

NATIONAL REPORT: LITHUANIA

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A. General

- 1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.**

Two kinds of formal relationships between couples are regulated by legislation: Marriage between different-sex couples and registered partnerships (cohabitation) between different-sex couples.

- Marriage between different-sex couples

The Civil Code of the Republic of Lithuania (Official gazette. 2000, No. 74-2262, hereafter Lithuanian Civil Code) defines marriage as the main legal form for the creation of family relations. According to Art. 3.7 of the Lithuanian Civil Code, a marriage is a voluntary agreement between a man and a woman to create legal family relations and which is entered into by means of the procedure provided for by law.

Article 38 of the Constitution of the Republic of Lithuania provides that a marriage shall be entered into upon the free consent of man and woman. The State shall also recognize marriages registered in a church. Marriages formed according to the procedure established by the Church (confessions) shall be entered in the official records in accordance with Article 3.304 of the Lithuanian Civil Code. The formation of a marriage in accordance with the procedures established by the Church (confessions) shall entail the same legal consequences as that emanate from the formation of a marriage at a Register Office provided that: 1) the conditions laid down in Articles 3.12 to 3.17 of the Lithuanian Civil Code have been satisfied; 2) the marriage has been formed according to the procedures established by the canons of a religious organisation registered in and recognised by the Republic of Lithuania; 3) the formation of a marriage in the procedure established by the Church (confessions) has been recorded at the Register Office in the procedure provided for herein.

Book III of the Lithuanian Civil Code regulates the personal and property relations of spouses and their maintenance rights as well as the legal relations between parents and children. Book V of the Lithuanian Civil Code regulates the law of succession. The legal effects of a marriage in other areas of the law (for example, tax law, social security law, pension law, labour law etc.) are prescribed by relevant legislation.

- Registered partnership (cohabitation) between a different-sex couple

Registered partnerships (cohabitation) are regulated in the Lithuanian Civil Code, Book III 'Family Law', Part 6 'Rights and duties of other members of the family', chapter 15 'Persons living together outside of legal marriage (cohabitation)'. Articles 3.229-3.235 regulate the property relations of a man and a woman who, after registering their partnership in the procedure laid down by the law, have been cohabiting for at least one year with the aim of creating family relations without having registered their union as a marriage (cohabitees). Although the Lithuanian Civil Code has been in force for more than 13 years (from 2001 onwards) norms regulating relations between cohabitants are still lacking, because no special law has been adopted since.¹ Such inconsistency and the lack of legal clarity obviously influence legal disputes within society and the different approaches within the case law. The above-mentioned provisions of the Lithuanian Civil Code (Art. 3.229-3.235) have not been applied in practice; however they have not been abolished either, so they are referred to in the answers to some of the questions.

- 2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?**

Articles 3.229-3.235 of the Lithuanian Civil Code regulate property relations between cohabitants who live together in a registered partnership without being legally married. Partnership conditions laid down by the Lithuanian Civil Code are comparable to those for a marriage: having reached the age of majority, possessing full legal capacity, being of a different sex, absence of a marriage or a blood relationship, and registration. In addition, just as in the case of marriage, partners entering into cohabitation should be unified by a common goal to build a family-type relationship. There are also certain restrictions: a partnership is only allowed between adults, so the courts shall not permit the registration of a partnership between minors; a partnership is subject to the verification criterion, i.e. the partners must have lived together for at least one year; in the case of a partnership, the legal regulation covers only some of the property relations between partners but does not cover personal non-property relations between them.²

- 3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases**

¹ Article 28 of the Lithuanian Civil Code provides that the norms of Chapter XV (Cohabitation between persons without a marriage registration) of the Lithuanian Civil Code, 'shall come into force from the moment of the adoption of the Law on partnership registration.' According to Art. 50 of the Lithuanian Civil Code, such a Law was to be drafted by 1 January 2002.

² V. MIKELĖNAS, *Šeimos teisė* (Family law), Justitia, Vilnius, 2009, at p. 209.

Bearing in mind that Art. 3.229-3.235 of the Lithuanian Civil Code are not applied in practice, the courts usually rely on general provisions while considering material disputes between non-married individuals, such as the provisions of Book IV, 'Material Law', of the Lithuanian Civil Code on the division of joint-partial property between co-owners as well as the provisions of Book VI, 'Law of Obligations', of the Lithuanian Civil Code regarding an agreement on joint activities (a partnership) in creating joint-partial property.

When dealing with cases regarding the division of property between a man and a woman living together outside of marriage, the Supreme Court of the Republic of Lithuania (hereafter Lithuanian Supreme Court) follows certain key criteria, such as: 1) cohabitation is still recognised as only an union between a man and a woman; 2) the principle of monogamy must be complied with; 3) cohabitation entails more than one year of having lived together.³ This requirement is established in order to ensure that only partners with stable relations are guaranteed legal protection; 4) an overall economy (even under the circumstances when there exists a distribution of work between the couple, i.e. when one person takes care of the household and the other earns the main income, there might be an agreement on joint activity by creating common partial property).⁴ An overall economy means the distribution of roles within the household, a total budget, etc.; 5) this union is considered to be a family. This attribute can be proved by witnesses. It should be noted that judicial practice does not provide an exhaustive list of cohabitation features, since in every case the courts decide with regard to concrete circumstances and the evidence provided. Important features might be the same as those which are specific to a marriage, for example both cohabitees share a dwelling and raise and educate their common children. Persons who meet the requirements of the characteristic features of cohabitees established by court practice might have a claim to part of the common property when their cohabitation comes to an end, provided that the parties have decided on joint activity by creating common partial property.

The Supreme Court of Lithuania has issued a clarifying ruling that the existence of an agreement on joint activities (a partnership) in creating joint-partial property shall be recognised in cases when non-married individuals live together (especially when cohabitation is persistent rather than being of a casual nature), jointly manage property, and contribute to the creation of common property with their personal financing and joint work.⁵ According to Art. 6.969 and 6.970 of the Lithuanian Civil Code, partners (cohabitees) may conclude an agreement on joint activities according to which property could be acquired under joint-partial ownership. In dealing with cases concerning the division of joint-partial property acquired during cohabitation, the prevailing presumption is that the partners' contributions shall be deemed to be equal.⁶ The contributions by the parties to an agreement are deemed equal unless the

³ Ruling of the Lithuanian Supreme Court of 15 September 2009, civil case No. 3K-3-389/2005; Ruling of the SCL of 13 June 2006, civil case No. 3K-7-332/2006.

⁴ Ruling of the Lithuanian Supreme Court 5 April, 2011, civil case No. 3K-3-152/2011; Ruling of the Lithuanian Supreme Court of 21 February, civil case No 3K-5-51/2014.

⁵ Ruling of the Lithuanian Supreme Court of 28 March 2011, civil case No. 3K-3-134/2011.

⁶ Ruling of the SCL of 30 November 2010, civil case No. 3K-3-482/2010.

agreement provides otherwise, and then a corresponding share of the property is assigned to each partner according to their contributions in monetary terms, property, and personal input and with consideration being given to joint property management. In addition, the share of the personal property is determined for each individual taking into consideration his/her contribution to the joint property management in terms of money, property, personal input as well as labour.⁷

4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?

The current legislation does not provide a definition of informal relationships between couples. Individual legal acts contain a variety of terms mostly referring to family members, the family,⁸ close relatives, persons engaged in joint household management, close persons, etc. An analysis of the legislation suggests that persons remaining in such a relationship are considered to be cohabitants, persons in a close relationship, partners, etc. For instance, the Lithuanian Law on Protection against Violence in a Proximate Environment uses the definition of a 'proximate environment' which means an environment consisting of individuals linked together by the present or past matrimonial, partnership, in-law or similar close relationship, as well as individuals living together and engaged in joint household management.⁹ The Law on State Benefits for Families Raising Children¹⁰ defines a family as 'spouses or cohabiting persons, as well as a married person with whom, by a court order, their children live because of the separation of the spouses, or one of the parents, their children and adopted children aged 18 and under'. The family shall also include persons between the ages of 18 and 24 who are unmarried and not cohabiting with another person: full-time school-children and students at secondary schools and other institutions of formal education, as well as persons from the day of graduating from a secondary school which they attended as full-time students until the 1st of September of the same year.

The case law suggests that the definitions depend upon the nature of the legal relationships,¹¹ therefore the following circumstances play an important role: the fact

⁷ Ruling of the SCL of 8 April 2008, civil case No. 3K-3-235/2008.

⁸ It was established that the terms 'family' or 'family members' are used in almost 200 laws, and the definitions of a 'family' or 'family members' are present in about 30 laws. K. AMBRAZEVIČIŪTĖ, E. KAVOLIŪNAITĖ-RAGAUSKIENĖ, V. MIZARAS, 'Šeimos kaip teisės kategorijos turinys Lietuvos Respublikos įstatymuose' (The substance of the family as a legal category in Lithuanian Legislation), *Teisės problemos*, Vol. 78, No. 4, 2012, at p. 81.

⁹ Extract from Art. 2, part 1 of the Law of the Republic of Lithuania on the Protection Against Violence in a Proximate Environment (*Lietuvos Respublikos apsaugos nuo smurto artimoje aplinkoje įstatymo straipsnio 1 dalis*) Official gazette, 2011, No. 72-3475.

¹⁰ Law on State Benefits to Families Raising Children, Official Gazette, 2004, No. 88-3208.

