

Developments in Marriage and Marital Law in the Czech Republic

Abstract

Doc. JUDr. Zdeňka Králíčková, Ph.D.

The paper *Developments in Marriage and Marital law in the Czech Republic* explores the influence of political, social, and economical changes mainly after the collapse of communism.

The paper is, first of all, focused on the family based on marriage with its problems as follows: rejecting or postponing marriage to the “later age”, insufficient marital property law, marital instability and domestic violence etc. Main part of the paper is devoted to “free” forms of cohabitation, both heterosexual and homosexual, and to the problems caused by them, especially after the break-down of the relationship. This part is concluded by contemplation on another negative aspect of nowadays - the phenomenon of single style and the increase of the amount of children born out of wedlock (32%), which creates a lot of problems for single mothers, for children in fatherless family, for the whole society.

Secondly, through presenting a comprehensive study with respect to historical aspects, the paper analyzes changes in family law. So-called velvet revolution from 1989 brought out attention to human rights, mainly to the European Convention on Human rights and its Article 8 protecting the right to family life, which caused “new” interpretation and application of old family law influenced by the Soviet model. Euphoria and enthusiasms of early 90’s could have run to the revolution changes in Family law, too. Nevertheless, a long time expected so-called great amendment to the Act on the Family (1998) meant only a half-hearted law reform.

Nowadays, due to quite chaotic legislative process and strong lobbies, we can face passing of controversial acts. The Act on the childbirth with “secret identity” of the mother is considered to be a very bad step on the way of improving Family law (2004). This Act is in contrary with the rights of the child and of the child’s father and creates space for non-family behaviour. The Act on Registration of the same sex couples, passed after so many attempts, has been broadly criticised as dilettante by both favourers and objectors of registered partnership (2006). The Act against domestic violence is not complete – the effective civil law protection is missing (2006).

The full reform of Family law within new Civil code has been discussed for almost 15 years with expectations by most, while others still adore the old Act (1963). In 2001 the Government approved legislative intention of new Civil code. The draft of the new law has been finished recently and is a topic of comments, analysis and conferences. According to some experts, this project should return the Czech Republic again to the sphere of European legal tradition, which was broken by the communist take-over in 1948.

Recent Changes in Polish Matrimonial Property Law

Abstract

Dr. Piotr Fiedorczyk

Polish *Family and Guardianship Code* of 1964 was passed under old Communist regime. Matrimonial property regulations were based on a system of joint property of husband and wife. This system was convenient for spouses (especially for wife) in Communist economy. Although it was possible to conclude contract about matrimonial property rights, but in fact there was no economic need to do it. After 1989, when Poland joined free market economy countries, this system was not adequate to the new situation. It was changed in 2004 by the partial modification of the old Code. Statutory system of joint property has been maintained as a rule, but amendments introduced to it give each of spouses more freedom in taking part in economic activities. Also contractual systems of matrimonial property rights are now regulated in the Code. Spouses now can choose the system, which is most convenient to them. Especially they can choose one of following systems: division of property, division of property combined with leveling of gained property of spouses. Marriage settlement must be done in notarial form.

The Impact of the Changes in the Law of Marriage and Quasi-marital Relationships in Europe on Polish Family Law and Social Development

Abstract

Dr. Katarzyna Bagan-Kurluta

Although it's hard to measure the impact of ideas on a behavior of society as a whole, it's should be said that in last decade we have in Poland a lot of changes concerning thinking about family. Probably the whole idea of changes firstly came from the political transformations in the last two decades of XX century. The concept of family was connected with an idea of state, thus social behavior of its members should have served to build a specific society. So, there was no place for thinking differently, especially about a person (also as a member of family) as an individual having his freedoms and rights. In the center of interest were duties towards a state and, as a paradox in the communist country, towards family and society stated by the Catholic Church. That means that family was conservatively understood as a nucleus of society, started by a marriage. Giving birth to children was an obvious consequence of marriage and upbringing them for the good of a state was a main duty of parents. Shortly after political changes it was a time to adopt a lot of international legal instruments and after that also to adopt European law. It was also a time of great migrations of Polish people. All these changes plus a flow of new ideas about a role of a human being in society started a kind of small revolution in thinking about a family in Poland. The question is how much the conservative pattern of family was changed, also in law? The other question is if Polish law should be transformed according to changes in social thinking and if recent developments in law of marital and quasi-marital relationships (also concerning adoption) have influenced Polish regulations? Matters connected with family are in Poland regulated mostly by provisions of family law, regarded as a part of civil law, despite separately regulation. Alongside with civil law, family law is in the group of private laws. Provisions comprised in family law code are supplemented by the provisions of public laws, protecting family (e.g. provisions of criminal code introducing penal sanctions for actions against child's good). On the other hand, family relationships of international character are regulated by large number of acts of private international law. There are also general constitutional rules protecting family.

