GERMANY

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

The provisions on substantial law in divorce matters have remained basically unchanged. However, since the Act introducing same-sex marriage of 20 July 2017, a marriage may be entered into also by persons of the same sex (§ 1353 para. 1 German Civil Code).[1] The procedure in marital matters and on divorce is now regulated in the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction of 17.12.2008.[2]

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

Maintenance between former spouses is based on §§ 1569 – 1586b German Civil Code. It has been reformed by the Act Amending Maintenance Law of 2007, which has entered into force on 1 January 2008.[3] The main objectives of the reform were strengthening the best interests of the child, relieving the economic burden on so-called second families and simplifying maintenance law. One of the goals of the reform was to stress the personal responsibility of the ex-spouses. Under the principle of personal responsibility each spouse is responsible for providing for his or her own maintenance after divorce unless he or she is not in a position to do this (§ 1569 German Civil Code).

There are, however, still several grounds for maintenance. One reason is maintenance to care for a child. A divorced spouse may demand maintenance from the other, for the care for or upbringing of a child of the spouses, for at least three years after the birth (§ 1570 para. 1 German Civil Code). The duration of the claim to maintenance is extended as long as and to the extent that it is equitable. The concerns of the child and the existing possibilities of childcare are to be taken into account. The duration of the maintenance claim is further extended if, taking into account the arrangement of

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1 Gesetz zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts of 20.07.2017, Federal Gazette (Bundesgesetzblatt; BGBl.) 2017 I p. 2787.

2 See §§ 121- 150 Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit of 17.12.2008, Federal Gazette 2008 I p. 2586.

3 Gesetz zur Änderung des Unterhaltsrechts of 21.12.2007, Federal Gazette 2007 I p. 4189.

childcare and gainful employment in the marriage and the duration of the marriage, this is equitable (§ 1570 para. 2 German Civil Code).

The newly created § 1578b German Civil Code has opened the possibility of reducing post-marital maintenance, and/or of setting a time-limitation to it, under equity aspects in individual cases. According to the former legal situation, maintenance claims could be limited in terms of time or amount with reference to the principle of personal responsibility. However, family courts used this option only very cautiously, which particularly created financial stress for second families. The basis for the maintenance claim was primarily based on the marital living conditions, which often made returning to the profession unattractive. The reform has strengthened the options for setting time limits and limiting payments, whereby the standard of living achieved in marriage is only one of several aspects of whether and to what extent gainful employment must be resumed after the divorce. Now own income is expected (§ 1574 para. 1 German Civil Code). In addition, the length of the marriage and the actual distribution of roles must be taken into account. When raising children together, the childcare options actually available play a greater role than before. A waiver of maintenance claims, however, is only effective if both parties have been fully informed about the consequences. Maintenance agreements before the divorce must therefore be notarized (§ 1585c sent. 2 German Civil Code).

If there is more than one person entitled to maintenance, the priority of the divorced spouse is now governed by the general provision of § 1609 German Civil Code (§ 1582 German Civil Code). The order of priority of those entitled to maintenance in the event that the person liable for maintenance is unable to pay maintenance to all (so-called deficiency case; *Mangelfall*) has been newly determined in § 1609 German Civil Code. Maintenance claims of minor children are accorded the first rank if the income of the person liable for maintenance is not sufficient to meet all claims (§ 1609 n. 1 German Civil Code). While the claims of divorced and current spouses previously stood on an equal footing with those of the children, claims of adults are now always subordinate. Divorced and subsequent spouses are, in principle, equal in rank.