¹¹ For example, on the 26th of April 2005 the Board of the Supreme Administrative Court of Lithuania heard a case (Ruling of the Supreme Administrative Court of Lithuania in case *H.J. v. Pravieniškųjų 1 Correction House No. A 10-483-05*) and applied the provisions of the Lithuanian Civil Code concerning cohabitants, although they are not legally effective. In this case, the Court acknowledged the claimant's right to have his long-term relationship with his cohabitant recognised, although such a right is not incorporated in the internal rules of the correctional

of cohabitation and its duration,¹² joint household management (including care and maintenance), the creation of joint property by contributing personal funds and joint labour, mutual health care and relaxation, agreements regarding common objectives (e.g. the acquisition of certain property for the fulfilment of mutual needs or undertaking joint liabilities), an open demonstration of close emotional relations and appearing in public as a couple.

5. Where informal relationships between a couple have legal effect:

a. When does the relevant relationship begin?

No law defines the starting point of an informal relationship between a couple. On the other hand, Art. 3.299 of the Lithuanian Civil Code implies that legal consequences should occur as of the moment when a partnership is registered.

The case law suggests that an important detail is the moment from which the parties started living together and engaged in joint household management.¹³

b. When does the relevant relationship end?

No law defines the end point of an informal relationship between a couple. On the other hand, according to Art. 3.232 of the Lithuanian Civil Code, such a relationship could be considered as having been terminated when the couple starts living separately (the end of cohabitation) or upon the death of one of the partners.

6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?

The Constitution of the Republic of Lithuania provides no definition of a family, so some disputes have arisen as to whether cohabitants can be considered to be family members, followed by questions regarding the possible discrimination of families created outside of marriage. In this context, on 28 September 2011 the Constitutional Court of the Republic of Lithuania adopted a resolution 'On the compatibility of the provisions of the State Family Policy Concept approved by Resolution No. X-1569 of the Seimas of the Republic of Lithuania of 3 June 2008 'On the approval of the State Family Policy Concept' with the Constitution of the Republic of Lithuania'.¹⁴ Among

institutions (their living together (partnership) was not registered). Other possible criteria for acknowledging a long-term relationship were also absent (for example, a mutual child).

¹² For example, on the 15th of September 2005 the Supreme Court of Lithuania delivered its ruling in civil case No. 3K-3-389/2005 where a dispute had arisen concerning the cohabitant of a deceased tenant of an apartment and a close relative (grandmother) with regard to their recognition as family members and their right to the apartment which belonged to the municipality. This case did not apply the norms of 'Family law', but relied on the sixth book of the Lithuanian Civil Code (Art. 6.588), i.e. the Supreme Court held that it is not the registration of the partnership that is important, but rather the exact time when the claimants settled in the living accommodation and whether they had lived there for not less than one year.

¹³ Ruling of the Lithuanian Supreme Court of 9 January 2015, civil case no. 3K-3-62/2015.

¹⁴ Resolution No X-1569 of the Seimas of the Republic of Lithuania of 3 June 2008 On the Approval of the State Family Policy Concept, Official gazette, 2008, No. 69-2624.

other things, this Court resolution states that the Constitution and, *inter alia*, the provisions of its Art. 38, part 1, offer protection also to families created on a different basis than marriage covering, *inter alia*, the cohabitation of a man and a woman outside marriage based on a continuous emotional attachment, mutual understanding, responsibility and respect, the joint nurturing of children and similar relations, as well as on a voluntary decision to assume certain rights and duties, which form the basis of the constitutional institutions of motherhood, fatherhood and childhood. Thus, as noted by the Lithuanian Constitutional Court, the State has a duty not only to 'establish a legal regulation that, *inter alia*, creates preconditions for the proper functioning of a family, strengthens family relationships and protects the rights and legitimate interests of family members' but also a duty to 'regulate family relationship by way of laws and other legal acts in a way that leaves no grounds for discrimination against the parties to a family relationship (such as a man and a woman living together outside marriage, their children (foster children), a single parent raising a child (foster child), etc.)'. Bearing in mind the arguments presented by the Lithuanian Constitutional Court, there is an indisputable necessity to create legal premises for the functioning of the institution of a partnership.

7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?

The State must equally guarantee effective respect for the family life of all participants in family-type relationships (spouses, cohabitants, parents and children, other persons linked by blood, in-law or other types of relationships (e.g. those of foster parents and foster children)). This value is protected by EU legal acts, the European Convention on Human Rights and other global and regional legal acts, of which the ECHR has been the most important and effective as far as Lithuania is concerned. For instance, on the basis of the case law of the European Court of Human Rights, the Law of the Republic of Lithuania on the legal status of foreign nationals¹⁵ contains a norm that obliges migration officers dealing with the question of the deportation of a foreign national from the Republic of Lithuania to take into consideration, *inter alia*, his/her family relations with persons living in the Republic of Lithuania. Thus, from a human rights perspective, not only spouses but also cohabitants have the right to protection as laid down in Art. 8 of the ECHR if their relationship can be considered to be a family-type relationship in terms of its substance and quality.¹⁶

8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate

¹⁵ Lietuvos Respublikos įstatymas dėl užsieniečių teisinės padėties (*The Law of the Republic of Lithuania on the legal status of foreign nationals*), Official gazette, 2004, No. 73-2539.

¹⁶ G. SAGATYS, *Šimos teisinių santykių turinys. Lietuvos Respublikos civilinio kodeksas: pirmieji dešimt galiojimo metų. Mokslo studija* (The Substance of Legal Relations Within Family // Civil Code of the Republic of Lithuania: the first decade in force. Academic study) MRU, Vilnius, 2013, at p. 442-443.

the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.

In analysing the legal regulation of informal relationships we should look at actual marital relations or what is otherwise called a factual marriage (cohabitation) in the context of the development of family law.¹⁷ It has to be mentioned, that the legislation in force in 1918-1940 did not regulate cohabitation at all. A factual marriage was most widely regulated in 1926 by the Code of Matrimony, Family and Foster Care, which was adopted in Lithuania on 1 December 1940. Its provisions accepted a factual marriage alongside the registered marriage. A factual marriage had to be established by a court ruling stating that 1) a man and a woman had kept house together, 2) did not hide their relationship from other persons, 3) the relationship was supported by documentary evidence, 4) they provided material support to each other, 5) they had children and raised and supported them. According to the norms of this Code a factual marriage could be established with reference to similar factors. However, the courts could only equate actual cohabitation with an actual marriage in two cases: 1) when establishing cohabitant's right to maintenance as a result of incapacity, and 2) when dividing property which had been acquired when living together. Not all relations were identified as a factual marriage, but only serious and enduring relations with the intention of forming a family. For several years a factual marriage was equated with a registered marriage, i.e. legal acts recognised both factual (not registered with the state institutions under the act of civil status) and registered marriages. In both cases the legal outcomes were the same. The legal regime of property acquired in a factual marriage obtained the same legal property status as in a registered marriage. On the 8th of July 1944 this situation was changed by a decree,¹⁸ which abolished the legal recognition of factual marriages. Persons who had been living as factual cohabitants until the decree came into force, were allowed to register their marriage. In the process of registering their marriage they could indicate the beginning of their factual marriage. This date was then considered as the date on which marital rights and duties had originated. This legal act again acknowledged the importance of marriage registration bearing in mind that a factual marriage could endanger the principle of monogamy and could encourage polygamy. Factual cohabitation was seen as avoiding state control which determined the legal obstacles to marriage registration, since factual cohabitants did not apply to the Department of the record of the civil status act. Therefore, difficulties occurred while trying to set demographic tasks with regard to population records. Factual marriages were also considered to encourage frivolous relations.¹⁹ Finally, factual cohabitation (any informal relationships) was not recognized by the valid

¹⁷ I. KUDINAVIČIŪTĖ-MICHAILOVIENĖ, 'Unmarried cohabitation: Theoretical and Practical aspects', in: *The Seventh year as European Union Member States: Economics, Politics, Law*, Proceedings of the International Conference 6-7 May, Riga, 2011, at p. 271-28.

¹⁸ USSR decree of the Praesidium of the Supreme Soviet 'On the increase of State aid to pregnant women, mothers with many children and single mothers, on strengthening measures for the protection of motherhood and childhood; on the establishment of the honorary title 'Mother Heroine' and foundation of the institution of the order 'Motherhood Glory' and 'Motherhood Medal', USSR Supreme Soviet News, 1944, No. 37.

¹⁹ V. RIASENCEV, *Family Law* (in Russian), 1971, at p. 32.

norms of the Family and Marriage Code of the Republic of Lithuania (hereafter the Lithuanian Family and Marriage Code).²⁰

The Civil Code of the Republic of Lithuania, which came into force in 2001, introduced a new institution – living together without the registration of marriage (cohabitation).

It must be mentioned that on 24 February 2004 a draft law on partnership (cohabitation without the registration of marriage) was presented; however, most of its provisions were not sufficiently grounded or finalised.²¹ As the adoption of the legal act on partnerships (cohabitation) had failed, the Government of the Republic of Lithuania instructed the Ministry of Justice on 4 September 2006 to draft amendments to the Civil Code concerning the registration of a Partnership. On 22 August 2007, a Draft Law on the Amendment of the Civil Code²² was introduced. This bill included a proposal to partly modify the definition of a partnership as presented in the existing Civil Code by stating that a ‘partnership shall be cohabitation between a man and a woman (cohabitants) following the principle of monogamy on the basis of a joint declaration of partnership produced in writing and duly registered and thus having legal consequences for property rights’. The draft proposed a procedure whereby a partnership declaration would have to be validated by a notary and registered at the Registry of Marriage Contracts. The bill was subject to serious criticism and was eventually abandoned.

