

Same-sex partners in Hungary Cohabitation and registered partnership

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1. Introduction

Same-sex partners can neither marry each other nor establish a registered partnership according to the Hungarian legal system currently in force. Nevertheless, they are permitted to live in an unmarried partnership within the framework of the current legislation in the field of informal cohabitation. This type of partnership is not regulated in the Family Act, Act No. IV. 1952, and so does not create any familial relationship between the partners. This cohabitation – *élettárs* in Hungarian – is defined in the Civil Code,¹ Act No. IV. 1959. The Code contains a number of limited and brief legal provisions with regards this cohabitation form.² Cohabitation was legally defined and regulated laconically in 1977 for the first time as a non-registered form of partnership restricted to different-sex partners. Later, in 1996 the gates of this informal partnership were opened for same-sex partners as a consequence of a decision of the Hungarian Constitutional Court.

Although this is the state of the law as of early 2008, some important steps have been taken since 2001. The most notable changes happened recently, especially in 2007. In December 2007 the Hungarian Parliament approved the Act on Registered Partnership, which will enter into force in January 2009. The Act makes it possible for same-sex and different-sex couples to enter into a registered partnership. Although there are some differences between the regulation of marriage and of registered partnership, the new Act orders the application of rules regarding marriage to apply correspondingly to registered partnership, at least as a main rule and for the relationship between the partners. The enactment of this Act is admittedly the most notable change in the regulation of same-sex partnerships, but many other changes have also taken place. The Constitutional Court has pronounced a number of judgments over the course of the last fifteen years affecting the legal position of homosexual persons and the adjudication of homosexuality itself. Moreover, the recodification of the Civil Code has been going on since 2001. Inasmuch as the family law will comprise one part of the Civil Code, this process has involved the alteration and modernization of family law and especially the revision of the legal regime with respect to unmarried and/or registered partnership. Although some steps, decisions and accepted stand-points during this process had a positive effect on the legal acceptance of same-sex partnership

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1 § 685/A Civil Code (*Polgári törvénykönyv*).

2 §§ 578/G (1)-(2) and 685. b) Civil Code.

as marriage, there were also negative steps and decisions, which go some way to explaining the delay of legal acceptance in Hungary.

2. The change in the legal status of homosexual couples in the light of the Constitutional Court's decisions

2.1. The decision resulting in the acceptance of same-sex informal cohabitation and the regulation of unmarried partnership currently in force

In 1995, the Constitutional Court had to deal with the institution of same-sex marriage and same-sex cohabitation.³ A petition arrived to the Court alleging that the rule of the Family Act stating that only a man and a woman can enter into a marriage and the rule in the Civil Code stating that only a man and a woman can cohabit gives rise to sex discrimination. The Court analysed the institution of marriage and of cohabitation and stated very definitively that marriage must be restricted to different-sex couples. In the opinion of the Court the traditional purpose of marriage makes it impossible to permit same-sex couples to enter into marriage, also with a view to the fact that marriage is protected in the Hungarian Constitution.

In connection with cohabitation the Court took a more liberal stance, but it did not deal with the real function and purpose of cohabitation at all. The definition of unmarried partnership and the regulation for cohabitants was considered and the Court examined which legal rules contained rights and obligations for unmarried partners at that time. These were mostly rules in the field of social law, as well as civil and criminal procedural law. As a result of this investigation, the Constitutional Court stated that the differentiation between partners according to their gender violates the constitutional prohibition of discrimination, with certain exceptions. The exception applies if the law has been created with regard to either common children or to marriage with a third person. In these cases it is essential to distinguish between the forms of cohabitation according to the gender of the partners.

The Constitutional Court stayed the proceeding in this case so as to ensure that Parliament could resolve this unconstitutional situation. In 1996 the definition of cohabitation was extended to same-sex partners. Unmarried partners are two persons with an emotional and economic partnership who live together, without entering into a marriage, in a common household. Neither the establishment nor the termination of this partnership requires any registration procedure. The unmarried partnership comes into being in an informal way. Most of the time this does not cause any problem. However, there are other cases when the lack of the registration does create legal dispute. Sometimes the question arises whether the partners actually cohabited at all. In such cases evidence plays an enormous role and the court's task is to determine not only whether the partnership existed, but if it did exist the dates of its commencement and termination.

