A. Introductory remarks

Family policy is an instrument that consists of an official attitude on how a specific state would like to regulate family relations and how all governmental bodies and other social subjects should protect family members and the family itself by implementing various legal and social measures. Sometimes it is presented in an official document, sometimes it is an informal part of the political programme of a certain government.

Part of any modern family policy is expected to deal with social change, especially changes in the different forms of families. One form is cohabitation, which develops into a family when a child is born.

Same-sex partnership, depending on the ideological standpoint, is considered to be a form of a family, or a quasi-family union. In Croatia, same-sex partnership and the legal relationships arising from it are clearly distinguished from family relationships in legal acts, in the published articles of legal writers, and in public opinion.

Because of this distinction, at a national level, the term same-sex union (istospolna zajednica) is used in legislation for same-sex partnership, and for the parties who enter into a same-sex partnership the word partners (partneri) is used. For a heterosexual couple who live together, the expression extramarital union (izvanbračna zajednica) is used in family legislature in Croatia. Parties who live in such a union are called extram marital partners (izvanbračni drugovi).1

Since there are no domestic partnership registers, both unions are factually created as well as dissolved. For this reason, in this article, the term cohabitation will be used for heterosexual union, and for the parties the term cohabitants or non-marital spouses will be employed. The term same-sex partnership and partners will be used for homosexual union.

This paper is divided into sections dealing with the historical background, social environment and family policy, legal effects in family law and in other fields of law, and the dilemmas concerning family policy and the possibilities to regulate new lifestyles.
Chapter 16 - Korać

I. Historical background

Generally speaking, cohabitation was not recognized in the (different) legal systems that existed on the territory of Croatia until the middle of the 20th century.²

In the earlier socialist period of the 1950s, courts started to protect property rights after the breakdown of cohabitation.³ General obligation and property law provisions (societas and condictio sine causa) were applied in order to preserve the assets that the weaker partner, always a woman, had acquired during cohabitation. This was an important turning point, since previously courts had held that cohabitation should not produce any legal consequences whatsoever since it was considered to be immoral.

Cohabitation was for the first time institutionalized in the Socialist Republic of Croatia (as a part of the Socialist Federal Republic of Yugoslavia), in the Marriage and Family Relationships Act in 1978.⁴ Some limited family law consequences were recognized by that act. They included property and alimony rights, but mostly among cohabitants who were named “non-marital spouses”.

The next development in 1990 placed “extramarital union” as a constitutional norm, where it gained the status of a constitutional institution.⁵ Consequently, the Constitution of the Republic of Croatia obliged the Croatian Parliament to regulate this relationship by law. However, a strict interpretation of the wording of the Constitution and the wording of the present legislation leads to the conclusion that the legislator has the obligation to regulate only heterosexual unions.⁶ Nevertheless, there is a clear attitude in domestic family law theory that cohabitation, despite strong public pressure, should remain differently regulated, with fewer effects than traditional marriage, and even with fewer effects than same-sex partnership.⁷

The two Family Acts, one from the year 1998 and the other from 2003, basically kept the position of the Marriage and Family Relationship Act 1978 with regard to the rights of cohabitants. The only difference was in the development of the marital property relationship, where more autonomy was granted to spouses, including non-marital spouses.

The regulation of homosexual partnership had a much shorter route. After a bitter debate, homosexual partnership was enacted in a separate act in 2003 (the Same-sex Partnership Act), with a similar concept as cohabitation and with almost no consequences in other fields of law.

B. Social environment and family policy

There is a gradual trend in Croatia, although not at all as significant as in many other European states, that each year more and more couples choose cohabitation as a lifestyle. Marriage seems no longer to be so desirable, at least not at the beginning of the period of living together.

Nevertheless, although the nuptial rate is constantly decreasing, at the beginning of the 21st century only just over 10% of children were born out of wedlock.⁸ Such data reveal a rather traditional society, still under the strong influence of conservatism and religion.
Some recent comprehensive European sociological research illustrates the situation even better. It shows that among thirty-three countries, Croatian citizens hold fourth position according to the extent of their disagreement with the statement that marriage is an outdated institution (after Turkey, Malta and Iceland).\(^9\)

In such a situation, the social pressure on couples to enter into marriage is still strong. Cohabitation is usually considered to be a probation marriage. Usually, couples conclude marriage when the woman becomes pregnant.