On 20 November 2011 a third option for legal regulation was presented in the form of a Draft Law on the Amendment of Art. 2.18, 2.19, 3.140, 3.229, 3.230, 3.231, 3.232, 3.233, 3.234 and 3.235 of the Lithuanian Civil Code and Supplementing it with the New Art. 3.229(1), 3.234(1) and 3.234(2) prepared by the Ministry of Justice. An analysis of the provisions of this bill leads to the conclusion that the legal regulation scheme presented therein also lacked legal clarity, consistency and finalisation. For example, the draft included an unjustified proposal to divide any property jointly acquired by cohabitants into equal shares, with possible exceptions only being made in cases specified by the law, and another proposal that a cohabitee shall have no right to dispose of joint-partial property without the written consent of the other cohabitee. An usufruct option was proposed with an unjustified widening of the grounds for its application (lacking any specification). The draft also lacked a legal regulation linked to the civil liabilities of partners arising from their obligations, and left open certain aspects of paternity disputes, paternity verification, etc.²³

²⁰ Marriage and Family Code of the Republic of Lithuania, Ministry of Justice Press, Vilnius, 1990.

²¹ Draft Law on Partnership 14-07-2004, available at: www.lrs.lt; Report regarding the Law on Partnership (Committee on Legal Affairs of the Seimas of the Republic of Lithuania (IXP-3272)), available at: www.lrs.lt.

²² Draft Law on the Amendment of Art. 2.18, 2.19, 3.16, 3.229, 3.230, 3.232, 3.234 and 3.235 of the Civil Code and Supplementing thereof with New Articles 3.229(1) and 3.229(2), available at: www.lrs.lt.

²³ I. KUDINAVIČIŪTĖ-MICHAILOVIENĖ, *Teisinė šeimos forma, Lietuvos Respublikos civilinis kodeksas: pirmieji dešimt galiojimo metų. Mokslo studija* (The Legal Form of a Family, Civil Code of the Republic of Lithuania: the first decade in force. Academic study), MRU, Vilnius, 2013, at p. 423-426.

On 21 February 2012, new provisions of the Lithuanian Civil Code on Cohabitation were drafted by Parliament (Draft XIP-4097). This final attempt to amend the Lithuanian Civil Code also failed.

The difficulties in legally regulating partnerships in Lithuania are likely to be caused by several major reasons. One of them is the position of the Church, another is the ambiguous and mixed public opinion.²⁴ On top of that, politicians do not support the model of a registered partnership and are of the opinion that cohabitating couples (staying in informal relationship) should not enjoy the legal protection encompassing all the rights and privileges of marital partners. According to the prevailing political opinion regarding alternative forms of family relationships and their legal regulation, it is reasonable to regulate such relationships by way of the institution of a 'partnership by law', thereby applying its provisions within the limited scope of property interests to the extent which is necessary for the protection of the weaker party's property interests.²⁵

9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?

On 16 June 2014, the Ministry of Justice submitted to the Government a Draft Law on the Amendment of Art. 2.18, 2.19, 3.16, 3.140 and 3.150 as well as Chapter XV of Part VI, Book III and Art. 5.13 of the Lithuanian Civil Code.²⁶ According to this draft, a partnership is defined as cohabitation (living together) between a man and a woman (the partners) in order to build a family relationship without the registration of marriage. Partners must be adults, not linked by blood relations, and not married to each other or to any other person, and they cannot also be in a registered partnership with another person. Both partners must have legal capacity at the time of entering into the partnership. Partners shall be loyal to each other, show mutual respect, render moral and material support to each other, and contribute to the common family needs or the needs of the other partner. A partnership entails legal consequences from the moment of entering into cohabitation. A partnership entails legal consequences with respect to third parties if the Residents' Register Service of the Republic of Lithuania contains a corresponding record made on the basis of a joint declaration of partnership signed by both partners and duly notarised. Such data shall be notified to the Residents' Register Service by the notary within 3 working days. Any property acquired during the partnership in the name of both partners or one of them shall be considered to be the joint-partial property of the

²⁴ For further details refer to: I. KUDINAVIČIŪTĖ-MICHAILOVIENĖ, *Santuokos sąlygos ir jų vykdymas, Monografija* (Marriage Conditions and their Implementation, Monograph), Justitia, Vilnius, 2007. E. NEMAIKŠTYTĖ and M. POŠKUTĖ, 'Law on Partnership – which way Lithuania choose?', *Law News*, Vol. 17, No. 4, 2006.

²⁵ An empirical study of political opinions took place on 16/10/2014 by way of sociological opinion poll. Opinions were expressed by 100 respondents (The Parliament of Lithuania (Seimas) consists of 141 members). Polling was done by L. GALINIENĖ, 'Heteroseksualių sugyventinių porų teisinio statuso reglamentavimas (lyginamasis aspektas)' (Regulation of the legal status of heterosexual cohabitant couples (a comparative aspect)).

²⁶ See: www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=241949&p_org=8&p_fix=n&p_gov=n.

partners. The draft also includes the possibility of succession by law to the deceased partner's property.

B. Statistics and estimations²⁷

10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.

In the past few years the number of marriages contracted per year has fluctuated at around 20,000 with the crude marriage rate (marriages per 1,000 population) reaching 6.9 (Table 1). The last decade has marked a gradual upward trend in the marriage rates and was preceded by a decade which saw a dramatic decrease in marriages in the 1990s. Between 1990 and 2000, the absolute number of marriages dropped from around 36,000 to 17,000 and the crude marriage rate from 9.8 to 4.8.²⁸ The year 2001 marked the lowest marriage rate at around 4.5 (Table 1). The reported upward trend is also reflected in the total first marriage rate that is gender and age-specific.

Table 1. Marriages in Lithuania, 2000–2013

	Number of marriages	Marriages per 1,000 population	Total first marriage rate	
			Male	Female
2000	16,906	4.8	-	-
2001	15,764	4.5	0.51	0.53
2002	16,151	4.7	0.53	0.55
2003	16,975	5	0.57	0.58
2004	19,130	5.7	0.64	0.65
2005	19,938	6	0.67	0.69
2006	21,246	6.5	0.73	0.74
2007	23,065	7.1	0.8	0.8
2008	24,063	7.5	0.84	0.85
2009	20,542	6.5	0.74	0.75
2010	18,688	6	0.71	0.71
2011	19,221	6.3	0.75	0.76
2012	20,660	6.9	0.82	0.84
2013	20,469	6.9	0.81	0.83

Source: Statistics Lithuania, www.stat.gov.lt

²⁷ The answers to Questions 10-19 have been prepared by Prof. dr. Aušra Maslauskaitė, Vytautas Magnus University, Department of Sociology.

²⁸ *Demografijos metraštis 2013* (Demographic Yearbook 2013), Lietuvos statistikos departamentas, Vilnius, 2014, at p. 95.

At the beginning of the 2000s, Lithuania experienced a secular turn towards the non-direct family formation model. Around 70% of all first partnerships started as cohabitations.²⁹

There is no official statistical data on registered partnerships.

11. How many couples are living in an informal relationship in your jurisdiction? Where possible, indicate trends.

According to the last official Census of 2011, there were 75,201 couples living in informal relationships in Lithuania; cohabitants constituted 5% of the total household population.³⁰ The Census of 2001 registered 55,222 couples living in informal relationships and cohabitants represented 3.1% of the total household population.³¹ Thus there was an increase in the prevalence of cohabitation in the first decade of the 21st century in Lithuania.

12. What percentage of the persons living in an informal relationship are:

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

The age distribution of the population living in informal relationships proves that among the cohabitants young, middle-aged and older middle-aged groups are equally frequent. The share of cohabitants aged 20-29, 30-39, 40-49 is around 23% in each group respectively (Table 2). People aged 50-59 constitute around 17% of those in informal relationships and 60 years and older represented 12.3%. The age distribution of the cohabitants did not experience any significant changes between the 2001 and 2011 Censuses.

²⁹ A. MASLAUSKAITĖ, Development of cohabitation in Lithuania (Kohabitacijos raida Lietuvoje), *Lietuvos socialinė raida*, No. 1, 2012, at p. 102-119.

³⁰ *Results of the 2011 Population and Housing Census of the Republic of Lithuania*, Statistics Lithuania 2013, at p. 356-357.

³¹ A. MASLAUSKAITĖ, 'Household status of members of the private households', in: D. AMBROZAITIENĖ, V. STANKŪNIENĖ, A. MASLAUSKAITĖ and R. BALANDIENĖ (eds.), *Population of Lithuania: Composition and Demographic Development*, Statistics Lithuania, Vilnius, at p. 94.

Table 2. Age composition of persons living in informal relationships in Lithuania in 2001 and 2011

Age	2001	2011
Under 19	1.4%	1.11%
20-29	23.4%	22.93%
30-39	26.3%	23%
40-49	23.45%	23.09%
50-59	15%	17.57%
60 and older	10.48%	12.3%
Total	100%	100%

Source: Results of the 2011 Population and Housing Census of the Republic of Lithuania, 2013; A. MASLAUSKAITĖ, 2006.

13. How many couples living in an informal relationship enter into a formal relationship with each other:

- a. Where there is a common child?
- b. Where there is no common child?

