CHANGES IN THE MATRIMONIAL PROPERTY LAW IN HUNGARY
(PAST – PRESENT – FUTURE)
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I. Introduction:

A new democratic system brings about changes in Hungary from 1990. Free-market economy causes more unemployment, especially among the female population. A lot of acts already have been changed to some extent, but further supplements and reformations due to new socio-economic relations and new political system in Hungary are inevitable. In addition, because Hungary became a member of the European Union, it is likely to shape the formulation of future regulations within the framework of the law of the European Union and its member states.

After the World War II, there have been extensive changes in the family law systems of Hungary. In the areas of marriage, divorce, transmission of property, and children's rights, legal norms, which had remained relatively unchanged for years, were swept aside. The direction of change: a move towards the privatisation of the family. In relation to normative guidelines on entry into or exit from marriage, the law is moving away from prescriptive action towards regulation of outcomes, that is, towards a reactive position concerned with regulating the consequences of changes in family organisation. The law is now concerned to protect the interests of dependent groups - which may include children, women, the elderly and ethnic minorities, but also to protect the public interest from claims made upon it by vulnerable members of society (Soltész.1988.p.58-89).

The 1952 Family Code - still in force after a series of amendments - has put an end to previously assured authority of husband over wife, just as it has terminated paternal authority over the child substituting that with the joint parental competence that already postulates equal right of father and mother. A 1986 amendment of this law also stipulates that husband and wife are supposed to decide about basic family affairs by mutual consent. Both married parties are bound to respect the autonomy of other in case of decisions concerning him/her. Management of the household, ie. contribution to common expenses also assumes equal rights and acquired property - regardless of questions whether it has been obtained from the earnings of this or that party and to what a proportion of it - is deemed to be of common ownership and is to divided to equal shares, if the marriage breaks up.

Liabilities of spouses are also equal. According to the law housework is not solely the responsibility of the wife - as was the case according to the previous law - but two parties must decide about the division of the tasks with mutual consent, whether it is about taking care the children or the spouse. If it is decided, for instance that the wife devotes all her activities to the family and the education of the children, having no wage earning employment all properties bought from the income of the husband are still parts of common possessions and the wife cannot be qualified as dependant. Fidelity, serving each other's interests, bearing responsibility for the other are again requirements equally shouldered by the spouses. This obligatory marital solidarity is also the reason why handicapped (previous) spouses - whether men or women - must be helped if in the need of support by the other party even if separated or divorced. (Soltész.1988.p.89-101.).
Equal rights and duties of men and women in the family life after separation is also a binding principle. Parents are not only bound to cooperate in the upbringing of their children and in the serving of their interests within the frames of the marriage but also in case of their divorce, when they may lay a claim for the awarding of the custody of the children. In case of a difference of opinions the court must decide in favour of a warding the children to the parent that can assure presumably better physical, mental and moral conditions for the development and education of the child irrespective of the fact that the selected parent is the father or the mother.

(In reality the parent, the child is awarded to, is in the majority of the cases the mother, this being also accepted by most of the fathers. In some of the cases however, the father lays a claim for the child, too and in case of losing the suit, complains of a promother judicial practice. And in some instances this complaint is not all baseless). (Papp.1991.p.24-68.).

Proportion of disintegrated families is very high, number of divorces reaches as much as 28-30 thousands a year, with about this same number of children concerned. Inclination to get married is less common, whereas the number of single mothers bringing up their child on their own is growing (Families with only one parent are up to 13%).

II. Rights and Responsibilities of spouses:

Both husband and wife shall have equal rights in the possession and the management of family property.

In case of divorce, the wife shall retain such property as belonged to her prior to her marriage. The disposal of other household properties shall be subject to agreement between the two parties. In cases where agreement cannot be reached, the court shall render a decision after taking into consideration the actual state of the family property, interests of the wife and the child.

Property acquired during cohabitation would be equally divided. Nor was it necessary to enter into formal marriage. These provisions applied to de facto cohabitations, a move, which was thought necessary to protect women from persons taking advantage of the sexual freedom of the times.