The court has to compare the cohabitation's definition and the facts of the concrete situation. Nowadays there is an established judicial practice in interpreting and applying the elements of the definition, but since this is always developing, this factual model cannot operate as safely as registration. Real importance is attributed to three elements of the definition: the emotional partnership, the economic partnership and whether the partners' relationship was recognised and obvious to third persons. Whether the couple lives together plays a decisive role in the decision, as does the economic partnership, which after analysis of the case law can be seen to be playing an increasing role. This last factor is balanced very critically and often the stated

³ Decision of the Constitutional Court No. 14/1995 (III. 13.), *ABH (Alkotmánybírósági Határozatok, Constitutional Court Decisions)* 1995, p. 82.

lack of economic co-operation ensures that the couple is regarded as not having reached the required level of commitment necessary for cohabitation. Sometimes the courts demand a higher level of co-operation than is often required of married partners!

Same-sex cohabitants have almost the same legal position as different-sex cohabitants, *e.g.* the Civil Code regulates the financial issues in the same way. Both groups of couples can enter into a cohabitation contract, but it occurs rarely. The statutory property regime is a partial community of property regime, namely the community of property of cohabitants. It resembles the matrimonial property of spouses, but there is a clear distinction between them. The cohabitants do not have any maintenance obligation according to the Civil Code, neither for the period of cohabitation, nor after the termination thereof. Nevertheless, judicial practice has developed differently; according to this development, the partners are obliged to maintain and take care of each other during the duration of the cohabitation since this is regarded as an integral element of cohabitation.

The parent-child relationship is not regulated by the Civil Code. Under the regime of the Family Act, parental responsibility does not depend on the marital status of the parents. The decisive factor is the establishment of the mother's or the father's legal parentage. Nevertheless, there are differences in the establishment of the paternal presumption. Actually, this is true only for different-sex couples.⁴

2.2. Other decisions of the Constitutional Court having relation to homosexuality

The fundamental premise that marriage can only entail a relationship between one man and one woman was repeated and affirmed by the Constitutional Court several times. Two decisions were handed down in October 2007,⁵ which referred to the fact that marriage is the community of life between persons of different sex; a value protected by the Constitution. It was emphasized that the subject matter cannot be extended.

A decision of the Constitutional Court in May 1996 dealt with the question whether it should be forbidden (or at least restricted) for a minor to be a member of an association that is connected with homosexuality. The court procedure was initiated by the President of the Supreme Court. The aim of this procedure was to draw a line between two fundamental rights, on the one hand the right for a child to get the care and protection from the State that guarantees his or her proper physical, mental and moral development, and, on the other, a child's right to associate when he or she intends to be a member of an association that legally protects the interests of homosexuals. In its explanation the Constitutional Court stated that the freedom of association is a fundamental right, the restriction of which depends on two factors, namely the child's maturity to decide alone and the exact object of this decision.

The Constitutional Court emphasized that the State is obliged to protect the child from such dangers and risks that he or she is not able to appreciate due to his or her age or to measure the consequences of such a choice. The membership of an association requires taking a public stance and it thus can adversely affect the child's physical, mental and moral development, especially if the commitment is perceived in an inconsistent or negative way in the society.

Concerning the social perception of homosexual persons and of homosexuality itself, the Court declined to hold on the moral qualification of homosexuality. Nevertheless, it expressly

4 About the legal status of cohabitants and the judicial practice in details in English: O. Szeibert-Erdős, 'Unmarried Partnerships in Hungary', in K. Boele-Woelki (ed.), *Common Core and Better Law in European Family Law*, 2005, pp. 313-330. In Hungarian: O. Szeibert-Erdős, 'Cohabitation', in A. Körös (ed.), *Családjogi Kézikönyv* (Family Law Handbook), 2007, pp. 850-898.

