FINLAND

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General

When same-sex couples were allowed to marry in March 2017, it was considered to be one of the most significant changes in Finnish family law in recent years.[1] Although same-sex couples had been free to register their partnership since March 2002, the possibility to marry was an important step for the advancement of equal rights of rainbow families and the LGBTIQ community. As of March 2017, the existing registered partners were also able to change their relationship status from registered partnership to marriage with a simple written declaration given to the local register office. The couples who did not wish to do so, could remain in a registered partnership. However, new registered partnerships could no longer be formed. All new formalized unions in Finland have been marriages as of March 2017.

The legal consequences of changing a relationship status from registered partnership to marriage are very minor, as the starting point with registered partnerships was that it equals to marriage. For example, the provisions on divorce, maintenance and property relations between spouses are applied to registered partners in the same way as if the couple were married. However, the *pater est*–rule on the presumption of paternity based on the marriage of the birth mother is not applied to registered partnerships (or to marriage of same-sex couples, for that matter). Further, one party to a registered partnership can adopt the child of his or her partner, but the couple cannot adopt together outside the family. Until 2018, the provisions regarding a common family name did not apply to registered partners, but this was corrected by the introduction of the new Act on Forenames and Surnames in 2017,[2] which entered into force in January 2019. The only remaining significant (and non-biology related) legal difference between registered partnerships and marriages lies, therefore, in the right to jointly adopt a child outside the family.

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1 Parliament accepted the citizens' initiative on amending the Marriage Act, Act on Registered Partnerships and the Act on Confirmation of the Sex of the Transsexuals (Nr. 3 of 2013) in December 2014. This was the first time when the newly introduced possibility to make citizens' initiatives to the Parliament was accepted directly into law without submitting the initiative to the government for further development.

2 Nr. 946 of 2018.

Although the reform in the Marriage Act does not,[3] strictly speaking, belong under any of the particular topics discussed in this report, it has its indirect implications to many of the developments addressed below.

Another more general reform in the Finnish marriage law is that as of June 2019, persons under the age of 18 can no longer enter into a marriage under any circumstances. Until June 2019, the Ministry of Justice could grant a minor a dispensation to marry for special reasons. In the same connection, the provision according to which the child's custody ends at marriage, if the minor marries under the age of 18, was removed from the Act on Custody and Right of Access.[4] The most common justifications in the applications for under age marriages had been pregnancy, religious beliefs and cultural reasons. The number of applications and dispensations had been decreasing rapidly in the 21st century. For example, in 2017, the number of applications was 11 and only 7 dispensations were granted. Almost all of the granted dispensations concerned persons at the age of 17.[5]

A. New Developments in the field of Divorce (since September 2002)

The main features of the Finnish divorce legislation have remained the same since 1988, when the amendments to the Marriage Act of 1987 entered into force. As of 1988, divorce is granted by application of one or both spouses without any particular ground. A mandatory six months' period for reflection and consideration is applied, which is not necessary, if the spouses have lived apart for a period of at least two years since the marriage was concluded.[6]

One significant change in the dissolution of marriage since the reform of 1987 is, however, currently under preparation. Social and parliamentary debate on forced marriages has been ongoing in the recent years and this theme came up again in 2018, when the possibility of minors to enter into marriage was abolished. A proposal is therefore being drafted in the Ministry of Justice, according to which a victim or victims of forced marriage could bring an action into court claiming forced marriage. If the action is approved, the court could annul the marriage. The draft proposal is currently being finalized into a Government Bill, and it is expected to be handed over to the Parliament during the spring of 2021.

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3 Nr. 234 of 1929.
4 Nr. 361 of 1983.
5 Governmental Bill Nr. 211 of 2018, p. 2.
6 More details on the history and the procedural aspects on the Finnish divorce legislation, please see M. Savolainen, Grounds for Divorce and Maintenance between Former Spouses, http://ceflonline.net/wp-content/uploads/Finland-Divorce.pdf, last accessed 7 February 2021.

At present, according to Section 19 of the Marriage Act, a marriage can be considered void, if the marriage ceremony has not been performed in accordance with law, or if the ceremony has been performed by a person without the right to perform marriage ceremonies. Otherwise, a marriage can only be terminated by divorce or by the death of the other spouse. According to the draft proposal mentioned above, Finland might bring back the possibility of annulment of marriage, which has not been a legal option since 1987. [7]

B. New Developments in the field of Maintenance between former spouses (since September 2002)

As stated in the earlier Finnish report on maintenance between former spouses in 2002,[8] the provisions on spousal maintenance have in most parts become obsolete, as maintenance claims by a former spouse after divorce have virtually ceased to exist. There has been no impetus to reform these provisions and the current legislative framework has remained unaltered since 1987.

