

## NATIONAL REPORT: SPAIN

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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.**

According to Art. 44 of the Spanish Civil Code both men and women can enter into marriage. In 2005 this provision was amended in order to add a second paragraph establishing that the conditions and effects of marriage do not vary depending on whether the intended spouses are of the same or the opposite sex.<sup>1</sup> Marriage was thereby opened up to same-sex couples. Article 44 applies throughout Spain, since marriage falls under the legislative competence of the Spanish Central State in accordance with Art. 149.1.8 of the Spanish Constitution.

Registered partnership regimes have been developed in some of the Spanish legal systems. This is so in the case of Basque law.<sup>2</sup> According to Art. 3.1 of a special statute on *de facto* couples (the terminology is misleading), couples have to register in order to be governed by the special regime on *de facto* couples. Registration is a constitutive requirement and both same-sex and opposite-sex couples may register. The law of Galicia<sup>3</sup> and that of the Balearic Islands<sup>4</sup> contains analogous provisions.

Other Spanish laws, however, follow a so-called double track model: special partnership regimes apply to couples that formally constitute their relationship (very often by notarial deed and without registration) and to couples that have cohabited for a certain time period or fulfil certain factual conditions. Catalan law furnishes an example of this model. According to Art. 234-1 of the Catalan Civil Code two people who cohabit in a manner analogous to marriage qualify as a so-called stable couple in three circumstances:

- if cohabitation lasts for more than two years without interruption; or
- if the couple have a common child; or
- if the couple formalises their relationship by notarial deed.

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<sup>1</sup> Ley 13/2005, de 1 de julio, por la que se modifica el Código civil en material de derecho a contraer el matrimonio (BOE núm. 157, de 2 de julio de 2005).

<sup>2</sup> Ley 2/2003, de 7 de mayo, reguladora de las parejas de hecho (BOE núm. 283, de 25 de noviembre de 2011).

<sup>3</sup> Ley 2/2006, de 14 de junio, de derecho civil de Galicia, as amended by Ley 10/2007, de 28 de junio, de reforma de la disposición adicional tercera de la Ley 2/2006, de 14 de junio, de derecho civil de Galicia (BOE núm. 226, de 20 de septiembre de 2007).

<sup>4</sup> Ley 18/2001, de 19 de diciembre, de Parejas Estables (BOE num.14, de 16 de enero de 2002).

Couples qualifying as a stable couple are governed by special provisions of the Catalan Civil Code that do not apply to other informal relationships.

The Catalan model is followed by the law of Aragon<sup>5</sup> and Navarre.<sup>6</sup> This report will focus on the Catalan Civil Code (as an example of a Spanish legal system that does have specific provisions on informal relationships) and the Spanish Civil Code (as an example of a Spanish legal system that does not have specific provisions on informal relationships).

Since terminology may be misleading to those unfamiliar with the Spanish Constitution, it is important to mention that the Spanish Civil Code does not apply, as regards this subject matter, throughout the country, but coexists with other legal systems in those Autonomous Communities with jurisdiction to legislate in matters of civil law (Balearic Islands, Catalonia, Aragon, Navarre, Basque Country and Galicia). This issue and the conflict of law matters connected to it will not be dealt with in this report. The special statutes on unmarried couples of Autonomous Communities that have no jurisdiction to legislate in matters of private law will not be taken into account either, since they do not contain provisions falling within the scope of this report.<sup>7</sup>

**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?**

The Spanish Civil Code does not contain a special legal regime governing informal relationships even though these relationships are dealt with by that Code and special statutes at random, in connection with certain matters. In 1987, for example, a reform of adoption law equated partners and spouses in connection with joint adoption<sup>8</sup> and in 1994 the Spanish Law on leasehold<sup>9</sup> granted legal rights to partners in an informal relationship. This Law requires partners to have had two years of cohabitation or to have a common child in order to qualify as a *de facto* couple, but does not specify circumstances that disqualify a couple.

Catalan law has developed a new institution called the 'stable couple', with rules contained in the second Book of the Catalan Civil Code (On persons and the family),

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<sup>5</sup> Decreto Legislativo 1/2011, de 22 de marzo, del Gobierno de Aragón, por el que se aprueba, con el título de «Código del Derecho Foral de Aragón», el Texto Refundido de las Leyes civiles aragonesas (BOA) núm. 67, de 29 de marzo de 2011).

<sup>6</sup> Ley foral 6/2000, de 3 de julio, para la igualdad jurídica de las parejas estables (BOE núm. 214 de 6 de septiembre de 2000).