It should also be mentioned that there is constant pressure from some social groups that cohabitants should enjoy increasing rights, not only in family law, but in other fields of law as well (inheritance law, pension law, labour law, civil and civil procedure law, criminal and criminal procedure law, medical law in terms of assisted procreation, etc.). Some of these efforts have had certain, although limited, effects.

The social environment in respect of homosexuality is still rigid and refuses to extend the rights of same-sex couples in further fields of law (social security, health security and pension law, labour law, reproductive medicine law, inheritance law, etc.). Very hostile voices are often heard from both sides: NGOs representing lesbians and gays and from conservative individuals as well. Still, there have been some legislative proposals, designed to widen the present rights of same-sex couples, but which have failed to pass through Parliament. Political parties are strictly divided, according to their general political orientation, in relation to the idea of how to regulate the rights of same-sex couples.

It has to be stressed that the national Family Policy, officially adopted in January 2003, recognizes the plurality of family forms and does not give priority exclusively to the family based on marriage. In this document, a definition of the family was deliberately omitted in order to decrease certain ideological difficulties. Consequently, determining who has the status of family member is left to the field of the specific law.

C. Family law legislation

Two acts exist concerning heterosexual and homosexual de facto unions. The difference has been made so as not to put homosexual relationships within the same sphere as traditional family relationships.

According to the Family Act 2003, cohabitants who:

- are a woman and a man,
- are not married to another person, and
- have been living in a union for at least three years, or less if a common child has been born (Art. 3),

enjoy property and maintenance rights similar to those rights arising from marriage.

The fact that there are no provisions related to obstacles similar to those in marriage law (minority, legal capacity, kinship) might lead to the conclusion that the personal status of the cohabitants, and their possible kinship or age, is not relevant. However, the opinion of this author is that an obstacle which is against public order, for example living with a minor under sixteen or incest that is prescribed as a criminal act, should not
produce any family law effects. A problem might arise if a weaker party sought legal protection, especially maintenance, after the breakdown of union. Denying such protection would cause injustice. In this case, a judge should protect primarily the welfare of the child, or an incapable person, giving priority to the implementation of one of the basic principles of family law.10

Since no specific registers have been established for domestic partnership, a partnership is a de facto union, founded and dissolved by the simple act of the partners. The existence of de facto union might be a prejudicial question in a proceeding where the different effects of de facto unions are examined. In practice, evidence that a de facto union was established might be the official recording of the same place of residence, testimony of witnesses, common payments of everyday expenses (like water supply paid for and by members of the family). A key element in proving a family union is a common household.

If cohabitation exists, another important question that arises is property relations. The act assigns all the provisions concerning marital property relations to the non-marital union, including statutory provisions, contractual freedom and the legal relationship of the cohabitants to other persons as well.11

The existence of cohabitation has no effect on parental care. A child enjoys the same rights toward his/her unmarried parents and both parents enjoy the same parental care (responsibilities and rights) as if the child had been born in wedlock. Joint custody is a principle (Art. 99) unless it is contrary to the best interest of the child or if it has been restricted by judicial decision.12 The court is entitled to make decisions on parental disputes.

Maintenance rights among cohabitants arise only after the dissolution of cohabitation. A procedure can be initiated six months after the dissolution and the court might order the maintenance obligation to last indefinitely or only through the following year, with the possibility of prolonging it for the next period (Art. 224).

Preconditions are the same as for spouses,13 but in practice maintenance among ex-cohabitants is almost unknown.

The provisions of Croatian family law regulating property are modest in terms of their quantity. There are only ten articles that regulate the property relations of spouses (mutatis mutandis and cohabitants), and for all other issues the provisions of civil law are applied in general (mutatis mutandis as to matrimonial acquisitions Art. 250).

If cohabitants do not sign a contract, they are presumed to be co-owners in equal part of the property acquired during their union and they are not entitled to seek a different percentage. Acquired property is property acquired by work, or that derives from this property, a gambling win,14 or from financial benefit from authorial rights (mutatis mutandis Art. 248, 252, 254 (2)).

Each of the cohabitants has his or her own property, that is, the property that she or he had before cohabitation or has acquired during the cohabitation on a legal foundation different from that prescribed for acquired property, such as inheritance, a gift, and so on (Art. 253).

The same provisions as for any other co-owners apply to and among cohabitants, including how the cohabitants manage their property. In connection with matters of regular management, it is deemed that the other
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cohabitant has given his/her consent unless the cohabitant who has managed the property can prove otherwise. The absence of consent of the other does not affect the rights and obligations of a bona fide third party (Art. 251). Non authorised actions of one cohabitant may constitute negotiorum gestio.