The Finnish provisions on maintenance between spouses make a distinction between maintenance during marriage and after divorce. Section 46 of the Marriage Act states the duty to provide maintenance during marriage as follows:

> *Each spouse shall participate in the common household of the family and the maintenance of the spouses to the best of his or her abilities. The maintenance of the spouses means the fulfilment of the common needs of the spouses as well as the personal needs of each spouse.*

Section 48 of the Marriage Act addresses maintenance after divorce:

> *When the spouses are granted a divorce and a spouse is deemed to be in need of maintenance, the court may order the other spouse to pay him or her maintenance deemed reasonable with a view to his or her ability and other circumstances.*

Both provisions describe need and ability as central factors when determining spousal maintenance. When considering maintenance after divorce, however, also

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7 The difference between the proposed annulled marriage and a void marriage lies in the legal consequences of the termination of marriage. If a marriage is considered void, the legal effects are the same as in a situation where the marriage had never taken place. Therefore, for example, the potential children born during the void marriage are considered fatherless, unless recognised separately, and the provisions on division of matrimonial property or spousal maintenance are not applied. In the contemplated type of annulled marriage, the legal consequences would be the same as in divorce, but the civil status of the parties would be restored to 'single' (or other status prior to the forced marriage) rather than 'divorced' in order to mitigate the cultural stigma attached to divorce.

8 M. Savolainen, Grounds for Divorce and Maintenance between Former Spouses, http://ceflonline.net/wp-content/uploads/Finland-Divorce.pdf, last accessed 7 February 2021.

reasonability is taken into account. The formulation of these provisions is flexible and leaves much open to interpretation by the courts. The following two relatively recent decisions of the Supreme Court in this area clarify some important principles related to the interpretation of these two provisions and reveal the main differences in their application.

The first case (*KKO 2004:104*) involved a Finnish couple. The wife had stayed at home since the birth of their first child due to the child's illness, and later due to the hobbies of the two children. The marriage had lasted 16 years, during which the wife had not been had any income from employment. Before entering into marriage, she had graduated from a commercial college. During the reflection period for the divorce, the wife's father had passed, which meant that she had received some inheritance. She had also received a considerable sum of money in the division of the matrimonial property. The husband had good income, but the wife was unemployed and relied on unemployment benefits.

The Supreme Court accepted the wife's claim for maintenance for the reflection period, as the starting point was that during marriage, both spouses share the same standard of living based on mutual and individual needs, which does not need to be restricted to mere subsistence.[9] The inheritance and the share of the matrimonial property that the wife received partly towards the end of the reflection period for divorce and partly after the divorce, did not have an effect to the calculation of the maintenance during the reflection period.

However, the Supreme Court, as well as the lower courts, rejected her claim for maintenance after the divorce. This was due to the principle that the financial connection related to marriage ends at divorce and the duty to pay maintenance is finalised. Spousal maintenance after the divorce is based on consideration of reasonability and usually comes to question only, when the other spouse is left without ability to support him or herself. Divorce in itself is not a foundation for maintenance.[10] As the wife was considered to have the ability to support herself by seeking employment at the age of 49, the Supreme Court did not consider it reasonable for the husband to pay maintenance. The inheritance and the property received in the division of matrimonial property were also taken into account in the evaluation.

The case makes it clear that in court practice, there is a strict division between maintenance during marriage and after the divorce.

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9 KKO 2004:104, Paragraph 2.
10 KKO 2004:104, Paragraph 10.

The second case (*KKO 2010:3*) involved a Finnish husband and a Thai wife. The couple had been married for 10 years and they had three minor children. The couple had lived in Finland for the duration of the marriage, but the wife's skills in the Finnish language were still weak and she did not have any vocational training. Although she had received some startup funding for a restaurant, she had worked in the restaurant without salary and the premises had been owned by the husband. The restaurant was later sold and the husband had retired. All property in Finland was owned by the husband alone. The husband had income from both his pension and his capital. The wife owned some property in Thailand, which, however, was not easily capitalized to support her in Finland. The couple had a prenuptial agreement, according to which the wife received nothing in the division of matrimonial property.