<sup>7</sup> If they contain such provisions they would be unconstitutional. See Decision by the Constitutional Court on the law on unmarried couples of the Autonomous Community of Madrid (STC 81/2013).

<sup>8</sup> Ley 21/1987, de 11 de noviembre, por la que se modifican determinados artículos del Código Civil y de la Ley de Enjuiciamiento Civil en materia de adopción (BOE núm. 275 de 17 de noviembre de 1987).

<sup>9</sup> Ley de Arrendamientos Urbanos (BOE núm 282 de 25 de Noviembre de 1994).

in a special Chapter in the Title devoted to the family (Chapter IV of Title III). A same-sex or opposite-sex couple qualifies as a stable couple under Catalan law if the partners cohabit in a manner analogous to marriage and fulfil one of the two following conditions: (a) continuous cohabitation for more than two years; or (b) having a common child. However, certain personal circumstances will disqualify the couple. Article 234.2 of the Code establishes that non-emancipated minors or relatives in the first degree of the descending line (children and parents) or up to the second degree of the collateral line (siblings and first degree cousins) cannot constitute a stable couple. In addition, a stable couple cannot be constituted if one of the partners cohabits with a third person or if one or both partners are married and have not separated from their spouse (legal separation is not required, *de facto* separation suffices). It is worthwhile mentioning that this last requirement has been modified by the legislature. Originally, when legislation on stable couples was enacted in 1998,<sup>10</sup> a 'stable couple' as therein defined, could not be constituted by married persons. In 2010 this requirement was removed and married individuals who have factually separated from their spouse qualify. The legislature justified the change in the Preamble to the 2010 Statute that enacted Book II of the Catalan Civil Code. Since the overall purpose of the rules on stable couples is to solve problems related to the break-up of the relationship, an unequal treatment based on the circumstance that one or both partners in an informal relationship are married to another person, is unjustified. The second reason is that the requirement that none of the partners continued to be married disqualified an estimated 30% of the cohabiting heterosexual couples. Problems related to the break-up of couples not qualifying as stable couples were left to case law, which created legal uncertainty. This is precisely what the special rules on stable couples sought to avoid.

**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**

The Spanish Civil Code does not have specific legal provisions on informal relationships. Case law solves the legal issues related to these relationships in an ad hoc manner leading to inconsistencies and uncertainty. Many decisions stem from the assumption that these relationships cannot be equated to marriage, with the consequence that rules on married couples cannot be applied by analogy. There are, however, cases that have applied the rules of *pensión compensatoria* (Art. 97 Spanish Civil Code), a provision for financial relief in cases of marriage breakdown, if the factual situation fulfilled the conditions required by statute (e.g. STS 5-7-01, 16-7-02). This trend seems to be gaining ground in more recent decisions. There are, however, other decisions based on the law of property (e.g. STC 18-5-92, 29-10-97, 4-6-98), resorting to company law (STS 18-2-93), applying general principles such as those of abuse of rights and good faith (STS 11-12-92 and 23-11-04), tort law (STS 16-12-96) or the doctrine of unjust enrichment (STS 11-12-92; 17-6-03). The legal status of

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<sup>10</sup> Ley 10/1998, de 15 de julio, de uniones estables de pareja (BOE núm. 198, de 19 de agosto de 1998).

unmarried couples is therefore uncertain unless partners resort to self-regulation. Agreements entered into by the partners on the basis of the general principle of party autonomy (Art. 1255 Spanish Civil Code) are always given precedence. They are, however, not very common in practice.

**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 Spanish Civil Code system only has a limited number of provisions that refer to informal cohabitation without defining it. In special statutes that grant rights to partners in an informal relationship these may be defined for the specific purpose of the statute. The Spanish Law on leasehold requires partners, whether of the same or opposite sex, to have cohabited for a period of two years or to have a common child.<sup>11</sup>

Case law often uses the concept of cohabitation *more uxorio* which is defined as a cohabitation that has a certain stability, duration and public character and is marriage-like because the couple is united by feelings similar to those of spouses (*affectio maritalis*) and different from those of friendship. A decision by the Supreme Court dated 18 May 1992, which is often cited by lower instance courts, stated that *more uxorio* cohabitation requires 'cohabitation on a daily basis, stability and duration over some years as well as publicity, with partners performing joint acts vis-à-vis third parties'. Some decisions would seem to exclude same-sex couples from the concept, even though this would appear to be inconsistent with the constitutional principle of non-discrimination and the general evolution of Spanish family law and may be explained by the specific facts of the case.<sup>12</sup> As for duration it would seem that a two-year period is generally required.