5 Decisions of the Constitutional Court No. 65/2007 (X. 18.) and No. 75/2007 (X. 19.), *ABH* 2007, pp. 940. and 943.

stated that neither the peculiarities of homosexuality, nor the current social status of homosexual persons could be ignored when determining the child's right of association in that concrete situation. When weighing the child's decision to join an association, the problematic social integration of homosexuals must be taken into account. According to the decision, homosexuals are generally not accepted in Hungary at this time, which could even result in discrimination.

The 1996 decision stated that the State can limit the minor's right of association. This standpoint was severely criticised. Although the Constitutional Court emphasized its neutrality, many believed the decision to take a slanted stance. The starting point of these criticisms was that the moral development of the child could not be protected without deciding what is moral and is immoral.

This decision in its very detailed explanation also referred to its abovementioned decision handed down in 1995. The Constitutional Court admitted that same-sex partnership had been declared to be a value that required legal protection if the relationship was long-lasting and limited to special relationships. However, the Court confirmed a year later that the ground of this declaration was not the partnership's homosexual character, but the fact that cohabitation was a kind of partnership that was acknowledged in other fields of law. Besides, the differentiation between different-sex and same-sex partnerships seemed to be without any foundation.

In 1999 and 2002, the Constitutional Court decided two other relevant cases.⁶ These changed certain rules of the Criminal Code in connection with homosexuality. The first of the decisions put an end to the regulation of incest, which was discriminatory towards same-sex fornication between brothers/sisters'. This was punished as a crime, in contrast to fornication between different-sex brothers/sisters. The 2002 decision equalised the age of consent for different-sex and same-sex relationships. Although these steps were taken in the field of criminal law, they are really important as they indicate the change in the social and legal perceptions towards homosexuality.

3. Conceptions about the same-sex partnership in the course of the codification process

3.1. The Concept and the Regulation Programme of the new Civil Code

The Concept and the Regulation Programme of the recodified Civil Code was published in 2003.⁷ The problem of unmarried partnership and the choice among the different alternative solutions was one of the most debated issues of family law. According to the Concept, there was a need to guarantee further rights for cohabitants, but only in a way that would not weaken the institution of marriage. This idea was based on the increasing number of cohabitants and the fact that cohabitating parents had the same parental rights as married parents. The aim was to grant maintenance rights and rights with regards the use of the common home to partners living in long-term partnerships. The Concept itself contain neither any willingness for the introduction of a registration method nor the institutionalisation of same-sex partnerships.

The Regulation Programme dealt in detail with the regulation itself. It affected the property issues of unmarried partners and definitively determined that there was no proposal to introduce the registered form of non-marital partnership. The issue of same-sex partnership remained outside the scope of the new Civil Code.

⁶ Decisions of the Constitutional Court No. 20/1999 (VI. 25.), *ABH* 1999, p. 159. and No. 37/2002 (IX. 4.), *ABH* 2002, p. 230.

⁷ *Az új Polgári Törvénykönyv koncepciója és tematikája* (Concept and Regulation Programme of the New Civil Code), published in *Magyar Közlöny* (Hungarian Official Gazette), February 2003.

3.2. *The Experts' Proposal of the new Civil Code*

The slogan characterizing the Experts' Proposal of the new Family Law Book issued in 2005 was 'deliberate progress'.⁸ This was especially true for non-marital partnership. The detailed rules of the Proposal were in accordance with the Concept, but they went one step further with regard to the registration of partnerships. Although the Proposal emphasized avoiding the introduction of a marriage-like 'registered partnership', the so-called 'optional registration' was drafted with the aim of granting a possibility for those partners (*e.g.* same-sex partners) who desired official registration. However, cohabitation would have preserved its factual character even in these cases since this registration would only have had a declarative, and no constitutive, character. It would have served only as an evidence of the existence, duration and termination of unmarried partnership.