The letter of the law might create a severe problem when it is applied, because of the obligation relationship toward third parties - solidarity for certain debts, mortgage, uncertainty if some assets of the property belong solely to one of the cohabitants or also to the other one. The fact that there is no public register of personal status and that ownership rights entered into registers of immovable property can be challenged by a spouse and, mutatis mutandis, by a cohabitant, increase the legal uncertainty.

Another issue is when the effects of cohabitation begin. If cohabitation does not satisfy the requirements of Art. 3 of the Family Act - three years duration or the birth of a mutual child, then the effects of cohabitation are pending. The general provisions of obligation and property law are applied in the event that cohabitation breaks up (societas, condicio sine causa, etc.).

Also, there is no expressed legal solution in the event that cohabitation develops into marriage. It would be logical in this case for the acquisition from cohabitation to transform to marital acquisition subordinated to basically the same property rules. Case law is still developing concerning this problem.

Cohabitants are entitled to write a contract on property relations, but it is not likely to expect a couple that is not ready to conclude a marriage to be prepared to sign a property contract.

The Family Act deliberately reserves certain rights only for spouses. Cohabitants cannot jointly adopt a child and they are not entitled to seek methods of assisted procreation. The reasoning to deny some kind of state assistance to found a family is that it is simple and inexpensive to marry. Additionally, there are some legal instruments to take care of the best interest of a child if a family is founded on marriage, in the event of its dissolution. In the event of the dissolution of cohabitation, the court or social welfare office has no “warning signal”, such as one provided by divorce proceedings, to indicate that there is a family crisis. Obviously, the human right to found a family cannot be restricted by the state if an individual seeks to exercise it, but the state has the right to secure the best possible legal requirements and life conditions for a child who is going to be adopted or conceived with medical help.

Also, the Family Act does not grant to one cohabitant any rights or duties towards the child or to the relatives of the other cohabitant during cohabitation or after its breakdown.

According to the Same-sex Partnership Act 2003, partners who:

- are of the same sex,
- have been in a union founded on the mutual emotional commitment of the partners for at least three years,
- are not married, do not live in another heterosexual or homosexual union,
- have reached the age of majority,
- are not deprived of legal capacity, and
- are not ascendants and descendents or in the fourth degree of kinship (cousins) to each other (Art. 2 and Art. 3), enjoy maintenance rights during and after the breakdown of their union and the right to gain and
regulate property rights among themselves. The provisions on acquisition are the same as for cohabitants.

As there are no registers provided for the partners, the problems that arise from the factual nature of such a union are the same as those that arise from cohabitation. These problems concern legal uncertainty among partners and toward third parties.

Partners are not allowed to adopt a child together or to seek benefits from medically assisted procreation. If one of the partners has her/his own child, the other partner cannot establish any kind of family law relationship. This is the same rule as applied in the case of cohabitants.

No information is available on whether any court proceedings have been conducted under the Same-sex Partnership Act. However, some notary documents exist for the purpose of obtaining a residence permit and other benefits abroad where partners declare that they live in a same-sex partnership in Croatia.

D. Legal effects in other fields of law

Since 2003, cohabitants have enjoyed the same inheritance rights as spouses, although the Inheritance Act requires more than the Family Act to gain the status of a cohabitant who is entitled to inherit by law. So, the present situation is that two important acts, one regulating family relationships and the other inheritance relationships, are not harmonized. In an inheritance procedure, the existence of cohabitation may be disputed by another heir. In that case, the notary might ask for the declaratory decision of a court that the cohabitation had legal effects, or he or she might redirect the parties to a judicial inheritance proceeding.

In obligation law, cohabitants were first entitled to compensation claims in 1978, which was quite a progressive solution at that time.

According to the Social Welfare Act (1997), the Health Protection Act (2003), the Code of Criminal Procedure (1997), the Penalty Execution Act (2003), the Act on the Protection of Family Violence (2003), as well as the Labour Act (1995), a cohabitant has the same status as a spouse.

In some cases concerning loans, especially those subsidized by the state, a heterosexual couple enjoys some of the privileges enjoyed by a married couple.

Retirement rights in the case of the death of a cohabitant are not extended to the other cohabitant. The reason lies in efforts to avoid potential fraud due to the factual status of the union, and hence to take care of the state pension funds.