In Catalan law a stable couple is a couple of same-sex or opposite-sex individuals who cohabit in a manner analogous to marriage. In order to qualify, couples need either (a) to have cohabited uninterruptedly for at least two years, or (b) to have a common child (Art. 234-1 Catalan Civil Code).

Social security law, which applies throughout the country, defines *de facto* couples for the purpose of survivor's pension. In order to qualify for survivor's pension, Art. 174 of the *Ley General de la Seguridad Social*,<sup>13</sup> requires cohabitation for at least five years prior to the worker's death. Cohabitation needs to be proved by city registration in the same dwelling. Additionally, the couple needs to have formalised their relationship either by notarial deed or by registration in one of the Registries of the Autonomous Community or Municipalities, where available, at least two years before the death. If partners are married to a third person or if there are other marriage impediments that would not allow the couple to enter into marriage, the

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<sup>11</sup> Art. 12 Ley de arrendamientos urbanos (BOE núm 282 de 25 de Noviembre de 1994).

<sup>12</sup> See STS of 21 October 1992, 27 May 1994, 27 March 2001 and 5 July 2001.

<sup>13</sup> Real Decreto Legislativo 1/1994, de 20 de junio, por el que se aprueba el Texto Refundido de la Ley General de la Seguridad Social (BOE núm. 154 de 29 de Junio de 1994).

couple does not qualify. A paragraph which referred to partnership provisions of Autonomous Communities was struck out by the Constitutional Court. STC 40/2014 of 11 March 2014 found this provision to violate the principle of equality between Spaniards, since social security benefits could not vary depending on the applicable law.

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

**a. When does the relevant relationship begin?**

Under the Spanish Civil Code system it is difficult to answer this question conclusively. There is however case law that suggests that a two-year period of permanent cohabitation is required and that relationships not meeting this requirement do not qualify. It is uncertain whether the couple qualifies retroactively once the requirement has been met.

Catalan law establishes that the couple has to cohabit for two years without interruption in order to qualify. Once this time limit has been met, the stable couple is deemed to have begun on the date when cohabitation started. If a child is born to or adopted by a cohabiting couple it also qualifies as a stable couple from the moment of birth or adoption (Art. 234-1 Catalan Civil Code).

**b. When does the relevant relationship end?**

Under the Spanish Civil Code there is no case law that would allow this question to be answered conclusively. In most cases that touch upon this issue the relationship ends either because of separation or because of the death of a partner. There is also no doubt that the relationship ends if one of the partners marries a third person, or changes its legal status if the partners marry each other.

According to Art. 234.4 Catalan Civil Code a stable couple ends: if the partners cease to cohabit and this puts an end to their personal relationship; if one of them dies or is declared to have died; if they marry (each other or a third person); if they so agree (the agreement needs to be formalised in a notarial deed); or at the unilateral will of one of the partners provided that it is notified to the other partner.

**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 Spanish Constitution has been decisive in connection with the legal position of informal relationships. The constitutional principles of equality and non-discrimination, particularly on grounds of filiation or sexual orientation (Art. 14), of free development of one's personality (Art. 10) and of legal, social and economic protection of the family and children, regardless of filiation, and mothers, regardless of civil status (Art. 39.1 and 2) were instrumental in the first years after the enactment of the Constitution in 1978. Based on these provisions the Constitutional Court established a broad concept of family that includes informal relationships (STC 222/1992 and 116/1999).

The Constitutional Court however also consistently held that the fact that informal relationships were recognized and protected by the Constitution did not mean that partners had the same legal status as spouses in connection with, for example, social security pensions in the case of death of one of the partners, or in connection with leasehold contracts (STC 184/1990 and 156/1987). These decisions caused an enormous social uproar and pushed the legislature into becoming active and legislate. The Spanish Parliament opted for the modification of specific provisions in the law of leasehold and social security, whereas legislatures in the Autonomous Communities enacted comprehensive statutes that dealt with all matters within their competence. These statutes were very significant from a political point of view and were certainly decisive steps towards the opening up of marriage. There were, however, doubts as regards their constitutionality.

In 2013 the Constitutional Court delivered two decisions in connection with the domestic partnership laws of Madrid and Navarre. The constitutional issues arose not because of the absence of legislation, but, on the contrary, because of the content of the legislation enacted.<sup>14</sup>

The first decision, STC 81/2013, on the Law of the Autonomous Community of Madrid, decreed that the Autonomous Community had gone beyond its legislative competence. It is therefore of no interest for the present report, since it deals with the division of legislative powers within Spain. The second decision, STC 93/2013, found nine provisions of the legislation of the Autonomous Community of Navarre to be unconstitutional, because they were in breach of the right to free development of personality since the law did not provide an opt-out mechanism allowing partners to exclude their application by agreement. According to the Constitutional Court provisions containing detailed regulation that cannot be derogated by agreement are not in conformity with the couple's individual freedom.

