

Announcement

submitted by Kees Waaldijk* to the editors of the journal *GenIUS* for inclusion in its January 2017 issue

The LawsAndFamilies Database

A new online resource on aspects of legal family formats available to same-sex and/or different-sex couples in European countries

January 2017 sees the publication of *The LawsAndFamilies Database*.¹ This database is one of the milestones of the larger EU-funded FamiliesAndSocieties research project.² This new online open-access resource will make it easier to find and compare legal information about marriage, registered partnership and cohabitation in European countries. The database will be accessible via www.LawsAndFamilies.eu.

The information in the database has been provided by selected legal experts in more than 20 countries in the European Economic Area (typically two experts per country).³ In a questionnaire the experts were asked, for some 60 typical legal consequences and formalities of marriage, to what degree and since when these consequences and formalities are now available to same-sex and/or different-sex couples via one or more of three possible legal family formats (marriage, registered partnership, cohabitation).⁴ The questionnaire was divided in six sections on formalisation, income, trouble, parenting, migration, splitting up, and death. The experts were also asked to mention the relevant legal sources and to provide some explanations. Everywhere in the database, the user can access these detailed references and explanations. The questionnaire and the resulting database have been developed by research teams at Leiden Law School in the Netherlands and the Institut national d'études démographiques (INED) in France.

The database will also link to interesting sociological and statistical research regarding same-sex families. Its core is an interactive database with legal information about the situation of same-sex and different-sex families over the last 50 years in over 20 countries. It will allow lawyers, judges, policymakers, legislators, activists, researchers and others to look up a specific legal issue for a specific country, or to generate colourful overviews comparing different countries, different issues, or different legal family formats. The database thus will help to discover patterns of legal development in a very interesting period during which family law and related fields of law gradually became more diverse and more inclusive. This ongoing process has been much faster or much broader in some countries than in others. For example, during the course of the 4-year research project several more countries made marriage available to same-sex couples, and several other countries – including Italy – introduced registered partnership. Other countries go on to attach more legal consequences to registered partnership or same-sex marriage, while a number of countries are beginning – if at all – to give some legal recognition to cohabiting partners of the same-sex. Such steps are typically (but not always) preceded by some recognition of *different-sex* cohabitation. For example, a few western European countries now allow joint adoption by registered same-sex couples, but not joint adoption by cohabitants, even if the latter are of different sexes.

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- 1 K. Waaldijk, M. Digoix, N. Nikolina, G. Zago, D. Damonzé, A. Caporali & K. Nait Abdellah (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu.
- 2 Acknowledgement: The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under grant agreement no. 320116 for the research project FamiliesAndSocieties, www.familiesandsocieties.eu.
- 3 The legal experts for Italy in this survey are Matteo Winkler and Marco Gattuso. Their answers and detailed references and explanations have been brought together in six papers that will be included in the database referenced in note 1 above: M. Winkler authored the papers 'Formalisation of legal family formats in Italy', 'Parenting and legal family formats in Italy' and 'Migration and legal family formats in Italy', while M. Gattuso is the author of the papers 'Income, troubles and legal family formats in Italy', 'Splitting up and legal family formats' and 'Death and legal family formats in Italy'.
- 4 K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper 64*(2016) www.familiesandsocieties.eu.

The questionnaire used for creating the *LawsAndFamilies Database*, introduced the term ‘legal family format’, to refer to family forms (for couples) that have legal effects. It distinguishes between three such legal family formats: marriage, registered partnership, cohabitation. It was a challenge to precisely define the distinction between cohabitation and registered partnership. On the basis of his expertise on Spanish legislations,⁵ José María Lorenzo Villaverde (who as a researcher for this project at Leiden Law School played an important role in developing the questionnaire) contributed to the definition of this distinction in the questionnaire. After he had thus contributed to the elaboration of the definition for the 2014 test-version of the questionnaire, I gratefully used a similar definition in my article ‘Great diversity and some equality’ in *GenIUS*.⁶ In the end, the guidance document for the experts answering the final version of the questionnaire gave the following definition:

‘[...] registered partnership is defined here as a legal family format for two partners:

- (1) that is constituted in a procedure that results in registration,
- (2) for which it is *not* a condition that the partners are already living together for a substantial period of time (six months or more),
- (3) that is registered in a register kept by a public authority,
- (4) that has an extended or limited set of substantive legal consequences,
- (5) and that is *not* dissolved automatically when the partners no longer live together.’⁷

And reversely, as regards ‘cohabitation’ the document specified:

‘When a condition for registration is that the partners must have been living together already for a substantial period (six months or more), then such a legal regime does not count as registered partnership, because it is not created by the act of registration. It should then be classified as “cohabitation”. Also when the registration is not in a *public* register, it should be considered here as a form of cohabitation. Idem, when the formalisation is only valid for as long as the partners live together.’⁸

It seems that the Italian legislation of 2016 meets all five conditions.⁹ The same is true for Greece (that opened up registered partnership to same-sex couples at the start of 2016) and probably also for Cyprus (where registered partnership legislation entered into force in 2015),¹⁰ but maybe not yet for Estonia (where partnership legislation entered into force in 2016).¹¹ Not counting Estonia, the number of countries allowing same-sex partners to marry or to register their partnership, is now 21 among the 28 countries of the European Union, 24 among the 31 countries of the European Economic Area, and 26 among the 47 countries of the Council of Europe. The *LawsAndFamilies Database* also shows that the number of countries with some recognition for cohabiting same-sex couples is even greater. However, such cohabitation recognition mostly only applies to some specific issues. And the material scope of registered partnership is mostly more limited than that of different-sex marriage. In a few countries that is also true for same-sex marriage. The new database should be a good tool to establish the precise legal scope of such legislation in different countries.

5 Expertise gained and developed in his PhD research at the Faculty of Law of the University of Copenhagen since 2009. See J.M. Lorenzo Villaverde (2015), *The Legal Position of Same-Sex Couples in Spain and Denmark. A Comparative Study of Family Law*. Copenhagen: Faculty of Law of the University of Copenhagen (PhD thesis defended April 2016, not yet published).

6 See K. Waaldijk, ‘Great diversity and some equality: non-marital legal family formats for same-sex couples in Europe’, 1 *GenIUS – Rivista di studi giuridici sull’orientamento sessuale e l’identità di genere* 2014/2, p. 42 and 47.

7 Waaldijk et al. 2016 (note 4 above), p. 20.

8 Idem, p. 19.

9 See the forthcoming papers by Winkler and Gattuso (note 3 above).

10 For a chronological overview of the 21 European countries that introduced registered partnership for same-sex partners earlier, see Waaldijk 2014 (note 6, above), p. 44. In 2015 also Luxembourg and Ireland have opened up marriage to same-sex couples.

11 About the implementation problems regarding the new Estonian law, see P. Roudik, ‘Estonia: legalization of civil partnerships’, *Global Legal Monitor*, 2016, <https://www.loc.gov/law/foreign-news/article/estonia-legalization-of-civil-partnerships/>.