

Family or not? – The legal position of de facto partners in the light of the Hungarian regulations

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Introduction – historical aspects

The situation of de facto partners¹ is one of the most controversial issues in Hungarian Family Law² and throughout the world, which is why this study aims to present, what the legal background of de facto partners looks like in Hungary. In many countries, there are already legal solutions for the modern form of the family, what based only on the fact of cohabitation as a legally regulated form of the couple relationship, but many states do not yet provide for it at all or they are considering to create the legal background of it. This is due to the growing demand in society for atypical forms of cohabitation outside of marriage. Hungary currently has legal consequences of de facto partnership,

¹ I should take a mark right here at the beginning because in English there is a lot of word for this relationship form. Some studies call that cohabitation, other call civil union but the hungarian word is de facto partnership. Basically, this is the relationship form, when the parties want to live together without marriage.

² See more: HEGEDŰS, Andrea: Az élettárs fogalma és a kifejezés tartalmi vonatkozásai (Definition of de facto partners and the content of the definition). *Családi jog*. 2006, Vol 4, pp. 3–24.

however, the solution would be a very specified and unique result from the legislator, even though the number of people, who live in a de facto partnership in Hungary is high and is constantly increasing. According to the data of the national census conducted in 2016,³ compared to previous years, 483 thousand out of 2 million 743 thousand households considered themselves to be in a de facto partnership (this represents 17% of the population), this may have doubled since then, but accurate numbers are unfortunately not available, because between the questions of the census (what is your marital status?) there is no option for de facto partnership, so these parties often claim to be single. The census only asks about the composition of households, and gives an option for the answer “I live with my de facto partner”, but in many cases, the partners do not necessarily live in the same household according to the address declaration. Based on this, only estimated values are available.

From the historical aspect of regulation, it can be said that in judicial practice, the property claims of de facto partners against each other appeared quite early, which at that time was derived from the rules of the civil law society, and then also recorded *in Curia's practice, in PK. No. 94.*⁴ At the legislative level, however, Act IV of 1977 was the first⁵ to regulate property relations between de facto partners. This was the first significant step since it was thus recognized that de facto partnership is an existing legal institution, but it was also a negative aspect of the legislation that the legislature did not consider it a family relationship if a person chose a form of cohabitation outside of marriage. In terms of its placement, the de facto partnership became part of the Civil Code 1959 (hereinafter referred to as the CC 1959). it was included in *its contract law* rules.

Another change occurred in 1996 because the Act IV. of 1977 defined de facto partnerships *as a relationship between a man and a woman*. As a result of a long process and through a lot of constitutional disputes, Act XLIII of 1996 modified the definition of de facto relationship to be applied to same-sex couples. In the meantime, however, the codification of the current Civil Code has begun, during which the legislator paid special attention to the more detailed regulation of de facto partnerships. The concept of the Civil Code wanted to

³ ERDEI, Virág, KASZA, Jánosné, VÖRÖS, Csabáné. *Mikrocenzus 2016. 6. A háztartások és a családok adatai* [online]. Budapest: Központi Statisztikai Hivatal, 2018, pp. 21-22. [Q 2022-11-30]. Available at: http://www.ksh.hu/docs/hun/xftp/idoszaki/mikrocenzus2016/mikrocenzus_2016_6.pdf.

⁴ HEGEDŰS, Andrea. *Az élettársi kapcsolat a polgári jogi kodifikáció tükrében. (The de facto partnership in the light of the codification)*. Szeged: Pólay Elemér Alapítvány, 2010. p. 20.

⁵ Act IV of 1977 about the modification of Act IV of 1959 on the Civil Code of Hungary.

acknowledge de facto partnerships as an *existing institution of family law*,⁶ citing the fact that the social perception of de facto partners has come through a significant change and that the younger generations prefer cohabitation instead of marriage.