General principles

The Hungarian Family Code established the complete equality and individual rights of the spouses, (even with respect to nationality, choice of name and residence, and exercise of parental rights,) in the matters of name, choice of residence, property rights and in decision making concerning children and other questions of family life. Equality of sex was made a constitutional principle in the Hungarian Constitution of 1949 art.67.

The Family Code pursuants to the Fundamentals, provides simply, in art.72.: "Questions concerning the children's upbringing and other questions of family life shall be decided by the spouses jointly. Each of the spouses shall be free to select his occupation, profession, and place of residence.". Equal rights to possess, use and dispose of joint property are established in art.27., and equal rights and duties between father and mother with respect to their children, in art.72. When there is a dispute between the parents with respect to the upbringing of the
children, art 73. provides that in the absence of agreement the disputed question shall be resolved "by the agencies of guardianship with the participation of the parents.

Art. 77. provides that the spouses should live together, be loyal to one another, be considerate and respectful of one another and help each other. Art.75. provides that both spouses have the duty of caring for the children and the management of the household, and art. 32. adds the joint duty of contributing to the needs of the household.

A married couple presents itself, for many purposes, as a unit. But the unit consists of two persons. A married couple is viewed as living under such or such marital regime, and the incidents of their property affairs are determined by it. Property acquired during cohabitation would be equally divided. Nor was it necessary to enter into formal marriage. These provisions applied to de facto cohabitations, a move, which was thought necessary to protect women from persons taking advantage of the sexual freedom of the times.

Both husband and wife shall have equal rights in the possession and the management of family property.

Both parties must cooperate in the control of the community found, but in everyday transactions a third party in good faith may assume that the other spouse has given a power of representation to the spouse with whom the third party has been dealing.

Family Code laid the foundation for the system of separate property between spouses. Each spouse owns and controls his or her own property during the marriage and, on dissolution, each takes out what belongs to him or her.

Separate property is property, which belongs to each of the spouses. In conformity with article 28. regarding separate property of spouses, the following matters are considered:

- possessions before the marriage
- property presented to one of the spouses during the marriage
- property inherited by a spouse during the marriage
- individual possessions for personal use
- according the sec.31. the spouses may voluntarily divide their property themselves. In this case, they would not go to court. A lawyer or notary must certify such a decision by the spouses. After dividing common property, it becomes separate property.

As earlier Hungary belonged to the socialist countries, so I must write about the socialist systems of marital property law.

While the communist ideology held sway in Hungary, only the state's property was recognised as the basis of the economy. Private property took on a secondary importance. Civil legislation included many rules restricting private individuals right to their possessions. For instance to each family belonged only one dwelling house and one car.

The difficult problem of how to combine community property with equal rights of husband and wife is solved in the socialist countries by providing for the joint management of the community fund by both spouses together. Where (eg: in Hungary) private property is limited to goods of use and consumption, enterprise capital cannot enter a marital community fund.
In the socialist laws on marital property, a third party in good faith may assume that the party with whom he is dealing is acting with the consent of his spouse in dispositions of community assets.

As all systems of community of acquests, those of the socialist countries designate as the community fund that part of a married couple's property which is acquired during marriage through gainful activity, while property brought into the marriage or acquired during marriage gratuitously is owned separately by each spouse. Property gainfully acquired during the marriage is commonly designated by law as separate property of one spouse if it consists of objects which by their nature serve the personal needs or the exercise of a trade or profession of that spouse, at least where their value is not disproportionately high in relation to the common income and property.

The very idea of community of acquests in general, and of its socialist version in particular, implies that the fruits of labour are to be the common fund of both spouses. But on the other hand free disposition of earnings is an effective incentive. Besides, an employer is little inclined to deal with anyone but his individual employee. In Hungary, as in most of the other countries, the dilemma is solved in the following way. The claim to wages as yet unpaid is separate property. The pay does not become an asset of the community until it is placed into a common pool or turned into savings. So unpaid earnings are technically part of the community, but the earning spouse has full power to dispose of them.

For obligations incurred by him, either party is liable with his separate assets as well as with the share of the community fund that is his when that fund is partitioned. A creditor who is unable to obtain full satisfaction out of the separate fund of his debtor before termination of the marriage can, it seems, brings about partition.

