

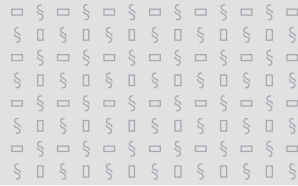


MASARYK UNIVERSITY
FACULTY OF LAW

CZECH FAMILY LAW

III. REGISTERED PARTNERSHIP

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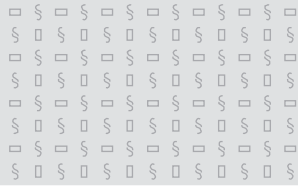
THE NATURE OF REGISTERED PARTNERSHIP

Act No. 115/2006 Coll.

- „act on registration“
- not „act on rights and duties of partners“

since 1. 7. 2006

- permanent cohabitation of two persons of the same sex
- not a marriage
- not allowed for a man and a woman



IMPEDIMENTS TO PARTNERSHIP

- INFANCY (under 18 years)
- BIGAMY - POLYGAMY - MARRIAGE - REGISTERED PARTNERSHIP
- BLOOD AND ADOPTIVE RELATIONSHIP
(siblings, ascendants - descendents)
- MENTAL ILLNESS AND INCAPACITY
- FOREIGNERS (ONE MUST BE A CZECH CITIZEN)



CONCLUSION OF PARTNERSHIP

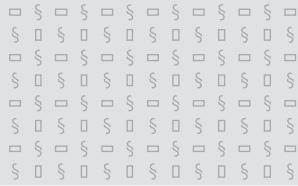
mutual consent

- ONLY CIVIL CONCLUSION
 - before some special municipality authorised to keep registers



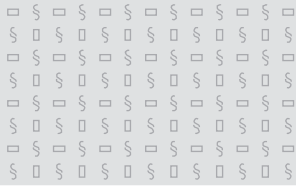
PERSONAL RIGHTS AND DUTIES OF PARTNERS

- EQUALITY
- NO to live together, to be faithful to each other, to mutually respect their honour and human dignity, to help each other and no duty to create healthy living environment and background
- to represent each other
- NO to adopt a child together, NO to be foster parents or guardians together



PARTNERS PROPERTY LAW

- NO JOINT PROPERTY OF SPOUSES
- NO COMMUNITY OF PROPERTY
- only OWNERSHIP WITH SHARES TOWARDS THINGS (CC)
- MAINTENANCE DUTY



DISSOLUTION OF PARTNERSHIP

- ONE GROUND:
 - no existence of partnership *de facto*

- NO SPECIAL PROCEEDINGS:
 - on the motion of one of the partners
 - plaintiff x accused



TWO WAYS TO DISSOLUTION OF PARTNERSHIP

■ PROOF OF BREAKDOWN

- duty of a plaintiff

■ PRESUMPTION OF „NO EXISTENCE OF PARTNERSHIP“

- „agreement“ of both partners



CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

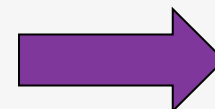
■ Schalk and Kopf v. Austria

same-sex couple

- no possibility to marry or have their relationship otherwise recognised by law

no violation of Art. 12

no violation of Art. 14 in conjunction with Art. 8





■ Fretté v. France

a single homosexual man

- „difficulties with practical consequences - child's arrival“
- x the best interest of the child - balance - the principle of proportionality

no violation of Art. 14 in conjunction with Art. 8

■ E. B. v. France

a woman living in de facto same-sex partnership with a woman, who did not want to adopt jointly

- the role of mother and father
- but personal qualities and aptitude for bringing up the children
- best interest of the child

violation of Art. 14 in conjunction with Art. 8

no effect on Czech AF or other acts



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COHABITATION



NATURE OF COHABITATION

de facto relationship



PERSONAL RIGHTS AND DUTIES OF COHABITEES

- EQUALITY (Constitution)
- NO to live together, to be faithful to each other, to mutually respect their honour and human dignity, to help each other and no duty to create healthy living environment and background
- NO to represent each other
- NO to adopt a child together, NO to be a foster parents or guardians together

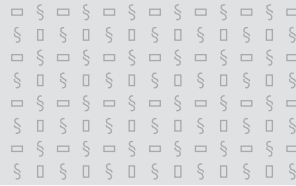


PROPERTY ASPECTS OF COHABITATION

- NO JOINT PROPERTY OF SPOUSES
- NO COMMUNITY OF PROPERTY
- only OWNERSHIP WITH SHARES TOWARDS THINGS (CC)
- NO MAINTENANCE DUTY

only rights and duties according to contracts/agreements -
(inominat) - seldom happen

property protection of unmarried mother or pregnant woman
(LIMITED MAINTENANCE etc. - CC: 920/1 and 920/2)



CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

■ Keegan v Ireland (1994)

the child was born out of marriage, but there was informal long lasting relationship!

mother left the father and gave the child for adoption

violation of Art. 8