There is no official statistical data on the transition from cohabitation to marriage according to the status of common children. Some estimations could be provided on the basis of the 'Generations and Gender Survey'³² on the transition rate for first partnerships as cohabitations. Out of all cohabitations entered into in the 2000–2009 period as first partnerships, 25% had been transformed into a marriage by the end of the first year of cohabitation and by the end of the third year this was around 40%.³³

14. How many informal relationships are terminated:

- a. Through separation of the partners?

There is no official statistical data on the termination of cohabitations; however, some survey-based estimations could be provided for first partnerships. 25 percent of first partnerships that started as cohabitation and were not converted into a marriage by the end of the third year were terminated.³⁴ The rate is not specified according to the calendar period due to data limitations, thus the rate is very crude.

- b. Through the death of one of the partners?

No information available.

³² UNECE, *Generations and gender Programme: Survey Instruments*, United Nations Economic Commission for Europe, Geneva, 2005.

³³ A. MASLAUSKAITĖ, 'Kohabitacija Lietuvoje: šeimos formavimo etapas ar 'nauja šeima'?' (Cohabitation in Lithuania: a stage in family formation or 'the new family?'), in: V. STANKŪNIENĖ and A. MASLAUSKAITĖ (eds.), *Lietuvos šeima: tarp tradicijos ir naujos realybės* (The Lithuanian Family: between tradition and new reality), LSTC, Vilnius, 2009, at p.37–98.

³⁴ A. MASLAUSKAITĖ, 'Development of cohabitation in Lithuania (Kohabitacijos raida Lietuvoje)', *Lietuvos socialinė raida*, No. 1, 2012, at p. 102–119.

15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?

The average duration of unions that start as cohabitations and are dissolved due to a break-up is 4.3 years for men and 7.4 years for women; for marriages the corresponding rate is 12.2 years for men and 21.3 years for women.³⁵

16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.

The percentage of children born out of wedlock in Lithuania is 29.3% and in the last decade (2003-2013) this figure has been more or less stable with the exception of a short-term fluctuation in 2009-2010 (Table 3). The secular increase in non-marital fertility in Lithuania started at the beginning of the 1990s when the long-term stable rate of non-marital fertility (6-7% in the period 1922-1990) started to move gradually upwards after 1992 and increased by more than three times in the period of 1992-2001.³⁶

Recently, the majority of children born out of wedlock are registered to parents living in cohabitation and only a small fraction to single mothers. In 2013, out of all children born out of wedlock, 81% were registered by both non-married parents and 19% by single mothers. Moreover, in recent years, the share of children born to single mothers has decreased; the share of children born to cohabiting parents, in contrast, has increased.³⁷

The composition of non-marital fertility by the partnership status of the parents significantly changed after 2004. Before this, the majority of non-marital fertility cases had been attributed to single mothers, while after 2004 this was to cohabiting parents. This trend has been generated by the legislative changes in the social support policies in 2004 and not the demographic factors.

³⁵ V. STANKUNIENE and M. BAUBLYTE, *Parents and Children, Men and women in Family and Society. Standard tabulations. Generations and Gender Survey in Lithuania*, LSTC, Vilnius, 2008, at p. 135.

³⁶ A. MASLAUSKAITĖ, 'Nesantuokinis gimstamumas Lietuvoje: raida ir erdvinė diferenciacija' (Non-marital fertility in Lithuania: trends and spatial differentiation), *Lietuvos socialinė raida*, 2014 (in press).

³⁷ A. MASLAUSKAITĖ, 'Nesantuokinis gimstamumas Lietuvoje: raida ir erdvinė diferenciacija' (Non-marital fertility in Lithuania: trends and spatial differentiation), *Lietuvos socialinė raida*, 2014 (in press).

Table 3. Non-marital fertility, totals and according to type of the parental partnership status, 2000–2013

Year	Non-marital births, total	Non-marital births registered by the statement of both non-married parents	Non-marital births registered by the statement of the mother	Non-marital birth registered by the statement of a guardian
2000	22.3%	6.8%	15.8%	0%
2001	25.4%	8.3%	17%	0.1%
2002	28%	9.5%	18.4%	0.1%
2003	29.5%	13.2%	16.2%	0.1%
2004	28.5%	19.3%	9%	0.2%
2005	28%	18.9%	8.9%	0.2%
2006	28.7%	19.9%	8.7%	0.2%
2007	27.8%	19.9%	7.8%	0.2%
2008	26.5%	19.6%	6.8%	0.2%
2009	25.4%	18.8%	6.4%	0.1%
2010	25.6%	19.3%	6.2%	0.2%
2011	27.7%	20.9%	6.6%	0.2%
2012	28.8%	23%	5.7%	0.1%
2013	29.3%	24%	5.2%	0.1%

Source: Statistics Lithuania database (www.stat.gov.lt)

17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?

There is no official statistical information available on the proportion of children in cohabiting families that are not the couple's common children. According to the Census of 2011, 9.2% of children were living in cohabiting families in Lithuania in total, and the number was higher in rural areas (12.3%) than in urban areas (7.5%).³⁸

18. How many children are adopted within an informal relationship:

- a. By one partner only?**
- b. Jointly by the couple?**
- c. Where one partner adopted the child of the other?**

No data available.

³⁸ *Results of the 2011 Population and Housing Census of the Republic of Lithuania*, Statistics Lithuania 2013, at p. 360.

According to Art. 3.210 of the Lithuanian Civil Code, the right to adopt a child may be exercised by married couples. In exceptional cases, an unmarried person or one of the spouses may be allowed to adopt a child. Unmarried persons may not adopt the same child. As a consequence of this regulation, the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour reports on the number of children adopted through the Service by spouses, one of the spouses and unmarried (single) individuals. The statistics suggest that up to 10 children, on average are adopted annually by single individuals.³⁹ It should be noted that there are no data available on possible cohabitation or other forms of informal relationships by these individuals.

19. How many partners in an informal relationship have been in a formal or an informal relationship previously?

43.4% of men and 39.9% of women registered in the 2011 Census as cohabitants were divorced, 44.7% of men and 41.6% of women were not married.⁴⁰ The composition of those in informal relationships by marital status in the 2001 Census was similar: 47.7% divorced men and 43.2% divorced women, 37.3% non-married men and 32.1% non-married women, 6.6% widowed men and 17.1% widowed women, 8.1% married men and 7.4% married women living in cohabitation.⁴¹

Thus, despite the moderate fluctuations, the composition of cohabitants by marital status did not experience any substantial changes between the two last censuses. The informal relationships are more often the re-constitution of the family after the dissolution of a previous marriage than the first partnership.

C. During the relationship

20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:

a. Where there are no children in the household?

There is no legal provision which imposes an obligation on partners in an informal relationship to support each other.

b. Where there are common children in the household?

³⁹ The highest adoption rate by single individuals adopting children deprived of parental care was registered in 2007 (16 cases), while the lowest was in 2004 and 2010 (4 cases each). In 2008 and 2011, 6 adoptions by single individuals were registered. One may assert that adoption by single individuals shows a declining trend since 2007. Available at: www.vaikoteises.lt/en/.

⁴⁰ *Results of the 2011 Population and Housing Census of the Republic of Lithuania*, Statistics Lithuania 2013, at p. 334.

⁴¹ A. MASLAUSKAITĖ, 'Household status of members of the private households', in: D. AMBROZAITIENĖ, V. STANKŪNIENĖ, A. MASLAUSKAITĖ and R. BALANDIENĖ (eds.), *Population of Lithuania: Composition and Demographic Development*, Statistics Lithuania, Vilnius, 2006, at p. 103.

There is no legal provision which imposes an obligation on partners in an informal relationship to support each other.

The maintenance of common children is regulated separately (Art. 3.192–3.204 of the Lithuanian Civil Code). The duty to support a child is universal and does not depend on the matrimonial status of the parents (married or non-married), i.e. Art. 3.156 of the Lithuanian Civil Code stipulates that parents shall have equal rights and duties with respect to their children irrespective of whether the child was born to a married or unmarried couple.

c. Where there are other children in the household?

There is no legal provision which imposes an obligation on partners in an informal relationship to support each other.

21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?

The provisions of Book III of the Lithuanian Civil Code (Art. 3.229-3.236) do not impose a direct obligation of this kind; however, considering the substance of these provisions (e.g. the legal regime of assets used by the cohabitantes together; the division of assets acquired and used together, etc.), one may find an indirect implication that the partners in an informal relationship should contribute to the costs and expenses of their household. The existing case law suggests that an analysis of the circumstances presupposing a common household and the contributions to the family needs, as well as the generation of wealth from the personal revenues of the partners and also the revenues gained from the common household and through common efforts could be a sufficient ground for the court to recognise the existence of a (non-written) agreement between⁴² the partners aimed at the creation of common partial ownership (Art. 4.76 of the Lithuanian Civil Code: ‘Rights and duties of co-owners in possession and maintenance of common partial ownership’).⁴³ In cases such as these, the court will analyse a property dispute by applying the general provisions of Lithuanian Property Law and Obligations Law rather than those of Family Law. It is also worth mentioning that if partners (cohabitantes) rent an apartment, they will be subject to the general rules regarding the leasing of dwellings

⁴² Article 6.974 of the Lithuanian Civil Code: Joint expenses and joint damages: the distribution of joint expenses and joint damages, related to the joint activities, shall be established in the agreement on joint activities. Absent such agreement, each partner shall be liable for the joint expenses and joint damages in proportion to the amount of his part of such expenses or damages.

