

# ***PATRIOTS***

**FOR *EUROPE* FOUNDATION**



**LEGAL ASPECTS OF CIVIL  
PARTNERSHIPS REGARDING TO  
“WOKE AGENDA” IN SLOVAKIA  
AND THE EUROPEAN UNION**

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## **PREFACE**

This work aims to highlight the current factual state of rights for LGBTI minority communities, not only in Slovakia but also in most countries of Central and Eastern Europe. We consider this essential given the efforts of representatives advocating for what is often referred to as the "Woke agenda," attempting to persuade us that their rights are not protected by the law.

These efforts involve presenting facts in a misleading manner to convince us that the legal system does not respect their rights, especially concerning cohabitation, property rights, family law matters, access to medical records, inheritance, and more. They seek to persuade us that the legal system does not recognize their rights.

The "Woke agenda" is striving to advance its objectives using what is known as "salami tactics," even though the Constitution of the Slovak Republic explicitly defines marriage as a unique union between a man and a woman.

By focusing on the current legal framework in Slovakia, this publication aims to provide readers with a better understanding of the aforementioned issue. Even though the majority, nearly 70% of the population of Slovakia, and likely Western Europe, holds conservative opinions and values, leading to a conservative stance on this issue, representatives of the "Woke agenda" are attempting to artificially emphasize the importance of their agenda.

This agenda, originating from Western Europe and America, is already encountering opposition in these countries. For example, Florida and Texas in the US have abolished the possibility of transgender surgeries and hormone therapy for minors. Despite Western Europe taking a more liberal path, we advocate for common-sense views. We believe that states should have the autonomy to decide on these matters themselves, rather than having others or Brussels decide for them.

Slovakia is still one of the last countries in the European Union without legislation for same-sex couples. The issue of same-sex marriage and civil partnerships is increasingly prominent, leading to rising tensions among citizens and within parliament. For these reasons, we have chosen to provide information to members of the LGBTI+ community on how to utilize existing legal frameworks until legislative changes occur, ensuring a basic level of their rights. Recognizing the complexity of incorporating registered partnerships into Slovak law, we felt compelled to offer a comprehensive solution to address the rights of the LGBTI+ community within the current legal framework.

Our primary objective, however, has been to reduce tensions, seek compromise amid the current circumstances, and foster a more balanced perspective between opposing groups in Slovakia.

The classified "terrorist attack" in the capital city of Bratislava, in which two homosexual men were shot, has evoked strong emotions among both citizens and politicians. The rights of same-sex couples have become an intensely debated topic, resonating not only among the public but also within the political scene.

Through our efforts, we endeavor to furnish members of the LGBTI+ community with information on how to navigate the current legal frameworks until legislative changes take place, thus ensuring a fundamental level of their rights.

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## INTRODUCTION

At the outset, we would like to emphasize that the Western world, to which the Slovak Republic belongs, is evolving in a particular direction. In this regard, our country and its citizens find themselves differing from the majority, as we, alongside Bulgaria, Latvia, Lithuania, Poland, and Romania, are among the last countries in Europe that have not yet established the institution of registered partnership, along with the associated rights and obligations, within our legal systems. Discussions surrounding the legalization of same-sex civil partnerships have been taking place across Europe. Presently, 33 out of 50 countries and 8 dependent European territories recognize some form of same-sex union. Notably, 24 out of 27 of these countries are Member States of the European Union.

Why is our country diverging from the majority in this regard? Because Slovakia maintains a conservative stance. How can we assert that Slovakia remains a conservative country? One of the key factors contributing to Slovakia's continued reputation as a conservative nation is the enduring and influential role of the Church in Slovak society. The Church wields significant influence over social and political aspects, particularly in areas such as marriage, family, and LGBTI+ rights. Slovakia is generally categorized as a conservative country due to its historical and political landscape, which has long featured elements of conservatism and authoritarianism compared to many other Western nations. Following World War II, the Slovak Republic became part of the communist Eastern Bloc, and during the 1990s, the country encountered numerous challenges in transitioning to a market economy and embracing democracy.

In the past, the Church played a significant role in the Slovak nation. Slovaks have historically been a predominantly Catholic nation, and as such, the Church has exerted a substantial influence on society. Throughout the centuries, the Church in Slovakia has been instrumental in preserving cultural identity and religious traditions, while also impacting political and social events. During the era of communist rule, the Church faced severe

restrictions, and its social influence was suppressed, but it still maintained a degree of sway even under these challenging conditions. However, following the 1989 revolution, the Church once again emerged as a vital institution. Many regarded it as a key symbol of Slovak identity and a source of hope and moral support. This resurgence contributed to the renewed and strengthened influence of the Church within Slovak society.

Even today, the Church maintains a notable influence on Slovak society, albeit not to the extent seen in the past. The majority of Slovaks are affiliated with the Roman Catholic Church, which holds a prominent position in the country and exerts a substantial impact on the culture, traditions, and moral values of its inhabitants. According to the latest Population and Housing Census (SODB), 68.5% of the total population of the Slovak Republic, comprising 3,733,783 inhabitants, are members of one of the Christian churches. Considering these statistics, it is evident that Slovakia maintains a conservative character. With nearly 70 percent of the population identifying as Christian, it becomes challenging to argue against the persistence of conservatism in Slovakia.

Nevertheless, the issue of marriage and civil partnerships for same-sex couples is gaining increasing prominence, leading to tensions among both citizens and in parliament, along with newsletter articles titled: 'LGBT organizations claim that transgender individuals are being pushed to the margins of society in Slovakia.' Wokeism introduces chaos into society with its dangerous and harmful ideology, causing irreparable harm to society, particularly to our children and young adults."

## **1 REGISTERED PARTNERSHIP AS A LEGAL FORM OF COHABITATION – BASIC BACKGROUND**

Currently, there is no legal regulation of the institution of registered partnership for same-sex couples in Slovakia. Marriage is defined in the Slovak Republic as a union between a man and a woman, which means that same-sex couples do not have the opportunity to conclude either of these legal institutions.

### **1.1 Forms of coexistence of persons from the point of view of private law – the state de lege lata in the conditions of the Slovak Republic**

The most basic form of cohabitation of persons under private law in the Slovak Republic is marriage. It is generally a complex social, biological, moral, and legal relationship between a man and a woman.

The Constitution of the Slovak Republic, as Act No. 460/1991 Coll., defines marriage as a unique union between a man and a woman. Article 41 provides for the constitutional protection of marriage, family, and parenthood.<sup>1</sup> Although this definition is very brief, our family law rules describe marriage as a unique union and therefore guarantee it the protection of society, which makes it significantly different from other forms of cohabitation.

The legal institution of marriage finds its more detailed regulation in the Family Code No. 36/2005 Coll., according to which marriage is the union of a man and a woman, in which spouses are equal in rights and obligations and the purpose of these relationships is the establishment of a family and the proper upbringing of children. This unique union

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<sup>1</sup> Act No. 460/1992 Coll. Constitution of the Slovak Republic – Article 41, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/>.



comprehensively protects society and promotes its good. The family is a fundamental part of our society, and it protects all forms of the family comprehensively.<sup>2</sup>

Under the Family Code, marriage can be defined as the union of a man and a woman resulting from a voluntary and free decision to marry both spouses.

In compliance with the conditions laid down by law, marriage may be contracted as a legal relationship that entails legal consequences. Marital rights and obligations are laid down by law and therefore cannot be derogated from or modified, for example by concluding a contract.

It can be inferred from the legislation that this legal relationship must arise from the free decision of both individuals who have decided to enter this legal relationship for a long time. Since permanence is a conceptual feature of marriage, it cannot be entered into for a fixed period. The dissolution of a marriage may occur upon death, the declaration of one of the spouses as dead, and if the relations between the spouses are so seriously disturbed and irretrievably broken down that the marriage cannot fulfil its social purpose and the spouses cannot be expected to resume marital coexistence, the court may, at the request of one of the spouses, dissolve the marriage.<sup>3</sup>

The legal regulation of property relations between spouses is regulated through the institute of matrimonial community of property (hereinafter referred to as "BSM"). BSM, which can arise exclusively between spouses, is one of the types of joint property regulated in the Civil Code No. 40/1964 Coll.

Unlike joint ownership, where there may be different amounts of shares, BSM does not have designated shares of co-owners. BSM includes everything that can be owned and acquired by each spouse during the duration of the marriage<sup>4</sup> - that is, from the conclusion of the marriage to its dissolution or the dissolution of BSM by the court during the marriage.

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<sup>2</sup> Act No. 36/2005 Coll. on the Family – Article I, Article II, [https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1963/94/vyhlasene\\_znenie.html](https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1963/94/vyhlasene_znenie.html).

<sup>3</sup> Act No. 36/2005 Coll. on Family – Section 21, Section 22, Section 23, [https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1963/94/vyhlasene\\_znenie.html](https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1963/94/vyhlasene_znenie.html).

<sup>4</sup> Act No. 40/1964 Coll. Civil Code – Section 143, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201#predpis.cast-siedma>.

BSM is tied to the existence of marriage and since both spouses cover the costs incurred for such subsistence things, they enjoy the things in BSM jointly.