However, the retirement rights of women who cohabitated with a man who had the status of Croatian defender during the Homeland War (1991-1995) are under special protection. As a curiosum, and as an exception, Art. 6(2) of the Act on the Rights of Croatian Defenders of the Homeland War changed the requirements for the proof of the required status. Consequently, nowadays a court decision is required that declares that the cohabitation of a person who had the status of defender and her or his cohabitant existed. It appears unusual that the state offers its budget resources for cohabitants.
This benefit has been driven by the special status of Croatian defenders and members of their marital and non-marital families.

Cohabitants do not have the right to represent each other in medical cases, and neither do immigration provisions recognize any advantages for them. The tax law offers no privileges either for cohabitants, or for spouses, or for homosexual partners solely on the basis of their family status.

Homosexual partners are different from cohabitants primarily through the different official term for their union (same-sex union – istospolna zajednica, as opposed to extramarital union – izvanbračna zajednica). This approach was chosen on purpose, in order to differentiate between heterosexual and homosexual institutions and to sweep it symbolically away from the notion of marriage and family.

Homosexual partners have, purely by chance, some rights only in labour law, as they are subsumed under the notion of other family members who are entitled to legal maintenance. The absence in the case of same-sex partnership of legal consequences at least similar to those for cohabitation seems to be contrary to the jurisprudence of the ECHR (case Karner v. Austria, see, footnote 7).

E. The pros and cons: family policy and legislative dilemmas

I. Cohabitation

As shown above, there is no consistent family policy that bears influence on the legal effects of cohabitation in Croatia.

The state has relinquished responsibility to specific fields of law to grant benefits to married or to unmarried couples. Sometimes this is completely neutral, as in the tax law, where benefits are granted only to individuals who maintain another family member, independent of personal status. It can be noticed that in the main field of law, that is, family law, there is a tendency to stop further effects of cohabitation. In other fields of law, the general rule is that when state funds might be engaged (as in pension law), cohabitants enjoy fewer rights.

In an ideal world, one might expect a consistent family policy, where, following serious psychological and sociological research, an answer could be derived about whether cohabitation deserves more support, or if marriage should prevail and be supported as the more desirable institutional form of family union.

It is very difficult for any family lawyer to offer a scientifically correct and honest approach without adequate socio-psychological data. In Croatia, there is a lack of sufficient longitudinal research on human relationships in alternative lifestyles, and consequently a lack of findings on how such relationships may influence the welfare of a family, including its stability. There is no firm evidence that cohabitation is a less valuable form for the founding of a family, or a place where emotions are of less value than those in marriage. Consequently, it would be desirable to conduct research to discover the rate of participation of cohabitants in family violence, or the number of parents whose parental care (rights and duties) have been restricted.
Also, the figures of acknowledged paternity might indirectly indicate how good the relations of the parents are in the period when a child is born. Indeed, the choice of cohabitation for a heterosexual couple is a psychological and social phenomenon. As a matter of personal choice, it might be “a probation marriage”, a lack of animus for serious commitment and uncertainty about a long term relationship with full responsibility arising from the legal and symbolical status of “spouse”, or the choice of a deliberately non-conformist lifestyle.

There is a growing tendency in the postmodern developed world toward liberalism and individualism. But, it seems that the human rights of individuals have to be balanced with the rights of other individuals and public interest. Legal regulation should rely on a comprehensive family and social policy, achieving desirable social goals and values, and respecting well-balanced human rights. It has to take into account the arguments for and against.

Some pros for widening the rights of cohabitants would be:

- protection of the weaker party (mostly a woman),
- respect for the individualistic approach,
- adjusting the legal system to new lifestyles as social phenomena.

It is undisputable that the law has a role to protect weaker members of society. Historically, such a goal was achieved by the Croatian legislator in the late 1970s, significantly early when compared with other family laws in particular European states. This protection grew in almost all fields of law where the state budget has not been burdened for expenses arising from, for example, retirement rights.

Regarding respect for the individualistic approach, it is clear that modern society in developed countries is less and less bound by family ties. This development is also reflected in the field of new forms of family unions, especially weakening marriage as the traditional base on which to found a family. According to this approach, individuals as members of families should have the right to choose the lifestyle that most appeals to them.

Still, the family, no matter what its social appearance is and by whom it is constituted, retains its significant position, as an individual and social value and as a basic and natural unit of society.

