
- 3) **by means of a statute** (note: by operation of law, statutory succession) (sect. 1633 et seq.).

These reasons may also operate together.

- Cohabitants may benefit from all legal titles of succession.



Cohabitation – Law of Succession

Statutory succession:

First class of heirs (Sect. § 1635):

- ▶ children
- ▶ husband [or (registered) partner of same sex] (no more than $\frac{1}{2}$ share)
- ▶ no cohabitant here

Second class of heirs (Sect. § 1636):

- ▶ husband [or (registered) partner of same sex] (at least $\frac{1}{2}$ share)
- ▶ decedent's parents
- ▶ those who **lived with the decedent in the common household for at least one year before his death and, as a result, cared for the common household or were dependent in maintenance on the decedent** (no more than $\frac{1}{2}$ share)
(again, qualified cohabitation)



Cohabitation – Law of Succession

Statutory succession:

Third class of heirs (Sect. 1637):

- ▶ siblings
- ▶ children of siblings (instead of sibling who does not inherit)
- ▶ those who **lived with the decedent in the common household for at least one year before his death** and, as a result, cared for the common household or were dependent in maintenance on the decedent (no limit on share)
(again, qualified cohabitation)



Cohabitation – Law of Succession

Q.: Peter and Emily did not have children. In 2022, Peter moved in with his mistress Sophie, with whom he lived in a shared household without divorcing Emily. In 2025, Peter died suddenly. At the time of his death, his mother Sarah was still alive, while Peter's father had already died in 2020. Peter did not leave any disposition mortis causa. Determine who will inherit from Peter and how much each person will receive.



Cohabitation – Law of Succession

Q.: Peter and Emily did not have children. In 2022, Peter moved in with his mistress Sophie, with whom he lived in a shared household without divorcing Emily. In 2025, Peter died suddenly. At the time of his death, his mother Sarah was still alive, while Peter's father had already died in 2020. Peter did not leave any disposition mortis causa. Determine who will inherit from Peter and how much each person will receive.

According to Sect. 1636:

wife Emily $\frac{1}{2}$ share

mistress Sophie $\frac{1}{4}$ share

mother Sarah $\frac{1}{4}$ share



Cohabitation

Public law:

Act No. 372/2011 Coll., to regulate **healthcare** services

Sect. 28: patient's right to have a close person present

Sect. 33: designation of persons who are to be informed of a patient's health condition

Sect. 33 para 3: If a patient is unable to designate persons under paragraph 1 due to their health condition, their **close persons** have the **right to information** about their current health condition and to obtain extracts and copies of the patient's medical records.



Cohabitation

Public law:

Act No. 187/2006 Coll., Health Insurance Act

Sect. 40 para 7: For the purposes of nursing allowance, a single insured person [...] is considered to be an insured person who is single, widowed, or divorced, **provided that they do not live with a cohabitant** or in a registered partnership.

Act No. 117/1995 Coll., on State Social Support

Sect. 7 para: Unless otherwise specified, jointly assessed persons are [...] c) spouses, partners, **cohabitants**, unless they are parents assessed under letter b). [...].



Cohabitation

Public law:

Act No. 40/2009 Coll., Criminal Code

Sect. 125: A close person is understood to mean a relative in the direct line, adoptive parent, adopted child, sibling, spouse, and partner (note: of the same sex); **other persons in a familial or similar relationship shall, with regard to each other, be considered to be close persons if the harm suffered by one of them is perceived as his own harm by the other.**

- + adoption (superfluum)
- in-law relationship



Cohabitation

“common-law marriage”

stricto sensu: a marriage that takes legal effect without the prerequisites of a marriage license or participation in a marriage ceremony
(namely in USA)

sometimes used (*largo sensu*) as a synonym for cohabitation

e. g. **Code of Jutland** (Danish: *Jyske Lov*):

Sect. 27: *If anyone has a mistress in his home for three winters and obviously sleeps with her, and she commands lock and key and obviously eats and drinks with him, then she shall be his wife and rightful lady of the house.*



List of Sources – Civil Code, Case Law

Relevant provisions of Czech Civil Code:

Sect. 15, 22, 29-37, 49, 74, 646, 836, 806, 807, 867, 885, 886, 1098, 771-774, 655-770, 1526, 1636 and 1637, 2279, 2920, 2301

Case law:

ECtHR: Christin Goodwin v the United Kingdom, Application no. 28957/95

ECtHR: Fedotova and Others v. Russia, Applications nos. 40792/10, 30538/14 and 43439/14

CJEU: C-713/23 (Wojewoda Mazowiecki)

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The project “ESF+ na UK“, reg. no. CZ.02.02.XX/00/23_022/0008957,
is supported by the [Programme Johannes Amos Comenius](#).

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