According to the Proposal's explanation the registration of unmarried partners would have been a special register, especially created with this single aim. The couple would have been able to jointly register their non-marital partnership in the registers maintained by the local government's notary. The registration would have been terminated on the couple's joint petition or upon the petition of either one of the cohabitants with notice being sent to the other partner. To avoid the polygamous registration, the Proposal contained the rule that only one partnership could have been recorded for one person at the same time. The Proposal did not connect any other legal effect to the fact of registration, apart from serving as evidence in the case of dispute.

3.3. *The actual proposals of the new Civil Code*

As of early 2008, there are now two proposals for the new Civil Code since the codification process has separated since late 2007. One official proposal is that of the Ministry of Justice⁹ and one is of the Experts.¹⁰ Their standpoints in the matter of registered partnership are slightly different. (Although the new Act has since been approved in the meantime, this fact that there are two proposals now can nonetheless still be important).

The Proposal of the Ministry of Justice would modify the institution of cohabitation and would introduce a new one, namely registered partnership. Nevertheless, it should be mentioned that this latter institution is a real registered partnership in terms of its content, but the Hungarian terminology is misleading. In Hungarian cohabitation is *élettárs*, so *élettárs* can roughly be translated as living in a factual non-registered unmarried partnership. Registered (non-marital) partnership was labelled in the Proposal as *bejegyzett élettársi kapcsolat*, that is to say registered cohabitation. It worth using the term registered partnership, rather than registered cohabitation.

The non-registered cohabitation has preserved its character since 2005 as it was formulated in the abovementioned Experts' Proposal. However, registered partnership has been drafted as a novel solution. According to the Experts' Proposal two persons – either same-sex or different-sex – can enter into registered partnership by declaring their intention before the registrar. The regulation in case of marriage would be applied to the establishment and termination of the partnership. The rules with regard to maintenance, property issues, and for the use of the common household would be the same as for married partners and the surviving registered partner would

8 Among others the periodical *Családi Jog* (Family Law) published the Experts' Proposal in parts. The proposal about cohabitation was published in August 2005. A. Körös, "Fontolva haladás" – az új Ptk. Családjogi Könyve 1. Rész: Az élettársi jogviszony szabályozásának szakértői javaslata' ('Deliberate progress' – Family Law Book of the new CC Part 1 Expert's Proposal for the regulation of cohabitation), 2005 *Family Law*, no. 2, pp. 1-10.

9 It is available on the homepage of the Ministry, www.irm.gov.hu/download/ptk-normaszoveg-tervezet_20071029.pdf

10 Published in: L. Vékás, *Szakértői javaslat az új Polgári Törvénykönyv tervezetéhez* (Experts' Proposal to the Draft of the new Civil Code), 2008, under edition.

inherit in exactly the same manner as surviving spouses according to the current system of intestate succession.

Although the Experts' Proposal of 2007 follows a different approach, the essence of the regulation resembles the Proposal of the Ministry. Non-marital partnership would be regulated as a family relationship in form of registered partnership and of cohabitation. Both forms of partnership would be open to both different-sex and same-sex partners without any discrimination. The aim is to realize the principle of equal treatment of persons living in the same kind of partnership. However, neither forms of unmarried partnership would result of certain legal effects of the marriage, namely the right to the partner's name, right of adoption and the paternal presumption based on the partnership itself.

According to the 2007 Experts' Proposal registered partnership would be registered in a special register by the registrar. Their property relationship, including maintenance and use of the common flat, would be identical to that applied to the married partners, but in other issues the rules for cohabitants would be applied for registered partners. Both the establishment and the termination of the partnership are regulated in more detail than in the Proposal of the Ministry. Registered partnership would be terminated not only if one partner dies or if one of the partners get married, but also by means of a dissolution procedure and by the registrar upon the common petition of the partners.

4. Act on Registered Partnership

In the summer and autumn of 2007 debate centred on same-sex marriage and same-sex registered partnership. While the Alliance of Free Democrats declared their intention to equalise the rights of same-sex partners with married partners, the Hungarian Socialist Party proclaimed that they were in favour of introducing same-sex registered partnership. The Bill itself was submitted in November and on 27th December the Hungarian Parliament approved the new Act on Registered Partnership, which will enter into force in January 2009. According to the literal translation, the institution will be called 'registered cohabitation', but this new form of partnership corresponds (in terms of its content) to the institution of registered partnership as this terminology is used in this context in Europe. (Registered partnership would be *bejegyzett partnerkapcsolat* in Hungarian but the Act uses the phrase *bejegyzett élettársi kapcsolat* that is to say registered cohabitation.)