The main aim of the paper is to try to answer if a law should be treated as a mirror – if it should reflect the social changes and needs of members of society or if it should protect certain values which were treated as milestones in building our world?

The Marital Contract and its Effects for the Romanian Legislation

Abstract

Adriana Ilut Ph.D

The hereby paper is analysis of the legal regulating concerning the marital contract and its effects as the only accepted couple form. Starting from the notion and judicial character of marriage its intent and validity have been indicated. Also an analysis of its main effects in the light of personal relations between spouses and their patrimonial assets has been concluded.

The assessment of the legal dispositions regarding the marital contract and its effects for the Romanian Legislation allows us to sum up the following conclusions:

The family, which is a social group created through marriage, has not suffered any modification as to evolve into a new structure or as to acquire new functions but rather has evolved into a new rethinking of the weight awarded on the different typological structures, as far as their importance and content is concerned. As far as the family is concerned, the fundamental mutation appears that from traditional to modern.

The crucial distinction between the traditional and modern family refers mainly to the primacy of duties and affection. The traditional family of the authoritative father-provider figure over the wife and offspring must be dissociated from the modern one, which presents a greater closeness between roles within the family group.

While in the traditional marriage was a matter regarding the very "prosaic" family, clan interest due to a complex of causal factors (technical-economical factors, political and socio-cultural ones) in the modern family the choice of the partner becomes more and more a problem concerning only the directly affected party.

From the parents and relative fixed marriages a step was taken towards marriages based on free and personal choices. The functions of the family have shifted from the instrumentally economical ones in favor of the expressively emotional ones (psychical comfort, love and affection) as the choice of a partner is made on the bases of affection and love feelings.

For this reason we consider a harmonization of marital legislation necessary.

Regarding the named bore by spouses after marriage, by examining the provisions of art 27 from the Family Code, we conclude that the hypothesis are limitative and none of the would-be spouses is granted a choice, as none of them can chose as family name the name of the other, to which his/her name is added. Therefore in an effort to ensure equality between spouses as far as the family name is concerned, the legislator envisaged this as only possible through the bearing of the same common name, respectively either the surname of one of them either their united names.

We therefore consider, based on art 8 from the European Convention that either future spouse should have the possibility to bear during marriage the name of the other spouse as a common name reunited to its own name.

As far as the marital juridical regime which is very rigid, constraining and without alternative, we think that the liberalization of the patrimonial rapports between spouses is needed.

In the same manner as the marital juridical act is governed by the agreement of will of the two spouses, the configuration of the patrimonial relations should be determined at principle level by the same manifestation of will.

In other words, there is a need for the patrimonial rapports between spouses to be governed by the principle of free will, and the spouses should be acknowledged the legal possibility of contracting matrimonial conventions. The project of the new Civil Code takes upon consideration, among other things, the liberalization of matrimonial conventions.

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The Current Laws Regulating Marital and Quasi-marital Relationships In Hungary

Abstract

Dr. Martha Dóczy

I. Introduction

- Legislation

The Hungarian Family Act was adopted in 1952 (Act No.VI.1952. on Marriage, Family and Guardianship) and amended in 1974 and 1986.

Part One of the Family Code contains the regulations relating to marriage. The second part of the family Code summarizes the rules relating to the family (family, child, adoption, maintenance, custody etc.). The third part of the Family Act deals with guardianship.

- Statistics and demography

II. Marriage

The Nature of Marriage

The Capacity to Marry

Formalities of Marriage

Effects of Marriage

Void and Voidable Marriages

III. Matrimonial Property

IV. Cohabitation Without Marriage

Some Responses of Hungarian Law to Cohabitation.

Property Rights

Children

The Developments in Russian Law on Marital and Quasi Marital Relationships

Abstracts

Olga A. Dynuzheva

1/ Russian family legislation in the XX century is an example of the numerous controversial changes in the marriage law. For instance *de facto* marriages for almost twenty years (1926 - 1944) were accepted by the law equally with *de jure* marriages. Initially there were several reasons for legal recognition of *de facto* marriages. However some of them gradually disappeared. The two forms of marriage peacefully co-existed until the government turned towards the new policy of strengthening families in order to raise birth rate.

2/ Shortly after the World War II the Government banned marriages between Soviet citizens and foreigners. Because at that time *de facto* marriages were not recognized any more the international couples did not have other choice then to leave “in a sin”. Needless to say that the Russian party to such an illegal union put him/herself under the risk of being prosecuted as a foreign spy. The reasons for this ban were patriotic ideology and anti-spy hysteria.

Though the ban had been withdrawn after Joseph Stalin died some politicians would like to re-establish this ban today in order to prevent the fertile women from leaving Russia.