In all the socialist countries, a marriage can be terminated easily when it has ceased to function. Upon termination of the marriage, the community fund as a general rule is divided equally. But partition in unequal parts may be judicially decreed in special circumstances. In Hungary, however, the Law on marriage, family and guardianship does not mention the possibility of an unequal division. (This law - sec.31.- sets forth the principle of equal division, Hungarian matrimonial property law does not discuss whether there are possible cases of unequal division)

Alimony may be granted to either party in a divorce, but in general it is only available for the period needed by a healthy individual for restoration to the labour market, or for periods of child care, and permanently in exceptional situations of illness or old age.

If the marriage is terminated by death, the surviving spouse, in addition to his one-half share in the community fund, takes as the sole heir if there are no descendants or ascendants. But if there are such relatives of the descendent or, if there are brother and sisters, or descendant of brothers and sisters, he takes with them as a co-heir or, as an usufructuary of the estate, which passes to the children. But in Hungary the rule of ancestral estate still survives.

The systems here under discussion are characterised by the fact that so far as the ownership and control of property are concerned, one starts out from the premise that husband and wife independent of each other. What each spouse owned before marriage and what he acquires after marriage remains his separate property, except assets, which the spouses choose to hold in co-ownership. The independence of the property masses of the husband and the wife can be
and often is, however, qualified by the existence of limited property interests of the other spouse.

In addition, the existence of the marriage between the spouses affects their property situation, one may say, indirectly, in a number of ways. There are duties of support, and rights of succession upon death. One spouse's creditors may, in certain circumstances, resort to assets belonging to the other spouse. Like any people who are not married to each other, spouses may make agreements by which they establish co-ownership of some specific asset or assets. Like any other persons, spouses may jointly engage in business as a partnership, of which they may be the only partners or partners together with other persons.

If the parties are divorced, neither spouse has any direct rights in property acquired during the marriage by the other. A spouse may, however, have a right to maintenance.

If the marriage is terminated by death, the property rights of surviving spouse will depend on whether the predeceasing spouse left a will.

The household expenses

FC section 32. provides that both spouses have duty the management of the household, and the joint duty of contributing to the needs of the household.

The matrimonial home

A spouse has statutory right to occupy the matrimonial home, ie: a right not to be evicted from the home unless the court orders otherwise. Under FC sec.31. the non-owning spouse is given statutory rights of occupation and either spouse can apply for orders relating to occupation.

In Hungary the spouses have rights to occupy the matrimonial home, each will have a right to use the house. But according to sec.31. spouses acquire the right to determine a matrimonial home different from legal one. Thus, if according to the law, there is considered common, they may, by mutual consent, consider it in an other way. Spouses are entitled to agree to voluntary division of their home in the case of divorce. If the spouses have concluded a marriage contract, the division of their home in dissolving the marriage is carried out according to the conditions of the contract. A marital contract is in force only if a notary or a lawyer has certified it.

The courts will normally be slow to make any order, which deprives either spouse of the use of the matrimonial home. If the spouses have separated, they will normally have come to some express or implied arrangement about the house, to which legal effect should be given. Similarly the problem may be solved by reference to the interests of the children of the marriage, or the husband would permit her to remain in the home (in the case when the house is the husband's property, or joint property.). In the case when the house is joint property, neither can have a better right than the other and the court must have a much wider discretion under section 31.
Another possibility would be to introduce a presumption that the matrimonial home is owned by both spouses.

The matrimonial home, which for most couples is their most valuable capital asset, is often the subject of a dispute on divorce. The court has a considerable discretion when deciding what should happen to the matrimonial home on divorce, and has range different orders, which it can make, in respect of the matrimonial home irrespective of ownership. The court could order one party to the marriage to transfer the matrimonial home or his or her share of the matrimonial home to the other party with the latter making any compensating payment.

According to CC sec.616. Both a spouse and the heirs may request redemption of the right of usufruct of the spouse. Redemption of the right of usufruct on the flat in which the spouse lives, of furnishings and installations used by him may not be requested.