⁴³ Article 4.76 of the Lithuanian Civil Code: Rights and duties of co-owners in possession and maintenance of common partial ownership: Each of the co-owners in proportion to their respective shares shall have the right to the profits obtained from a thing (property), shall be accountable to third persons in relation to duties related to a thing (property), held in co-ownership and shall pay expenses related to its maintenance and preservation, taxes, dues and other payments. If one of the co-owners fails to fulfil the obligation to maintain and take care of a thing (property), the other co-owners shall have the right to a compensation for losses thus incurred.

(Art. 6.589 of the Lithuanian Civil Code: 'Rights and duties of the lessee's family members').

22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?

Article 3.234 of the Lithuanian Civil Code, part 5, provides that the dwelling or the apartment which belonged to one of the cohabitantes before their life together can be occupied by the other cohabitee under a right of usufruct if he or she has underage children born to the cohabitation or due to health, age or other important reasons does not have his or her own dwelling.

Article 3.235 of the Lithuanian Civil Code defines the right to use a dwelling: Having regard to the duration of the cohabitation, the interests of the minor children of the cohabitantes, the age, health, financial situation of the cohabitantes and other important circumstances, the court shall have a right to award the use of the rented dwelling to the cohabitee who is in greater need of that dwelling. Having regard to the circumstances of the case, the court may oblige the cohabitee who has been awarded the right to use the rented dwelling to pay compensation to the other cohabitee for the expenses incurred in looking for and moving to another dwelling.

We should note that these rules are not applied in practice, therefore there have been cases when the courts have applied different legal norms by a parity of reasoning with exclusive consideration being given to the interests of minors. For instance, in 2006 the Lithuanian Supreme Court examined a case where the claimant (the child's mother), with whom the child was determined to reside, had requested that a right of usufruct to the apartment owned by the defendant (the child's father) be established. As the child's father and mother had never been married, the Court had to decide whether Art. 3.71 of the Lithuanian Civil Code⁴⁴ could also be applicable when a child is born out of wedlock; therefore, the Lithuanian Supreme Court stated that '[t]he European Convention on the Legal Status of Children Born out of Wedlock, and the constitutional principle of equality between persons (paragraph 1 of Art. 29 of the Lithuanian Constitution), substantiate the necessity to equally defend the rights of children belonging to both married and unmarried parents [...]. Taking into account that there is no rule of law directly providing for guarantees for the rights of children belonging to unmarried parents and parents who have not registered their partnership with regard to the right to use a dwelling place, [...] the effective Art. 3.71 of the Lithuanian Civil Code, which provides for such guarantees protecting children's rights when the child's parents are married, is to be applied by analogy'. In rejecting the respondent's arguments that the establishment of a usufruct would be in conflict with the principle of the inviolability of his property provided for in

⁴⁴ In order to protect the child's right to a place to live, Art. 3.71 of the Lithuanian Civil Code provides for the right of an underage child to use a dwelling when the child's parents divorce: '[w]here the matrimonial dwelling is owned by one of the spouses, the court may make an usufruct order and allow the other spouse to remain in the matrimonial dwelling if their minor children live with him or her. The usufruct order shall be valid until the child (children) attain majority.' This legal regime may not be changed by an agreement of the spouses.

Art. 23 of the Lithuanian Constitution, the Court noted that 'this principle is not absolute and the restriction can be imposed on a person's property on the grounds provided for in the law, inter alia for protection of children's rights and interests, giving an underage child the right to use a dwelling by the right of usufruct.'⁴⁵

**23. Are there specific rules on a partner's rights of occupancy of the home:
a. In cases of domestic violence?**

Article 5 of the Lithuanian Law on Protection Against Violence in Proximate Environment stipulates that:

'Upon confirmation of the occurrence of violence in a proximate environment, protective measures shall be introduced to protect the victim of the violence:

- 1) the obligation for the perpetrator to temporarily move out of the place of residence if he/she shares a common dwelling with the victim;
- 2) the obligation for the perpetrator to stay away from the victim, and to refrain from any communication and seeking contact.'⁴⁶

The above-mentioned measures will apply until the judicial scrutiny of the case comes to an end, unless the investigating judge or the Court imposes preventive measures as laid down in the Code of Criminal Procedure of the Republic of Lithuania: the transgressor may be remanded in custody or be ordered to live separately from the victim. These measures shall be imposed by the court within 48 hours at the latest.

b. In cases where the partner owning or renting the home is absent?

There are no specific rules, except Art. 3.234-3.235 of the Lithuanian Civil Code mentioned in Question 22. So in this case the general rules apply, the family members of the lessee of a dwelling shall have the same rights and duties arising from the lease contract as the lessee himself. Upon having ceased to be members of the lessee's family while continuing to reside in the leased dwelling, natural persons shall have the same rights and duties as the lessee and his or her family members. (Art. 6.589. Rights and duties of the lessee's family members)

Article 6.590 of the Lithuanian Civil Code provides a right for family members to occupy the leased dwelling:

'1. In accordance with the lease contract, the right to occupy the dwelling shall be enjoyed by those family member of the lessee as well as former family members who are indicated in the contract. In the event of those persons failing to occupy the dwelling within six months from the date of the formation of the contract, they shall forfeit the right of occupancy. In respect of persons who are temporarily absent, this term shall start to run upon the expiry of the time-limit established in

⁴⁵ Ruling of the Lithuanian Supreme Court of 26 April 2006, civil case No. 3K-3-302/2006.

⁴⁶ Law of the Republic of Lithuania on Protection Against Violence in a Proximate Environment, Official gazette, 2011, No. 77-3475.

Art. 6.591 of this Code, in the event of an earlier return of these persons, it shall start from the date of their return.'

24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:

a. Where the home is jointly owned by the partners?

There are special rules: according to Art. 3.233 of the Lithuanian Civil Code, without the written consent of the other cohabitee a cohabitee shall have no right to sell, donate or alienate in any other way, or to lease or charge the assets acquired and used together or to encumber the rights to such assets in any other way.⁴⁷ If a cohabitee is incapable of giving such consent due to incompetence or the consent of the other cohabitee is impossible to achieve due to other important reasons, permission to make a transaction may be granted by the courts at the request of the other cohabitee.

A transaction entered into in violation of the rules laid down in Art. 233 may be declared null and void in an action brought by the cohabitee who has not given his or her consent to the transaction except in cases where a third party recipient of the assets sold, charged or leased had acted in good faith. The time limit for bringing an action to avoid such a transaction shall be one year from the day when the cohabitee knew or should have known about the transaction.

Considering the fact that these specific rules are not yet effective, informal relationships (*de facto* relations) between partners are not subject to a special legal regulation, and separate elements of such relations are subject to the rules of the general civil law under Book IV, 'Material Law', of the Lithuanian Civil Code, which regulates relations between co-owners. So in this case Article 4.88 of the Lithuanian Civil Code defines a right of a co-owner to transfer or limit the right to the part held in joint common ownership:

- An asset (property) which is the object of common joint ownership is possessed, used and disposed of only upon agreement between the co-owners.
- Agreement between the co-owners is necessary in order to transfer immovable property to the ownership of another person, to rent or to give for use in some other way, to mortgage or otherwise to encumber the right to the asset. If a co-owner is a minor, permission may be given by his or her parents, guardians, or carer.
- A co-owner shall have no right to transfer to the ownership of another person his or her share of the commonly owned joint property until that share has been established in the common property, with the exception of cases where the property is being inherited, and in other cases established by law.

⁴⁷ According to Art. 3.230 of the Lithuanian Civil Code, the community property of cohabitees shall include: 1) a house or an apartment acquired and used together by cohabitees for their life together; 2) the rental, usufruct or any other right of one of the cohabitees to use the dwelling house or the flat which the cohabitees use for their life together [...].

b. Where the home is owned by one of the partners?

There are no specific rules. The case law contains some examples⁴⁸ when the Court's permission was necessary for transactions involving a family dwelling in cases where the partners had common children.⁴⁹ Such an approach is based on the provisions of the Law on the Fundamental Protection of the Rights of the Child,⁵⁰ the United Nations Convention on the Rights of the Child, and the 1975 European Convention on the Legal Status of Children Born out of Wedlock.

c. Where the home is jointly rented by the partners?

d. Where the home is rented by one of the partners?

Article 3.233 (see answer to Question 24(a)). Moreover, the lessee of a dwelling shall have the right to sublease that dwelling upon the written consent of all the family members residing together with him or her as well as that of the lessor. Upon concluding a contract to sublease, the lessee shall continue to be liable towards the lessor under the lease contract (Art. 6.595).

25. Under what circumstances and to what extent can one partner act as an agent for the other?

There are no special rules, so the general rules of Art. 2.132 – 2.151 of the Lithuanian Civil Code apply.

Persons shall enjoy the right to conclude contracts through agents with the exception of those contracts which, due to their character, may only be concluded personally as well as other contracts prescribed by law. An agent may not conclude contracts in the principal's name either with himself or with a person whom he represents at the given time, as well as his spouse, parents, children or other close relatives. Such contracts, upon the principal's request, may be deemed null and void. An authorised agent whose rights are not clearly defined in the power of attorney shall enjoy the right to perform only those actions which are necessary for the protection of the principal's property and property interests as well as the supervision of the principal's property.