Codification of de facto partnership regulation – clearly a family relationship

During the process of the expert work, it soon became clear that the previous solid regulation did not correspond either to the significance of the de facto partnership or to its social acceptance. The essence of the relationship is that the de facto partners live similarly to spouses, usually with their children, like a family, but at the same time they want to live in smaller commitment compared to marriage. Accordingly, the Hungarian Civil Code's⁷ first concept was published in 2003 and supported that the expansion of rules should be placed in the Family Law Book (hereinafter: FLB) in the Civil Code.⁸ The draft assessed two important factors about the relationship, namely the duration of the actual cohabitation and the birth of a child during the relationship, and ensured the appropriate legal effects if at least one of these was established. In *addition to modifying the property effects* of the previous solution, the legislature wanted to introduce the *right of tenancy* of the de facto partner and in the case of dying the stand-alone possibility of *succession*. In the first draft of FLB appeared also the possibility of *optional registration* of the relationship before the proper authority, which, although it would not have generated legal status, would be much easier to prove the existence of the relationship.⁹ In addition, the obliga-

⁶ HEGEDŰS, Andrea. Az élettárs fogalma és a kifejezés tartalmi vonatkozásai. (Definition of de facto partners and the content of the definition). *Családi jog*. 2006, Vol 4, pp. 11–12.

⁷ Act V. of 2013 about the Hungarian Civil Code (hereinafter „CC 2013”).

⁸ KÓRÓS, András. A családjog jövője: Az új Ptk. Családjogi könyve – a 2013. évi V. törvény és a Szakértői Javaslat összevetése; Első rész: Alapelvek, Házasság, Élettársi kapcsolat. (The future of family law: The Family Law Book from Civil Code – Comparison of the contemporary rules with the Proposal of Civil Code: Part I. Principles, Marriage, De Facto Partnership.) *Családi Jog*. 2013, Vol 3, p. 6.

⁹ It was later replaced by the registration process, which also created a presumption of paternity for different sex partners between 1 July 2010 and 31 December 2010. However, Act CXLVIII of 2010 cancelled this legal effect from 1 January 2011, so registration now only secure the proof of the existence of a relationship and has only declaratory effect. – KÓRÓS, András. A családjog jövője: Az új Ptk. Családjogi könyve – a 2013. évi V. törvény és a Szakértői Javaslat összevetése;

tion of de facto partners to collaborate and support has been incorporated in the draft from judicial practice.¹⁰

The final text of the CC 2013 – Family that is not entirely family(?)

However, the concept detailed above never entered into force, as a last-minute amendment was tabled against the bill, the adoption of which resulted in a rather specific legal solution in the Civil Code. The modification explains that there is a „*private legal relationship*” between de facto partners, which is based on „*the contract of the parties in which they can settle their relationship in an all-encompassing manner.*”¹¹ However, the most controversial explanation is that a person who enters into a partnership does not wish to enforce the internal legal order of marriage and family on himself and therefore cannot have family law implications.¹² In connection with the amendment, there is a very sharp change of attitude on the part of the legislator, as it provided a completely different explanation for the regulation of de facto partners in connection with the preparation of the Concept. The explanation of the Expert Proposal drew attention to the fact that the placement in the FLB of the rules governing the legal relationship of de facto partners expresses, like the majority of European states, that it considers it to be a family relationship, although its recognition and support are not the same as marriage. The proposal also took into account the fact that those who wish to enter into a de facto partnership wish to form this partnership in a more legally informal way, so the legislature also wanted

Első rész: Alapelvek, Házasság, Élettársi kapcsolat. (The future of family law: The Family Law Book from Civil Code – Comparison of the contemporary rules with the Proposal of Civil Code: Part I. Principles, Marriage, De Facto Partnership). *Családi Jog*. 2013, Vol 3, p. 7.

See also HEGEDŰS, Andrea. Élettársi kapcsolat kontra házasság: hasonlóságok és különbségek a hatályos magánjogban. (De facto partnership vs. Marriage: Similarities and differences between the contemporary rules). *Acta Universitatis Szegediensis: Acta juridica et politica*. Szeged, 2006.