If a state accepts the individualistic approach, or merely understands that its legislative role needs to follow social movements, then it has to recognize new lifestyles.

Some cons for recognizing the effects of cohabitation would be:

- legal insecurity for partners and third parties (especially property rights, because their relationship is not formal, not registered),
- no warning signal (as in the case of divorce proceedings) that children might be endangered in the event of the breakdown of the family,
- liberalization of divorce: it is inexpensive and easy to marry and to divorce,
- respect of the wishes of cohabitants not to submit themselves to rules similar to those of marriage,
- cohabitation is (presumably) not so stable.27
Clearly, the way cohabitation has been regulated in Croatia, as a factual union, raises numerous issues concerning its legal insecurity. Neither cohabitants nor third parties have clear knowledge about what their mutual rights and obligations are, because such rights and obligations depend on the fact of cohabitation. Even when all the requirements are satisfied, it is not visible to others that a person cohabits, so she or he might have some property that is under co-ownership. It might be quite difficult for the third party to prove bona fide the position in a potential dispute.

The factual nature also means that there is no warning when cohabitation comes to an end. If the cohabitants are parents, social welfare offices and courts have less chance to find out whether the welfare of children is endangered. On the other hand, a court is obliged in a divorce proceeding to decide *ex officio* on parental care and on all aspects of parental rights and responsibilities after the breakdown of the family unit.

In the previous legal period, it used to be expensive to marry and to divorce. Nowadays, it is not complicated either to marry or to obtain a divorce. In Croatia, for example, divorce may be obtained unilaterally if marital relations have been seriously and lastingly disturbed, or if a year has passed since the marital union ceased to exist, or consensually, if both spouses apply for a divorce (Art. 43 of the Family Act).

So, why impose marital consequences on a couple that does not want to accept them? A good example is inheritance. Older people used not to marry, although they established cohabitation, in order not to include their partner (cohabitant) in the circle of legal successors. After the Inheritance Act (2003), a cohabitant cannot be excluded completely from the inheritance, except on very serious grounds. If one of the cohabitants has a child, by the fact of cohabitation the child's part in the inheritance will be diminished. Before the Inheritance Act (2003), people used to protect the inheritance rights of their children by avoiding concluding marriage. Nowadays, this is not possible.

Legal uncertainty could be avoided by establishing registers for partnerships. But, why introduce an institute similar to marriage and offer options that also reflect personal status? It seems that the reason for such a solution in comparative law has been predominately motivated by the need to introduce same-sex registered partnerships. If this hypothesis is true, then it seems to be that the tendencies and insistence on offering equal opportunities for homosexual and heterosexual couples, simultaneously avoiding allowing same-sex marriage, open the door of parallel institutes for heterosexual couples.

The final argument from this list of *cons* is that a family based on cohabitation is not as stable as a family based on marriage. This argument needs to be proved, as mentioned above.28 If it is true, then the welfare of a family includes its stability. As in many states, if the family enjoys constitutional protection, then one may argue that marriage should be the more favoured form of founding a family. In this case, there should be different treatment concerning the narrower legal effects of cohabitation compared with marriage.

**II. Same-sex partnership**
There is a different reasoning for how a legislator regulates same-sex partnership. This is basically a human rights issue, which is an ideological battlefield, often with a lack of convincing legal argumentation (at least in Croatia).

There is a huge list of publications dedicated to the rights of same-sex couples in family law, and in other fields of law. It seems to me that currently this is predominantly a question of the internal decision of the state concerned. Each state should enjoy a wide margin of appreciation (let us use the wording of the European Court of Human Rights) for the question of whether, and how, to regulate same-sex partnerships.

If a state decides to institutionalize same-sex relationships, then there is a convincing argument of legal certainty that same-sex partnership registers should be established. The effects of same-sex partnerships also seem to be up to each state, which should take into account the non-discrimination principle and balancing the interests of an individual with other individuals (especially children), and public interest as well.

F. Conclusion

In Croatia, as well as in other countries of ex-Yugoslavia, domestic partnership is regulated as the “de facto union” (extramarital union) of two partners of different sex. This characteristic causes a whole spectrum of legal insecurities.

Firstly, cohabitants are not sure whether their union will have legal effects, so the burden of proof lies upon one or both of them in possible later disputes and court proceedings.