3/ Though the current Family Code of 1996 does not recognize *de facto* marriages their number is steadily growing. It raises questions of insecure position of economically dependant *de facto* spouse and of children born within such co-habitation.

Another aspect of *de facto* marriages raises from teen pregnancies. Years ago certain members of the State Duma (the lower chamber of the Russian Parliament) drafted an amendment to the Family Code to drop the age of marriage from 18 to 14 (!). The amendment was adopted by the State Duma but vetoed by the upper chamber of the Parliament. Those who initiated the amendment sincerely believed that by making teen co-habitations legal will solve the problem of teen pregnancies by securing young mother and her baby within a pattern of legal marriage.

4/ The Russian law does not accept homosexual marriages. There is no such wording as gay/lesbian marriage in the Family Code. The Code says that “marriage is concluded between a man and a woman...”. The attempts of some gay couples to file a marriage application with the authorized organs of civil status registration certainly had never been successful.

Qauzi Marital (Same Sex) Relationships from the Point Of View of International Private Law In Russian Federation

Abstracts

Galina Fedoseeva

1. There are two problems, which are closely related to the discussed theme. The first is: Can the foreigners or non-residents form the same sex marriage in Russia? The second is: Will the marriage, which was registered in other state, be valid in Russia, if both persons are of same sex?
2. Both questions must be discussed from the point of view of International Private Law (which now is actively developed in Russia), the main aim of which is to provide cooperation on matters, which are closely connected with the discussed problems. Novels in current legislation – chapter 6 (adopted in 2001) in Civil Code of Russia and chapter 7 in Family Code – prove this fact.
3. Marital relationships are the most conservative relationships among any other within Russian civil legislation. In spite of different traditions (in comparison with other states) and social or legal norms we must remember, that different states should cooperate, recognizing decisions of the foreign courts and other official documents or legal acts.
4. Russian legislation and the term “marriage”. There are two articles in the Family Code of Russia adopted in 1995, which determine the marriage as union between man and woman. This rule is based on Russian traditions and culture. It means that the union between two men or two women can not be qualified in Russia as marriage. So the answer to the first question can be only negative. There is no case in Russian judicial practice when our court or any other Russian official body qualified such union as a marriage.
5. The same sex marriage and public law. This institution plays an important role as limitation to apply foreign law and it will be the main barrier to recognize same sex marriage in Russia.
6. The protection of children’s rights and quasi marital relationships. Although there is no possibility to form or recognize in Russia the same sex marriage, it is possible to defend the children, who were adopted by such persons abroad under foreign law. Parties in some of the cases in Russian courts are parents from different countries. These cases concern the determination of living place of children.
7. The same way are regarded different cases between same sex partners, which are connected with property rights. But the legal ground for this will be the civil legislation and not the family legislation.
8. The law compromise between different laws systems. We must try to draft and provide for a special international treaty or at least a special declaration, which will be referred to the problem of same sex marriage.

Family Crisis and Demographic Situation in Russia: the Main Tendencies and Perspectives

Abstract

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This report seeks to analyze the demographic situation in Russia in late 1990s and early 2000s, its detailed instances and the specific character, including perspectives for the nearest 50 years. The demographic situation in Russia may be characterized as depopulation. The report asserts that the main factor in depopulation is super-low fertility. Nonetheless, we discuss shortly in this report the dynamics of mortality in Russia as well. Beside this, dynamic of marriages and divorces, abortion, contraceptive practice in Russia are the subject of analysis.

The data of Russian population censuses reflect negative processes which took place in a life of the Russian family at the end of the past and the beginning of present century: the crisis a life of family as social institute, refusal of an increasing share as men, and women from the introduction into a marriage, all greater preference of so-called "alternative" forms of family life. First of all the reduction of number of marital pairs pays to itself: if census of 1989 has fixed 36 million marital pairs in 2002 their number was on 2 million less (34 million). Thus the tenth part of all marital pairs, or about 3 million, cohabitations (officially not registered marriages) make. The information on number of cohabitations is received for the first time, therefore she cannot be compared to that their number which was in Russia in former years, except for the selective data of microcensus of 1994 when the share of cohabitations was equal Russia 6%.

From the sociological point of view presence or absence of official registration of marital attitudes, their legal registration, is extremely important indicator of a status of family as social institute. Growth of number of cases and shares of refusal of official registration of a marriage, distribution of cohabitations testify to going deep crisis of family and degradation of values of familism. The opportunity to live in cohabitations, without legitimization of marital attitudes corrodes in consciousness of many value of a legal marriage and family as social establishments as it is unique normative forms of a joint life.