On the other hand, the exceptions that do not belong to the BSM are things acquired by inheritance or gift, then things which, by their nature, serve the personal needs or exercise of the profession of only one of the spouses, and, finally, cases issued under the rules on the restitution of property to one of the spouses who owned the issued thing before the marriage or to whom the thing was issued as the legal successor of the original owner.<sup>5</sup> In the form of a notarial deed, the spouses may also extend or narrow the scope of BSM by agreement.<sup>6</sup> As regards the succession of spouses, the deceased's spouse and children are in the first group and each of them inherits in equal shares.<sup>7</sup>

Cohabitants can be considered as another form of cohabitation. According to Slovak law, a household consists of natural persons who live together permanently and jointly cover the costs of their needs.<sup>8</sup> This means that two or more persons who together form the same household, by living together continuously and both or all of them contributing to and meeting the expenses of their common living needs, are cohabitants.

The form of cohabitation of persons from the point of view of private law is also the cohabitation of persons close to them. A close person according to Act No. 40/1964 Coll. of the Civil Code is a relative in the direct line, a sibling and a spouse; Other persons in a family or similar relationship shall be deemed to be close to each other if the damage suffered by one of them is reasonably felt by the other as his/her own.<sup>9</sup> A close person therefore means a relative in the direct line, a brother or sister and a spouse, and also persons who are either

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<sup>5</sup> Act No. 40/1964 Coll. Civil Code – Section 143, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201#predpis.cast-siedma>.

<sup>6</sup> Act No. 40/1964 Coll. Civil Code – Section 143a, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201#predpis.cast-siedma>.

<sup>7</sup> Act No. 40/1964 Coll. Civil Code – Section 473, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201#predpis.cast-siedma>.

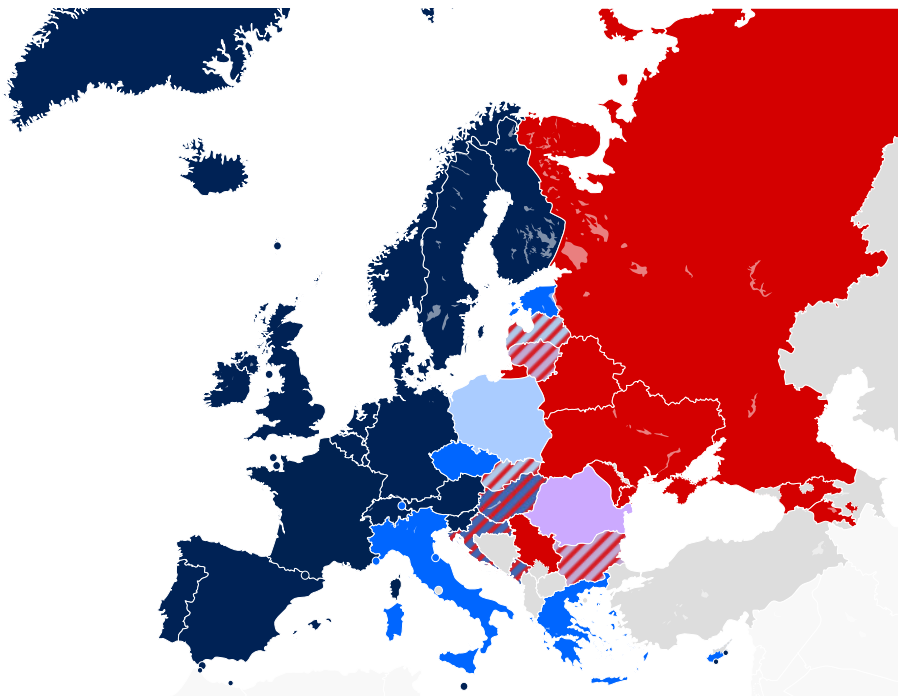
<sup>8</sup> Act No. 40/1964 Coll. Civil Code, Section 115, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201#predpis.cast-siedma>.

<sup>9</sup> Act No. 40/1964 Coll. Civil Code, Section 116, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201#>.

in a family relationship or in a similar relationship are considered to be persons close to each other if the harm suffered by one of them would be felt by the other person as his/her own harm.

## 1.2 Forms of coexistence of persons – a global view, forms within the European Union

Slovakia, as one of the six countries of the European Union that has not yet implemented the institution of registered partnership in its legal systems, is still one of the more conservative countries.



**Fig. 1:** Same-sex marriage map Europe, Source: Wikipedia, 2023<sup>10</sup>

<sup>10</sup> Same-sex marriage map Europe detailed (1).svg, *Wikipedia*, 2023, [//https://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Europe](https://en.wikipedia.org/wiki/LGBT_rights_in_Europe).

The legal order of 6 European Union countries, including: Bulgaria, Latvia, Lithuania, Poland, Romania, and Slovakia, does not provide for the institution of registered partnership.

Bulgaria and Latvia have constitutional arrangements for marriage defined as the union of a man and a woman but recognize foreign same-sex marriage for residence on their territory. The constitutions of Slovakia and Lithuania regulate marriage as the union of a man and a woman, and same-sex unions as well as other forms of same-sex cohabitation have limited legal recognition.

Romania recognizes foreign marriages of same-sex couples for residence purposes.

Like us in Slovakia, our neighbors in Poland have limited legal recognition for same-sex unions as well as other forms of same-sex cohabitation.<sup>11</sup> Cohabitation without marriage has become a social norm in most cultures.

While other world countries, such as the United States, consider it necessary to introduce different types of cohabitation, probably because more and more adults are either postponing marriage or have no plans to marry. According to a Pew Research Center survey, most Americans find the legal institution of "cohabitation" acceptable even for couples who don't plan to get married. Nevertheless, it is the majority opinion that society is more beneficial when couples in long-term relationships eventually get married.<sup>12</sup> Cohabitation is loosely defined in the United States as two or more people in an intimate relationship who live together and share a common domestic life, but are not connected by marriage or civil union.<sup>13</sup> According to the Institute of Legal Information of the Faculty of Law of one of the Ivy League of Universities, Cornell University states that a cohabitation contract is a contract explaining the property and financial arrangement between people living together.<sup>14</sup>

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<sup>11</sup> Same-sex marriage map Europe detailed.svg, *Wikimedia Commons*, 2023, [https://commons.wikimedia.org/wiki/File:Same-sex\\_marriage\\_map\\_Europe\\_detailed.svg](https://commons.wikimedia.org/wiki/File:Same-sex_marriage_map_Europe_detailed.svg).

<sup>12</sup> Horowitz Juliana Menasce, Graf Nikki, Livingston Gretchen, "Marriage and Cohabitation in the U.S." *Pew Research Center*, <https://www.pewresearch.org/social-trends/2019/11/06/marriage-and-cohabitation-in-the-u-s/>.

<sup>13</sup> Cohabitation in the United States, *Wikipedia*, 2023 - [https://en.wikipedia.org/wiki/Cohabitation\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Cohabitation_in_the_United_States).

<sup>14</sup> Legal Information Institute, "Cohabitation." *Cornell Law School*, <https://www.law.cornell.edu/wex/cohabitation>.

Another popular form of cohabitation in the US is the so-called "domestic partnerships". A domestic partnership is a legal institution binding two persons into a civil union (generally a registered partnership), which is legally equivalent to marriage. In general, individuals choose to enter a domestic partnership because they want to avoid marriage or because they are not allowed to marry. Entering a registered domestic partnership allows such couples to receive benefits and protection that are the same or similar to those enjoyed by married couples. Although some states do not permit the conclusion of registered partnerships - domestic partnerships, all states are bound by the principles of courtesy and federalism in order to respect domestic partnerships.<sup>15</sup>

England, like many countries in the Western world, is also one of the countries using the legal institution of "cohabitation". Unmarried couples in the UK who have lived together for a long time and have children do not automatically have the same rights as married couples, so such couples often benefit from a cohabitation agreement with a will which, in the event of serious illness or the death of one of the partners or the separation of the partners, protects both partners and other family members who would be affected by such events. A cohabitation agreement is a legal document between unmarried couples living together. It sets out measures regarding finances, property, and children while partners live together, but also if they separate, fall ill, or die. They can sign a contract at any time, but it's better to do so before they move in together. Couples should consider concluding a cohabitation contract if they decide to have children or get a mortgage, as without such a contract, partners do not have many rights. With a cohabitation contract, couples out of wedlock can ensure that they have a mutual share of each other's property, mutual access to their partner's pension and the right of closest relatives in the event of a health emergency.<sup>16</sup>

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<sup>15</sup> Legal Information Institute, "Domestic partners." *Cornell Law School*, [https://www.law.cornell.edu/wex/domestic\\_partners](https://www.law.cornell.edu/wex/domestic_partners).

<sup>16</sup> The Law Society, "Moving in together: getting a cohabitation agreement." *The Law Society*, <https://www.lawsociety.org.uk/public/for-public-visitors/common-legal-issues/moving-in-together-getting-a-cohabitation-agreement>.

Proposals to legalize same-sex marriage as well as same-sex civil partnerships have been debated across Europe. Currently, 33 out of 50 countries and 8 dependent European territories recognize some type of same-sex union. Most of them (24/27) are Member States of the European Union.

As of March 2023, nineteen European countries already legally recognize and conclude same-sex marriages: Andorra, Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. A further twelve European countries have adopted another alternative form of legislation on cohabitation, which is identical or like marriage. These are Croatia, Cyprus, Czech Republic, Estonia, Greece, Hungary, Italy, Latvia, Liechtenstein, Monaco, Montenegro, and San Marino. Slovakia and Poland grant two persons, irrespective of their sex and the nature of their relationship, the legal regulation of cohabiting persons' relations in the sense of unmarried couples living in a partnership. Although this modification is minimalistic, it is not entirely absent. Some basic rights and obligations are granted to them through the status of close persons, but their legal recognition is limited.