¹⁰ KÓRÓS, András. A családjog jövője: Az új Ptk. Családjogi könyve – a 2013. évi V. törvény és a Szakértői Javaslat összevetése; Első rész: Alapelvek, Házasság, Élettársi kapcsolat. (The future of family law: The Family Law Book from Civil Code – Comparison of the contemporary rules with the Proposal of Civil Code: Part I. Principles, Marriage, De Facto Partnership). *Családi Jog*. 2013, Vol 3, p. 7.

¹¹ *Proposal T/7971/106* [online]. 12. 11. 2012, p. 12 [Q 2022-11-30]. Available at: <https://www.parlament.hu/irom39/07971/07971-0106.pdf>.

¹² *Ibidem*.

to settle the legal relationship of de facto partners only through frameworks, but in more detail than before, placing it in a separate chapter of the CSJK after marriage.¹³

The reason for the legislation, which differs significantly from the Expert Proposal, could certainly come from the fact that the strengthening of the rights of de facto partners could lead to a further weakening of the institutions of marriage, thereby undermining the long-standing and traditional system of family law. Nevertheless, more and more people are choosing alternative forms of couple relationships not only in Hungary but throughout the world, as a result of which a social trend has emerged that – I think – cannot be ignored by legislation.¹⁴

Arguments in favor of recognition and interpretation as a family relationship

It is no coincidence that the title of this chapter is not that de facto partners are a set of rules among the norms of family law. The legislature, as I mentioned earlier, has not been persuaded by the change in social trends and the numbers, since most of the norms for de facto partners¹⁵ are still found in the rules of contract law today. However, de facto partnerships in which the parties have lived together for at least one year and have children together will have family law effects. In this case, the FLB provides for de facto partner *maintenance and the right of tenancy*.¹⁶ The question rightly arises as to why certain provisions had to be included in the Family Law Book and whether it is necessary to separate the rules on this basis.

According to Orsolya Szeibert, *by allowing childless partners (even those who may not have children for health reasons?) they are regulated – or remain – within the scope of contract law, without the legal consequences of the relationship*

¹³ *Proposal of Act V. of 2013 the Hungarian Civil Code* [online]. P. 484 [Q 2022-11-30]. Available at: www.parlament.hu.

See also HEGEDŰS, Andrea. *Az élettársi kapcsolat a polgári jogi kodifikáció tükrében. (The de facto partnership in the light of the codification)*. Szeged: Pólay Elemér Alapítvány. 2010, pp. 68–69.

¹⁴ KŐRÖS, András. Szerkesztőbizottsági javaslat: Harmadik rész – Az élettársi jogviszony. (Proposal of Civil Code: Part III. – De facto partnership). *Polgári Jogi Kodifikáció*. 2006, Vol 2, p. 3.

¹⁵ In contract law we find the definition of de facto partners, the norms of their statutory property regime and property contract, and the right of tenancy by contract. CC 6:514. § – 6:517. §.

¹⁶ CC 4:86. § – § 4:95. §.

*in terms of maintenance, the right of tenancy and inheritance, we are clearly stepping back from the current regulation of the Civil Code.*¹⁷ András Kőrös also draws attention to the fact that the separation of the rules with contractual and family law effects „has also been technically imperfect.”¹⁸ As an example of this, under the rules coming into force, the maintenance with a one-time benefit can also be agreed upon by partners who do not have common children or any children and have lived together for less than a year. The agreement about the right of tenancy, on the other hand, was placed within the rules of contract law, but the judicial settlement of the use of the family house occupied based on the common title of de facto partners may also be requested by de facto partners who have lived together for less than a year or do not have children together, so in this case, the application of the rule from the FLB does not depend on additional conditions here either. Against this solution, it can be concluded that the effects of contract law and family law are not consistently separated, just as de facto partnerships themselves cannot be divided into contractual and family relationships.¹⁹