The best interests of the child are now also in the foreground in the ranking of dependent adults. Priority is given to parents who raise a child together or alone, regardless of whether they are or were married (§ 1609 n. 2 German Civil Code). Spouses after a long marriage, whose trust in marital solidarity is particularly protected even after a divorce, have the same rank (§ 1609 n. 2 alt. 2 German Civil Code). Divorced spouses who have only been married for a relatively short time and who do not look after children are last in the ranking and only receive maintenance if all claims of the children, the parents raising children and the divorced who have been

married for many years have been met (§ 1609 n. 3 German Civil Code). However, the Federal Constitutional Court stressed in 2011 that the maintenance claim of the ex-spouse should be based on the living conditions at the time of the divorce.[4]

In eight situations restriction or refusal of maintenance for gross inequity is possible (§ 1579 German Civil Code). This provision has been redrafted. A maintenance claim is to be refused, reduced or restricted in time to the extent that it would be grossly inequitable for the person obliged to be claimed on, even if the concerns of a child of the spouses entrusted to the entitled person, in order to be cared for or brought up, were observed. One of the grounds is now that the entitled person lives in a stable long-term relationship (§ 1579 n. 2 German Civil Code). The harshness of the exclusionary rules is mitigated to some extent if the claimant carries the responsibility for a child of the marriage. That responsibility must be taken into account and may lead to a certain minimum amount of alimony.

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

There have been several reforms in the field of parental responsibilities. The procedural norms are now a part of 'Proceedings in Parent and Child Matters' in §§ 151-168a of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction of 17.12.2008.

A reform of 2013 secures information on the personal circumstances of the child. Each parent may, in the case of justified interest, demand information from the other parent on the personal circumstances of the child, to the extent that this is not inconsistent with the best interests of the child (§ 1686 German Civil Code). Another part of the reform concerns the position of biological fathers. Under German law paternity must be determined either by an acknowledgement of paternity or by a court decision establishing paternity. If the child already has a legal father, then the presumption of paternity for that man must be rebutted by a special action contesting paternity. Therefore it is possible that under certain circumstances the biological father is not the legal father. The rights of the biological father in such cases have been strengthened. As long as the paternity of another man exists, the biological father who has demonstrated a serious interest in the child has a right of access to the child if such access is in the best interests of the child, and a right to be provided with information from each parent regarding the personal circumstances of the child where he has a

[4] Federal Constitutional Court 25.01.2011, BVerfGE 128, 193 (Entscheidungen des Bundesverfassungsgerichts) = NJW (Neue Juristische Wochenschrift) 2011, 836 = FamRZ (Zeitschrift für das gesamte Familienrecht) 2011, 437.

justified interest and this is not inconsistent with the best interests of the child (§ 1686a German Civil Code).[5]

The provisions on parental custody of parents who are not married to one another have been amended. The position of the father has been strengthened to a certain degree. When the parents, at the date of the birth of the child, are not married to one another, they can have joint parental custody. However, a child of unmarried parents is in principle placed solely under the parental custody of the mother (§ 1626a para. 3 German Civil Code). There can be joint custody only with a common declaration of parental custody (*Sorgeerklärung*) by the parents (§ 1626a para. 1 n. 1 German Civil Code) or a court decision based on the welfare of the child (§ 1626a para. 2 German Civil Code). Such a declaration of parental custody may be made even before the birth of the child (§ 1626b para. 2 German Civil Code). Declarations of parental custody and approvals must be notarially recorded (§ 1626d para. 1 German Civil Code). The former law under which the father of a child born out of wedlock was in principle excluded from the parental custody of his child when the child's mother did not consent and he could not obtain a judicial review, violated the father's parental rights under Art. 6 para. 2 of the Basic Law.[6]

The father can obtain a court order for sole custody of his child either with consent of the child's mother (§ 1671 para. 2 n. 1 German Civil Code) or if his sole custody complies with the welfare of the child (§ 1671 para. 1 n. 1 German Civil Code); other cases are when the custody of the mother has been suspended (§ 1678 para. 2 German Civil Code) or when the mother has died or has lost her custody rights (§ 1680 German Civil Code).