Transactions between spouses

According to the Hungarian family law (FC sec.31.) where one spouse concludes a transaction, it is considered that he or she operates with the other spouses' consent. Some transactions require an obligatory notarisation. For these alterations, the consent of the other spouse must be expressed in written form. In other cases the other spouses' consent may be expressed verbally. If a spouse concludes a deal in connection with common property without the consent of the other spouse, the deal may be recognised as invalid by the Court. Other than that, it is imperative that the other party to the transaction was aware that the other spouse did not give his or her consent to the transaction.

Transactions between spouses in Hungary are allowed, but these contracts require an obligatory notarisation. A marital contract is in force only if a notary or a lawyer has certified it.

III. The Marriage Settlement

Until 1986. - in Hungary - persons without a settlement would contract marriages. Nowadays there is only one type of marriage settlement: prenuptial property contract. According to FC sec.27. spouses acquire the right to determine a matrimonial property regime different from legal one. Thus, spouses are entitled to transfer their separate possessions to their common property. On the contrary, if according to the law, there is considered common, they may, by mutual consent, consider it separate. Spouses are entitled to agree to voluntary division of their property. If the spouses have concluded a marriage contract, the division of property in dissolving the marriage is carried out according to the conditions of the contract. A marital contract is in force only if a notary or a lawyer has certified it.

In all the socialist countries, a marriage can be terminated easily when it has ceased to function. Upon termination of the marriage, the community fund as a general rule is divided equally. But partition in unequal parts may be judicially decreed in special circumstances. In
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Most property disputes between spouses do not occur during marriage, but on marriage breakdown when the court in proceedings for divorce has wide and flexible discretionary powers under sec. 31. to make property adjustment orders.

Under sec. 148. Civil Code the court can make the following property adjustment orders:
- transfer of property order,
- sale of property order,
- termination of co-ownership order

CC Section 147 provides that:
Any of the co-owners may demand termination of co-ownership; waiver of this right shall be null and void.

CC Section 148 says:
(1) Objects of co-ownership shall be divided primarily in kind.
(2) The objects of co-ownership or a part thereof may be given by court into the ownership of one or several co-owners against the payment of appropriate countervalue if it is justified with regard to the conditions of the co-owners. This requires the agreement of the co-owner acquiring ownership, except for the case if the part of real property is given to the ownership of the co-owner who is a resident of the real property, and this does not injure the justified interests of the resident.
(3) If co-ownership cannot be otherwise terminated, or division in kind would cause a significant decrease in value or would prevent proper use, the objects of co-ownership shall be sold and the sales price shall be duly divided among the co-owners. Co-owners shall have the right of preemption in the course of selling as well against third persons.
(4) A way of termination of co-ownership, which is protested against by all co-owners, shall not be applied by court.

In addition, the existence of the marriage between the spouses affects their property situation, one may say, indirectly, in a number of ways. There are duties of support, and rights of succession upon death. One spouse's creditors may, in certain circumstances, resort to assets belonging to the other spouse. Like any people who are not married to each other, spouses may make agreements by which they establish co-ownership of some specific asset or assets. Like any other persons, spouses may jointly engage in business as a partnership, of which they may be the only partners or partners together with other persons.
IV. Cohabitation without marriage

Although many couples live together as cohabitees (i.e.: as husbands and wives in the same household but without going through a ceremony of marriage), Hungarian law does not give them the same rights and responsibilities as spouses. This may have certain advantages (e.g.: there is no mutual duty of maintenance.), but being a cohabitee has several disadvantages. On relationship breakdown cohabitees are often in a particularly vulnerable position, as any property dispute must be determined according to the general rules of property law, for there is no discretionary jurisdiction to adjust the property rights of cohabitees as there is for spouses on divorce. On the death of a cohabitee who dies intestate the surviving partner is also not treated as favourably as a spouse is.

With increasing numbers of couples cohabiting and more children being born outside marriage, perhaps legislation should be enacted to give cohabitees more rights and remedies, although to do so might undermine the institution of marriage.

Unmarried people living together as husband and wife do not usually have the status of a married couple. But under the rules the resources and requirements of an unmarried couple living together are aggregated for the purposes of claiming social security benefits under the Social Security Act 1975.