The acceptance of de facto partnerships as a family relationship is also supported by the fact that the definition of de facto partnership in the CC 2013 is almost entirely consistent with the previous positions of legislation and judicial practice. To do this, it may be worthwhile to first compare the concept in the CC 2013²⁰ with the definition of family annulled by the Constitutional Court:

¹⁷ SZEIBERT, Orsolya. Élettársak – a villikirály lányai vagy szürkellő fűzfák?: A de facto élettársi kapcsolat szabályozásának margójára. (De facto partners – Daughters of Erlkönig or grizzle willow? – some thoughts about the de facto partnership’s regulations). In: *Ptk.’2013* [online]. 18. 1. 2013 [Q 2022-11-30]. Available at: <http://ptk2013.hu/szakcikkek/szeibert-orsolya-elettarsak-a-villikiraly-lanyai-vagy-szurkello-fuzfak/1699>.

¹⁸ KŐRÖS, András. A családjog jövője: Az új Ptk. Családjogi könyve – a 2013. évi V. törvény és a Szakértői Javaslat összevetése; Első rész: Alapelvek, Házasság, Élettársi kapcsolat. (The future of family law: The Family Law Book from Civil Code – Comparison of the contemporary rules with the Proposal of Civil Code: Part I. Principles, Marriage, De Facto Partnership). *Családi Jog*. 2013, Vol 3, p. 8.

¹⁹ *Ibidem*, p. 8; and SZEIBERT, Orsolya. Az élettársi kapcsolat családjogi hatásai. (The family law effect of de facto partnerships). In: KŐRÖS, András (ed.). *Az új Ptk. magyarázata III./VI.: Polgári jog. Családjog*. Budapest: HVG-ORAC Lap- és Könyvkiadó Kft. 2013, pp. 147-148.

²⁰ See details: KRISTON Edit. *Szerződési szabadság a családi vagyonyjog klasszikus szerződéseiben. (Contractual freedom in the classic contracts of family property law)*. Miskolc: Bíbor Kiadó. 2022, p. 38.

*A family is a system of relationships that implements the **emotional and economic community** of natural persons, based on the marriage of a man and a woman, on a direct kinship, or temporary family placement.²¹*

*A de facto partnership exists between two persons who living together in a household, **emotional and economic** community without marriage, neither of whom has a marital cohabitation, registered partnership cohabitation, or other de facto partnership and who is not directly related or not siblings to each other.²²*

Even though the annulled section specifically names family relationships in the second half, the first part of the definition highlights the existence of emotional and economic community as a general characteristic, which also forms the basis for the definition of a de facto partnership. However, these contents can be found not only in the destroyed definition, which is no longer in force but also in one of the basic institutions of the FLB, in the definition of marital cohabitation.

The definition of marital cohabitation is not defined by the legislature itself, but the juridical practice has interpreted it with unchanged content for a long time since it is an essential preliminary question to the settlement of marital property relations. Accordingly, the marital cohabitation of the spouses includes emotional, moral, and property components and its content usually consist of a common household, economic collaboration, and intimate personal relationship. The absence of elements precludes the establishment of marital cohabitation, which is exemplified by the fact that the spouses do not know each other's private lives and pasts even at the level of the most basic information. Curia confirmed, if the relationship between the spouses is supported only by the marriage certificate, without the content that can be expected of

²¹ Act CCXI. of 2011 on the protection of families 7. § (1) – condition: 20.12.2012.
In the previous chapter, it was mentioned that the concept was destroyed by Constitutional Court because it narrowly defined the concept of family. Subsequently, however, during the fourth modification to the Fundamental Law, in Article L) was also amended, which refers to marriage and the parent-child relationship as the basis of the family relationship, thus significantly narrowing the number of persons in the family relationship from the side of the forms of couple relationships.