The Act No. CLXXXIV. 2007 does not give any definition of the registered partnership. However, it states how to establish this form of partnership. The Family Act follows the same method of regulation in case of marriage. Registered partnership can be created by two adults if they declare to enter into registered partnership with each other.¹¹ Minors are not allowed to enter into this partnership even with permission.¹²

One of the most important peculiarities of the partnership is that it is open both for same-sex and different-sex partners. It seems to be one institution, but in reality there are two institutions: registered partnership for different-sex couples and registered partnership for same-sex couples. Their function is far from identical since while same-sex couples only have the possibility to cohabit, a man and a woman are also able to get married. The explanation of the Act is very general and laconic, it refers to the fact that the family model based on marriage is increasingly chosen by fewer people, as it shown by statistical data. The question of why it seemed necessary

¹¹ § 1(1).

¹² § 1(2).

to grant the right to registered partnership not only for same-sex partners can not be answered upon the mere explanation. It fixes that the increase of unmarried partnerships is a social tendency which is to be taken into attention just as the claim of same-sex partners for a legally regulated partnership. The consequence drawn by the legislature and put forward as a motive for the Act is that these two tendencies are connected.

Nevertheless, the question remains concerning the real purpose of the legislature: it seemed rational to meet the demands of the same-sex partners and of other couples who do not want to marry each other and at the same time do not want to cohabit either. Furthermore, it seemed to be political and social nonsense to introduce a marriage-like institution restricted to same-sex couples. The reactions and critics unambiguously indicate that society has understood the message of the Act: the emphasis has been laid on same-sex partnership.

4.1. The comparison between marriage and registered partnership

The Act contains four titles, as it regulates the establishment of registered partnership, its legal consequences, its termination and deals with the acts which are to be altered according to the new form of partnership. The process of establishment is the same as in case of marriage. The partners should declare their intention to enter into this partnership before the registrar who records the details and selects the day for the registration of the partnership, taking into account the parties' wishes.¹³ The registered partnership is established by the declaration of the parties' identical intention before the registrar (identical to marriage). The registration is not a constitutive act, merely declarative. From this point of view the only difference between marriage and registered partnership is that a minor over 16 can marry with the permission of the guardianship authority. This is impossible when entering into a registered partnership.

The new Act alters the Act on Maintaining the Register stating that not only births, marriages and deaths have to be registered, but also registered partnerships.¹⁴ This procedure follows the model of marriage. There are special regulations in connection with registration of the non-Hungarian citizen's registered partnership and with issue of certification of no impediment being necessary for the registered partnership's registration abroad.¹⁵

According to the Act on International Private Law, if a non-Hungarian citizen wishes to marry in Hungary, he or she has to certify that there is no impediment of marriage under his or her personal law. The Act on Registered Partnership refers to this rule, stating that the registrar can provide an exemption under the certification as in case of marriage. A Hungarian citizen, who wishes to enter into a registered partnership abroad, can claim for such a certificate by the registrar. He or she has to attach the declaration according to which there is no statutory impediment of entering into a registered partnership to his or her knowledge.

It is a really essential point that the same authority, *i.e.* the registrar, has competence to proceed in both ceremonies according to the same principles. The same is true of other formal criteria too, namely that the establishment of registered partnership should happen in public and solemnly; deviation from this rule is possible only at the parties' request.¹⁶

With regard to the legal effects, the Act orders that in questions not regulated by this Act, the rules of the Family Act concerning marriage are to be applied analogously.¹⁷ This seems to be the key point: registered partnership results in the consequences of marriage as a main rule.

13 § 15 entering the § 26/G into the Act on Maintaining the Register.

14 § 15 entering § 35/A into Act on Maintaining the Register.