The Supreme Court referred to its own earlier decision (KKO 2004:104, described above), according to which, as a main rule, the financial connection related to marriage ends at divorce and the spousal duty to pay maintenance is finalized. The Court continued that the spousal duty to pay maintenance after divorce can be considered reasonable and usually comes to question only when the other spouse has been left without ability to support him or herself independently because of the marriage.[11]

The majority of the Supreme Court accepted the wife's claim for maintenance for the duration of the reflection period and, exceptionally, also for the duration of three years after the divorce. One Supreme Court judge disagreed with the majority and would have rejected the wife's claim for maintenance after divorce.

According to the majority, it could be deducted from the facts that the wife had not had any income after the divorce or that the income had been so low that she was considered to lack ability to support herself independently. Her situation had been affected by the fact that she had taken care of the home and the children in Finland for 10 years, which had resulted in the lack of her linguistic skills in Finnish and lack of vocational training. Although she had some property in Thailand, it was not likely that she could support herself from the income received from that property. She had also not received anything in the division of matrimonial property because of the prenuptial agreement. Therefore, she had been left without ability to support herself independently, which was caused by the marriage.

However, this lack of ability to support herself was not to be considered indefinite. She was eligible for social benefits, and she was capable of employment and ought to seek training in order to be employed. Therefore, spousal maintenance of 300 euros per month was granted to her only for the duration of three years after divorce. During

[11] KKO 2010:3, Paragraph 4.

this time, she could be expected to acquire the necessary language skills and the training in order for her to support herself independently. The sum was considered reasonable also from the point of view of the husband's financial ability. [12]

Court decisions where the claim for spousal maintenance is accepted for the time after divorce, are very exceptional in Finland. The case summarized above is the only one published by the Supreme Court in the recent years. As could be seen, the circumstances have to be very exceptional to qualify and a strong presumption for self-maintenance is applied. However, as international marriages are increasing in volume, it will be interesting to see whether the special circumstances related to international marriages will also result in the increase of spousal maintenance claims after divorce.

C. New Developments in the field of Parental Responsibilities (since December 2004)

There are three major reforms in the area of parental responsibilities that have taken place since December 2004, when the last Finnish report on parental responsibilities was published by Dr. Kirsti Kurki-Suonio.[13] First of all, the primary legislation governing this area, the Child Custody and the Right of Access Act of 1983 was revised in 2018. The revised provisions came into force in December 2019. This reform is explained in more detail below.

Secondly, before the 2018 revision, a new Chapter (3a) was added to the Act on court mediation in disputes concerning child custody and right of access in 2013. With these provisions, the municipalities were made responsible for assigning expert assistance to court mediation concerning cases on child custody and right of access. The expert assisting the judge in charge of the mediation is usually a psychologist or a social worker. The state compensates the municipalities for providing this service, which has resulted into its active use. The use of court mediation has provided excellent results.

The third major reform in the area of parental responsibilities was the enactment of the new Child Welfare Act of 2007, which replaced the old Child Welfare Act of 1983. This Act came into force in January 2008. Some minor revisions have also been made to the provisions on the administration of the child's property.

Provisions on international private law relating to parental responsibilities have also been revised in 2004 and in 2008 in order to make the necessary adjustments required

12 KKO 2010:3, Paragraphs 12-14.

13 http://ceflonline.net/wp-content/uploads/Finland-Parental-Responsibilities.pdf, last accessed 7 February 2021.

by the European Union legislation[14] and the Hague Conference on Private International Law.[15] Another revision on the private international law provisions is ongoing. However, as private international law is outside the scope of this report, these topics are not explained further here. In the following, I will focus on the revision of the Child Custody and the Right of Access Act of 2018, briefly discuss the amended provisions on the administration of the child's property in 2010 and finish with the new Child Welfare Act of 2007.

The revision of the Child Custody and the Right of Access Act in 2018 has undoubtedly been the most significant change in the legislation on parental responsibilities in recent years.[16] The central aim of the revision was to ensure that the best interests of the child would materialize in matters concerning child custody and right of access. In the reform, the duties of the custodians were underlined more strongly than before to include the fostering of all close relations of the child and to protect the child from all physical and mental violence. In addition, the custodians were given the responsibility to inform in advance their move to another location, if the move would have an adverse effect on the exercise of parental responsibilities.