⁴⁸ For example, in a case examined in 2008 the Lithuanian Supreme Court admitted that 'both parents must ensure a home for the child irrespective of whether or not the father is registered as the child's father in the statements of civil status, as the child's origin from his parents, on which the mutual rights and duties of the child and parents are founded, is confirmed from the date of the child's birth and creates related rights and duties under the law from that date'. In the Court's view, a breach of this duty is a basis for subjecting the father to civil liability; therefore, compensation was awarded to the child's mother for part of the expenses incurred in acquiring a dwelling for the child and herself. Ruling of the Lithuanian Supreme Court of 9 October 2008, civil case No. 3K-3-383/2008.

⁴⁹ I. KUDINAVIČIŪTĖ-MICHAILOVIENĖ, 'Šeimos narių teisės į gyvenamąją patalpą įgyvendinimas ir gynimas' (The Realization and Protection of the Right of Family Members to the Dwelling), *Socialinių mokslų studijos*, Vol. 3, No. 3, 2009, at p.193-212.

⁵⁰ Official gazette, 1996, No. 33-807.

26. Under what circumstances can partners in an informal relationship become joint owners of assets?

Partners in an informal relationship can become joint owners of assets if documented proof of the acquisition of those assets can be established in accordance with Art. 4.47 of the Lithuanian Civil Code. Such proof could be a procurement contract indicating the acquisition of the asset as joint-partial property, or some evidence of an in-kind contribution to the creation of such assets with personal funds, labour or initiative in asset management. Also see the answer to Question 3.

27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.

There are no specific rules governing acquisitions and/or transactions in respect of household goods. According to Art. 3.35 of the Lithuanian Civil Code, movable property for the use of the household shall include household utensils and furniture, except for works of art, personal collections or home libraries. Article 4.8 of the Lithuanian Civil Code defines household objects are all things used in household activities such as movable things, furniture and decorative items, with the exception of book collections (libraries), collections of art works and other valuable collections, as well as items of scientific or historic value.

28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?

Article 3.231 of the Lithuanian Civil Code provides that where immovables or the rights to immovables are registered in the name of one of the cohabitees, both cohabitees may require, by submitting a joint application to the public registrar, the addition of a record to the effect that the cohabitees use these immovables or the rights to these immovable together. The signatures of the cohabitees added to such an application must be attested by a notary public.

The case law has developed practice to the effect that a certain asset of the cohabitees could be acknowledged as their joint-partial property despite its ownership being registered in the name of one of them if evidence exists that the asset was acquired by both cohabitees from their common funds and is used jointly, as well as in the case of legal relations based on contractual joint activities⁵¹ leading towards a common objective, for instance, to acquire immovables by way of procurement contracts with the aim of subsequently renovating, building (/rebuilding) and using and managing them as joint-partial property, and also contributing to the creation of such assets with their labour.⁵²

⁵¹ Ruling of the Lithuanian Supreme Court of 9 January 2015, civil case no. 3K-3-62/2015.

⁵² Ruling of the Lithuanian Supreme Court of 28 March 2011, civil case no. 3K-3-134/2011.

29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?

According to Art. 177 of the Code of Civil Procedure of the Republic of Lithuania, evidence shall be any factual data on the basis of which the Court, following the procedures established by the Law, can issue a statement regarding the presence or absence of circumstances serving as grounds for the claims and rebuttals of the parties, as well as other circumstances relevant for a fair resolution of the case. Factual data can be obtained by the following means: explanations by the parties to the case and third parties, witness testimonies, documentary evidence, physical evidence, inspection protocols, expert evidence, visual and audio material legally obtained and other means of proof.

According to the practice of the Court of Cassation, the applicability of the principles of honesty, fairness and prudence to the rules on the admissibility of evidence in cases of this type means that the courts may remove any restrictions on the admissibility of evidence when they see a ground to admit that the property rights of cohabitees outside marriage who jointly managed the common household would not be protected merely because of a lack of a written agreement on joint activities, although practical relations between the parties, the evolved situation, the intentions of the parties, their goal-oriented behaviour and other actions would allow their legal relation to be qualified as joint activity.

As in the case of any other civil agreement, it is mandatory to establish the objective of the parties to the agreement, i.e. what particular asset (or all assets acquired during the entire period of the partners' relationship) was covered by the agreement on the acquisition of joint-partial property.⁵³

The Court of Cassation has noted that the admissibility of evidence is an important aspect in the context of such cases because notarised documents and records at the Registry of Immovable Property are *prima facie* evidence, therefore an established legal fact can be contested in accordance with the rules on the admissibility of evidence as defined in Art. 197, part 2, of the Lithuanian Code of Civil Procedure. Circumstances related to the legal regime of property supported by official documentary evidence are deemed to have been fully proven unless they are refuted by other evidence in the case, except for witness testimonies whereby restrictions on the use thereof may be lifted if they would contradict the principles of honesty, fairness and prudence.

The Supreme Court of Lithuania follows standard practice that cohabitation between a non-married couple, joint household management and the creation of joint assets by using common funds generated from the joint household, as well as personal funds, and by their own labour, can serve as a sufficient ground to recognise the

⁵³ Ruling of the Lithuanian Supreme Court of 6 October 2008, civil case no. 3K-3-479/2008.

existence of an agreement between the parties on joint activities for the creation of joint-partial property.⁵⁴

It is presumed that the contributions of the partners are equal unless established otherwise in the agreement on joint activities (Art. 6.970 of the Lithuanian Civil Code), and each participant is allocated a corresponding share of the property rights, depending on the partners' contributions in terms of money, assets, personal input and with consideration being given to the joint household management (Rulings of the Lithuanian Supreme Court in civil cases No. 3K-3-37/2004, No. 3K-3-235/2008).

30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?

The ownership of assets is proved with regard to third parties by property registration records in the corresponding public registers, as well as by documentary evidence of the acquisition of assets (contracts, etc.).

31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?

There are no special rules, so the general provisions of the Law of obligations apply (Art. 6.6 of the Lithuanian Civil Code).⁵⁵ Partners shall be held jointly liable if they have together undertaken joint or subsidiary obligations.

According to Art. 6.975 of the Lithuanian Civil Code, if the agreement on joint activities is not related to the economic/commercial activities of the partners, each partner shall be liable under joint contractual obligations to the extent of all of his or her property in proportion to his or her part of such obligations. Under such joint non-contractual obligations the partners shall be jointly liable. If the agreement on joint activities is related to the economic/commercial activities of the partners, both partners shall be jointly liable under the joint obligations, notwithstanding the grounds for the appearance of such obligations.

32. On which assets can creditors recover joint debts?

According to Art. 4.80 of the Lithuanian Civil Code, a creditor of a co-owner shall have the right to partition the debtor's share in order to claim it. This means that creditors may recover a corresponding share of the debt from the property of each partner, including from jointly acquired and used property as referred to in Art. 3.230 of the Lithuanian Civil Code.

⁵⁴ Ruling of the Lithuanian Supreme Court of 8 April 2008, civil case no. 3K-3-235/2008; Ruling of the SCL of 28 September 2009, civil case no. 3K-3-336/2009; Ruling of the SCL of 21 December 2010, civil case no. 3K-3-553/2010.

⁵⁵ The joint liability of the debtors shall not be presumed, except in those cases established by law. It shall only arise where this is expressly imposed by law or stipulated by an agreement between the parties, also in cases when the subject of the obligation is indivisible

33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.

There are no special rules governing the administration of assets jointly owned by the partners in an informal relationship, although Art. 3.233 contains some limitations on the right to dispose of the assets which are jointly used. But usually the general rules apply: the object which is subject to common partial ownership is possessed, used and disposed of by a common agreement between the co-owners. If a dispute arises, the order of possession, use or disposal is established by a judicial procedure on the basis of a claim by one of the co-owners (Art. 4.75 Lithuanian Civil Code).

While managing joint affairs, each of the partners shall be entitled to act on behalf of all the partners, unless the agreement on joint activities provides that joint affairs shall be managed by one of the partners or all the partners together (Art. 6.972 Lithuanian Civil Code).

D. Separation

34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?

The separation of partners in an informal relationship and its legal effects are not subject to legal regulation. Only the separation of married partners established by the court is legally regulated (Art. 3.73 -3.80 of the Lithuanian Civil Code).

There is no legal obligation to provide maintenance for a cohabitant.

35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:

- a. **The creditor's needs and the debtor's ability to pay maintenance?**
- b. **The creditor's contributions during the relationship (such as the raising of children)?**
- c. **The standard of living during the relationship?**
- d. **Other factors/circumstances (such as giving up his/her career)?**

See the answer to Question 34.

36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?

See the answer to Question 34.

37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?

See the answer to Question 34.

38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?

See the answer to Question 34.

39. Is the maintenance claim extinguished upon the claimant entering:

- a. Into a formal relationship with another person?
- b. Into an informal relationship with another person?

See the answer to Question 34.

40. How does the creditor's maintenance claim rank in relation to:

- a. The debtor's current spouse, registered partner, or partner in an informal relationship?
- b. The debtor's previous spouse, registered partner, or partner in an informal relationship?
- c. The debtor's children?
- d. The debtor's other relatives?

See the answer to Question 34.

41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?

The institution of a partnership is not yet effective due to the fact that a special law establishing partnership registration procedures has not been adopted. Until this law is adopted, the *de facto* relations of partners are not subject to a special legal regulation, and separate elements of such relations are subject to the rules of the general civil law, but not the rules of family law (e.g. the division of assets that the partners have jointly acquired are subject to the rules under Book IV, 'Material Law' (Co-ownership rights), and Book VI, 'Law of Obligations' (joint activities (partnership) articles 6.969-6.971), of the Lithuanian Civil Code, regulating relations between co-owners).