Among the countries that have legalized same-sex marriage, some follow the so-called pluralistic model, which maintains the civil partnership system as an alternative to marriage. These are the Benelux countries, France, and the United Kingdom. In contrast, Germany, Ireland, and Scandinavia have abolished their own civil partnership laws with the adoption of same-sex marriage. Current registered partnerships are still legal, but new partnerships can no longer be created.

Several European countries do not recognize same-sex unions at all. The following countries define marriage in their constitutions as the exclusive union of a man and a woman: Armenia, Belarus, Bulgaria, Montenegro, Croatia, Georgia, Hungary, Latvia, Lithuania, Moldova, Russia, Poland, Serbia, Slovakia, or Ukraine. Montenegro, Croatia, Hungary, and

Latvia constitutionally prohibit same-sex marriage but offer same-sex couples the option to enter registered partnerships.<sup>17</sup>

### **1.3 Factors determining views on forms of cohabitation between two persons.**

One of the reasons why Slovakia is still considered a conservative country is because of the Church's constant and strong influence on Slovak society.

The Church plays an important role in Slovak social and political life, especially in relation to topics such as marriage, family and LGBTI+ rights.

Slovakia is often considered a conservative country because, compared to other Western countries, its social and political environment was marked for a long time by regimes that had conservative and authoritarian elements. After World War II, the Slovak Republic was part of the communist Eastern Bloc and in the 90s the country encountered many challenges related to the transformation into a market economy and democracy.

In the past, the Church played an important role in the Slovak nation. Slovaks have historically been a distinctly Catholic nation and the Church has therefore had a strong influence on society. Over the centuries, the Church in Slovakia has helped maintain cultural identity and preserve religious traditions, but also influenced political and social affairs.

During the communist regime, the church was severely limited and its influence on society was muted, yet it managed to maintain its influence during the communist period. After the 1989 revolution, however, the church again became an important institution, and many people began to turn to it as an important symbol of Slovak identity and a source of hope and moral support. This led to the renewal and strengthening of the influence of the Church in Slovak society.

The Church still has a significant influence on society in Slovakia today, although not as strong as in the past. Most of the inhabitants of Slovakia belong to the Roman Catholic

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<sup>17</sup> Recognition of same-sex unions in Europe, *Wikipedia*, 2023, [https://en.wikipedia.org/wiki/Recognition\\_of\\_same-sex\\_unions\\_in\\_Europe](https://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_Europe).

Church, which has a strong position in the country and a great influence on the culture, traditions, and moral values of the inhabitants.

Based on last year's Population and Housing Census (Census), 68.5 percent of the total population of the Slovak Republic, namely 3,733,783 inhabitants of Slovakia, belong to one of the Christian churches.<sup>18</sup> Given these data, the claim that Slovakia is a conservative country is only confirmed. With nearly 70 percent of the population professing the Christian faith, it is difficult to confirm the opposite of persistent conservatism in our country.

## **1.4 Registered Partnerships in European Union Law**

The European Union is committed to upholding and promoting human rights and equality, including LGBTQ+ rights, across its member states. While the EU does not directly dictate member states' laws or policies on issues like LGBTQ+ rights and registered partnerships, it does encourage and monitor their compliance with EU standards in these areas.

The EU has taken various steps to promote LGBTQ+ rights, including Non-Discrimination: The EU Charter of Fundamental Rights and the Treaty on the Functioning of the European Union prohibit discrimination on various grounds, including sexual orientation. Member states are expected to uphold these principles. The EU has also adopted directives aimed at combating discrimination, including discrimination based on sexual orientation. Member states are expected to transpose these directives into national law. While the EU respects the fact that marriage and registered partnerships fall under the competence of member states, it encourages a consistent approach to legal recognition and protection of same-sex partnerships. The EU encourages the establishment of national equality bodies to promote and monitor equality, including LGBTQ+ rights and it provides funding and support for various initiatives aimed at promoting LGBTQ+ rights and awareness.

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<sup>18</sup> REUTERS. "Almost 70 percent of the population of the Slovak Republic belong to Christian churches, the census showed." *Trend*, 2022, //<https://www.trend.sk/spravy/krestanskym-cirkvam-hlasi-skoro-70-percent-obyvateľov-sr-ukazalo-scitanie>.



It's important to note that member states have varying legal and cultural backgrounds, and the EU should respect their sovereignty to manage family and social issues. While the EU influences and encourages policies in these areas, the specifics often depend on each member state's legal and political landscape. There has been progress in LGBTQ+ rights across many EU member states, but the pace and extent of change differ from one country to another.

The European Union (EU) has seen a progressive evolution in its role in regulating family life since the Treaty of Rome in 1957. The EU's initial focus on family life stemmed from provisions enabling the free movement of workers among Member States, which also granted family members the right to migrate and join the worker. Over time, this scope has broadened to encompass regulations on private international family law and the safeguarding of family rights as per the Charter of Fundamental Rights of the European Union. Article 7 obliges the EU to uphold private and family life, while Article 9 protects the right to marry and establish a family in accordance with national laws.

Since 1957, there have been notable societal and legal transformations regarding the acceptance and acknowledgment of diverse familial relationships, especially same-sex partnerships. As the contributions in this book demonstrate, legal developments in recognizing same-sex registered partnerships and same-sex marriages have not followed a uniform path, resulting in significant legal divergence among the European Union's Member States. While the EU's role in regulating family life has expanded, it remains without the authority to dictate the content and structures of family relationships. Consequently, it must respond to, acknowledge, and adapt to the diverse legal relationship definitions found across the Member States. This is particularly significant in a context where families are spread across multiple jurisdictions, and societal and moral norms related to family and sexuality vary widely, revealing disparities in the cultural and legal treatment of same-sex relationships in Europe.

The EU's reaction to the notion of same-sex registered partnerships and the absence of a consistent legal framework for this concept have not yet been exhaustively examined or analyzed within various areas of EU involvement. In three specific scenarios – concerning the free movement of individuals, non-discrimination in employment, and cases filed against the EU by its own employees – both the EU legislative bodies and the Court of Justice of the European Union (CJEU) have acknowledged and dealt with the implications of registered partnerships established under national law in the context of European law. This ongoing process persists as more Member States move toward accommodating same-sex marriage.<sup>19</sup>

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<sup>19</sup> Cambridge University Press, *Registered Partnerships in European Union Law*, <https://www.cambridge.org/core/books/abs/future-of-registered-partnerships/registered-partnerships-in-european-union-law/DD6BFC6954DF6646BB265DEB2617D0EF>

## **2 INSTITUTE OF REGISTERED PARTNERSHIP FROM THE POINT OF VIEW OF SELECTED PRIVATE LAW RELATIONS**

In Slovakia, everyone has the right to own property. Gay couples can acquire ownership of each other through various transfers. According to the Civil Code, they may acquire ownership of a thing by purchase, donation or other contract.

As far as succession is concerned, under the current legislation, homosexuals are not included in any inheritance group as partners but should be considered close persons within the meaning of the law. Under the current legislation, homosexual couples can use the institution of donation freely through a deed of gift and thus acquire sole ownership, they also do not have a spouse's maintenance obligation, which gives them an advantage unlike spouses.

### **2.1 Proprietary rights, their realization and protection in a registered partnership**

One of the fundamental human rights is the right to own. Constitutional Law No. 460/1992 guarantees everyone the right to property and guarantees the same legal content and protection of all owners of property rights.<sup>20</sup>

To realize the right of ownership, Act No. 40/1964 Coll. Civil Code grants the owner within the meaning of §123 the right to hold, use, enjoy and dispose of the object of his property.<sup>21</sup>

In Slovakia, forms of ownership rights are regulated by the Civil Code as forms of so-called exclusive, share and property ownership. Sole ownership is when the owner is only one entity, joint ownership is when several persons are owners - at least two, and share means the degree to which the joint owners share in the rights and obligations arising from joint ownership of the common property, if the shares are not established by law or agreed by the

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<sup>20</sup> Act No. 460/1992 Coll. Constitution of the Slovak Republic, Article 20, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20230126>.

<sup>21</sup> Act No. 40/1964 Coll. Civil Code, Section 123, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

participants, then the shares of all joint owners are equal.<sup>22</sup> Community property arises only between spouses and arises by law upon marriage. The community of property of spouses (hereinafter referred to as "BSM") includes everything that can be subject to property rights and that each spouse acquires from the beginning of the marriage until the dissolution or dissolution of BSM, which can be annulled by a court during the marriage.

Since it is not possible to marry two persons of the same sex in Slovakia, same-sex couples cannot have community of property for same-sex couples.

The institute of registered partnership is also not legally regulated in Slovakia, so for now homosexual couples can only own in sole or share ownership and subsequently exercise their property right only through joint ownership.

Gay couples can acquire ownership of each other through various transfers. According to Section 132 of the Civil Code, it is possible to acquire ownership of a thing by purchase, donation or other contract.<sup>23</sup>

By a contract of gift, the donor can leave something free of charge or promise something to the donee and the donee accepts the gift or promise.<sup>24</sup>

Through the purchase contract, partners can transfer ownership of the item between themselves, which the seller undertakes to hand over the subject of the contract to the buyer and the buyer undertakes to pay the purchase price.<sup>25</sup>

As far as the protection of property rights in registered partnerships is concerned, the protection of rights could be ensured by the institute itself, that they belong together, and thus they would also be able to acquire in an institute similar to community property.