The introduction of the new Paternity Act in 2016 brought about the possibility to acknowledge the child before birth in order to enable the child to have two parents as soon as possible after the child's birth even if the parents were not married. Since 2016, the parents can, at the same time, make an agreement on joint custody, which can then be confirmed after the parenthood has been confirmed. The revision of the Child Custody and the Right of Access Act in 2018 developed the process even further: no separate agreement on joint custody is required, if the child was acknowledged before its birth, as in this case both parents would automatically become custodians. However, if the child was acknowledged after birth, the mother of the child would become the sole custodian unless a separate agreement on custody was concluded. The automatic joint custody can also be altered to sole custody by agreement after the birth of the child. By the entry into force of the Maternity Act in 2019,[17] the possibility of automatic joint custody was also extended to families consisting of two mothers.

The revision of the Child Custody and Rights of Access Act also recognized the alternating residence arrangements between the separated parents, which had already

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14 Council Regulation (EC) Nr. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

15 Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

16 Act Nr. 190 of 2019, Government Proposal Nr. 88 of 2018. The amendments entered into force 1 December 2019.

17 Citizens' Initiative 3 of 2016, Act Nr. 253 of 2018.

become popular in practice and in the agreements between the parents, but which had not been formally recognized as an option in the Act. The Act on the Maintenance of the Child was also specified to include a provision on payment of maintenance even under an alternating residence arrangement.[18] After the 2018 revision, the court can also confirm that the child has a right of access to a person other than a parent. The relationship between the child and this person must, however, be comparable to that of a parent and a child. The right of access to another person than a parent can only be confirmed, if it is considered to be in the best interests of the child. The child's right to be heard in his or her own matter was also strengthened in the revision and the parents' possibility to make out-of-court agreements confirmed by the Social Welfare Board was extended. Amendments were also made to the procedural provisions to expedite the court procedure.

The child's custodians are normally also the child's guardians,[19] which means that the child's custodians are usually also responsible for taking care of the administration of the child's property. As minors usually do not accumulate a substantive property before they reach majority, this administrative task does not normally constitute a major part of the child's upbringing. However, if the child inherits from his or her other parent or a grandparent before reaching majority, the value of the inherited property may be substantial. The result is that the guardian is placed under a statutory duty to provide an annual statement of the administration of the property in the same manner as guardians appointed to adult persons.

In 2010, the Guardianship Act was amended to the effect that the value of the property, which triggers the guardian's duty to provide a statement of the management of the child's property, was raised from 15 000 euros to 20 000 euros.[20] Once the value of the property reaches 20 000 euros, the guardianship is registered in the guardianship register. The registration then sets off the duty of the guardianship authorities to supervise the management of the property, which includes, for example, the duty of the guardian to provide an annual statement of the administration of the property. Some parents may consider this administrative task as a burden, especially if the accumulation of property has been the result of the death of the other parent, which in itself places a strain to the family. In order to try to find the correct balance between the duties of the guardians and the supervisory functions of the guardianship authorities, the provisions of the Guardianship Act were, at the same time, amended to allow a discretionary relief from the reporting duties depending on the nature and value of the property. Especially, if the property is already in a form that cannot be

18 Nr. 704 of 975.
19 Section 4 of the Guardianship Services Act Nr. 442 of 1999.
20 Government Proposal Nr. 203 of 2010. The amendments entered into force 1 May 2011.

liquidated without a permission of the guardianship authorities (for example, ownership of real estate or shares of a housing company), it is possible to lengthen the reporting period or to grant a relief from the reporting altogether.

The new Child Welfare Act of 2007 placed more emphasis on actions to support the families and the child welfare workers in order to prevent children from being taken into care. The municipalities were given a duty to draft child welfare plans to enhance the preventive measures and the protection of children when they are taken into care, as well as a duty to set up multi-professional teams to support their enforcement. The new Act also included more detailed procedural provisions for decision-making and for the delegation of powers in order to clarify the process and in order to protect the rights of all parties. The statutory duty to notify the social services of the need to investigate the child's need for care or of circumstances endangering the child's development or the child's behavior was also extended.

When the child is taken into care, the parental responsibilities of a child are divided between the custodians and the social welfare board of the municipality, into whose care the child is taken. The division of parental responsibilities between the custodians and the social welfare board was clarified in the new Child Welfare Act. In Section 45 of the new Act, decisions on health care and education of the child were specifically mentioned as parental responsibilities, which are transferred to the municipality along with the more general responsibilities of whereabouts, care, upbringing, supervision and other care of the child. Decision-making power on the child's name, nationality and religion remain with the custodians, although the social welfare board must be heard before the name of a minor child is changed. Decisions on the child's passport, however, are made by the municipality, if the child is taken into care.[21] In all decision-making, efforts must be made to cooperate with the children, parents and custodians concerned, and the interests of the child concerned must be given priority.