Secondly, the rights of third parties might be severely endangered if the same rules, according to the wording of the Family Act, apply to the property (especially real estate) of cohabitants.29

Finally, there is a dilemma concerning family policy: what is the purpose of bringing closer or even unifying the consequences of non-marital union and marriage?

The idea of recognizing legal effects arose from the desire to protect the weaker party from economic exploitation.

A modern couple living in cohabitation do not express the wish to submit themselves to the rules of marital law with its consequences. The reason not to enter into a marriage remains mostly a psychological and social phenomenon, since the procedure to conclude a marriage is quite simple and inexpensive. The divorce procedure is also not costly and does not last too long (unless it is complicated by disputes concerning parental responsibility).

Therefore, if there is no animus shown with regard to accepting the consequences of marriage, which is legally more secure, why is it necessary to unify the consequences of the two different institutes that have different purposes?

This reasoning seems to be valid in traditional countries, where the nuptial rate is still high, where the divorce rate is moderate, and where a significant number of children are born in marriage. Why encourage more flexible lifestyles in societies where the family, based on the principle of solidarity, still plays a significant role, not only for individuals but also for the state, as an economic shelter when there is economic crisis? Rethinking
the role of economic influence, tax exemptions for married couples could be a good instrument to encourage more couples to marry.

A somewhat different reasoning applies for states in which there are registers of domestic partnerships, and where marriage as a traditional institution is no longer considered to be so attractive.

For homosexual unions, the situation is different: there is a whole spectrum of human rights issues for gay and lesbian individuals (including non-discrimination, the right to marry and the right to found a family), the rights of a child, but also public interest, depending on the tradition of the society, public opinion, the activity of NGOs, etc.

A proposal to the Croatian legislator would be to allow homosexual couples to register themselves, and for the legislator to reconsider widening the legal effects, for example in health law and labour law, of such a more formal union.

Cohabitation should remain informal, but with restricted legal effects. So, a second proposal would be to form a consistent family policy: is it preferable to encourage people to enter into a marriage, or to take a more flexible attitude towards life choices? If the answer to the first question is positive, marriage should be encouraged by instruments of family and economic policy. Such a policy would help the legislator to create a more consistent legal system, taking into account individual rights, the rights of third parties, as well as public interest.

However, if the answer to the second question is positive, then the state should support a more individualistic approach in family law, with all the consequences that arise from a changing society.

1. Unofficial translation of the Ministry responsible for social care. For more details, see footnote 6.
2. There were only some traces of legal recognition of de facto unions, such as those in the Workers’ Insurance Act of 1922, Službene novine (Official Gazette of the Kingdom of Yugoslavia) 117/1922. This act gave some rights to the non-marital spouse of a laid off worker if he satisfied certain requirements.
3. For more on the legal historical aspects of cohabitation, see Draškić, M., Vanbračna zajednica, Beograd, 1988, p. 117.

Officially, parliamentary translators choose the word common-law marriage for cohabitation. In two acts, the Family Act 1998 (Obiteljski zakon, Narodne novine
(Official Gazette), 162/98) and the Family Act 2003 (Obiteljski zakon, Narodne novine (Official Gazette), 116/03, 17/04 and 136/04) the expression “extramarital union” was used for a heterosexual union. In the Same-sex Partnership Act (Zakon o istospolnim zajednicama, Narodne novine (Official Gazette) 116/03) the expression “same-sex union” was deliberately used to strengthen the difference among the two institutes.

7. Beside this attitude, also valid is the warning that the European Convention on the Protection of Human Rights and Fundamental Freedoms developed a slightly different attitude, which is obligatory for state parties. A difference in treatment based on gender or sexual orientation, concerning a regulated same-sex and homosexual relationship, has to satisfy the principle of proportionality of public and individual interests (the judgment of the European Court of Human Rights in the case Karner v. Austria, Application no. 40016/98, judgment of 24 July 2003). If this is not the case, there is discrimination, breach of Art 14 of the above-mentioned Convention. This means, if the states provide a legislature framework for both relationships, differences in regulation have to be based on the principle of proportionality and the principle of achieving the legitimate aim.

8. According to official data published in 2006, in 2004 the nuptial rate was 5.1 marriages per 1,000 inhabitants, and the divorce rate was only 219 divorces per 1,000 inhabitants. Only 10.4% of children were born out of wedlock. Statistical Information, Republic of Croatia, Central Bureau of Statistics, Zagreb, 2006. www.dzs.hr, 3. 1. 2007.