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<sup>22</sup> Act No. 40/1964 Coll. Civil Code, Section 137 paragraph 1, 2, //<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

<sup>23</sup> Act No. 40/1964 Coll. Civil Code, Section 132 paragraph 1, //<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

<sup>24</sup> Act No. 40/1964 Coll. Civil Code, Section 628 paragraph 1, //<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

<sup>25</sup> Act No. 40/1964 Coll. Civil Code, Section 588, //<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

## 2.2 Succession rights in a registered partnership

Succession generally means the transfer of the assets of the testator, i.e., the deceased, to his heirs. The estate always includes what existed on the date of the deceased's death. Who will become the heir and what his share of the inheritance will be can be determined in three ways, which are: by will, by law, or by a combination of both.<sup>26</sup>

The Civil Code recognizes the right that if an intestate heir does not acquire an inheritance, the intestate heirs take his place. If only part of the estate is acquired from the will, the remaining part is acquired by the intestate heirs.<sup>27</sup>

In intestate succession, heirs are divided into four groups. Groups are chronologically superior. First, it is examined whether the conditions for determining the circle of heirs according to the first group are met. If the heirs cannot be determined according to the earlier group, the conditions of the next group shall be reviewed.

The rules of succession of different groups cannot be combined, so it is possible to inherit only according to the rules of one of the groups.

Children are included in the first inheritance group and the spouse of the deceased, i.e., the deceased, each of them inherits in equal shares.<sup>28</sup>

Succession according to the second group occurs when the deceased did not have any children or, for whatever reason, neither the children of the deceased nor their descendants inherited. In such a case, the spouse, the deceased's parents, and close persons who lived with the deceased in the same household for at least one year before death and who for this reason looked after the common household or were dependent on the deceased for maintenance shall inherit. The heirs of the second group inherit in equal shares, but at least half of the inheritance is always inherited by the spouse.<sup>29</sup>

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<sup>26</sup> Act No. 40/1964 Coll. Civil Code, Section 460, Section 461 (1), //<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

<sup>27</sup> Act No. 40/1964 Coll. Civil Code, Section 461 paragraph 2, //<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

<sup>28</sup> Act No. 40/1964 Coll. Civil Code, Section 473 paragraph 1, //<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

<sup>29</sup> Act No. 40/1964 Coll. Civil Code, Section 474 paragraph 1, 2, //<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

According to the third group, the procedure is followed if it happens that neither the husband nor wife, child, nor parents of the deceased inherit. In such a case, according to the third group, the deceased's siblings and the deceased's close persons inherit equally.<sup>30</sup>

If the conditions for succession in the first three groups, defined by law, were not met, the rules of the fourth group would be followed, according to which the deceased's grandparents inherit in equal shares, but if none of them inherited, then the children of these grandparents inherit in equal shares.<sup>31</sup>

Only natural persons can inherit intestated, unlike willed succession, where a legal entity or the state can also be an heir.

A will is a unilateral legal act by which the testator may modify the rules of succession under the law so that after his death, his property is distributed in accordance with the deceased's wishes.

Under current legislation, homosexuals are not included in an inheritance group like a partner. In this, they are aggrieved by their rights since they cannot inherit even as a cohabitant and mate.

They should be considered close persons within the meaning of the law. The legislation would probably move them higher in inheritance groups, bringing them to succession relatively earlier than in the third inheritance group.

For now, same-sex couples under the current system would only be able to use a will to secure some inheritance rights. Alternatively, from current legal institutes, they could still use donations during life.

Therefore, if the institution of registered partnership were introduced in Slovakia, homosexual couples should be included in inheritance groups.

## **2.3 Freedom of contract in a registered partnership**

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<sup>30</sup> Act No. 40/1964 Coll. Civil Code, Section 475 paragraph 1, 2, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

<sup>31</sup> Act No. 40/1964 Coll. Civil Code, Section 475a, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201>.

Contracts of gift and donation, as one of the institutes that represents absolute contractual freedom for both homosexual couples and relatives and spouses, is one of the most used legal titles among individuals. The basic features of donation are general voluntariness and gratuitousness, while gratuitousness means that the donee is not legally obliged to provide remuneration for the gift. The object of donation can be anything, it can be a thing, a right or other property value, and in addition to these examples, it can also be, for example, securities, patents and other intellectual property objects, business shares, assignment of a claim, the right to payment of a co-ownership share and ultimately everything else that has property significance, so the gift may also include some action, by which the donee gains something.<sup>32</sup>

In the case of spouses, two solutions must be distinguished. If the gift is expressly given to one of the spouses, in this case only the donee spouse acquires sole ownership of the gift, even though there is community of property between the spouses and property is normally acquired into this joint ownership. If both spouses are jointly done, they will acquire joint ownership of the gift, even though they acquire the other property into the community of property of the spouses.<sup>33</sup>

In the case of spouses, it comes to the fact that the spouses can each decide on ordinary matters independently, they must always decide on things that are considered not ordinary, and they acquire BSM, if this were not the case, such an act would be relatively void.

Under the current legislation, homosexual couples can use the institution of donation freely through a contract of gift and thus acquire sole ownership.

When a person is not married, he disposes of his own property, at his own discretion, but since homosexual couples cannot marry because current legislation in Slovakia

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<sup>32</sup> JUDr. Klučková. "Donation." *JUDr. KLUČKOVÁ advokátka s.r.o.*, 2013, <https://www.kluckova.sk/darovanie/>.

<sup>33</sup> Michalička, "Donation." *Law and Administrator Office JUDr. Miroslav Michalička*, 2008, <http://www.michalicka.sk/advokatske-sluzby/poradna-on-line/darovanie/>.

does not allow same-sex partnerships, homosexuals, unlike spouses, are exempt from acquiring community of property of spouses as such.

Thus, in this respect, homosexual couples are generally at an advantage, because if one of the partners acquires something during their relationship or cohabitation, then under the current legal institutions they are free to make contractual obligations as everyone wishes and are not bound to each other. The acquired assets belong exclusively to that partner and Each partner can independently acquire and buy property without the property also belonging to his/her partner. In a registered partnership, their contractual freedom would already be restricted, as they would already have to consider their registered partner.

## **2.4 Family law aspects of registered partnerships**

The Slovak Constitution, known as Act No. 460/1992 Coll. in its fifth section, Title II, Article 41, provides constitutional protection for marriage. According to the provisions of the Constitution of the Slovak Republic, marriage is defined as a unique union between a man and a woman, which the Slovak Republic comprehensively protects and promotes his good. Article 41 also provides legal protection for marriage, parenthood, family and special protection for children and adolescents.<sup>34</sup>

With the introduction of the institute of registered partnership, a change in the constitution would not be necessary, but in the future with the introduction of same-sex marriage, the Constitution of the Slovak Republic would have to be amended. There would be various questions about Slovak Constitution and a possible change to Article 41. A change in the definition of marriage could read, for example: "Marriage is a unique union that women and men have the right to enter into." Such a definition of marriage would not dictate that only persons of the opposite sex can marry each other.

With the introduction of the institution of registered partnership, same-sex couples would have to obtain their legislation, which would be enshrined in the Family Code, and the

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<sup>34</sup> Act No. 460/1992 Coll. Constitution of the Slovak Republic, Article 41, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/>.



law would also have to undergo certain changes. The changes would immediately concern Article 1 of the Basic Principles of Act No. 36/2005 Coll. on the Family.

At the moment of marriage, the spouses have not only rights, but also obligations in which they are equal. Based on Act No. 36/2005 Coll. on the Family, spouses are obliged to live together, be faithful to each other, respect each other's dignity, help each other, take care of children together and create a healthy family environment.<sup>35</sup> Both spouses are obliged to ensure that the needs of the family established by marriage are met according to their abilities, means, and means. Personal care for children and the household is also the satisfaction of family needs. Family matters are decided jointly by the spouses and, if they do not agree on essential matters, the court decides at the request of one of the spouses. As far as the profession is concerned, neither spouse needs the consent of the other spouse for its performance and professional application.<sup>36</sup> In ordinary matters, each spouse is entitled to represent the other spouse, in particular to receive ordinary benefits on his or her behalf. The actions of one spouse in procuring ordinary family affairs are considered to be jointly and severally binding on both spouses. Another of the obligations is the so-called maintenance obligation between spouses.

Marriage gives rise to several obligations for the spouses, including the duty to take care of the conditions of the family created by the marriage according to their means, abilities and means. This obligation may also include the mutual maintenance obligation of a husband and wife, which is an essential expression of their economic solidarity, which lasts for the entire duration of the marriage, arises from the moment the marriage is contracted and ends on the date of dissolution of the marriage, which may be the date of death of one of the

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<sup>35</sup> Act No. 36/2005 Coll. on the Family, Section 18, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/36/20230101>.

<sup>36</sup> Act No. 36/2005 Coll. on the Family, Section 19 paragraph 1,2,3, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/36/20230101>.

spouses, the date on which the divorce judgment becomes final or the day on which the marriage is finally annulled.<sup>37</sup>

The Family Act, as Act No. 36/2005 Coll., regulates the maintenance obligation between spouses in the third part, first title, fourth section in §71, where the law stipulates that spouses have a mutual maintenance obligation and if one of the spouses fails to comply with this obligation, the court, at the request of one of the spouses, determines the extent of the maintenance obligation so that the standard of living of both spouses is basically the same. The court will consider the care of the household when deciding on the extent of the maintenance obligation.<sup>38</sup>

According to Act No. 36/2005 Coll., the maintenance obligation between spouses precedes the maintenance obligation of children towards their parents.<sup>39</sup>

Homosexual couples who are not married and must fulfil their marital obligations, such as maintenance obligations between spouses, do not have this obligation.