15 § 15 entering § 26/E and 26/F into Act on Maintaining the Register.

16 § 15 entering § 26/G into Act on Maintaining the Register.

17 § 2(1)-(2).

Nevertheless, although many of the consequences of marriage are extended, this is not without exception. The property consequences are the same in their entirety, that is to say, the statutory property regime for registered partners is the community of property. Moreover, both for maintenance of the registered partner and for the use of the common flat, the rules to be applied for marriage and registered partnership are identical. The personal legal effects are also the same as a main rule, but the Act mentions two exceptions: registered partners – at least by their status – cannot use their partner's surname and they can not adopt a child together.¹⁸

The regulation of the use of the surname for married couples in the Family Act is a modern one, being in force since January 2004. According to these rules, which are in line the international tendencies, not only the fiancée can take the man's surname, but the fiancé can choose to bear the woman's surname. Besides, they can have a common family name by connecting their family names. On the other hand, registered partners bear their own family name in spite of their status. The explanatory notes to the Act does not provide any motive for this, but the Experts' Proposal 2007 states that the rules for married partners' name are inherently connected to marriage pursuant to public opinion.

The prohibition of joint adoption means that registered partners are not permitted to adopt a child as adoptive parents together. Furthermore, step-parent adoption is also excluded, such that a registered partner cannot adopt the child of his or her registered partner and it is irrelevant whether the child is related by blood or was adopted.

Registered partnership can be terminated in a similar manner like a marriage, but there are some differences, too. The death of one partner terminates the partnership but it can be terminated by court. The court's action corresponds to divorce. If different-sex partners of registered partnership enter into a marriage, this results in the automatic termination of the registered partnership. An extra method of termination not available to spouses is the termination by public notary.¹⁹ According to the explanation this option provides a quicker and a more flexible procedure. The termination process before the public notary is limited to those situations laid down in the Act. There are three cumulative requirements to be met: (a) the registered partners have to claim the termination of the partnership together without any undue influence, (b) they do not have common minor children or common children that require maintenance, *e.g.* child of legal age who is studying, and (c) they have arranged their property issues.²⁰ These issues are identical the issues required to be arranged by spouses wishing to divorce by virtue of mutual consent: maintenance, the right to use the common flat after termination and distribution of the common property. The Act stipulates in which cases it is impossible to initiate proceedings before the public notary and arranges in detail the regulations of the proceeding itself.²¹ The aim is to guarantee a quick procedure by applying certain regulations of the civil procedure law.

The Act on Registered Partnership contains rules about the modification of the Family Act,²² the Act on Maintaining the Register²³ and the Civil Code.²⁴ The tendency is unambiguous: registered partnership has been raised, or at least almost been raised, to the level of marriage. This statement is supported by the regulation of void registered partnerships. According to the principle of monogamy, the Family Act declares marriage invalid if one of the parties has another

18 § 2(1) second sentence.

19 § 3(1)-(2).

20 § 4(2).

21 § 4(3) and §§ 5-12 on procedural rules.

22 § 13.

23 §§ 14-15.

24 § 17.

existing marriage. This rule is amended by the Act such that an existing registered partnership will also result in a new marriage or registered partnership being regarded as void.²⁵ A similar rule is also apparent with regards the right to spousal maintenance after divorce ceasing not only by entering into a new marriage, but also by establishing a registered partnership.²⁶ Besides, the person of legal age being in need of maintenance can claim it from his or her relatives not only if he or she does not have a spouse after divorce, but also if he or she does not have a registered partner.²⁷ Of course, the minor with the right to maintenance precedes both the married partner and the registered partner.