The transfer of sole custody when the parents live apart has been reformed. If parents live apart for a period that is not merely temporary, and if they have joint parental custody, each parent may apply for the family court to transfer parental custody or part of parental custody to him or her alone (§ 1671 para. 1 German Civil Code). The application is to be granted to the extent that (1) the other parent consents, unless the child has reached the age of fourteen and objects to the transfer, or (2) it is to be expected that the termination of the joint parental custody and the transfer to the applicant is most conducive to the best interests of the child.

In the case of the death of a parent or the removal of the parental custody from him/her, parental custody is held by the other parent (§ 1680 German Civil Code). The

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5 Gesetz zur Stärkung der Rechte des leiblichen, nicht rechtlichen Vaters of 04.07.2013, Federal Gazette 2013 I p. 2176.

6 Federal Constitutional Court 21.07.2010, BVerfGE (Entscheidungen des Bundesverfassungsgerichts) 127, 132 = NJW 2010, 3008 = FamRZ 2010, 1403.

consequences for the other parent of the actual prevention or the suspension of parental custody have been redrafted. Where a parent is actually prevented from exercising parental custody, or where his parental custody is suspended, the other parent generally exercises the parental custody alone (§ 1678 para. 1 German Civil Code). Where the parental custody of the parent, which he had alone, is suspended, and where there is no prospect that the reason for the suspension will cease to apply, the family court must transfer parental custody to the other parent if this is not inconsistent with the best interests of the child (§ 1678 para. 2 German Civil Code).[7]

The provisions on personal contact have also been reformed. A parent who is not entitled to personal custody nevertheless retains the right to personal contact (*persönlicher Umgang*) with his or her child (§ 1684 para. 1 German Civil Code). He or she may also demand information about the personal condition of the child insofar as this is compatible with the child's welfare (§ 1686 German Civil Code). In practice, the person caring for a child, e.g., the mother, decides under what circumstances the father will have contact. If the parents cannot agree on the terms of contact, the father may apply to the family court to determine that personal contact would not endanger the child's welfare (§ 1684 German Civil Code). The circle of persons who have the right to contact has been extended. Also persons with a 'social-family' relationship (*sozial-familiäre Beziehung*) to the child, i.e., grandparents, brothers and sisters, (former) stepparents and registered partners, have a right of personal contact (§ 1685 German Civil Code). The same is true for a biological father not having the status of a legal father.[8]

Another law has reformed court measures in case of the endangerment of the best interests of the child.[9] If the personal welfare or the property interests of the child are in jeopardy and the parents do not wish to or are not able to avert the danger, the family court is obliged to take the necessary protective steps (§§ 1666 *et seq.* German Civil Code). The reform explicated the court measures which can be taken. These include in particular (1) instructions to seek public assistance, such as benefits of child and youth welfare and healthcare, (2) instructions to ensure that the obligation to attend school is complied with, (3) prohibitions to use the family home or another dwelling temporarily or for an indefinite period, to be within a certain radius of the home or to visit certain other places where the child regularly spends time, (4) prohibitions to establish contact with the child or to bring about a meeting with the child and (5) substitution of declarations of the person with parental custody. As a

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7 Gesetz zur Reform der elterlichen Sorge nicht miteinander verheirateter Eltern of 16.04.2013, Federal Gazette 2013 I p. 795.

8 FGG-Reformgesetz of 17.12.2008, Federal Gazette 2008 I p. 2586.

9 Gesetz zur Erleichterung familiengerichtlicher Maßnahmen bei Gefährdung des Kindeswohls of 04.07.2008, Federal Gazette 2008 I p. 1188.

matter of last resort, the parents may be deprived totally or partially of their parental custody. A detailed catalogue of additional powers held by the Youth Welfare Authorities is contained in the Children and Young Persons Assistance Act of 1998.