42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?

See also the answer to Question 41.

Art. 4.80 of the Lithuanian Civil Code provides that each co-owner shall have the right to demand that his or her share should be partitioned from the common partial ownership. If no agreement is reached regarding the method of partitioning, the

asset shall be divided in kind preferably without disproportionate damage; in other cases, one or several of the co-owners thus partitioned shall receive compensation in monetary terms.

The following effective specific rules (Art. 3.232 and 3.234) should be mentioned: at the request of one of the cohabitees the court may divide all the assets, acquired and used by the cohabitees together, after the death of one of the cohabitees or at the end of their life together provided the cohabitees had not made an agreement on the division of assets certified by a notary public.

43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?

Article 3.234 of the Lithuanian Civil Code defines the division of assets used together: A house or an apartment may be awarded to the cohabitee who is in greater need of a place of residence taking into consideration his or her age, health, financial situation, the interests of his or her minor children and other important circumstances. In such cases the share of this cohabitee in other community assets shall be reduced. Where the value of the house or the apartment exceeds the value of the cohabitee's share in the assets, he or she must compensate, in monetary terms, the other cohabitee for the difference in the value. The house or the apartment which belonged to one of the cohabitees before their life together can be occupied by the other cohabitee under a right of usufruct if he or she has underage children born to the cohabitation or due to his or her health, age or other important reasons does not have his or her own dwelling.

Assets other than those referred to in Art. 3.230 (the provisions of this article shall not be applicable to assets which the cohabitees use for recreational purposes (the garden, a summer cottage, etc.)) which have been acquired and maintained by using the funds of both cohabitees shall be divided in accordance with the rules of shared community property.

The court shall have a right to depart from the principle of equal shares if it is just and reasonable to award one of the cohabitees a greater share of the assets, taking into account the interests of their minor children, the duration of their life together, their age, health, financial situation, personal contribution to the community property and other important circumstances.

The issue of transferring household articles to one of the cohabitees is resolved by the parity of reasoning,⁵⁶ in accordance with Art. 3.127 of the Lithuanian Civil Code ('If

⁵⁶ V. MIKELENAS et al., *Commentary on Book Three of the Civil Code of Lithuania* (in Lithuanian), Justitia, Vilnius, 2002, at p. 453.

possible, the property is divided in kind having regard to its value and the share of each spouse in the community property. If the property cannot be divided in kind, it is awarded in kind to one of the spouses, who is ordered to compensate the other spouse's share in money. The decision on the way the property is to be divided and the actual division of property in kind is taken having regard to the interests of the minor children, the state of health and the financial situation of one of the spouses as well as to other important circumstances').

44. How are the joint debts of the partners settled?

According to Art. 4.80 of the Lithuanian Civil Code, a creditor of a co-owner shall have the right to partition the debtor's share in order to claim it. This means that creditors may recover a corresponding share of the debt from the property of each partner, including from jointly acquired and used property referred to in Art. 3.230 of the Lithuanian Civil Code. Also see the answer to Question 32.

In order to divide assets acquired and used by cohabitees together the court shall first establish the assets acquired and used together and the separate assets of each cohabitee. Debts contracted by the cohabitees together and still outstanding at the end of their life together shall be deducted from the assets acquired and used together by the cohabitees. The assets acquired and used together which remain after the deduction of the joint outstanding debts of the cohabitees shall be divided into two equal shares except in cases provided for in this Art. 3.234.

45. What date is decisive for the determination and the valuation of:

a. The assets?

The current legislation which applies to partners in an informal relationship does not provide for this aspect, but by the analogy of Art. 3.119 the value of the community property to be partitioned shall be established at its market value on the date of the termination of the common partial ownership. In addition, the Court must take into consideration any depreciation of assets or, on the contrary, a possible increase in their value (i.e. in the case of securities).

b. The debts?

Debts contracted by the cohabitees together and still outstanding at the end of their life together shall be deducted from the assets acquired and used together by the cohabitees (Art. 3.234 part 1 of the Lithuanian Civil Code).

46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?

Where the value of the house or the apartment exceeds the value of the cohabitee's share in the assets, he or she must compensate, in monetary terms, the other

cohabitee for the difference in the value. In this case the provisions of Art. 3.117 are applied by analogy:⁵⁷ 'Where the value of the property awarded by the court to one of the spouses is greater than his or her share in the joint community property, that spouse shall be obliged to pay compensation to the other spouse. Upon the presentation of an adequate security for this liability, the court may defer the payment of the compensation for no longer than two years.'

When the size of the specific shares of each co-owner is not established, it is assumed that these shares are equal (Art. 4.73 part 3). In the case law the provisions of Art. 4.80 of the Lithuanian Civil Code are applied: Each co-owner shall have the right to demand that his share should be partitioned from the common partial ownership. If no agreement is reached regarding the method of partitioning, the asset shall be divided in kind preferably without disproportionate damage; in other cases, one or several of the co-owners thus partitioned shall receive compensation in monetary terms.

E. Death

47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?

A partner has no right to succeed according to the law. The legal basis for succession is a blood relationship and a matrimonial relationship. According to the law, legal successors can be: natural persons who survive the bequeather at the moment of his or her death, children of the bequeather who were born after his death, and likewise the State of Lithuania (Art. 5.5 of the Lithuanian Civil Code).

In intestate succession, the following persons shall be the heirs to inheritance in equal shares:

- First-degree descendants: the bequeather's children (including adopted children) and the bequeather's children born after his death;
- Second-degree descendants: the bequeather's parents (adoptive parents) and grandchildren;
- Third-degree descendants: the bequeather's grandparents both on the father's and mother's side, the bequeather's great grandchildren;
- Fourth-degree descendants: the bequeather's siblings and great grandparents both on the father's and mother's side;
- Fifth-degree descendants: the bequeather's nephews and nieces, likewise the bequeather's uncles and aunts;
- Sixth-degree descendants: the bequeather's cousins.

Second-degree heirs shall inherit by operation of the law only in the absence of first-degree heirs, or in the event of the latter's non-acceptance or renunciation of the

⁵⁷ V. MIKELENAS et al., *Commentary on Book Three of the Civil Code of Lithuania* (in Lithuanian), Justitia, Vilnius, 2002, at p. 453.

inheritance, likewise in cases where the first-degree heirs are deprived of the right to inherit. The third, fourth, fifth and sixth-degree heirs shall inherit in the absence of heirs of a superior degree or in the event of the latter's renunciation of the inheritance or deprivation of the right to inherit (Art. 5.11 of the Lithuanian Civil Code).

According to Art. 5.13 of the Lithuanian Civil Code the surviving spouse of the bequeather shall be entitled to inherit pursuant to intestate succession or alongside the heirs (if any) of either the first or second degree of descent. Together with the first-degree heirs, he or she shall inherit one fourth of the inheritance in the event of the existence of no more than three heirs apart from the spouse. In the event where there are more than three heirs, the spouse shall inherit in equal shares with the other heirs. If the spouse inherits with the second-degree heirs, he or she is entitled to half of the inheritance. In the event of the absence of first and second-degree heirs, the spouse shall inherit the whole inheritable estate.

48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?

The surviving partner can bring a creditor's claim on general grounds both against the heirs by law and the heirs by will⁵⁸ (Art. 5.63 of the Lithuanian Civil Code,⁵⁹ and Chapter VI of the Lithuanian Code of Civil Procedure). A separate regulation covers the compensation of funeral costs: Art. 5.63 is not applicable, and instead the courts follow Art. 1.2, part 1, Art. 1.5, Art. 1.8 part 2, Art. 5.59, part 2, Art. 6.1 and 6.2 of the Lithuanian Civil Code as well as Art. 3, part 6 of the Lithuanian Code of Civil Procedure.

49. Are there specific rules dealing with the home and/or household goods?

The object of succession is the totality of the property, property rights, obligations and some personal rights enjoyed by the testator at the moment of his/her death. As the right to request to be recognised as a family member of the tenant is of a personal nature, this right cannot be transferred to other parties (Art. 5.1, part 1 of the Lithuanian Civil Code). When a tenant who was a natural person and who was holding a lease on immovable property dies, his/her rights and obligations pass to his/her heirs unless the law or the lease agreement provides otherwise (Art. 6.494, part 4 of the Lithuanian Civil Code).

There is no separate regulation concerning succession to household goods. The clothing, documents, relics and household articles are transferred to the heirs according to the law regardless of the order of succession if they have been living

⁵⁸ Ruling of the Lithuanian Supreme Court of 17 May 2011, civil case no. 3K-3-243/2011.

⁵⁹ The creditors of a bequeather shall have the right, within three months from the day of the opening of the succession, to instigate claims against the successors who accepted the succession, the executor of the will or the administrator of the inheritance, or to bring an action in respect of the inheritable property. Claims shall be made without having regard to the maturity of the time limit for their satisfaction.

together with the deceased for at least one year prior to his/her death. Living together must have been factual and continuous. Household articles can also be disposed of by will.

50. Can a partner dispose of property by will in favour of the surviving partner:

- a. In general?
- b. If the testator is married to or is the registered partner of another person?
- c. If the testator has children?