The new Child Welfare Act of 2007 has been repeatedly amended since its entry into force. For example, provisions on emergency placement and urgent measures for open care were amended in 2010, 2015 and 2016. The duty to notify of the child in need of care has also been extended many times to cover various professionals in connection to families, for example in 2010 and 2015. Foster care in a family environment was made the primary alternative for children in care in 2012. The most recent amendments to the Child Welfare Act, which came into force in January 2020, are mostly related to the strengthening the rights of children in child welfare institutions in relation to the use of restrictive measures.

[21] Section 7 of the Passport Act Nr. 671 of 2006.

D. New Developments in the field of Property relations between spouses (since August 2008)

Apart from the amendments that were caused by the implementation of the European Union Regulations 2016/1103 and 2016/1104 on matrimonial property and the property consequences of registered partnerships,[22] the domestic substantive law provisions on the property relations between spouses have not been revised since August 2008, when the previous report on property relations between spouses was written by Dr. Kirsti Kurki-Suonio.[23] Only one minor amendment to the Marriage Act was made in 2009, which entered into force in November 2010. Paragraph 2 of Section 35 of the Marriage Act was then amended to the effect that the spouses can exclude the marital right of the other spouse also in a beneficiary clause of the personal insurance. Earlier, such exclusion could only be made in a marriage settlement, a gift deed or a will.[24]

Although there are no major legislative reforms in the area of property relations between spouses in the last five years, this is an area of law which is frequently tackled by all court instances, including the Supreme Court. Hence, there would be multiple Supreme Court cases to present from the last five years. As the space allowed in this article is limited, the author has selected only two to be presented here.

The first case (KKO 2016:67) concerned the distribution of matrimonial property after divorce. The matrimonial property included a limited partnership company (*kommandiittiyhtiö*), which was owned by the husband. The company had taken two voluntary pension insurances for his benefit. The Supreme Court ruled that the value of the pension insurances were to be taken into account when determining the value of the limited partnership company for the distribution of the matrimonial property. However, the hidden tax liability was to be deducted from the repurchase value of the pension insurances. Because of the pension insurances, the husband would have to pay an adjustment to the wife, which amounted to almost half of the net value of the pension insurances. When the voluntary pension insurances formed a substantial part of the husband's pension plan in comparison to the wife's statutory pension, which was not taken into account when determining the value of the matrimonial property, the payment of an adjustment from the husband to the wife would result into an

22 Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

23 See K. Kurki-Suonio's report at http://ceflonline.net/wp-content/uploads/Finland-Property.pdf, last accessed 7 February 2021.

24 Government Proposal Nr. 63 of 2009. The amendments entered into force 1 November 2010.

unreasonable outcome. Therefore, the distribution of matrimonial property was conciliated, and the husband did not have to pay an adjustment to the wife.

The case brings forward the principle, according to which statutory pensions are always disregarded, when determining the value of the matrimonial property. Voluntary pension schemes are more frequently used by entrepreneurs than employees. If one of the spouses is an entrepreneur and the other is an employee, this may result in unequal treatment in the distribution of matrimonial property. The possibility for adjustment included in the Marriage Act is frequently used by the courts to adjust the potentially unreasonable outcome of the distribution of property.

The second case (KKO 2016:37) concerned the determination of ownership of real estate, which was used as a joint summer cottage by the married couple during their marriage. According to the contract of sale, the real estate was owned by the husband, although both spouses had participated in the purchase and financing of the real estate. When the spouses divorced, the wife demanded that she should be regarded to own half of the property.

The Supreme Court stated that the spouses had acknowledged the purchase of the real estate to be conducted so as the husband would become the sole owner. They had therefore knowingly and purposefully acted so as for the husband to become the owner of the property on his own. The Court therefore stated that the wife had not shown that the purpose was to acquire the property as joint property. The estate was regarded as belonging to the husband alone.

It is apparent that the name principle, i.e. under whose name the property is purchased, still plays an important role in determining who owns the property. The possibility of adjusting the distribution of property is only used, if the end result of the distribution of matrimonial property as a whole would lead into an unreasonable result, taking into account, for example, the activities of the spouses for their common household and for the accumulation and preservation of the property (Section 103 b of the Marriage Act).