The placement of children in accommodations where they are deprived of their liberty, has been clarified in 2017. The placement requires an approval of the family court (cf. § 151 n. 6 Act on Proceedings in Family Matters). Accommodation is permissible if it is necessary in the child's best interests, in particular in order to avert a danger to the child himself or to a third-party and the danger cannot be remedied by other means, including via other public assistance. Without approval, accommodation is only permissible if delay thereof entails risk; the approval must thereafter be obtained without undue delay (§ 1631b German Civil Code).[10]

A small reform law tried to bring the circumcision of a male child in line with the law of parental responsibilities. The care for the person of the child includes the right to give consent to a medically unnecessary circumcision of a male child who is not capable of reasoning and forming a judgment, if this is to be carried out in accordance with the rules of medical practice. This does not apply if the circumcision, even considering its purpose, jeopardises the best interests of the child. In the first six months after the child is born, circumcision may also be performed by persons designated by a religious group to perform this procedure if these persons are specially trained to do so and, without being a physician, are comparably qualified to perform circumcisions (§ 1631d German Civil Code).[11]

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

On 1 September 2009, the Act Amending the Law on Equalisation of Gains *(Zugewinnausgleich)* and the Law on Guardianship entered into force.[12] The new regulations regarding the equalisation of gains are limited to selective changes, namely with regard to the calculation of the initial and final assets and to the improvement of protective provisions against abuse in favour of the spouse entitled to equalisation. These amendments are intended to take better account of the principle of equalisation of accrued gains, i.e. to allow the other spouse to participate in half of the value created during the marriage.[13] The structure of the matrimonial property regime of the

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10 Gesetz zur Einführung eines familiengerichtlichen Genehmigungsvorbehaltes für freiheitsentziehende Maßnahmen bei Kindern of 17.07.2017, Federal Gazette 2017 I p. 2424.

11 Gesetz über den Umfang der Personensorge bei einer Beschneidung des männlichen Kindes of 20.12.2012, Federal Gazette 2012 I p. 2749.

12 Gesetz zur Änderung des Zugewinnausgleichs- und Vormundschaftsrechts of 06.07.2009, Federal Gazette 2019 I p. 1696.

13 *Koch*, FamRZ 2008, 1124 (1124).

community of accrued gains as a matrimonial property regime of separation of property with only equalisation under the law of obligations always requires a snapshot of the assets on the balance sheet at the beginning and end of the matrimonial property regime.[14] This entails the risk of value distortions. In addition, there is a greater risk of abuse in case of equalisation of gains than in such matrimonial property regimes in which the assets acquired during the marriage actually become joint assets.[15]

The initial assets *(Anfangsvermögen)* required for the calculation of the gain are the assets which each spouse possesses at the time of entering into the matrimonial property regime (§ 1374 para. 1 German Civil Code). However, the repayment of debts during the marriage period may constitute an economically relevant gain as well and may be attributable to a contribution of the spouse. That is why a share under matrimonial property law is required.[16] The reform now allows for this by providing that also debts in excess of the assets are to be deducted and that the initial assets can therefore be negative (§ 1374 para. 3 German Civil Code).[17] In order to be able to take into account the economic gain of the initially indebted spouse, even if he or she has not acquired any assets at the end of the matrimonial property regime, the final assets *(Endvermögen)* can also be negative (§ 1375 para. 1 s. 2 German Civil Code).[18]

In order to protect the spouse entitled to equalisation from abusive, disloyal manipulation of assets, the new regulation provides different sets of rules. On the one hand, there are provisions to harmonize the cut-off dates for the calculation of the gain and for the accrual of the equalisation claim (§ 1384 German Civil Code) and, on the other hand, there are provisions to extend the duty to provide information (§ 1379 German Civil Code). Before the reform, the pendency of the divorce petition was decisive for the calculation of the equalisation of gains.[19] However, the claim for equalisation of gains became, and still becomes, due only with the termination of the matrimonial property regime (§ 1378 para. 3 s. 1 German Civil Code), which can be considerably later. The former law thus limited the amount of the equalisation claim to the assets of the party obliged to equalise at the time of the divorce. This way it gave the spouse the possibility to set aside assets during the divorce proceedings and to

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14 *Dethloff,* Vermögensrechtliche Folgen der Scheidung- Kritische Bestandsaufnahme und europäische Perspektive, p. 484; in: *von Bar/ Wudarski/ Badowski (Hrsg.)* Deutschland und Polen in der europäischen Rechtsgemeinschaft.