Homosexuals living together are not bound by the care of their partner, such as spouses' maintenance for their spouse.

The adoption of a child by homosexual couples in Slovakia is not yet the subject of discussions. Since Slovakia is still considered a conservative country, as demonstrated by the 2022 census, in which almost 70% of the population of the Slovak Republic declared themselves Christian churches with conservative values, the attitude of people towards adoption of same-sex couples is even more conservative than towards the institute of registered partnership itself.

The issue of the adoption of children by homosexual couples has not yet been discussed; rather, the discussions are mainly focused on promoting the basic institute for these

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<sup>37</sup> JUDr. Anovčinová, "Maintenance obligations between spouses." *Lucia Anovčinová*, 2020, <https://anovcinova.sk/blog/vyživovacia-povinnost-medzi-manželmi>.

<sup>38</sup> Act No. 36/2005 Coll. on the Family, Section 71 paragraph 1, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/36/20230101>.

<sup>39</sup> Act No. 36/2005 Coll. on the Family, Section 71 paragraph 2, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/36/20230101>.

couples as such. The introduction of such an institute also requires some detailed analysis from a sociological and psychological point of view.

Therefore, if the institution of registered partnership were introduced and same-sex couples could adopt children, then of course the Family Code would have to be changed. As far as maintenance obligations are concerned, the partners would be subject to maintenance obligations. If the partners separated, the maintenance obligation for the adopted children would remain.

## **2.5 Institute of Registered Partnership from European Union's point of view**

European Union citizens are increasingly moving across national borders to pursue studies, work, or establish families in different EU countries. This trend has resulted in a growing number of international couples, whether they are in marriages or registered partnerships.

International couples are those where the members have different nationalities, reside in an EU country other than their own, or hold property in various countries. Both married and registered partnership international couples need to effectively manage their shared property, particularly in situations involving divorce, separation, or the unfortunate event of one partner's passing.

EU regulations are designed to assist international couples facing these complex scenarios. These regulations are applicable in 18 EU countries, including Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, the Czech Republic, the Netherlands, Austria, Bulgaria, Finland, and Cyprus.

These regulations establish the jurisdiction of courts in determining matters related to the property of international couples and specify the applicable legal framework for resolving these issues. Additionally, they simplify the recognition and enforcement of judgments or notarial documents originating in one EU country when they are presented in another EU country.

Succession rights in registered partnerships in the European Union can vary depending on the country in which the partnership is registered. However, there are commonalities in how these rights are typically handled within the EU.

Many EU countries recognize registered partnerships for the purposes of inheritance. This means that if one partner in a registered partnership passes away, the surviving partner may have inheritance rights similar to those in a marriage. The specific rules and procedures can differ from one country to another.

It's often advisable for partners in registered partnerships to create wills and testaments to ensure that their partner inherits their assets and property. In many cases, the law may not automatically grant inheritance rights to a partner in a registered partnership unless it's explicitly stated in a will.

Succession rights can also be affected by the specific terms of the registered partnership agreement. In some countries, partners in registered partnerships may need to establish the inheritance rights of their partner through mutual consent or specific legal procedures.

It's essential to ensure that the registered partnership is legally recognized in the specific EU country where it's registered. Not all EU countries have the same legal framework for registered partnerships, and the level of recognition and rights granted can differ.

In cases of cross-border inheritance disputes involving registered partnerships, individuals may appeal to the ECJ to seek clarification on EU laws and their application in inheritance matters.

### **3 APPLICATION PROBLEMS IN THE IMPLEMENTATION OF HEALTHCARE**

One of the most common arguments for introducing the institution of registered partnership is that same-sex couples have limited rights regarding information about their partner's health status. In the meantime, securing their rights could be ensured by drawing up a notarial deed.

#### **3.1 Right to information about healthcare**

The current legislation on access to data from medical records grants the right of the patient to whom healthcare is provided to have access to data from medical records. If the patient is a minor, personal data concerning his/her health condition shall be made available to his/her legal representative. In both these cases, data from medical records will be provided in their entirety.

According to Act No. 576/2004 Coll. on Health Care, Services Related to the Provision of Health Care and on Amendments to Certain Acts, everyone may give consent to access data from their electronic health record to the extent stipulated by Act No. 153/2013 Coll. on the National Health Information System and on Amendments to Certain Acts by Section 5, paragraphs 11 and 12. Data from medical records are made available without delay by consulting the person's medical records and are made available to the person receiving health care or the legal representative of that person in their entirety. It is possible to make a person's medical records available to a spouse, child or parent or their legal guardian after the death of that person in their entirety. If there is no such person, to the adult who lived with him or her at the time of death in the household, a close person, or their legal representative. Persons who are authorized to do so based on a written power of attorney, as well as legal representatives, husband, wife, child, or parents with a certified signature pursuant to Act No.

599/2001 Coll. on the certification of documents and signatures on documents by district offices and municipalities may also inspect the medical records in their entirety.<sup>40</sup>

Currently, the current legislation does not allow same-sex couples to be provided with information about the health status of the other partner when one partner is hospitalized, because he or she is not his or her legal representative. These persons therefore have no right to learn anything about their partner and this creates enormous application problems. On the other hand, healthcare professionals are obliged to maintain the confidentiality of the facts of which they become aware in connection with the exercise of their profession. This obligation can only be released by the person to whom the facts relate or by the authority competent to issue the permit, at the request of law enforcement authorities and courts, which is defined by Act No. 578/2004 Coll. on the provision of health care, health professionals, professional organizations in health care and on amendments to certain acts.<sup>41</sup>

This information shows that the legislation in force does indeed harm the rights of homosexual couples, but of course this infringement also applies to cohabiting couples of the opposite sex.

A solution could be to draw up a deed with a notary certifying a legal fact, where both partners would declare before the notary that they are cohabitants or that they are close persons. In the meantime, their rights to information about their partner's health would be secured by such a notarial deed.

### **3.2 Proposals de lege ferenda**

On January 19, 2023, the former Minister of Justice of the Slovak Republic, Mr. JUDr. Viliam Karas, PhD. introduced two draft laws that should simplify life in different life situations. The draft laws affect not only same-sex couples, but also unmarried couples. The

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<sup>40</sup> Act No. 576/2004 Coll. on Health Care, Section 25, // <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/576/20230501#paragraf-20.odsek-2>.

<sup>41</sup> Act No. 578/2004 Coll. on the provision of health care, health professionals, professional organizations in health care and on amendments to certain acts, Section 80, paragraph 3, 4, // <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/578/20230415>.

solutions are developed in two separate laws. The first law deals with fiduciary statements, while the second law, the law on private endowment funds, considers substantive intent.

A fiduciary statement consists in the fact that the person of the announcer expresses before a notary the will for someone else to act on his behalf as a confidant in certain life situations stipulated by law. Confidentiality could be revoked at any time. The announcer could also choose several trustees to be arranged in Schemes A and B, with the claim being made first by the first fiduciary and only then by the second fiduciary. A confidant could declare only one person to be their fiduciary, and the statement might or may not be mutual.<sup>42</sup>

A confidant could act in the next four life situations. He could be appointed administrator of the estate, but he would not enter the right of inheritance but could only dispose of the estate until the inheritance proceedings were completed. He could also be appointed as the guardian or guardian of the children of the deceased, while the court would not be bound by this provision and could also entrust the child to another, more suitable person. The fiduciary could also be able to act in the case of obtaining information about the health status of the announcer and giving informed consent to the provision of health care and, if necessary, representing the announcer in ordinary matters, except for the sale of property and the like. Under this new institute, a confidant could be entitled to a nursing allowance or a care allowance for a person with severe disabilities. It would also be possible to apply an exception from the employment of a partner and to grant time off by the employer in the event of the death of a family member.<sup>43</sup>

The draft law on private endowment funds would simplify property relations in Slovakia, address a wide range of property relations in family businesses, in joint ventures of close persons, for example, such as the fact that a fiduciary could manage the property of a person close to him, which so far only a family member has the right to. "The petitioner's intention is to restore in law proven European instruments along the lines of trusts/trusts,

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<sup>42</sup> Nemcová, "Bill to improve the position of unmarried couples." *Legal Newspaper*, 2023, // <https://www.pravnenoviny.sk/navrh-zakona-na-zlepsenie-postavenia-nezosobaseny-ch-parov>.

<sup>43</sup> Nemcová, "Bill to improve the position of unmarried couples." *Legal Newspaper*, 2023, // <https://www.pravnenoviny.sk/navrh-zakona-na-zlepsenie-postavenia-nezosobaseny-ch-parov>.

which will allow citizens to effectively manage assets, control them and distribute them appropriately to the family as well as to other persons important to the current owners."<sup>44</sup>

The introduction of the legal institution of the confidant would significantly strengthen the rights of same-sex couples, but also of opposite-sex cohabiting couples, especially in the area of obtaining information about the health status of the partner.

### **3.3 Rights of registered partners to access information about their partner**

The rights to access information about one of the partners' health status can vary depending on the specific laws and regulations in the country where the partnership is registered, as well as the policies of healthcare institutions.