The modification of the Civil Code affects two issues, namely if the guardian *ad litem* if the partner is suffering from a form of incapacity. The inheritance rules of the Code are also modified as if the registered partnership is terminated by a partner's death. Registered partnership also has the same property consequences as the marriage. The registered partner succeeds just like the widow/widower.²⁸

4.2. The comparison between registered partnership of same-sex partners and of different-sex partners

Although registration has the almost same legal effects in both situations, there are some differences in relation to children. Although joint adoption is prohibited regardless of the gender of the registered partners, the rules of paternal legal status and of the common child's surname²⁹ are the same in a marriage and in a different-sex registered partnership. The paternal presumption is statutorily established both in marriage and in registered partnership between man and woman.³⁰

4.3. Three stages: marriage, registered partnership ('registered cohabitation') and cohabitation

There seems to be a lot of possibilities for partners to choose their relationship form: for same-sex couples they can enter into a registered partnership or a factual cohabitation and different-sex couples are provided the same possibilities, alongside the possibility of marriage. With respect to different-sex couples, one can question whether there is a real need for three different choices. The difference emphasised between cohabitation and the other two registered forms of partnership. The regulation of cohabitation has always showed a very delicate balance between real social facts, *e.g.* an increase in the number of cohabitants and the legislature's desire to preserve the institution of marriage. This balancing act can be observed both in the Proposal of the Ministry and the Experts' Proposal.

Nevertheless, the same seems to be true for the Hungarian registered partnership. It illustrates a cautious balancing of the strong claim of same-sex partners to legalize their partnership and the fear of permitting same-sex partners into the institution of marriage. At least two signs of circumspection are apparent. One is the fact that registered partnership is not restricted to same-sex couples and the other is the Hungarian terminology used. As has been referred to above several times, the name of the new institution is actually registered cohabitation. This phrase allows someone to suppose at the first sight that there is only a slight difference between the registered and non-registered forms of cohabitation. As we can see, this interpretation does

25 § 13 modifying § 7(1) Family Act and § 17(2) modifying 7(2) Family Act.

26 § 17(2) modifying § 22(2) Family Act.

27 § 17(2) modifying § 60(1) Family Act.

28 § 17(1).

29 § 13(4) modifying 42(1) Family Act.

30 §§ 13 and 17(2) modifying Family Act.

not square with the legal facts. The two ‘forms of cohabitation’ are far from each other not only in terms of family law, but also in inheritance law terms.

The Hungarian legislature has created an institution guaranteeing that same-sex couples are entitled to almost all of the rights and duties granted to spouses (as some exceptions exist). Nevertheless, the creation of this new institution could have been an onerous step which necessitated its mitigation. That is to say, it has ‘only’ been established as a registered form of cohabitation and ‘not restricted’ to homosexuals.³¹

5. Conclusion

As it has been shown, the codification process with respect to same-sex relationships has been accelerated. In 2001, experts seemed to be satisfied with the level of regulation for same-sex couples. Their ideas to widen the rights and duties of cohabitants stemmed from the conviction that the law has to mirror social change primarily in connection with different-sex partners. The optional registration meant a step further but only one cautious step as no special legal consequences were attached to the registration itself. (However, a conception emerged before 2007 according to which this not obligatory registration would have had some effects but only in inheritance law.)

Although the homosexual lobby and subsequently the liberal political conviction, considered this problem to be a topical one, it could have been felt that society itself was not ready to tolerate this kind of partnership. The explanations of the decisions of Constitutional Court showed this attitude very clearly. However, the Act No. CXXV. 2003 on Promoting Equal Treatment and Equal Chances, which was approved in December 2003, had important meaning for liberal movements. The Act prohibits both direct and indirect discrimination – among others – upon someone’s sexual direction.³² The explanation emphasises that the designation of sexual direction as a feature is in harmony with Direction (EC) No 2000/78.

With having regard to the actual situation, some questions can be raised. One of them is whether the Act will enter into force in this form next year or whether the codification process of the Civil Code will amend the system by approving a less permissive regime. Another question is whether this Act will function in practice, that is to say, whether different-sex or same-sex partners will actually enter into registered partnership.

31 Despite the cautiousness, this institution is not supported by all. In late April 2008, the Christian Democratic People’s Party announced to the press that they will initiate the annulment of the Act on Registered Partnership before the Constitutional Court, as it is contrary to the Hungarian Constitution which aims to protect the institution of marriage and the family, www.kdnp.hu/index.php?type=cikk&cikkid=3444

32 §§ 8 *m*) and 9.