15 *Dethloff,* Vermögensrechtliche Folgen der Scheidung- Kritische Bestandsaufnahme und europäische Perspektive, p. 484; in: *von Bar/ Wudarski/ Badowski (Hrsg.)* Deutschland und Polen in der europäischen Rechtsgemeinschaft.

16 *Büte,* NJW 2009, 2776 (2777); *Koch*, FamRZ 2008, 1124 (1124).

17 BT-Drs. (Bundestagsdrucksache): 16/10798, p. 5, 11.

18 BT-Drs.: 16/10798, p. 5, 11; *Koch*, FamRZ 2008, 1124 (1125).

19 *Kogel,* NZFam (Neue Zeitschrift für Familienrecht) 2019, 701 (706 et seq.).

exclude them from equalisation.[20] The new regulation provides that in case of termination of the matrimonial property regime by divorce, both for the calculation of the gain and for the amount of the equalisation of gains, the point in time of the pendency of the divorce petition is decisive (§ 1384 German Civil Code). The harmonization of the cut-off dates now prevents a disloyal transfer of assets from reducing the assets subject to equalisation.[21]

Furthermore, the reform extends the mutual rights to information to the initial assets and the assets upon separation (*Trennungsvermögen*), so that the rights to information now include the final as well as the initial assets and those upon separation.[22] In addition, for the first time there is an obligation to submit documents on the assets upon request (§ 1379 para. 1 s. 2 German Civil Code).[23] This enables the respective spouses to obtain detailed knowledge of the partner's existing assets.[24] In practice, however, the right to information at the time of separation according to § 1379 para. 2 in conjunction with § 1375 para. 2 German Civil Code proves to be problematic, as the spouse requesting information must state the date of separation to the day.[25] This often leads to a long and contentious taking of evidence and creates the risk that the intended protection from disloyal reductions in assets is falling short.[26]

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

In the Federal Republic of Germany, the number of de facto partnerships has been growing continuously.[27] In 2019, the number rose to 3.256 million. The total number of 8.189 million families with underage children is made up of 5.723 million (69.9%) families with married couples and 942,000 (11.5%) families with non-married couples.[28] Compared to 2013, when the number of families with non-married couples was still 810,000, the number has thus increased by 132,000.[29] In 2017, 75% of women in Western Germany living in a household with underage children were married.[30]

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20 *Büte,* NJW 2009, 2776 (2779).
21 *Kogel,* NZFam 2019, 701 (706 et seq.).
22 Münchener Kommentar Bürgerliches Gesetzbuch/ *Koch* (8. Auflage), § 1379, para.1.
23 BT-Drs.: 16/10798, p. 12; *Giers*, NZFam 2015, 843 (845 et seq.).
24 BT-Drs.: 16/10798, p. 12.
25 *Kohlenburg*, NZFam 2019, 86 (86).
26 *Kogel*, NZFam 2019, 701 (706); *Kohlenburg*, NZFam 2019, 86 (86).
27 https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Haushalte-Familien/Tabellen/3-3-lr-paarformen.html (retrieved on 01.12.20).
28 https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Haushalte-Familien/Tabellen/2-5-familien.html (retrieved on 01.12.20).
29 https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Haushalte-Familien/Tabellen/2-8-lr-familien.html (retrieved on 01.12.20).
30 Eltern sein in Deutschland, Neunter Familienbericht, 2.2.4.1., p. 55.
The Ninth Family report 'Eltern sein in Deutschland – Ansprüche, Anforderungen und Angebote bei wachsender Vielfalt von Familien. Empfehlungen für eine wirksame Politik für Familien' of

