

NATIONAL LEGISLATION: HUNGARY

1. Hungarian Civil Code

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1. HUNGARIAN CIVIL CODE

Sixth Book

Third Part

Title XXV, Cohabitation

Section 6:514

Establishment and termination of cohabitation

(1) Cohabitation means when two persons are living together outside of wedlock in an emotional and financial community in the same household (hereinafter referred to as „community of life”), provided that neither of them is engaged in wedlock or partnership with another person, registered or otherwise, and that they are not related in direct line, and they are not siblings.

(2) Cohabitation shall come to existence upon the couple’s community of life established under the conditions referred to in Subsection (1), and shall terminate upon the couple’s marriage or their entry into registered partnership, or when their relationship is terminated.

Section 6:515

Partnership contracts

(1) Cohabitants may arrange their relationship in terms of property by means of a contract for the duration of their partnership. The contract shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) The partnership contract may contain any provision relating to property rights, which could apply to married couples under contract or in accordance with this Act.

(3) A partnership contract shall be considered effective in dealing with third parties if the contract is recorded in the national register of partnership contracts, or if the partners are able to prove that the third party was aware, or should have been aware that such contract existed, including its contents.

(4) The provisions pertaining to the register of marriage contracts shall apply mutatis mutandis to the register of partnership contracts.

Section 6:516

Property regime of couples in cohabitation

(1) Unless otherwise provided for by the partnership contract, the partners shall be considered independent in their property acquisitions during their cohabitation. If cohabitation is terminated, either partner may request the division of property jointly acquired during the period of cohabitation.

Any property that is considered separate property in the case of spouses shall not be treated as jointly acquired property.

(2) Partners shall be entitled to a share of jointly acquired property primarily in kind, in proportion to their contribution. Work done in the household and in child raising and also in the other partner's enterprise shall be construed as contributing to acquisition.

(3) If the ratio of contribution cannot be determined, it shall be considered equal, unless this would constitute inequitable financial loss in respect of either of the partners.

(4) Unless otherwise provided for in this Act, the provisions on the marital property acquisition regime of spouses shall apply *mutatis mutandis* to the protection of a partner's share from jointly acquired property and for the division of jointly acquired property among the partners.

Section 6:517

Contractual arrangement of the right of tenancy

(1) The partners may enter into an agreement before entering into and under the duration of cohabitation regarding further use of their common home following the termination of their partnership. The agreement shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) Where the right of tenancy is provided for in advance by means of an agreement, the provisions on the use of the common home of spouses shall apply *mutatis mutandis* to the right of tenancy of a child.

(3) Following the termination of their relationship the partners may agree regarding further use of their common home. There are no formal requirements for such an agreement.

Part Three

Legal Aspects of Cohabitation under Family Law

Title VII, Maintenance Obligations in Cohabitations

Section 4:86

Entitlement for maintenance

(1) Following the termination of cohabitation, either partner shall be entitled to demand maintenance from his/her partner if unable to support him/herself for reasons beyond his/her control, if their cohabitation existed for at least one year and it produced a child.

(2) If the former partner develops the need for support after a period of one year following the termination of cohabitation, maintenance may be demanded in cases of exceptional circumstances.

Section 4:87

Undeserving maintenance

- (1) A former partner shall be considered unworthy of maintenance:
- (a) if the breakdown of their relationship is attributable to his/her gross misconduct or reprehensible lifestyle; or
 - (b) if engaged after the termination of cohabitation in any conduct intended to do harm to his/her former partner or the partner's resident family member.
- (2) In determining unworthiness, the actions of the former partner invoking it shall also be taken into consideration.

Section 4:88

Ability to provide maintenance

A person shall not be obligated to support his/her former partner if this would seriously jeopardize his/her ability to provide for him/herself or for his/her child.

Section 4:89

Agreement to provide lump-sum maintenance

By agreement of the partners executed in an authentic instrument or in a private document countersigned by an attorney, the partner subject to maintenance obligation shall meet this obligation by providing assets of kind value or in a lump-sum payment. In that case the partner to whom maintenance is provided shall not make any maintenance claim in the future, even if otherwise would be eligible under this Act.

Section 4:90

Order in which maintenance is provided between spouses and domestic partners

Former partners shall be entitled to maintenance in line with a separated or former spouse.

Section 4:91

Maintenance of relatives

The amount of maintenance, the means of providing and the duration such maintenance, including any changes thereof, the enforcement of any maintenance claim retroactively, the cessation of right to maintenance and the termination of maintenance shall be governed by the common provisions on the maintenance of relatives, with the proviso that the right to maintenance in cohabitation shall cease if the entitled party enters into another cohabitation or into marriage.

Title VIII, Right of Tenancy in Cohabitations

Section 4:92

Settlement of the right of tenancy in court

In the absence of an agreement for the prior arrangement of the right of tenancy relating to the common home, or any other agreement concluded after the termination of cohabitation, further use of the common home following the termination of partnership shall be decided by the court at the request of either of the partners.

Section 4:93

Use of a home occupied under the common legal title of the partners

(1) Further use of the common home used under the common legal title of the partners shall be decided by the court in accordance with the provisions governing the use of a home used under common legal title of spouses.

(2) In its decision for the further use of the home used under the common legal title of the partners following the termination of their partnership, the court shall take due account of the right of a common child of minor age with the right of tenancy for adequate housing.

Section 4:94

Entitlement of either partner for use of a home occupied under the exclusive legal title of the other partner

(1) Following the termination of cohabitation, the court may award the right to a former partner - at his/her request - to continue using the common home occupied under the exclusive legal title of the other partner, if their cohabitation existed for at least one year and if this is justified in the interest of providing adequate housing under the right of tenancy of a minor child born during their relationship.

(2) In the cases provided for in Subsection (1), the court shall primarily order the shared use of a home that is considered suitable.

(3) On an exceptional and duly justified basis, the court may grant entitlement to a former partner for the exclusive use of a home owned exclusively by the other partner, or in which the other partner has beneficial rights, if that partner has parental authority over at least one of the common minor children with the right of tenancy and the housing for the minor child cannot be provided otherwise.

(4) The court may order shared use of a home or exclusive right of tenancy as provided for under Subsections (2)-(3) for a fixed period of time, or subject to some condition.

(5) The former partner granted exclusive right of tenancy shall have tenant status, with the proviso that his/her right of tenancy may be terminated by offering an adequate replacement subject to notice.

(6) Shared use of a home used under the former partner's exclusive legal title may not be demanded by the other partner if he/she has a vacant home elsewhere, or a home that can be made vacant by means of a unilateral statement.

Section 4:95

Rearranging the right of tenancy

(1) If the court has ordered the shared use of a home, or ordered the partner who is the owner or holder of beneficial interest to vacate the home, either of the former partners may request rearrangement of the right of tenancy on the pretext that his/her relevant lawful interests or the interest of the common child of minor age are in jeopardy under the current arrangement due to changes in the circumstances underlying the arrangement in question.

(2) The provisions in Subsection (1) shall not affect the former partner's right to request termination of his/her former partner's co-tenancy following the order of shared use, under the relevant provisions of this Act pertaining to co-tenancy.

(3) Where the right of tenancy is provided for in advance by means of an agreement, the provisions on the use of the common home of spouses shall apply *mutatis mutandis* to the right of tenancy of a child.

(4) Following the termination of their relationship the partners may agree regarding further use of their common home. There are no formal requirements for such an agreement.