If in 1960-1980 general factor of a nuptiality changed under influence of changes of the age structure connected to changes of fertility during the previous periods in 1990 this factor has decreased so strongly, that it is already impossible to explain this decrease by action of demographic waves. During this period intensity of a nuptiality has really decreased, that is the marital behavior of the population has changed, the desire to enter the registered marriage and realization of this desire has decreased. A known role in dynamics of a nuptiality has played increase of cohabitations. In parallel to decrease in a nuptiality in Russia there is a growth of divorce rate, reflecting action both long-term factors of crisis of family, and the tactical factors connected to sharp falling of a standard of living of the majority of the population.

The main factor of super-low fertility is devaluation of the marriage, and family with children. Super-low fertility reflects the deep global crisis of the family as social institute, and, respectively, the absence of family's and personal need to have fewer children. According to data of statistics and sociological surveys reproductive orientations and attitudes are decreasing in Russia and in all European countries as well. As long as sociological surveys of reproductive behavior was carry out only in our country, we have tried in this report to use Russia's example for proofs of the latest

statement. Our arguments are the data of three sociological surveys we performed in the late 1990s. They show that the mainstream direction of decision of depopulation problem in Russia is the revival of the system of social norms of the familism. These data refute the stereotype that by improving living conditions, the desire for more children will strengthen. Material stimulus, we stress in our report, are able only to facilitate conditions for satisfaction of need for children and not able to create the conditions for stopping an intergenerational weakening of this need itself. There are no alternative of rebuilding of the family with several children, as the data from this researches show. In this connection we accentuate in our report that the religious factor can play very important role for the revival of the familism. We discuss in our report the results of special sociological survey of the influence of religious affiliation on marital and reproductive behavior. We show that religious affiliation exerts very positive influence on marital and reproductive orientation, attitudes and other aspects of family life. There are significant difference between affiliate and non-affiliate people in reproductive attitudes, number of birth and abortion, contraceptive practice, in attitude toward divorce, homosexuality and so on. But in any case, we suggest, the increase of fertility and decision of the depopulation problem in Russia and other depopulated countries are impossible without active family and demographic policy that heightens the status of lifelong marriage and families with several children. In absence of such policy current negative social norms of family life and childbearing will only get stronger, and through this, the driving effect will intensify.

Summary and Analysis of the Current Laws Regulating Marital and Quasi-marital Relationships in Slovenia

Abstract

prof. dr. Vesna Rijavec and mr. sci. Suzana Kraljić

Slovenia is an independent state since 1991. The year 1991 has brought many economical, social and legal changes, which have influenced family law too. In Slovenia the law regulate three partnership relations: marriage, cohabitation and registered homosexual partnership.

- A. Marriage: marriage is possible only between man and woman. The number of marriages is lower every year. The paper will present the current economical, social and legal situation and how this influence the decisions to or not to marry. On the other hand, the number of divorces is very high. In Slovenia, every third marriage is divorced. The paper will present the problems with which the partners are confront in the divorce process. The divorce consequences refer to the partnership relation and to the relations between parents and children. If spouses they have children, the main intention is given to the childs best interests and that was the main subject of past reforms of FMRA in 2001 and 2004. The child and its interests are the put in the first line and the court and the centre for social work have the duty to do everything to protect the child and its rights. The paper will present the novelties which brought reform 2001 and 2004.
- B. Cohabitation: is relation between man and woman who did not enter into marriage. The relation must be for longer time. Between the partners should not be the obstacles which would made the marriage between them void. The cohabitation starts informally, so that in Slovenia is not possible to say how many people live in such partnership. But we can find some other arguments, which shows that cohabitation is widened in Slovenia (43% of children are born outside wedlock; the number of marriages is falling, but the number of families is growing...). The FMRA regulates the cohabitation for own purpose. Cohabitation and consequences deriving from it are regulate in many other laws (succession, taxes, social welfare...).
- C. Registered homosexual partnership: in Slovenia we have the act, which regulates this partnership since last year, but it is used since June 2006. The paper will present this new regulation and the problems regarding this.

The paper will present all three partnerships and especially the differences between them.

Summary and Analysis of the Current Law Regulating Marital and Quasi-marital Relationships in New Serbian Family Law

Abstract

Professor Dr. Olga Cvejić Jancić

In this paper, the author deals with the regulation of marital and quasi-marital relationships under the new Family Law Act of Serbia passed in 2005. She analyses the significance of marriage in this country using the statistical data on concluded marriages per 1000 citizens before and after the Second World War, and states that the number of concluded marriages is constantly decreasing, except for a short period after Second World War, when it increased.

The paper includes the overview of the conditions for the validity of marriage that the author divides in two parts: substantial conditions and formalities for the conclusion and validity of marriage. The law does not make any difference between them. The substantial conditions are the following: different (opposite) sex of the spouses, accordance of their wills to conclude the marriage, conclusion of marriage in order to realize a marital cohabitation and several marital impediments, such as an already existing marriage, incapability of reasoning, kinship (blood, by adoption and in-laws), minority (age under 18), guardianship and shortcomings of the will such as error and constraint. Only the minority and in-laws kinship impediments can be removed by a court decision.