10. Art. 1. of the Family Act:
“The regulation of family relations is based on the following principles:
1) the protection of the welfare and rights of the child…
2) appropriate … protection for … an adult that has mental difficulties.”

Croatian legal writers pointed out that the application of principles depends on judges and their sensibility for legal values. On this and for more about the family law principles in Croatia, see Hrabar, D., Načela hrvatskog obiteljskog prava i njihovo zakonsko uobičenje, Zbornik voć na Mile Hadži Vasilev, Universitet “Sv. Kiril i Metodij”, Pravni fakultet “Justinijan Prvi”, Skopje, 2004, pp. 79-103.

An example of another approach is the Slovenian family legislation, where heterosexual union is also factual by its nature and divided into “legal” and “non-legal”. Legal de facto unions satisfy conditions similar to those required for valid marriage.

11. “II. THE PROPERTY RELATIONS OF EXTRAMARITAL PARTNERS. Article 258: An extramarital union of a woman and a man that meets the conditions as defined in Article 3 of this Law creates property law effects to which the provisions of this Law concerning the property relations of spouses are applied in an appropriate way.”

12. For more details, see Hrabar, D., in Alinčić et alii, Obiteljsko pravo, Zagreb, 2006, pp. 222 and 223.

13. “Article 217 of the Family Act:
A spouse who does not have the means necessary for living or cannot realise them from his or her assets and is not capable of working or cannot be employed has the right to maintenance from the spouse.”

14. Following the principle of family solidarity.


16. In 2004 the Draft of the Assisted Medical Procreation Act granted the right to seek medically assisted procreation to cohabitants, as well as to spouses or individuals. Among other solutions, this was criticized in public and in professional circles as too liberal. The Draft was stopped and never entered into legislative procedure.

17. A bitter debate preceded the enacting of the Same-sex Partnership Act. The socialist democratic government, although advocating the legalization of homosexual
partnerships, did not engage enough energy into introducing new personal status registers.

18. The Inheritance Act (Zakon o nasljeđivanju, Narodne novine (Official Gazette), 48/2003), Art. 8(2) provides that cohabitation has to last for a longer period of time and that conditions for the validity of marriage should be satisfied.


20. Zakon o socijalnoj skrbi, Narodne novine (Official Gazette), 73/97, 27/01, 59/01, 82/01, 103/03.


22. Zakon o kaznenom postupku, Narodne novine (Official Gazette), 62/03.

23. Zakon o izvršenju kazne zatvora, Narodne novine (Official Gazette), 190/03.

24. Zakon o zaštiti od nasilja u obitelji, Narodne novine (Official Gazette), 116/03.

25. Zakon o radu, Narodne novine (Official Gazette), 38/95, 54/95, 65/95, 17/01, 82/01, 11/03, 14/03, 30/04.


27. This attitude has been shown in connection with the prohibition for cohabitants to jointly adopt a child. For more on this, see Alinčić, M., Promjene u propisima o braku i drugim životnim zajednicama, Zbornik Pravnog fakulteta u Zagrebu, 5, 2005, 55, p. 1178.

28. There are some partial remarks, like data from the National Strategy for Protection against Domestic Violence (Nacionalna strategija zaštite od nasilja u obitelji, za razdoblje od 2005-2007, Narodne novine (Official Gazette), 182/04). In this document, there are data that show the structure of perpetrators of violence, where in one period husbands constituted 44.4% of cases, and a cohabitant 7.87% of all family violence cases. The remaining percentage represents other members of the family.

Other research was conducted in 2003 and had as a subject the implementation of family law measures toward parents. Data showed that 26.9% of children whose parents were deprived of parental care were born out of wedlock. For more on this, see Hrabar, D., Korać, A., Primjena obiteljskopravnih mjera za zaštitu dobrobiti djece te zasnivanje posvojenja bezu pristanka roditelja. Istraživanje iskustva iz prakse, Zagreb, 2003.

Both indicators show a greater risk factor for children born out of wedlock, bearing in mind that they account for 10% of the total number of children.

29. The problem arises from the fact that in domestic case law some judgements were made that protected the property rights of a spouse by annulling the mortgage contract that was concluded by the other spouse without the knowledge of the former. This was decided against the principle of trust in (public) land registers, where only the husband was recorded as an owner. The reasoning was that spouses (mutatis mutandis and cohabitants) are co-owners of property acquired during their life union, regardless of whether this fact has been entered into the land register. This ruling clearly creates a danger for legal certainty.