There are no rules in the Hungarian Family Act for the cohabitation. Rules in regarding the cohabitation can be found in other codes eg.: Civil Code, Act II.of 1975 on Social Insurance etc.

Earlier - till 1977 - there was no rule in regarding to the cohabitation. The first step was in the modified Civil Code, which is in force today, yet. That is the following:

Section 685/A of CC declares:
Cohabitees are two persons living together in the same household in emotional and economic community without contracting marriage.

So we can see that according to the Hungarian law the cohabitation is when cohabitees - not only a man and a woman, but two persons, living together in the same household in emotional and economic community without contracting marriage. But sociologists and others who research cohabitation can make without do a precise formal definition and the law needs to be more precise: cohabitation a stable, more or less permanent, relationship between two persons who are not married to each other (though one or both may be married to someone else) and who share living facilities. They may have children, she may not take his surname, but they may have entered into a formal contractual relationship. The statistical data show that there is more cohabitation today than ten years ago.

Cohabitees during their relationship and on relationship breakdown are subject to the general law of property. Ownership of personal and real property of cohabitees is determined by the general law of contract, so that the cohabitee who contracts to buy property owns that property, the cohabitee whose name the bank account is in owns the money in that account, and the cohabitee whose name is on the conveyance owns the property conveyed, unless in each case a contrary intention is proved, eg: that the property should be jointly owned.
Most property disputes between cohabitees are in respect of a house or land, etc. It may be necessary for the non-owning cohabitee to establish an interest on relationship breakdown or to defeat the claims of a third party to possession of the house (e.g., mortgage). To establish an interest the non-owning cohabitee can apply to the court for declaration that he or she has a beneficial interest under a resulting in equity.

Section 578/G (Civil Code) says: Cohabitees - shall acquire joint property during their cohabitation in proportion to their contribution to acquisition.

It is worth considering what the results would be where a housekeeping allowance was paid by one cohabitant to another. It is not so easy to impute an intention to share everything in a cohabiting relationship as it is in marriage. Where the man to give the woman partner a housekeeping allowance, and the woman made savings, or purchased property from money derived from the allowance, then it could be argued that as donee she merely held the balance saved or property purchased on resulting trust for him.

Where the allowance is given only for housekeeping purposes, but the recipient with the donor's knowledge saves money and buys items in her own name for the home, which they jointly use, then it could be argued that the parties would have a joint beneficial interest in such items, the donee being duly rewarded for thrift by the award of an equal interest. It is the donor's money, which is used to purchase the item, but it is the donee's saving which has made the expenditure possible at all. Such a construction of a joint interest may be easier where it is the woman, who has made the saving, since thrift is assumed to be a female quality.

In relation to other household goods bought by the parties, the general rule for married couples is that, on divorce, orders can be made transferring rights from one party to the other, although sometimes such action may be too late. Where the couple have had joint funds in bank accounts or building societies, then, if the account was joint names, the balance on the death of one accrues to the survivor, and this applies whether the couple were married or cohabiting. Similarly, upon breakdown the fund would be split between the parties.

Unlike married couples, cohabitants have no right to be considered for compensation for loss of the possibility of acquiring some future benefit, or for the loss of continuing benefits. So, where the cohabitant works in her partner's business without remuneration, she is unlikely to receive anything by way of reward for work done, or compensation for future loss of benefits. On the other hand, if the cohabitant should later marry her partner, the possibility of receiving compensation will be much greater, even if the marriage only lasts a short time.

Cohabitees have no statutory rights of occupation of the quasi-matrimonial home, unlike spouses who have rights under the Family Code. A cohabitee's right of occupation therefore depends on whether he or she possesses a right of ownership (which usually carries with it a right of occupation) or a right to occupy it under a tenancy.

A cohabitee, like any other person, has complete freedom to leave his or her property on death to whomsoever he or she wishes provided the will complies with formalities laid down in sec. 624-635 (Civil Code).