The formalities for the marriage refer to the competence of the registrar for concluding the marriage. The celebration of marriage in church is also allowed but concluding only religious marriage without the civil one does not produce any legal consequences i.e. is not legally recognized.

Serbian law allows the conclusion of marriage through a proxy in case especially justified reasons for it exist. The authorization for the conclusion of marriage must be certified and special i.e. issued only for the representation in the proceeding of the conclusion of marriage and is valid for 90 days after the certification.

As far as quasi-marital relationships are concerned, the author underlines that new family law equalizes non-marital cohabitation with the marital one under the same conditions required for the marriage. Author discusses the effects of such solution which is not always favourable for the minor cohabiting partner or that incapable of reasoning.

The homosexual relationships do not have any legal consequences in Serbian law. The author also examines the European Convention on Human Rights and Fundamental Freedoms of the Council of Europe and the Charter of Fundamental Rights of the European Union regarding the rights of homosexual partners and points out those European countries that have a different level and different means for the protection of such partnerships.

Legal Aspects of Unmarried Cohabitation in Serbian Law - Alternative Way of Joint Living of a Man and a Woman

Abstract

Olga S. Jovic, LL.M

The content of this work is conceived on the research of the consequences on unmarried cohabitation, with its objective and specific features, which is legally determined in Serbian Family Law, establishing a new institutional framework of a community of a man and a women. The regulative approach towards unmarried couples results in loss of differentiation between marriage and unmarried cohabitation and leads towards their equalization. Although main feature of unmarried cohabitation is freedom of commencement and freedom of ending, unmarried cohabitation becomes legal institution because of the legal effects which make it close to marriage in its essence. The fact that unmarried cohabitation is an alternative way of joint living of a man and a women, leads to conviction that in Serbian legislation partners can chose one out of the two, socially equally valued and treated ways of joint living. Domestic legal norms determine that the rights and duties of unmarried partners are the same as those of married partners. Granting unmarried partners the same rights as spouses represents radical departure from basic values and the belief that legal marriage should have supremacy over unmarried cohabitation.

An unmarried cohabitation is a lasting life community of a man and a women, that is, a life community of a man and a women that lasted for a longer period of time and is known as such to third parties, one which commences with their cohabitation and ceases with the end of the intent of having such a community. What constitutes an unmarried cohabitation is reciprocity of the unmarried partners' relationship, a fact which compensates for the lack of the legal form of marriage. An unmarried cohabitation which fulfils legal conditions, in terms of the existence of life community, length and absence of marital impediments, produces family and legal consequences regarding the right for protection against family violence, child adoption, determination of fatherhood of a child conceived through bio-medical assistance, life support and joint property of the unmarried partners. This means that unmarried partners have the status which implies a set of rights and duties of personal and property character as well as the rights and duties of personal, personal-property and property character. Due to the fact that there is no specific form when constituting unmarried cohabitation, it does not produce statutory effects in terms of name, citizenship and business capacity of unmarried partners.

Legalization of unmarried cohabitation provides direct protection to the unmarried partners, not an extramarital family, because if a child is born out of wedlock, it does not imply any legal premise that could aid in determining the origin of the child in relation to his father rather it needs to be determined in each specific case. The departure in this respect, is related to the determination of extra marital fatherhood in cases when the child was conceived with bio-medical assistance.

Transsexual Persons: Right to Marry in the Countries of Former Yugoslavia

Abstract

Professor Dr Marija Draškić

The medical term "gender dysphoria syndrome" could be defined as a sense of discomfort, which the person in question ascribes to the incongruence between his/her gender identity and his/her gender role on one hand, and his/her biological sex (primary and secondary sexual characters) on the other. Transsexuality (transsexualism) is an extreme form of gender dysphoria accompanied by the obsessive desire to be delivered from one's primary and secondary sex characters and irresistible need to acquire the bodily appearance and the social status of a person of the opposite sex.

Two groups of countries may be distinguished in contemporary comparative law in terms of their attitude regarding transsexuality. The first includes the countries which adopted special legislation to regulate the legal status of transsexuals (Sweden, Germany, Italy, the Netherlands and Turkey), containing medical and legal requirements to be met by transsexuals in order to be permitted legal change of sex. Medical requirements relate to: (1) the existence of firm and long-term belief of a person as to his (her) not belonging to the sex otherwise indicated in official registers ('real-life test'); (2) permanent inability of child bearing (sterility); and (3) effected surgical intervention (sex reassignment surgery). Legal conditions include: (1) minimum age; (2) domestic citizenship; and (3) unmarried status.