²² CC 2013 6:514. § (1).

them, then it is doubtful the fact that, despite the fact of the marriage, their cohabitation would be real.²³ At the same time, the conceptual elements of marital cohabitation must be interpreted broadly, they do not need to coexist, one or the other may be absent or differ from the general,²⁴ and it does not have to conform to a general-ordinary standard.²⁵ In one of its occasional decisions, the Curia also held that the mere fact that the spouses live in separate apartments and are emotionally estranged does not affect the existence of a marital cohabitation if for any other reason economic collaboration has survived between them. On the other hand, the declaration of an intention to end the marriage even if it comes from one of the spouses means the termination of the marital cohabitation, even if the spouses continue to live together out of necessity, account for the living costs and, in this connection, there is also some economic collaboration between them.²⁶

In the case of de facto partnerships, a similar interpretation is given to the main elements. To establish the existence of a de facto partnership, the essential characteristics must be examined *collectively and as a whole*,²⁷ but in contrast to marital cohabitation, *it is necessary to prove the coexistence of all the conceptual elements*, the absence of any of which makes de facto partnership non-existent.²⁸ In the same decision, however, Curia points out that the individual living conditions or different agreements of the parties must also be taken into account, so that circumstances may be assessed in a specific way, similar to marital cohabitation. In several cases, the Curia held that the conditions for the establishment and existence of de facto partnership can be summarised as follows: the partners live in a common house, maintain a common household, have an emotional relationship, openly acknowledge their relationship to third parties, at least tacitly agree about the economical collaboration,²⁹ and their

²³ BH 2017.36. BH is the sort name of the main decision of Curia, which influential for the court in lower level and the juridical practice.

²⁴ BH 2003.323.

²⁵ BH 2011.105.

²⁶ Pfv. II. 21.219/2017. (occasional decision of Curia).

²⁷ See in detail: SZEIBERT Orsolya. *Az élettársak és vagyoni viszonyaik: különös tekintettel a magyar ítélkezési gyakorlatra és a házasságon kívüli partnerkapcsolatok szabályozási megoldásaira Európában. (De facto partners and their property relationships – with special regard to the hungarian juridical practice and the european solutions)*. Budapest: HVG-ORAC. 2010.

²⁸ Pfv. II. 20.120/2017. (occasional decision of Curia).

²⁹ BH 2007.122.

Lajos Besenyey names this as a criterion for coexistence and suggests that in order to establish it, it is sufficient for the parties to express their will to establish a community of life and from

emotional community also presupposes an obligation to support each other.³⁰ These positive criteria are the ones that give the essence of a de facto partnership, but it is also necessary to highlight the most important negative condition: if one of the parties lives in a marital cohabitation,³¹ the fact this precludes the possibility of the existence of a de facto partnership.³² The existence of a marital cohabitation with either party makes it legally impossible to enter into a de facto partnership with another person.

However, most often in jurisprudence, two conceptual elements are of paramount importance. The first is the intention of the parties *to live together permanently* since if a person wishes to enter into a de facto partnership, according to Curia, it presupposes the intention of ultimately.³³ However, cohabitation in the common household alone is not enough to establish a de facto partnership, especially if it consists solely of the fact that the parties live in an apartment, they also support each other economically within the expenses of the common life, performing mutual favor services for each other on an emotional basis. However, permanent coexistence³⁴ does not necessarily mean continuous, uninterrupted coexistence. The Curia express that the fact that the parties had their own houses in two different states and lived in a common household only to the best of their ability does not mean that there was no de facto partnership between them. In a more recent decision,³⁵ it stated that cohabitation in a common household, especially between older partners, which is one of the conceptual elements of a de facto partnership, can be achieved in such a way that both of them retain their housing property but at the same time use them together, so that both properties are the place of cohabitation, common household management, meals and rest.³⁶

that date they should be considered as partners. Alternatively, he emphasizes a strict interpretation of the law, which means actual cohabitation, living in the same household. – BESENYEI Lajos. Az élettársi viszonyról. (About the de facto partnership). *Acta Universitatis Szegediensis. Sectio-politico iuridica. Tomus. 2000, Vol 58, p. 28.*

³⁰ BH 2004.280.