Healthcare providers are typically bound by strict privacy laws and regulations that protect patient confidentiality. This means that they may not disclose a patient's health status to anyone without the patient's explicit consent or unless legally authorized.

In many cases, individuals must provide explicit consent or authorization for their healthcare information to be shared with specific individuals, including their registered partners. This consent is typically documented in writing, such as through the completion of a healthcare proxy or power of attorney for healthcare decisions.

To ensure that a registered partner has the right to access their partner's health information and make healthcare decisions on their behalf, it is advisable to create legal documents such as a healthcare proxy or a healthcare power of attorney. These documents grant legal authority to the registered partner to act on the other partner's behalf in healthcare matters.

The rights and recognition of registered partners in healthcare information can be similar to those of married spouses in many countries. However, the extent of recognition and specific legal requirements can vary.

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<sup>44</sup> Press release of the Ministry of Justice of the Slovak Republic - <https://www.justice.gov.sk/tlacovspravy/tlacova-sprava-3774/#>



In emergency situations where immediate medical decisions are required, healthcare providers may act in the best interest of the patient, even if there is no legal documentation in place. However, it's always best to have legal documents that clarify the registered partner's authority in healthcare matters.

## **4 COMPARISON OF SELECTED LEGAL REGULATIONS IN RELATION TO REGISTERED PARTNERSHIPS AND SELECTED PRIVATE LAW INSTITUTES**

We wanted to point out the significant differences in the legal regulation of registered partnerships in the Czech Republic, as Slovakia's neighbor, which, unlike us, has regulated the legal institution of registered partnerships in its legal system, and to point out the comparison with Denmark, which was the first country in the world to introduce a parliamentary law allowing two persons of the same sex to enter into a registered partnership. We then compared the legal framework for registered partnerships in other member states of the European Union, such as France, Italy, Austria and Germany.

### **4.1 Czech Republic**

The Czech Republic, unlike Slovakia, is one of the liberal countries of Central Europe in terms of the rights of the LGBTI+ community.

In its original form, the Law on Registered Partnerships, which entered into force on 1 July 2006, was divided into twenty parts, the text of which itself constituted the first part and the remaining parts concerned changes in the relevant and related legislation. Registered partnership is defined by law as a permanent community of two persons of the same sex formed in a manner prescribed by law.<sup>45</sup> This is a modified definition of marriage, adapted for the purpose of the law.

A partnership, like marriage, is concluded by affirmative declaration that persons enter the partnership. Such a declaration may be made only before a registry office and may not be made through an organ of a church or other religious society. For each region, there is one registry office competent to receive the declaration of persons entering a partnership, and the local jurisdiction is linked to the place of permanent residence of at least one of the persons wishing to enter a registered partnership. For persons who are not registered with permanent

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<sup>45</sup> Act No. 115/2006 Coll. Act on registered partnership and on amendment of certain related laws, paragraph 2 paragraph 1, <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>.

residence in the territory of the Czech Republic, a special office is the Office of the City District of Brno-Střed.<sup>46</sup>

The law does not require a ceremonial form or the presence of witnesses at the act of entering a partnership. This distinguishes the partnership from the act of marriage, which is traditionally associated with ceremony and solemn form, and the presence of witnesses is a typical and obligatory part of it.

Formally, persons who intend to make a declaration of entry into partnership must meet the same requirements as fiancés in terms of proof of identity and certificate of nationality. In addition, citizens of European Union Member States must also prove legal capacity to enter partnership and a certificate of civil status, to exclude the coexistence of several marriages or partnerships. The condition for entering a partnership under the law is that at least one of the persons planning to make a declaration of entry de partnership is a citizen of the Czech Republic, unlike a marriage that can be concluded in the territory of the Czech Republic by two foreigners. The reason for excluding foreigners from entering a partnership in the Czech Republic is the fact that there is no uniform approach to registered partnership in the world and therefore it is not possible to allow foreigners to enter a partnership when their country of origin does not recognize the existence of a registered partnership. Persons related in the direct line, siblings, persons under the age of eighteen, persons without legal capacity and persons who have previously married or entered a registered partnership or a similar relationship and this marriage or union is still ongoing, are also excluded from entering a partnership.<sup>47</sup>

The legal act of declaring entry into partnership is completed by an entry in the register of registered partnerships, which coexists with the marriage book and confirms the facts or records based on the declaration protocol and authentic documents. The marriage book is, in principle, non-public. Registration of a registered partnership is optional. If a

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<sup>46</sup> Act No. 115/2006 Coll. Act on registered partnership and on amendment of certain provisions of related laws, paragraph 3, <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>.

<sup>47</sup> Act No. 115/2006 Coll. Act on registered partnership and on amendment of certain provisions of related laws, paragraph 4, <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>.

citizen states when applying for an identity card that he does not wish to have a registered data on a registered partnership, this information will not be written in the identity card. The entries in the book are a manifestation of the public aspects of the Act on Registered Partnership No. 115/2006 Coll.<sup>48</sup>

The declaration of persons entering a partnership is different from that of the betrothed because mutual knowledge of the assets or state of health is not required, and this is because entering the partnership does not affect the existing property situation of the partners.

The non-existence and nullity of a partnership is declared by the court based on a proposal by a person who has a legal interest in the matter, or even of its own motion. The reason for declaring the non-existence of a partnership is an error in the declaration, i.e., in the expression of will, or an error concerning the legal act of establishing the partnership, or an error consisting in failure to meet the conditions laid down by law. Such a situation may arise if neither person was a citizen of the Czech Republic at the time of the declaration, or if the person deliberately provided false information in the documents required to enter the partnership. Partnership annulled It ceases to exist *ex tunc* and is deemed not to have arisen. A partnership does not arise even if a person has previously married or entered a partnership and it still persists. Although the 'new' partnership would be null and void, it would not have the consequences that the Criminal Code attaches to the existence of a double marriage.<sup>49</sup> This fact has been overlooked by the translators of the draft law and no amendment has yet been made to take account of the socially undesirable aspects of entering into a partnership during the duration of the marriage or partnership or other similar union. The impunity of

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<sup>48</sup> Burešová, "Parenthood and Partnership<sup>ti</sup> gayů a leseb in Czech law." *Institute of Sociology of the Academy of Sciences of the Czech Republic*, page 41-43, 2020, // [https://www.soc.cas.cz/sites/default/files/publikace/buresova-rodicovstvi\\_a\\_partnerstvi\\_gayu\\_a\\_leseb\\_v\\_ceskem\\_pravu.pdf](https://www.soc.cas.cz/sites/default/files/publikace/buresova-rodicovstvi_a_partnerstvi_gayu_a_leseb_v_ceskem_pravu.pdf).

<sup>49</sup> Act No. 40/2009 Coll. Criminal Code, Section 194

entering a partnership during the duration of a similar union can be abused for fraudulent purposes, which is why the criminal code currently in force requires adjustment.<sup>50</sup><sup>51</sup>

Partners in a registered partnership in the Czech Republic have the same rights and obligations and both partners decide on matters of cohabitation jointly. If they do not agree on basic matters, the court will decide at the request of one of them.

In ordinary affairs of one partner, the other partner is entitled to represent him/her, it concerns the acceptance of current transactions. When acquiring the normal affairs of a partnership, the actions of one partner bind both partners jointly and severally, this applies to obligations arising during the duration of the partnership, even if the partnership has subsequently been annulled or dissolved. This does not apply if another person knew that the other partner had expressly excluded the effects resulting from these paragraphs on him.<sup>52</sup>

There is no legislation which would create joint ownership of the partners by concluding a registered partnership *ex lege*. This preserves their ownership to the extent that it existed before entering the registered partnership, and the change in social status does not change this. Nevertheless, a person who has entered a registered succession partnership has the status of spouse and, in the event of death and intestate succession, belongs to the first class of inheritance and inherits the assets of the deceased partner.<sup>53</sup>

The rights and obligations of the partners also include the institute of maintenance. The law provides them with a direct maintenance obligation, which, similarly to marriage, precedes the maintenance obligation Children. Should one of the partners fail to fulfil his/her

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<sup>50</sup> Burešová, "Parenthood and Partnership gayů a leseb in Czech law." *Institute of Sociology of the Academy of Sciences of the Czech Republic*, page 44-45, 2020, // [https://www.soc.cas.cz/sites/default/files/publikace/buresova-rodicovstvi\\_a\\_partnerstvi\\_gayu\\_a\\_leseb\\_v\\_ceskem\\_pravu.pdf](https://www.soc.cas.cz/sites/default/files/publikace/buresova-rodicovstvi_a_partnerstvi_gayu_a_leseb_v_ceskem_pravu.pdf).

<sup>51</sup> Act No. 115/2006 Coll. Act on registered partnership a o změně některých souvisejících zákonů, Title III, // <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>.

<sup>52</sup> Act No. 115/2006 Coll. Act on registered partnership a o změně některých souvisejících zákonů, paragraph 8, 9, // <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>.