Any legally capable natural person has the right to draw up a testamentary disposition by means of a will and to dispose of all of his/her property or a part thereof in favour of one or several individuals who may or may not be heirs by law as well as in favour of the State, local authorities or legal persons (Art. 5.19 of the Lithuanian Civil Code). The principle of *Pater familias* is applicable in Lithuania – the law protects certain groups of individuals who, regardless of what is laid down in a will, inherit a mandatory share of the inheritance (Art. 5.20 of the Lithuanian Civil Code). Such individuals are the children (or adopted children) of the testator, his or her spouse, and his or her parents (or foster parents), but only if, on the day of the testator's death, they were in need of maintenance and the testator did not dispose of any property in their favour, or the share of the property allocated to them by will amounts to less than half of the property that they would inherit by law.

The testator may include in his/her will a bequest in favour of his/her partner (Art. 5.23 of the Lithuanian Civil Code).⁶⁰

51. Can partners make a joint will disposing of property in favour of the surviving partner:

- a. In general?
- b. If either testator is married to or is the registered partner of another person?
- c. If either testator has children?

No. Only spouses can make a joint will (Art. 5.44 Lithuanian Civil Code):

- A joint will by spouses shall be made exclusively by the spouses. Such a will shall be signed by both spouses in the presence of a notary or any other person attesting the will.
- A joint will by spouses shall be made exclusively as an official will (Art. 5.28 Lithuanian Civil Code).

52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:

⁶⁰ The testator shall have the right to obligate a testate successor to fulfil a certain obligation (a testamentary reservation) for the benefit of one or several persons, while these persons shall acquire the right to demand the fulfilment of this obligation. Beneficiaries of the testamentary reservation may be intestate heirs as well as any other persons. The successor authorised by the testator will have to fulfil the testamentary reservation without exceeding the value of the inheritable property after the claims of the testator's creditors have been satisfied.

- a. **In general?**
- b. **If either partner is married to or is the registered partner of another person?**
- c. **If either partner has children?**

No.

Any individual has the right to conclude any legal contract, i.e. to transfer property to his or her partner or to acquire assets in the form of joint-partial property while being alive. Such contracts shall take place while all parties to the contract are alive. There is no possibility to donate property upon death.

According to the law of the Republic of Lithuania, upon death the property can only be disposed of by will. While both parties are alive, property can be transferred by way of a donation, an annuity (the transfer of property under a maintenance obligation), an exchange and other types of contracts. Such contracts may include usufruct rights for the disposer. If the will provides for a bequest – the right to use immovable property or a part thereof for a fixed period or for one's lifetime – the person accepting the bequest becomes the usufructuary.

In the absence of a will, succession is regulated by Art. 5.11 and 5.13 of the Lithuanian Civil Code (see the answer to Question 47).

- 53. Is the surviving partner entitled to a reserved share⁶¹ or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?**

Under the regulation in force (Art. 1.62 of the Lithuanian Civil Code) and according to Art. 23 of EU Regulation no. 650/2012, succession relations are subject to the law of the last place of residence. Succession to immovable property is subject to the law of the country where the property is located.

According to Art. 38 of the above-mentioned Regulation, a person may choose the law which is applicable to succession. The choice is limited to the law (on succession by will) of the country whose nationality the person holds. In Lithuania, a working group has recently been established to analyse a possible amendment to the Lithuanian Civil Code. At present there is no possibility to make such a choice.

- 54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?**

There is no relevant statistical information available.

⁶¹ See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?

There is no relevant statistical information available.

56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?

There is no relevant statistical information available.

F. Agreements

57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?

Article 6.156 of the Lithuanian Civil Code provides that the parties shall be free to enter into contracts and to determine their mutual rights and duties at their own discretion; the parties may also conclude other contracts that are not established by this Code if this does not contradict existing laws.

Article 3.231 part 2 provides that cohabitees shall have a right to make an agreement by a notarial deed on how the assets acquired and used together should be divided after their life together ends. The provisions of Art. 3.101-3.108 shall be applicable to such agreements *mutatis mutandis*. Unfortunately, the provisions of Art. 3.231 of the Lithuanian Civil Code have not been applied in practice.

58. Are partners in an informal relationship permitted to agree on the following issues:

a. The division of tasks as between the partners?

No.

b. The contributions to the costs and expenses of the household?

No.

c. Their property relationship?

According to Art. 3.231 of the Lithuanian Civil Code, partners can agree how the assets acquired and used together should be divided after their life together ends. However, the very nature of the institution of a partnership determines that an agreement between cohabitees can regulate much smaller parts of the property relations of the cohabitees (in contrast to the default content of a marriage contract⁶²).

⁶² Article 3.104 of the Lithuanian Civil Code provides for the content of a marriage contract: in their marriage contract the spouses may stipulate different kinds of matrimonial legal regimes;

Therefore Art. 3.231 of the Lithuanian Civil Code clearly defines the scope of such regulation as being limited exclusively to the division of property.⁶³ On the other hand, there are opinions that state that the content of an agreement between cohabitees could be broader and include other mutual property obligations of the couple.

d. Maintenance?

No.

e. The duration of the agreement?

No. The provisions of Art. 3.231 imply that the duration of an agreement on the property division should be linked to the end of cohabitation or the death of one of the partners. The reason for this is the fact that the assets belonging to each cohabitee do not become the joint property of the couple but remain as the private property of each partner or the joint-partial property of the couple. On the other hand, under the current regulatory regime, the duration of such an agreement is subject to rather diverse interpretations. As there is no Court practice in applying these provisions (Art. 3.229-3.235) it remains unclear when, exactly, an agreement on the division of property signed by cohabitees ceases to be in force: from the moment of starting to live separately or from the moment of the dissolution of their partnership agreement?⁶⁴

59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?

No. The Law regulates neither the factual nor the judicial separation of cohabitees.

60. Are the agreements binding:

a. Between the partners?

b. In relation to third parties?

Yes, according to Art. 3.231 of the Lithuanian Civil Code. An agreement⁶⁵ by cohabitees is subject to the same formal requirements as a marriage contract (Art.

moreover, a marriage contract may regulate the rights and duties related to the management of property, mutual maintenance, participation in the provision of family needs and expenses as well as the procedure for partitioning property upon divorce and other matters related to the spouses' mutual relations in property.

⁶³ V. MIKELENAS et al., *Commentary on Book Three of the Civil Code of Lithuania* (in Lithuanian), Justitia, Vilnius, 2002, at p. 448.

⁶⁴ I. KUDINAVIČIŪTĖ, 'Institution of Cohabitation: old or new problem of family law' (in Lithuanian), *Justitia*, No. 3, 2001, at p. 4-5.

⁶⁵ Only an agreement on how the assets acquired and used together should be divided after their life together ends.

3.103 of the Lithuanian Civil Code),⁶⁶ i.e. in a notarised form and registered in the Register of marriage contracts.⁶⁷

61. If agreements are not binding, what effect, if any, do they have?

See the answer to Question 60.

62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?

Yes. The conclusion of an agreement on the division of property (as well as the legal registration of the partnership itself) is a voluntary choice of the individuals involved.

63. When can the agreement be made (before, during, or after the relationship)?

Cohabitees may conclude an agreement on the division of property at any time: both prior to and after the registration of the partnership. In both cases such an agreement shall come into force no sooner than one year after the date of the registration of the partnership.

Note: the provisions of the Lithuanian Civil Code (Art. 3.229-3.235) have not been applied in practice; however, they have not been abolished either.

64. What formal requirements, if any, govern the validity of agreements:

- a. As between the partners?
- b. In relation to a third party?

No law applies.

65. Is independent legal advice required?

No.

66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?

There is no relevant statistical information available.

⁶⁶ A marriage contract must be entered into before a notary public. A marriage contract as well as its subsequent amendments must be registered in the register of marriage contracts maintained by mortgage institutions in the procedure laid down by the rules of the register. A marriage contract may only be amended with leave from the court. In no case may amendments to a marriage contract be retroactive. A marriage contract and its amendments may be used against third parties provided the settlement and its amendments have been registered in the register of marriage contracts. This rule shall not apply if at the time of the transaction the third parties knew of the marriage contract and its amendments.

⁶⁷ Regulations on the Register of marriage contracts, Official Gazette, 2009, No. 126-5430.

67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?

There is no relevant statistical information available.

G. Disputes

68. Which authority is competent to decide disputes between partners in an informal relationship?

The Courts are competent to decide on disputes between partners in an informal relationship. Any person whose constitutional rights or freedoms have been violated shall have the right to resort to the courts (Art. 30 of the Constitution of Lithuania).

69. Is that the same authority as for spousal disputes?

Yes.

70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?

Bearing in mind that Art. 3.229-3.235 of the Lithuanian Civil Code are not applied in practice, the courts usually rely on general provisions while considering material disputes between non-married individuals, such as the provisions of Book IV, 'Material Law', of the Lithuanian Civil Code on the division of joint-partial property between the co-owners as well as the provisions of Book VI, 'Law of Obligations', of the Lithuanian Civil Code.

71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?

Probably yes, according to Art. 3.231 part 2 of the Lithuanian Civil Code (the provisions of Art. 3.101-3.108⁶⁸ thereof shall be applicable to such agreements *mutatis mutandis*).

72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?

There is no applicable law on this.

⁶⁸ Art. 3.108 of the Lithuanian Civil Code provides for the nullity of a marriage contract: the court may declare a marriage contract null and void at the request of one of the spouses if the agreement is in serious breach of the principle of equality or is especially unfavourable to one of the spouses. The creditors of one or both of the spouses shall have a right to demand that the agreement be declared null and void because it is fictitious.

73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?

There is no applicable law on this.

74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?

There is no relevant statistical information available.