A cohabitee can therefore make a will leaving property to the other cohabitee and/or children. On intestacy the position is different, for the surviving cohabitee, unlike a surviving spouse, is not entitled to the other partner's property as the rules of intestacy do not apply to cohabitees, although their children are entitled to succeed to property.
According to the Hungarian law a cohabitant has no right to succession after his or her cohabitant, only the legal marriage spouses have this right.

V. Concept of a new Hungarian Family Book – regarding the Matrimonial Property

In the past 15 years, significant changes occurred in property relations, private property, and the direct or indirect participation of private individuals in the Hungarian economic life.

These economic and social changes have brought such changes in the area of civil relations that their legal coherence requires the farming of a new Civil Code. The concept of the new civil code was prepared on the basis of a Government Resolution in 1998, titled Conception of the New Civil Code. The Conception would like to integrate the broadest possible range of private law regulations stipulated in specific laws, among others, regulations of family law. Thus the substance of family law will be incorporated in the Civil Code as a separate Book of the Code.

The Principles of the New Family Law Book:
Among the principles in the preamble, it is justified to preserve the principle of protection of marriage and family, the principle of equal rights for parties both in marriage and parent-child relations, as well as the principle of the protection of children and the priority of their interests.
The harmony of social and individual interests prescribed for the application of law will be replaced by the requirement of harmonising family and individual interests.
The ban on discrimination in relation to family law before the European Court of Human Rights – although not in Hungarian cases – has emerged particularly regarding the equal rights of children born out of wedlock.
It is desirable to promulgate in the sphere of family law rule, certain principles of the Convention of the Rights of the Child, such as the principle that a child should, to the extent possible, be brought up in his/her natural family.

The Conception of the new Code holds that a matrimonial property agreement should contain a provision also in the case of death, and to this extent the spouses may have a joint will. However, such joint will provisions in the contract should lose their legal force when the spouses have, or one of them has a child subsequently, following the agreement.
The currently valid family law provisions determine separately the issues of settlement of dwelling use by the spouses in case the settlement is based upon an agreement between them. Couples planning marriage, and spouses, can conclude a contract for the future disposal of the joint dwelling in the event of divorce. Regarding the substance of these contracts, the
currently valid provisions need to be amended in certain respects.

One of the more controversial issues in the course of the discussion of the Book of Family Law planned by the Conception was the expansion of any rights that must be provided to unmarried cohabitants. Many felt that any strengthening of such rights would lead to a further weakening of the institution of marriage and family.

The Conception takes the position that private law provisions of a cohabitation should be regulated in the new Civil Code not in the Book of Family Law.

The Conception does not suggest the introduction of a registered partnership, neither for partners of the same gender nor for couples of different gender. The above mentioned expansion of the rights of unmarried cohabitants should include them without calling for registration. Naturally, a possibility would be open for the cohabitants to regulate their relationship in advance and in any way differing from the law. The cohabitees could not be excluded even from the possibility of making in a public document any statement recognising each other as common-law couples or of asking the notary to give them a "certificate" about this relationship.

VI. The harmonisation and unification of family law in Europe. The effects of international and European law making within the national legal systems in Europe, as well as in Hungary.

The influence of European norms on national family law in Europe:

Although family law still displays a great diversity in the national legislations within Europe, the influence of European norms on national family law is increasingly beginning to manifest itself. The case law of the Court of Human Rights in Strasbourg as regards Article 8 (the right to family life) has, in a number of European countries, resulted in an adaptation of the legislation concerning parental authority both within marriage and after divorce.

Other Council of Europe conventions, such as the 1967 Adoption Convention and the 1975 Convention on the legal status of illegitimate children, have also had a unifying influence on the legislation of the ratifying states. Alongside this, the recommendations of the Council of Europe in the field of family law have provided an impulse for harmonisation. The same can be said for the recommendations of the European Parliament as regards family law, such as Resolution A3-017292 on a European Charter for the rights of the child. The Commission International d'Etat Civil, which consists of twelve European States, has drawn up a number of treaties in the field of family law. The EC Court of Justice has also proceeded along the family law path, albeit incidentally, in the case of Konstantinides v. Stadt Altensteig.