<sup>53</sup> Mgr. Tomanová, "Dědictví a vše, co o něm potřebujete vědět.", *Práv pro všechny*, // <https://www.pravoprovsechny.cz/clanky/dedictvi/>.

maintenance obligation, the court, at the request of one of the partners, determines the extent of the maintenance obligation regarding care and joint households.<sup>54</sup>

Should the partnership be dissolved, the former partner may require the other former partner to contribute to his or her maintenance according to their capabilities, abilities and means. The dissolution of the partnership does not require the same standard of living for both partners. The condition for the award of maintenance is that the applicant is unable to support himself. The court may award by decision a partner who has suffered serious harm as a result of the dissolution of the partnership and who has not participated in the breakdown of the partnership that the other former partner contributes to him or her in the same way as if the partnership had not been dissolved, thereby compensating him or her for moral and economic damage. As a general rule, such an obligation may last for a maximum of three years from the dissolution of the partnership. Even between former partners, the ex-partner's maintenance obligation precedes the parents' obligation to maintain their children. The law links the termination of maintenance obligations to three facts. The first is the death or pronouncement of dead obligated partner. The second is the conclusion of a marriage or other cohabitation of the creditor. According to the law, the third way of extinguishing the maintenance obligation is by concluding a written contract between the former partners, based on which a lump sum will be paid to the entitled partner.<sup>55</sup>

In order to determine the amount of maintenance, it is necessary to first find out the property situation of both partners, their needs, abilities, and possibilities. The court then examines whether the obligated partner has given up a more advantageous job or other gainful activity or property benefit. If he did so without good reason, the court will take this procedure into account in its decision. The facts examined include finding out whether the debtor is taking non-average property risks. In view of these facts, the court will then determine the amount of maintenance. Maintenance must fundamentally correspond to good manners and is provided in recurring regular doses. If the partners agree on the set-off of mutual

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<sup>54</sup> Act No. 115/2006 Coll. Act on registered partnership a o změně některých souvisejících zákonů, paragraph 10, // <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>.

<sup>55</sup> Act No. 115/2006 Coll. Act on registered partnership a o změně některých souvisejících zákonů, paragraph 11, // <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>.

maintenance claims, such an agreement is admissible. The law does not lay down any mandatory requirements for the form or content of such an agreement. From the following, therefore, we can conclude that the form of the agreement can also be oral, and the content of the agreement can only be the determination of the claim and consent to its set-off. Maintenance in a registered partnership is based on a regulation similar to that of spouses, so the judiciary and interpretative opinions on the maintenance obligation of spouses can be applied to it accordingly. The right to maintenance is not time-barred, but repetitive individual benefits may be subject to limitation. The court awards maintenance at the earliest on the day of the commencement of court proceedings.<sup>5657</sup>

The termination of a registered partnership under Act No. 115/2006 Coll. occurs upon the death of one of the partners or the pronouncement of one of the partners as dead or by the dissolution of the partnership by a court decision.<sup>58</sup>

The legislation in the Czech Republic divides the permanent cohabitation of two persons into three legal groups in terms of mutual rights and obligations. The first form is informal cohabitation, which is called cohabitation. This is the relationship of a man and a woman, as well as the relationship of a man and a man or a woman and a woman. The second form is registered partnership, which is a formalized union of two men or two women. A registered partnership in the Czech Republic does not arise between a man and a woman. The third and most protected form of cohabitation is marriage, which the Slovak legislation also recognizes as the union of a man and a woman.

Cohabitation is characterized by gender-neutral but informal cohabitation between two persons. The law confers only the necessary rights and obligations on cohabitation. These are social security regulations, criminal law, and various provisions of the Civil Code. Such

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<sup>56</sup> Act No. 115/2006 Coll. Act on registered partnership a o změně některých souvisejících zákonů, paragraph 12, // <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>.

<sup>57</sup> Burešová, "Parenthood and Partnership gayů a leseb in Czech law." *Institute of Sociology of the Academy of Sciences of the Czech Republic*, page 45-49, 2020, // [https://www.soc.cas.cz/sites/default/files/publikace/buresova-rodicovstvi\\_a\\_partnerstvi\\_gayu\\_a\\_leseb\\_v\\_ceskem\\_pravu.pdf](https://www.soc.cas.cz/sites/default/files/publikace/buresova-rodicovstvi_a_partnerstvi_gayu_a_leseb_v_ceskem_pravu.pdf).

<sup>58</sup> Act No. 115/2006 Coll. Act on registered partnership a o změně některých souvisejících zákonů, paragraph 14, // <https://zakony.judikaty.info/cz/predpis/zakon-115/2006>

cohabitation usually precedes the formalized union itself, i.e., a registered partnership or marriage.

Under Czech law, marriage is a permanent union between two persons of different sexes. According to the provisions of §655 of Act No. 89/2012 Coll., known as the "Civil Code", marriage is a permanent union of a man and a woman established in a manner laid down by law. The provisions in §655 to §770 relating to marriage implicitly state that marriage should not be a union between two persons of the same sex. Its permanence is assumed. According to Section 687 of the Civil Code, spouses are granted the same rights and the same obligations. The spouses contribute to the needs of the family's and household life according to their personal and property circumstances, abilities, and possibilities to ensure a comparable standard of living for all family members.<sup>59</sup> A specific property law is established for spouses in the form of the joint property of the spouses or under a regime agreed by the spouses or a regime established by a court decision. The joint property of the spouses is everything that belongs to the spouses and has property value and includes everything that either spouse acquires during the duration of the marriage. The law excludes items of personal use, gifts, etc. from the common property. Common property is both assets and debts. The right to manage, dispose of and enjoy the joint property belongs to both spouses.<sup>60</sup> After the dissolution of the marriage, the acquired property is settled, it either gives rise to the sole ownership of one of the spouses or the joint property becomes joint ownership.

In the Czech Republic, the homosexual family, otherwise also the homoparental family, does not have a definite existence in the legal system. Neither the Civil Partnership Act nor related legislation recognizes, does not grant a social parent any rights to his or her partner's biological child. The homoparental family is not supported by legislation and its origin and existence is inferred by analogous legal interpretation.

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<sup>59</sup> Act No. 89/2012 Coll. Civil Code, Section 690, <https://www.aspi.cz/products/lawText/1/74907/1/2/zakon-c-89-2012-sb-obcansky-zakonik/zakon-c-89-2012-sb-obcansky-zakonik>.

<sup>60</sup> Act No. 89/2012 Coll. Civil Code, Section 708-710, <https://www.aspi.cz/products/lawText/1/74907/1/2/zakon-c-89-2012-sb-obcansky-zakonik/zakon-c-89-2012-sb-obcansky-zakonik>.



Section 13 of the Civil Partnership Act is de facto the only provision which admits directly in the basic regulation that such a family may exist and at the same time provides for its basic legal protection. Paragraph 13 provides that both persons in the partnership are obliged to participate in the upbringing of the children living with them in the same household.<sup>61</sup>

## 4.2 Denmark

In 1989, Denmark was the first country in the world to introduce an Act of Parliament that allowed two persons of the same sex to enter a registered partnership. The law came into force on October 1, 1989, marking almost 34 years since same-sex couples have been allowed to enter registered partnerships.<sup>62</sup>

A 2012 amendment to the Marriage Act granted same-sex couples in Denmark the right to marry in the Evangelical-Lutheran Church under the same conditions as heterosexual couples.

Danish family and inheritance law regulates three models of couples' relationships. The first is marriage of persons of the opposite or the same sex. The second is registered same-sex partnership, and the third is cohabitation between persons of the opposite sex or the same sex.

Same-sex and opposite-sex marriage is permitted in Denmark by voluntary act between two unmarried persons who are of legal age, with legal capacity and with no relatives. Marriage is legally recognized and has the same legal protection as marriages of heterosexual couples.

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<sup>61</sup> Burešová, "Parenthood and Partnershipvi gayů a leseb in Czech law." *Institute of Sociology of the Academy of Sciences of the Czech Republic*, page 69, 2020, // [https://www.soc.cas.cz/sites/default/files/publikace/buresova-rodicovstvi\\_a\\_partnerstvi\\_gayu\\_a\\_leseb\\_v\\_ceskem\\_pravu.pdf](https://www.soc.cas.cz/sites/default/files/publikace/buresova-rodicovstvi_a_partnerstvi_gayu_a_leseb_v_ceskem_pravu.pdf).

<sup>62</sup> Lund-Andersen, "Registered Partnership in Denmark.", *Cambridge University Press*, 2018, //<https://www.cambridge.org/core/books/abs/future-of-registered-partnerships/registered-partnerships-in-denmark/DE7645D60210C367D9CA3985A74177DF>.

Before same-sex marriage was introduced, Denmark had a legal institution of registered partnership in place for same-sex couples. These partnerships offered many legal rights and protections as marriage. Since same-sex marriage was legalized, it is no longer possible to enter new registered partnerships. Existing registered partnerships continue to be recognized under Danish law.<sup>63</sup>

Same-sex couples have the right to adopt children jointly. Since 2019, Danish law has allowed joint adoption by both same-sex and opposite-sex couples, ensuring equal rights for all couples, regardless of sexual orientation.

In recent years, there has been progress in Denmark regarding 'rainbow families'. In 2022, the Danish Parliament passed a law that stipulates that lesbian couples no longer must prove how their child was conceived, and so the pregnant woman's partner automatically becomes a "co-mother" and thus is the child's legal parent.<sup>64</sup>

### 4.3 France

On April 23, 2013, France made history by becoming the 14th country to legalize marriage for same-sex couples. After a grueling 136 hours of passionate debate, the French National Assembly successfully passed the landmark legislation known as "mariage pour tous" (marriage for all). This historic law not only granted same-sex couples the right to marry but also allowed them to adopt children.