E. New Developments in the field of De Facto Partnerships (since February 2015)

There is one relatively general change – or one should perhaps say many changes – in the legislation concerning *de facto* partnerships since February 2015 when the last national report on this theme was published.[25]

[25] See Salla Silvola's report at http://ceflonline.net/wp-content/uploads/Finland-IR.pdf, last accessed 7 February 2021.

When the Parliament accepted the amendment to the Marriage Act allowing same-sex couples to marry in December 2014, its effects spread across many Acts, which included a reference to 'persons cohabiting in circumstances akin to marriage'. As marriage had thus far only been possible between a man and a woman, the reference to 'the circumstances akin to marriage' was in some areas of law also restricted to cover only cohabiting unions consisting of a man and a woman. When persons of the same sex were allowed to marry, this interpretation could no longer be maintained, and many acts in the area of social benefits and social insurance had to be amended and definitions on family members were expanded to cover also cohabiting partners of the same sex. These acts included, for example, the Health Insurance Act,[26] the National Pensions Act,[27] the Act on Social Assistance,[28] the Act on a General Housing Allowance,[29] and the Act on the Protection of the Livelihood of Unemployed Persons.[30] These amendments came into force at the same time as the amendment to the Marriage Act in March 2017.

Some acts were not amended, but their interpretation was changed instead. The guidance changing the interpretation of the Entrepreneurs' Pensions Act (1272/2006) and the old Employment Accidents Act of 1948 (608/1948) was given in February 2016, approximately one year before the amendment to the Marriage Act came into force in March 2017. The new Workers' Compensation Act (459/2015) came into force in January 2016, and replaced the old Employment Accidents Act of 1948.

Those acts, which had already treated cohabiting same-sex couples equal to cohabiting opposite sex couples, remained unchanged. For example, the change in the Marriage Act did not have any effect to the general Act on the Dissolution of the Household of Cohabiting Partners (26/2011, later referred to as the Cohabitation Act), which has been applied to both opposite and same-sex cohabiting couples since its entry into force 1 April 2011.

Although no significant changes have been made to the Cohabitation Act in the recent years, some important case law has accumulated from the Supreme Court involving its interpretation.[31] One of these cases is presented below.

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26 Nr. 1224 of 2004.
27 Nr. 568 of 2007.
28 Nr. 1412 of 1997.
29 Nr. 938 of 2014.
30 Nr. 1290 of 2002.
31 For example, KKO 2018:5 (on the relevance of agency and source of unpaid labor for the benefit of joint household), KKO 2019:69 (on the meaning given to a temporary break-up) and KKO 2020:65 (on the effects of decrease in value of common property and legal reconciliation).

In the case *KKO 2018:5*, the Supreme Court had to evaluate the conditions for compensation for the benefit of the shared household at the dissolution of the cohabitation that had lasted for 15 years. The main question was whether the considerable amount of unpaid carpenter work conducted by the father of one of the cohabitees qualified for compensation at the dissolution. The father had built a house for the couple six years before the break-up of the relationship. The majority of the Supreme Court considered the wording of Section 8 of the Cohabitation Act and concluded that compensation could not be paid, as the work had been conducted by the father of the cohabitee and not by the cohabitee herself. In addition, although the father claimed that the unpaid work had only been intended for the benefit his daughter and not for her partner, the Court considered that as the property and the constructed house was jointly owned by the cohabitees, there was no evidence that at the time of the construction, the unpaid work had not been intended for the benefit of the family as a whole. No compensation was therefore awarded. Two judges disagreed, however, and considered that the wording of the Cohabitation Act, which referred to the investments of the spouses themselves, should not be given such a strong emphasis. The two dissenting judges referred to the earlier case law on unjust enrichment, which was used as a legal model behind the Cohabitation Act. The case law on unjust enrichment did not restrict the means of how the enrichment has come about and allowed the situation to be evaluated as a whole. In addition, the two dissenting judges argued that the person receiving the gifted labour should have the burden of proof of the intended gift, and not vice versa.

Although only one of the recent cases could be presented here, it is interesting to see how in all recent cases the Supreme Court is reluctant – and perhaps rightly so – to separate the interpretation of the Cohabitation Act from its earlier case law on unjust enrichment. Most of the recent Supreme Court cases have also not been unanimous. It is perhaps therefore fair to say that this area of law is still developing.