³¹ Not just the marital cohabitation, neither the registered partnership cohabitation excludes the existence of de facto partnership. The registered partnership cohabitation means the same as the marital cohabitation, and the juridical practice use this definition only to settle their property relations.

³² BH 2004.504.

³³ Ibidem.

³⁴ BDT 2011. 2601.

³⁵ Pfv. II. 21.744/2004. (occasional decision of Curia).

³⁶ BH 2017.369.

The other important element that Curia has dealt with most is the *economic community* between the parties. This is the most demanded conceptual element, the meaning of which was not only determined by the Curia but also took particular care to examine the existence of the economic community. The interpretation of economic community draws the legal line which separates the cohabitation of parties living in the same household, who are in emotional contact with each other and who declare this to the outside world, and who are regarded as partners in the everyday and profane sense from the actual situation of de facto partnership with legal consequences. An economic community³⁷ is achieved when the parties cooperate and collaborate not only occasionally, in the acquisition of an asset or only in respect of the everyday expenses of coexistence, but also have common objectives that determine their economic activity throughout the cohabitation, and to achieve this, they show full cooperation, using their incomes together for their common goals.³⁸ It can also be established if the creation of the incomes of the de facto partners is the result of their common economic activity and their incomes are used for their common purposes.³⁹ An economic community is also realized if the parties living in emotional connection and the same household make a significant investment in the property of one of them, using a joint loan, to achieve a common family life.⁴⁰ However, the economic community cannot include themselves the cases where there is a certain commonality between the parties solely in terms of daily subsistence and household management.⁴¹

Judicial practice is controversial in considering *the expenses of child-rearing* as an economic goal. According to a decision of the Budapest-Capital Regional Court, raising the common children also establishes an economic community between the parties, because it makes sense that in this connection the parties have common goals affecting their long-term management. In addition to family joys, having children undoubtedly means continuous costs and long-term financial commitment, since ensuring the child's livelihood and schooling is a constant burden on the household budget. In addition to the actual costs of raising children, the lost income on the mothers' side, caused by the temporary or permanent absence of the mother from the labour market

³⁷ Pfv. II. 22.015/2016. (occasional decision of Curia).

³⁸ Pfv. II. 21.744/2004. (occasional decision of Curia).

³⁹ BDT 2015.3348.

⁴⁰ BH 2014.111.

⁴¹ Pfv. II. 20.068/2017. (occasional decision of Curia).

in the period between the birth of the children and their subsequent entry into the nursery or kindergarten community, is a kind of lost profit. In addition, mothers are falling out of their professions, their knowledge is depreciating and it is more difficult for mothers with young children to act in the labour market. Considering and deciding on these factors implies a long-term economic commitment, which can provide the basis for establishing an economic community between de facto partners.⁴²

However, according to Curia, the parties cannot achieve a common economic goal to start a family and have children, especially if the parties pay the costs of housing and the care of their minor children by contract, despite living in the same household. In the case of the economic community, two conjunctive elements are of decisive importance: at least tacit, cooperation between the parties for common purposes and the use of the income earned by them for a common purpose. The case law interprets the concept of a common goal narrowly: it must be aimed at economic activity and the acquisition of common property, that is to say, economic cooperation aims to increase the common wealth, regardless of whether its result is an increase in wealth or loss of wealth. No doubt having children imposes a long-term commitment and a significant financial burden on parents, but it cannot be identified with economic cooperation, one of the conceptual elements of de facto partnership. The intention of the parties must be to acquire the common property by joint contribution. However, starting a family and having children – as one common economic activity without any other contribution – cannot be classified as an economic goal or an intention to acquire wealth.⁴³

In addition, the Curia pointed out in several cases that the economic community does not require access to each other's bank accounts either, since the fact of a de facto partnership is not in itself excluded by the maintenance of a separate bank account and by the fact that the other party does not have access to it. From the point of view of joint management and the perception of the economic community, it is only important whether the parties are guided in decision-making by a common livelihood and the desire to move forward.⁴⁴

Here the question arises as to do it will the new statutory property regime defined by the CC 2013 influence the interpretation of the conceptual elements

⁴² BDT 2015. 3301.