The other group of countries - those without any special legislation which would cover only the cases of voluntary alteration of sex - permit legal change of sex through judicial decisions (for instance, Swiss and French laws), then through the practice of administrative agencies (for instance, Austrian law), or by applying solutions otherwise found in other regulations, such as the laws concerning the requirements for making changes and corrections of data entered into civil status registers (for instance, legal systems of the American states of Illinois, New Jersey and California).

Several countries of former Yugoslavia also have some experience in solving the problems of transsexual persons. Slovenia has changed the Law on Birth Registers in order to permit transsexuals to change their sex as a prerequisite for their right to marry; Serbia has a surprisingly developed history of transsexuality and it is now a well established practice of the administrative agencies to permit the change of sex referring to correction of the record books; Croatia is now facing the problem for the first time trying to justify changes and corrections of data listed in the civil status registers.

Legal Actions, Illegitimate Communities in former Yugoslav Republics (Serbia, Slovenia, Croatia and Macedonia)

Abstract

Jelena Vidic, LL.M.

Actions of a common life of unmarried couples (illegitimate communities) became, for the first time, a subject matter of legal regulation in former Yugoslav republics - Serbia, Slovenia, Croatia and Macedonia after Constitution amendments in 1974. According to legal state in these countries at that time, actually at the time of common state, the widest legal protection of unmarried spouse was provided under Slovenian Family Law, which made equal legal effects of married and unmarried couples (personal property and property, both during the common life as well as after breaking it, and personal as well). Besides, those couples were unequal in Inheritance law. A bit narrower legal protection provided Serbian legislature. According to this law, effects of common life without marriage included alimentation of the unmarried spouse when common life finished, as well as wider effects on property related to division of common property during and after this relationship. Narrower protection, comparing with first mentioned legal system, existed under Croatia Family law, which stated just a right to get alimentation when common life is finished and division of common property during and after the common life. Finally, common life of unmarried couple was not a subject matter of any legal act in Macedonia. In the other words, this kind of relationship did not protected according to Macedonian law at that time.

Based on analyzes of currently legislatures in mentioned states, conclusion is that all those legal systems tend to grant wider protection to unmarried couples who live together. This is emphasized in different ways in each of mentioned country: Serbian legislator admitted more personal effects of the fact that two people live together without marriage. Besides, regarding the personal property and property effects, married and unmarried couples are equal; in Croatia personal property and property effects of marriage and common life of unmarried couple put in the same position, inheritance rights of those couples as well, and unequal legal effects of homosexual couples; the last is also in Slovenia; and, finally, in Macedonia for the first time common life of unmarried couples produces some legal effects.

Taking into account mentioned above, the strongest legal effects unmarried couples life nowadays produces in Slovenia. As it said, married and unmarried couples are equal as well as heterosexual and homosexual. In Serbia and Croatia, legal effects of those couples are at the similar level. In Macedonia, the legal protection is the least, since they have just alimentation right as personal property effect and some of property effects (right to getting and dividing common property).

Family Violence

Abstract

Judge Olivera Pejak Prokeš

The new Serbian Family Act establishes normative system in the field of family law matters, which is compatible to the contemporary European laws and practice. The Family Act significantly took in consideration European and international conventions and opinions of the European Court of Human Rights in family law matters. Family violence is for the first time legally regulated in the field of Serbian civil law.

The paper intends to demonstrate different forms of family violence, its range, as well as legal solutions established in order to define the problem and rules of procedure for adopting safeguard measures against the family violence.

The court practice in the matters of protection against violence is still being developed. The Family Act establishes specialized court panels for these kinds of legal matters. Judges are required to obtain special knowledge in the field of children's rights, while the lay judges are supposed to be persons who gained experience by working with children and young people.

In order to provide the victims of the family violence with appropriate court protection, it is necessary to establish coordinated action and cooperation between courts, police, prosecution, court for minor offences, social service, health institutions, educational centers and non-governmental organizations.

Keywords: Serbian Family Act, forms of violence, safeguard measures against family violence, proceedings for the protections against family violence

1 Privileging Adult Desire Over the Best Interests of the Child: Will Hungary Legalize the Marriage of and Adoption by Same-Sex Couples?

Abstract

Camille S. Williams

In the United States, same-sex marriage advocates explicitly assert that legalizing same-sex marriage would be in the best interests of children. The children to whom they refer have a variety of family situations: some are the issue of prior heterosexual unions, some are adopted, some were produced via assisted reproductive technologies (“ART”), which are largely unregulated. Most of those children are candidates for planned-parental deprivation wherein they will be raised on a day to day basis without the benefit of the participation of one or both of their biological parents.