Another 16% were single parents and only 9% lived in a de facto partnership.[31] In contrast, in Eastern Germany over 20% of women lived in a de facto partnership with underage children in the same household and only 53% were married.[32] Compared to the year 2000, the number of women with children in de facto partnerships has almost doubled.[33] Relationships thus often show a stable consolidation even before their formalization and there is a clear increase in plural family structures.[34]

In 2015 a law reform was passed which led to some legal recognition of de facto partnerships, but only in a very limited field. The recognition of 'stable relationships' in the area of adoption law was triggered by the decision of the Federal Constitutional Court of 26 March 2019.[35] The starting point was the fact that the non-marital new partner of a parent often also assumes the role of a social parent of the stepchild in everyday life. However, he or she could not acquire full legal parental status, to which rights and obligations towards the child, such as parental care and maintenance and inheritance rights, are linked. A stepchild adoption was in fact only open to married couples, because the adoption, in these cases, only terminated the legal relationship between the child and the other parent and his or her relatives (§ 1741 para. 2 s. 3 German Civil Code, § 1755 para. 2 German Civil Code). In contrast adoption of the stepchild by a non-marital partner led to the extinction of the child's relationship to *both* parents, which therefore excluded this possibility. The Federal Constitutional Court considered this to be an unjustified unequal treatment of a child from a non-marital stepfamily and a child from a marital stepfamily.[36] Although in case of marriage a stable life situation for the child could typically be assumed, the complete exclusion of de facto partnerships was held not to be justified. A prognosis of stability in each individual case could satisfy the meaning and purpose of the adoption law without denying children in non-marital step families the advantages of a stepchild adoption altogether.[37]

Following this verdict of unconstitutionality, the legislature complied with the mandate for a new regulation by introducing § 1766a German Civil Code with effect

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the Federal Government was prepared by a commission of experts. On 3 March 2021 it was passed by the Bundeskabinett to the German Bundestag and Bundestag. The family report assesses the situation of parents in Germany and makes corresponding recommendations.

31 Eltern sein in Deutschland, Neunter Familienbericht, 2.2.4.1., p. 55.

32 Eltern sein in Deutschland, Neunter Familienbericht, 2.2.4.1., p. 56.

33 Eltern sein in Deutschland, Neunter Familienbericht, 2.2.4.1., p. 56.

34 Eltern sein in Deutschland, Neunter Familienbericht, 2.2.4.1., p. 56.

35 Federal Constitutional Court, NJW 2019, 1793.

36 Federal Constitutional Court, NJW 2019, 1793, para. 61 et seqq., 129.

37 Federal Constitutional Court, NJW 2019, 1793, para. 111 et seq.

from 31 March 2020.[38] It thereby declared the provisions on stepchild adoption for married couples to be applicable mutatis mutandis to two persons who live in a so-called 'stable relationship' (*verfestigte Lebensgemeinschaft*) in a common household (para. 1). Though the terminology is the same as in the provision of § 1579 n. 2 German Civil Code, which provides for a restriction of post-divorce maintenance if the entitled person is living in a 'stable relationship', the meaning here differs somewhat. According to the explanatory statement, a stable relationship is one that is intended to be permanent, does not permit any others of the same kind and is characterized by internal ties that establish the partners' mutual responsibility for each other.[39] Therefore the stability of the relationship is not only to be measured by its length of existence in the past, but also by the expectation of its future lasting existence.[40] The legislature has provided two presumptive examples for the existence of a stable relationship, namely if a couple has been cohabitating marriage-like for at least four years (no. 1) or cohabiting as parents of a joint child (no. 2) (§ 1766a para. 2 s. 1 German Civil Code). The additional requirement of living in a 'common household', which further narrows the scope of application, was justified with the special needs of a stepchild adoption.[41] The reform thus merely eliminated the constitutional violation by granting legal recognition to couples in stable relationships in the area of stepchild adoption. Contrary to corresponding demands they still cannot jointly adopt a child.[42]