⁴³ BH 2017.338.

⁴⁴ EBH 2018.M.8., BH 2016.117.

of the de facto partnership, especially the existence of an economic community, and if it will be, how? According to the mentioned rules, de facto partners are acquiring their wealth independently under cohabitation. As a consequence, whether the requirement for the parties to produce an effective common economic outcome to establish a link can be maintained, or whether economic cooperation in the absence of a possible pooling of assets can also form the basis of the relationship? I think, the previously narrowly drawn boundaries will definitely be changed by the new rules. At the same time, it is important to bear in mind that the establishment of the existence of a de facto partnership is a *preliminary element* to the application of the property regime, so it needs to be clarified before the decision of property questions, and not in the light of property situations so that a changeable interpretation of economic community is not excluded. In my view, it is essential to broaden the previous narrow interpretation, and the extent to which cooperation in the interests of common goals is accompanied by solidarity and cooperation between the parties may also be examined. That principle, as I referred to earlier, also stems from judicial practice in de facto partnerships and may take the form of financial support. Consequently, the *economic community* must include the *financial* cooperation of the de facto partners for common goals, *solidarity, support, and collaboration towards each other*, even without the actual concentration of the assets of the parties.

The content of marital cohabitation, therefore, bears a high degree of similarity with the definition of a de facto partnership, and the interpretation of the courts adapted to individual circumstances is also a common point. However, one more important similarity between marriage and de facto partnership should be highlighted.

Marriage, according to the FLB, „occurs when a man and a woman present together to declare in person before the registrar that they are entering into marriage with each other“.⁴⁵ In the case of de facto partners, the Register of Partnerships was introduced on 1 January 2010, where unmarried partners can ask a notary to enter their declaration of establishment or termination of their relationship in a public register. In this case, however, the partnership is not established by registration either, but the realization of the conceptual elements according to the CC 2013 is still necessary, but the register is suitable for proving the existence of the relationship – similar to marriage, where the civil registry also serves just declaration purposes. An important difference,

⁴⁵ CC 2013 4:5. § (1).

however, is that while the marriage creates legally family status between the spouses, the registration of de facto partners is only intended to guarantee proof of the existence of the relationship, but the parties cannot be obliged to enter it in the register.⁴⁶ It should be noted, however, that the entry in the register between 1 July 2010 and 31 December 2010 gave rise to a presumption of paternity for the couples, which also strengthened the family law character of the de facto partnership. However, the legal effect was repealed by Act CXLVIII of 2010 with effect from 1 January 2011.⁴⁷

All this makes it clear that, despite the taxonomic placement, de facto partnerships are to be regarded as family relationships rather than contracts.

In this context, we should mention the European Committee on Family Law in principle on de facto partners, which also defines this form of relationship. According to the first point of the recommendation,⁴⁸ a de facto partnership is established when two persons live together in a long-term relationship. And in the second paragraph, we come across the concept of qualified *de facto union*, according to which this is the case if the partners have lived together for at least 5 years and have a common child. The Commission, therefore, draws the line between legally regulated forms of couple relationships and forms of cohabitation that do not reach its level, based on long-term cohabitation. The other important criterion can be found in the second and third points of the recommendation, and that is the establishment of exclusion factors. If the partners live together in marriage or a registered partnership or even with third parties, this fact precludes the existence of a de facto partnership. However, an important difference from the Hungarian solution is that the exclusion factor here is the existence of a marriage or registered partnership and not the establishment of a parallel cohabitation.