A careful consideration of children’s identity development and children’s subjectivity problematizes the notion that same-sex marriage is in the best interests of the child, and reveals that the use of children as part of the arguments for legalization of same-sex marriage is an attempt to normalize same-sex desire with the imprimatur of the state, and transcend the biological limitations to procreation that same-sex couples face by legitimating the use of ART in nonconjugal settings. Attempting to piggyback on the historical protection of the parent-child bond, same-sex marriage advocates in the U.S., and in many other countries, are arguing that because children are being raised by single gays or lesbians or by same-sex couples, the sexual relationship of those parents or parental figures should be recognized in law; that is, the status of the parents and their sexual relations should be legitimated by the presence of children in the household.

The push for same-sex marriage in the U.S. and other countries is related to a more general movement for "sexual autonomy" rights, something akin to a recognition and legal affirmation of whatever relationship(s) a couple or other group of persons agrees on (polyamory, polygamy, etc.). Sections of national and state charters or constitutions, of international conventions and covenants are being interpreted to extend marriage to same-sex couples, and then to extend parental rights to those couples. It appears that such a movement is also a part of contemporary political activism in Central and Eastern Europe. Can a country, such as Hungary, which has recognized same-sex couples as having a relationship akin to common-law marriage, refuse to allow those couples to adopt children, or create children via ART, given the pressure to conform to the requirements of the European Union?

If we recognize the subjectivity of the child, we will understand that deliberately depriving the child of one or both biological parents is to irreparably truncate the child’s individual and familial heritage. We recognize the cultural loss when acts of *damnatio memoria* result in the loss of architectural and cultural artifacts; it appears that we are slow to recognize as a legal wrong intentionally causing the loss of an individual’s biogenetic, social and familial material history. Both the two-generational and the multigenerational family can be disrupted in various ways: natural disaster, war, genocide, epidemics, famine, political regimes which use rape with forced pregnancy, or forced sterilization, or “breeding” programs which encourage births to a favored subpopulation and discourage or punish births among the disfavored classes. Arguably, apart from the wrongs done to the persons and lives of specific individuals, an additional grievous wrong is committed against generations of children due to the intentional disruption of conjugal and filial relations. The child designed to live without one or both of her or his biological parents may be able to fit into the family history of the individual or the same-sex couple who raise her or him, but will have a difficult, if not impossible task should she or

he desire to know her or his hidden biogenetic family, who they are/were and how they live/lived. It is no small thing to deprive a child of her or his biogenetic, material, and cultural history.

Same-sex Union: A Comparison of the Various European Legal Concepts

Abstract

Gordana Kovaček Stanić, Full Professor

Regulation of the same-sex union differs comparing European countries. There are three main concepts. Most common is the concept of a registered partnership (e.g. Sweden, Denmark, Finland, Norway, Germany, France, United Kingdom, Slovenia). A few countries allow same-sex marriage (The Netherlands, Spain, Belgium). The third concept is unregistered cohabitation which does not require any formalities (e.g. Portugal, Croatia). In some countries parallelism of concepts exist, besides the concept regulated by an act, an unregistered union has certain legal consequences, as well. In addition, the issues of comparison will be: impediments and other requirements for the same-sex union regulated by law, formalities, legal consequences and dissolution of the union.

The Pros and Cons: Family Policy and Legislative Dilemmas by Regulating De Facto Unions

Abstract

Prof. Aleksandra Korać, Ph.D.

More and more couples chose *de facto* unions as a life style and marriage is not so desirable any more. Legislators have found out solutions to regulate new family forms in different ways. Such solutions have the *pros* and *cons*, depending if from the social standpoint of view marriage still have more advantages than new forms of (longer or shorter) life unions. The problem will be discussed mainly from the standpoint of the rather traditional society, as it is Croatian one (where only 10% of children are born out of wedlock). In such society the social pressure toward couples to contract a marriage is still strong.

In the earlier socialist period of 50's, courts started to protect women applying obligation law rules after breakdown of *de facto* union. Croatian family law has recognized some limited effects of unmarried cohabitation for almost thirty years (since 1978, as an inheritance of the socialist period). The legalization of *de facto* unions was introduced to protect the weaker partner – mostly a woman, to promote the principle of equality of genders and to prevent factual discrimination. *De facto* unions became the subject of the constitutional norm in 1990, so nowadays there is an obligation for the Croatian Parliament to regulate this *de facto* relationship by law.

In the official family policy it has not been pointed out that marriage should be a favourable form of founding a family. Also, there is the constant public pressure that cohabitees should enjoy more and more rights not only in family law, but in the other fields of law as well (inheritance law, pension law, labour law, civil and civil procedure law, criminal and criminal procedure law, medical law considering assisted procreation etc.). Some of these efforts had certain, although limited effects.

In Croatia, as well as in other ex-Yugoslav countries, domestic partnership is regulated as a *de facto* union of two partners of different sexes. This regulation causes the whole spectrum of legal insecurity arising from the factual status of this union, basically in general civil law and especially endeavouring the rights of others. On the other hand, the factual status of same-sex partnerships (regulated since 2003 in a special act) causes similar problems.