Furthermore, there continues to be no comprehensive legal regulation of the consequences of the dissolution of de facto partnerships. Particularly in the case of de facto partnerships with children, there are special needs which the legislature, despite repeated demands for reform, has until now not taken into account.[43] Recently, the Ninth Family Report of the Federal Government, which dealt with the need for reform with regard to parenthood, recommended the creation of a comprehensive regime for de facto partnerships with children, which provides regulations for the protection of children and partners when the partnership comes to an end. With explicit reference to the Principles of European Family Law Regarding Property, Maintenance and

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38 Gesetz zur Umsetzung der Entscheidung des Bundesverfassungsgerichts vom 26. März 2019 zum Ausschluss der Stiefkindadoption in nichtehelichen Familien of 19.03.20, Federal Gazette 2020 I p. 541.

39 BT-Drs.: 19/15618, p. 14.

40 Beck'scher Online Kommentar Bürgerliches Gesetzbuch/*Pöcker,* (56. Edition), § 1766a para. 4.

41 BT-Drs.: 19/15618, p. 12.

42 See for criticism *Dethloff,* Familienrecht (32. Edition) § 15 para. 17; https://www.bundestag.de/dokumente/textarchiv/2019/kw50-de-stiefkindadoption-nichtehelich-670550 (retrieved on 06.12.21); *Eckebrecht,* NZFam 2019, 977 (981); Beck'scher Online Kommentar Bürgerliches Gesetzbuch/*Pöcker*, (56. Edition), § 1766a para. 14; *Löhnig* Anm. zu BVerfG NZFam 2019, 473 (487).

43 *Dethloff,* GA A zum 67. Deutscher Juristentag (2008), p. 108 et seq.; Beschluss A IV 3, Abteilung Zivilrecht des 67. Deutscher Juristentag 2008; Beschluss Nr. 10 b, Abteilung Zivilrecht des 57. Deutscher Juristentag 1988; *Wellenhofer*, ZfF (Zeitschrift für das Fürsorgewesen) 2016, 162 (171); recently: *Dutta,* AcP (Archiv für die civilistische Praxis) 216, 609 (657 et seq., 666 et seq., 673).

Succession Rights of Couples in de facto Unions of the CEFL, the Commission of Experts endorsed provisions on the use of the home in the event of separation, as well as maintenance for partnership-related disadvantages and financial adjustments that also covers pension rights, and endorsed introducing a statutory right of inheritance in the event of death.[44]

In the absence of legislation, courts continue to resort to civil law instruments in order to grant claims in case of dissolution of partnerships. According to established case law in this context, in principle, personal and financial benefits which the partners gained during the cohabitation are not compensated in case of its termination.[45] However, there is an exception if the absence of a compensation or adjustment would be grossly inequitable.[46] In such a case, courts fall back on general civil law provisions, such as compensation claims under company law, claims under the law of unjust enrichment or claims due to disturbance of the basis of the contract.[47] Most recently, the Federal Court of Justice (BGH) had to decide on a compensation claim of the partner who upon separation continued to bear the burden of the expenses of a jointly owned house alone. In this decision of 11 July 2018, the BGH resumed the above-mentioned line of case law.[48]

44 Eltern sein in Deutschland, Neunter Familienbericht, 3.1.3.5., p. 81.
45 Federal Court of Justice, NJW 1980, 1520 (1521).
46 Federal Court of Justice, NJW 2008, 3277.
47 Federal Court of Justice, NJW 2008, 3277; Federal Court of Justice, NJW 2011, 2880.
48 Federal Court of Justice, NJW-RR (Rechtsprechungs-Report Zivilrecht) 2018, 1217.