In researching the influence of European norms on national family law in Europe, the central question is whether the influence of these European norms remains so strong, or indeed whether they will become (or need to become) so strong that the foundations of a European family law are beginning to be delineated. It should also be indicated what these foundations are or could be. Legislation, case law and the legal literature over the last ten years, will be the primary sources. The objective is to investigate the foundations of an already formed European family law and, as far as possible, to make this more explicit and to expound upon it.
The property law aspects of marriage and divorce:
Maintenace, as well as matrimonial property and succession, fall within the ambit of the
property law relationship between the (former) spouses. The contents of the legal matrimonial
property regime, the payment of pensions, limiting the duration of maintenance after
dissolution of marriage and the position of the surviving spouse as regards the law of
succession, all belong to this legal field, which in the last few years has received wide
attention in the European literature and case-law. In the field of family property law, new
legislation has been implemented in some countries during the last few years, or is currently
being prepared.
The Dutch legal matrimonial property regime, which recognises complete community of
property, is unique in Europe. With regard to this phenomenon the question should be asked
whether the Dutch matrimonial property regime is still in harmony with modern views on the
independent position of the husband and wife, especially as regards the financial point of
view. After all, a quarter of all the marriages celebrated here are done so after a prenuptial
contract has been entered into. A comparative law investigation into the laws of other
European countries where the same political and economic circumstances may be discerned
but where the legislators have chosen other matrimonial property law regimes, will be of great
value in answering the question of whether and how an eventual revision of the Dutch law in
this respect may take place.
Under English law we can encounter a completely different approach to matrimonial property
law. There, in the case of the dissolution of marriage, the court has in principle much more
freedom to apportion matrimonial property according to its own perceptions. Also with regard
to this legal system, one could pose the question whether an adaptation along the lines of
European norms of party autonomy is not indicated.
Apart from the specific Dutch and English situations, the implementation of this project will
lead to the similarities and differences as regards the property law aspects of marriage and
divorce in the European legal systems being laid bare, the objective being to formulate
common principles in this field.

The property law aspects of cohabitation outside marriage:
Marriage in Europe is no longer the only accepted form of cohabitation of two persons.
Traditional family law has to provide an answer to a new social phenomenon. Homosexual
couples also demand equal treatment, especially as regards the right to marry and thereby the
granting of rights and obligations that are, up to now, only applicable to spouses. Since the
beginning of the 1960s, legislation has entered into force, or is currently being prepared in a
number of countries, which deals with forms of cohabitation other than the marriage of
persons of the same or different gender. Considering this development, the question then
emerges whether in Europe there is already talk of a relationship law in the sense of
regulations which exclusively concern non-marriage-based forms of cohabitation.
As far as the property law consequences of such relationships are concerned, the following
questions, among others, are of importance: Is an analogous adaptation of matrimonial
property law justified? What does a cohabitation contract mean? What is the legal position of
third parties and of children and what are the consequences of the dissolution of the
cohabitation? As a result of the Dutch Bill concerning registered cohabitation of two persons,
which was introduced following certain Scandinavian regulations (Denmark, Norway and
Sweden), Nuytinck, for example, is of the opinion that the agreed application of matrimonial
property law to registered cohabitation is ill-conceived in the Dutch Bill. A comparative law
investigation into this same problem in other European countries, where the property law
consequences could also likewise be discussed, would increase the reservoir of solutions and
would provide a basis for harmonising the legal systems of Europe as far as this new legal field is concerned.

Bibliography:

P.M. Bromley: Family Law (London, 1994.)
Divorce in Europe (Leiden, 1977.)
Michael Bohman: Adopted children and their families (Stockholm, 1970.)
W. Friedman: Matrimonial Property Law
Commentary of Family Code (Budapest, 1988.)
András Körös: Family Law and Practice (Budapest, 1995.)
Tibor Papp: Family Law (Budapest, 1979.)
Ottó Csiki - Erika Filó: Family Law (Pécs, 1995.)
Emilia Weiss: Fatherhood and motherhood - The legal balance in Hungarian Family Law (Budapest, 1992.)
András Körös: Matrimonial Property Law (Budapest, 1996.)
K. Boele-Woelki: The Road Towards a European Family Law