In the paper the focus will be set to the possible social consequences, the *pros* and *cons*, of granting broader legal protection to *de facto* unions and more rights to partners.

The Concept of Marriage in the European Union and in European Union Law: Developments, Prospects, Challenges

Abstract

Dr. Dagmar P. Stroh

This paper discusses current developments in the field of marriage and marital law in the European Union and its Member States. It also addresses the question, whether and to what extent the European Union should play a role in on-going efforts to harmonize matrimonial and family law.

Demographic trends show that the concept of marriage and family life is changing substantially in basically all EU Member States: the number of marriages is in decline while divorce rates are increasing. Same-sex marriages have been or are currently being legalized in most EU countries. The numbers of factual partnerships and extramarital births are on the rise, and so are the numbers of single parent and “patchwork” families.

Throughout the European Union, national legislators respond to these trends by liberalizing and simplifying divorce, by giving more legal relevance to factual relationships, and by emphasizing joint custody for children after divorce. While the practical and legal handling of marriage-related issues is already difficult in national settings, it becomes even more complicated when cross-border relationships are concerned. Currently, more than 15 % of EU citizens entering into marriage are of different nationalities, mostly of different European states.

The fact that national rules of conflict have not been able to resolve cross-border cases in a satisfying manner brings up the question of whether Europe needs a harmonized, or even a unified, matrimonial and family law. If harmonization is found to be desirable, another, and maybe even more important question arises – is the harmonization of marital law an undertaking for the European Union?

As a market-oriented organization, the EU has not been granted the original power to rule on family matters. Yet, marital and family matters are not isolated from Community Law. Basically all EU institutions have had to deal with matters of a family law nature. It can be expected that marital law, at least the procedural part of it, will play a greater role in EU legislation during the next years and decades. For that reason, it is important for educators and legal scholars to now point the way which the European Union should follow.

The primary purpose of any future EU legislation on family matters should be to strengthen marriage and family as they are the foundation of every society. Thus, the emphasis should be on those means that promote and support marriages and families – and not on those which weaken or even dissolve them. Mediation and so-called covenant marriages are just two examples that follow that purpose. A strong EU will need strong marriages and strong families which may require a shift back to the traditional concept of marriage in which marriage is considered an indissoluble social institution between a man and a woman designed to provide a strong social structure and the optimal environment for child-rearing.

2The Need of and Prospects for A Second Renaissance – of Marriage

Abstract

Professor Lynn D. Wardle

It is the best of times and the worst of times for the institution of marriage and for marital families. In affluent societies around the world, particularly in Europe and North America, external conditions (health, wealth, income, etc.) for marital families are better than it has ever been, but many internal conditions (instability, infidelity, dysfunction, child-rearing out of marriage, etc.) for marital families are disintegrating. Some of these developments will be reviewed.

Many forces combine to put crumbling pressure upon marital families in affluent and rapidly developing societies today. For one thing, marriage and family historically have always been a matter of special concern for and given special attention and protection by churches; but for many reasons, religious institutions today have much less social and moral influence and provide much less, and less-effective, support and protection for marriage and families than in past times. Similarly, governments have historically protected the institutions of marriage and family in part because of the influence of powerful religious institutions, and in part because the popular political objectives of the governing ranks were compatible with support for marriage and family; whereas today the churches have much less political influence and in many societies the political objectives of the influential cadres favor deconstruction of marriage and family. Also, historically there was to some extent a culture of collective identity in which there was strong social support for connection and identification with one's family; whereas the modern world is largely individualistic and the social environment encourages focus on self-consciousness and self-development, rather than family-orientation. Additionally, modern economies are much less dependent upon the family as an economic unit than in past centuries, and our consumer-oriented economies are directed to individuals or couples, as units of production, consumption, and taxation, regardless of marriage or kinship.

Some of these marriage-devaluing trends are evident in parts of Central and Eastern Europe. Nations of Central and Eastern Europe need to be aware of and to be wary of the risks and dangers of disintegration of and damage to marriage and family that are associated with rapid development and affluence.

Marriage is the foundation of the basic unit of society. In the long run, no nation can be stronger than its families. As Francis Fukuyama has noted, liberal democracy alone is insufficient. There is a need for a renaissance of the institution of marriage and in public legal support of marriage and marital families in many developed and rapidly-developing societies.

The good news is that there are some promising indications and encouraging inklings that a renaissance of public recognition of the importance of marriage and a revitalization of the institution of marriage in many of these nations where there has been so much disintegration of and loss of public support for the institution of marriage. Some of that evidence will be reviewed from a comparative perspective. The "new Europe" holds out hope for revitalizing marriage in the "old Europe." The importance of revitalizing marriage in law and society will be discussed.