⁴⁶ See in more detail: HEGEDŰS, Andrea. Az élettársi kapcsolatok regisztrálása és annak hatása az élettársak öröklési jogi viszonyaira: az új Ptk. kodifikációs folyamatának áttekintése. (The registration of de facto partners and its effect for the inheritance law. Review about the codification of Civil Code). In: PUSZTAHELYI, Réka (szerk.). *A magánjogi kodifikáció eredményei*. Miskolc: Novotni Alapítvány. 2008, pp. 121–145.

⁴⁷ KÖRÖS, András. A családjog jövője: Az új Ptk. Családjogi könyve – a 2013. évi V. törvény és a Szakértői Javaslat összevetése; Első rész: Alapelvek, Házasság, Élettársi kapcsolat. (The future of family law: The Family Law Book from Civil Code – Comparison of the contemporary rules with the Proposal of Civil Code: Part I. Principles, Marriage, De Facto Partnership). *Családi Jog*. 2013, Vol 3, p. 7.

⁴⁸ *The Principles of European Family Law Regarding the Property, Maintenance and Succession Rights of Couples in de facto Unions* [online]. [Q 2022-11-30]. Available at: <http://ceflonline.net/wp-content/uploads/English-De-Facto.pdf>.

Summary and (maybe) answers

The question, therefore, remains whether the de facto partnership is an obligation or a family relationship. The arguments in favor of recognition as a family relationship are, in my opinion, stronger despite the placement of the current rules. In addition to the assessment of contract law, only the taxonomy interpretation of the rules, the fact that it was placed there by the legislature, explain this. Nevertheless, in its decision, BH 2011.11, the Curia took its first steps in the direction of interpretation as a family legal relationship, in contrast to the placement of the rules, in which it attached importance to the permanent coexistence of the parties, going beyond the taxonomic interpretation of the CC 2013, from which it can be concluded that, despite the placement of the regulation, the permanent cohabitation of two persons can provide a basis for the family recognition as a legal relationship. In this mentioned case, there was an emotional and economic community between the parties, which lasted almost 28 years, and they also had children together. The Curia said that the CC 2013 settles partnerships as an obligation in the Sixth Book containing the rules of contract law, but at the same time, it also has family law effects, the maintenance of de facto partners arranged in the FLB, which summarises the rules of family law, and the subject of the case in question, the right of tenancy by the de facto partners. It follows that the effects of de facto partnership, as regulated in the FLB, are also covered by the independent principles of family law,⁴⁹ most importantly the protection of the weaker party. It held that it would be contrary to the principle if, after 28 years of living together and raising three children, the plaintiff, who had been excluded from the possibility to work and get her own money because of the other party's behavior, was not even entitled to a right of use in a common house acquired.⁵⁰ It is therefore clear from the decision that the Curia does not emphasize the conjunctive application of the

⁴⁹ It is also worth noting the examination of the principles of the FLB, since our legislation provides for their application in a general manner, placed at the beginning of the FLB. This means that they govern all legal relations regulated in the FLB, but at the same time, until the aforementioned decision of the Curia in 2021, the question arose as to what extent the protection of the family as a basic principle or even the primacy of the child's best interests affected partnerships, especially those where there were no children or where the parties did not raise a common child. Different positions have appeared in the legal literature, where this solution of the FLB was seen as a more differentiating factor, but in my view, the decision of the Curia paved the way for the recognition of all forms of de facto partnership as family relationships.

⁵⁰ BH 2021.11.

conditions of permanent cohabitation and child-rearing when classifying the relationship as a family legal relationship.

In my view, de facto partnerships are clearly family relationships based on the arguments detailed above, so, despite the placement of the rules, it is necessary to treat and interpret the rules in such a way that it complies with all the principles and interpretations of family legislation. The growing popularity of the relationship form also confirms this.