France did not recognize civil partnerships in the same way some other countries do, but they passed a legal framework called "PACS" (Pacte civil de solidarité), which is similar to a civil partnership or domestic partnership in some other countries. PACS allowed

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<sup>63</sup> Danish Registered Partnership Act, <https://www.retsinformation.dk/eli/ta/1989/372>.

<sup>64</sup> "Denmark- a very LGBT+ friendly country.", Denmark.dk, <https://denmark.dk/society-and-business/denmark-a-very-lgbt-friendly-country>.

unmarried couples, both same-sex and opposite-sex, to have their relationship legally recognized. It provided some of the legal protections and benefits that are typically associated with marriage, such as inheritance rights and certain tax advantages.

The PACS agreement is a formal contract that can be registered with the French government. It provides legal recognition and protection to the partners involved. However, it's not the same as marriage, and some legal and tax differences exist between PACS and marriage.

A PACS, which stands for Pacte Civil de Solidarité or domestic partnership contract, is available for individuals of the same sex or opposite sex who either cannot or choose not to enter into a traditional marriage. It's important to note that at least one of the partners must be a French citizen. PACS doesn't modify the existing Family Law on adoption and marriage.

Nonetheless, PACS serves as a means to offer additional protection and stability to couples who opt for this type of union. Recognized and sanctioned by the French Government, PACS provides safeguards in various aspects, including housing, property, financial status, social security, and employment and obligations.

Regarding housing, if the partner who holds the lease or rental agreement departs or passes away, the lease or rental agreement is automatically transferred to the remaining partner's name.

Regarding property, unless stated otherwise, it is assumed that assets are jointly owned by both partners in equal measure.

In terms of financial status, PACS partners have the option to file a joint income tax declaration starting from the third year of their formal partnership, making them eligible for specific tax credits thereafter.

Regarding Social Security and Employment, one partner is eligible for the benefits of the other partner's social security and health insurance. Additionally, both partners have

the privilege of requesting simultaneous vacation time. Should one partner pass away, the surviving partner is entitled to a form of family leave.

In terms of obligations, partners are required to provide mutual and material support to one another. They share responsibility for jointly incurred debts, as well as for covering daily living costs and housing expenses.

#### **4.4 Italy**

Effective on June 5, 2016, Law No. 76 of May 20, 2016, titled "Regulation of Civil Partnerships for Same-Sex Individuals and Cohabitation Regulation" (published in Official Journal No. 118 on May 21, 2016), was integrated into the Italian legal framework.

The legislation governs two aspects: the legal union between two individuals of the same sex, referred to as a "civil partnership," and the cohabitation arrangements of two individuals, whether they are of the same or different sexes.

A civil partnership represents a legal connection between individuals of the same sex, leading to an alteration in their civil status. For an Italian citizen seeking to establish a civil partnership abroad, the process involves applying to the appropriate Italian Consular Office based on their place of residence. Simultaneously, upon forming the civil partnership, both parties have the option to declare their choice of a shared surname and/or property arrangement if necessary. Civil partnerships initiated at an Italian Consular Office are recorded in the civil status register of the Municipality where the Italian citizen is officially registered with AIRE (Registry of Italians Residing Abroad).

In adherence to the 1963 Vienna Convention on Consular Relations, the Italian consular authority can act as the Civil Status Registrar, provided that the laws and regulations of the host country do not pose any hindrance. Therefore, the ability to initiate civil partnerships abroad may not always be guaranteed.

In Italy, it is viable to officially record the certificates of marriage or similar unions between individuals of the same sex, particularly those formed in foreign jurisdictions,

provided that at least one of the individuals is an Italian national. In the Italian legal framework, these certificates hold the legal significance of a civil partnership as outlined in Law No. 76/2016.

De facto living together is regulated by Law No. 76/2016. This type of arrangement possesses a distinct character compared to civil partnerships, as it does not alter the civil status of the partners. Instead, it is exclusively regulated within the framework of the Civil Registry system. An Italian citizen living overseas has the option to officially declare a "de facto living together" with a person of the same or opposite sex who resides at the same foreign address. This declaration can be made at the competent Consular Office based on the individual's place of residence and is in accordance with the guidelines provided by the Interior Ministry, particularly when both parties are registered with the same AIRE Municipality. Upon the submission of the "de facto living together" declaration, the Italian Municipality has the authority to issue a certificate confirming the establishment of a shared household for the purposes of civil registration.

Additionally, there is the option of a cohabitation agreement or contract. An Italian citizen residing abroad, meeting specific criteria, can execute the "cohabitation agreement or contract" at the Consular Office, as outlined in paragraph 50 of Law No. 76/2016. Alternatively, they may request the authentication of the signatures on this agreement or contract. It's essential to note that the cohabitation agreement or contract deals exclusively with financial and property matters. Its regulation is subject to Italian law if both parties involved are Italian citizens or residents of Italy. However, if the two parties possess different nationalities and reside in a foreign country, the applicable law will be that of the respective foreign jurisdiction.<sup>65</sup>

## 4.5 Austria

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<sup>65</sup> Ministry of Foreign Affairs and International Cooperation, Civil Partnerships, <https://www.esteri.it/en/servizi-consolari-civisti/italiani-all-estero/stato-civile/unioni-civili/>

Starting from January 1, 2010, Austria permitted individuals of the same sex to establish registered partnerships. As of January 1, 2019, both same-sex and opposite-sex couples have had the option to access both marriage and registered partnership institutions.<sup>66</sup> In a registered partnership, two individuals commit to a long-term cohabiting relationship with legal rights and responsibilities toward each other. The establishment of a registered partnership requires both partners to appear together before a civil status authority, typically at a registry office. In this process, the registrar addresses each partner individually, asking if they wish to form a registered partnership with one another. These questions are posed in the presence of two witnesses, or fewer if desired. Upon both partners affirmatively responding, the registrar legally declares them as registered partners. It's also possible to formalize a registered partnership at a location other than the official registry office, provided that the chosen venue appropriately reflects the significance of the partnership. The registrar records the establishment of the registered partnership in writing.

To enter into a registered partnership, certain conditions must be met. Both individuals must be of legal age. They must meet the eligibility criteria for a registered partnership. Neither party should have an existing valid marriage. Neither party should already have a valid registered partnership in place. There should be no direct familial relationship, and the individuals should not be full or half-siblings, nor have an adoptive relationship with each other.<sup>67</sup>

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<sup>66</sup> Austrian Consulate General Los Angeles, Registered Partnership, <https://www.bmeia.gv.at/en/austrian-consulate-general-los-angeles/service-for-citizens/civil-status-family/registered-partnerships>

<sup>67</sup> Oesterreich.gv.at, General information on registered partnerships, [https://www.oesterreich.gv.at/en/themen/familie\\_und\\_partnerschaft/eingetragene\\_partnerschaft/Seite.1890100.html](https://www.oesterreich.gv.at/en/themen/familie_und_partnerschaft/eingetragene_partnerschaft/Seite.1890100.html)

## 4.6 Germany

Under German family and succession law, there are three forms of recognized relationships for couples. First is marriage between persons of opposite and same sex. Then there is a registered partnership between persons of the same sex, but only if the registered partnership was entered before October 1st, 2017). The last form is a De facto partnership between persons of opposite and same sex.

Marriage is governed by the Civil Code, while registered partnership is regulated under the Registered Life Partnerships Act. However, the latter's applicability has been restricted in time as a result of the Law of July 27, 2017. This restriction arose following the enactment of the "Gesetz zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts" on July 27, 2017, which rendered registered partnerships unavailable, except for those established prior to the introduction of marriage for same-sex couples. Since the introduction of same-sex marriage, entering into new registered partnerships is no longer permitted. De facto partnerships generate various legal consequences that are stipulated in different statutes.<sup>68</sup>

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<sup>68</sup> Euro Family, German family and succession law recognise three forms of couples' relationships, [https://www.euro-family.eu/atlas\\_scheda-de](https://www.euro-family.eu/atlas_scheda-de)

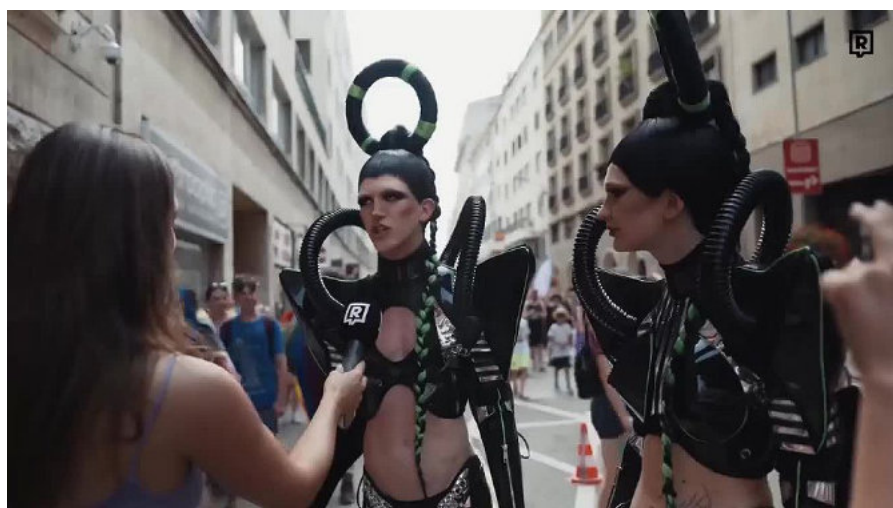












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