The 2013 decisions of the Constitutional Court only refer to the partnership bills of two Autonomous Communities. If the constitutionality of other Laws is challenged, judges need to request a new decision by the Constitutional Court. It is, however, only a matter of time until this happens.<sup>15</sup> In the meantime the legal situation of non-formalised relationships falling under the scope of application of the special statutes enacted by the Autonomous Communities of Aragon and Catalonia is uncertain.

## **7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations,**

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<sup>14</sup> M. ANDERSON, 'The Impact of the Spanish Constitutional Court's Judgments of Family Law and Succession in the Autonomous Communities', in: W. PINTENS and C. DECLERCK (eds.), *Patrimonium Intersentia*, Antwerpen, 2013, pp. 379-394; Á. LAMARCA MARQUES, 'The unconstitutionality of Cohabitation Regulation-Two decisions of the Spanish Constitutional Court', in: N. WITZLEB et al. (eds.), *Festschrift für Dieter Martiny zum 70. Geburtstag*, Mohr Siebeck, Tübingen, 2014, pp. 1141-1161.

<sup>15</sup> J. FERRER RIBA, 'Gemeinsames Sorgerecht, gleichgeschlechtliche Ehe und eheähnliche Gemeinschaften in der spanischen Verfassungsrechtsprechung', *FamRZ*, 2013, at p. 1464.

**and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?**

The partnership laws of the Spanish Autonomous Communities pursued two objectives. On the one hand, they sought the legal recognition of same-sex couples at a time when these individuals could not marry and, on the other hand, they intended to provide a legal framework for informal relationships. Whereas international instruments were relevant as regards the first objective, they have very rarely been relied upon in connection with the second. The Preamble to the first Catalan Law on stable couples, enacted by the Catalan Parliament in 1998, makes no reference to international instruments.

Case law has sometimes cited international instruments in order to justify new solutions. One of the oldest decisions of the Supreme Court accepting that partners may enter into an agreement and which establishes that their economic relationships are to be governed by the matrimonial property regime of community of acquisitions, STS of 18 May 1992, refers to Council of Europe Recommendation No. R (88) 3 on the validity of contracts between persons living together as an unmarried couple. These contracts were formerly held to be in breach of moral order.

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

The 1978 Spanish Constitution meant a radical change in Spanish family law, which had been very close to Roman Catholic standards and principles during the long period of the Franco dictatorship (1939-1975). In the 1980s the Spanish Constitutional Court held, in various landmark decisions, that families not based on marriage were equally protected under Art. 39 of the Spanish Constitution. This did not mean that marriage and cohabitation were equal and the Spanish Constitutional Court held that it was therefore legitimate not to treat them alike. These findings of the Constitutional Court pushed the legislature into becoming active.

The Autonomous Communities with jurisdiction to legislate in private law matters enacted different laws between the late 1990s and 2006. The first was Catalonia in 1998 with a special law on stable couples<sup>16</sup> that applied both to informal relationships and to couples that formalised their relationship by notarial deed. It contained different chapters on opposite-sex and same-sex couples, with more far-reaching effects for the second, which were justified by the fact that they could not enter into marriage. The second Autonomous Community to become active, Aragon,<sup>17</sup> though closely following Catalan legislation, gave up this distinction. The Law enacted by

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<sup>16</sup> Llei 10/1998, de 15 de juliol, d'unions estables de parella, (BOE núm. 198, 19 de agosto de 1998).

<sup>17</sup> Ley 6/1999, de 26 de marzo, de las Cortes de Aragón, relativa a Parejas estables no casadas (BOE núm. 95, 21 de abril de 1999).

the Autonomous Community of Navarre followed the same path.<sup>18</sup> It was, however, challenged on constitutional grounds by 40 members of the Parliament of the Autonomous Community. One of the arguments brought forward was that the legislation imposed mandatory provisions on unmarried couples, thus infringing their right to self-determination. Other Autonomous Communities with jurisdiction to legislate in private law matters, namely the Basque Country, Galicia, the Balearic Islands and Valencia decided to regulate only registered partnerships.<sup>19</sup>

In the rest of the country, where Autonomous Communities do not have jurisdiction to legislate in private law matters, two developments are noteworthy. First, Autonomous Communities such as Madrid,<sup>20</sup> Asturias,<sup>21</sup> Andalusia,<sup>22</sup> Canary Islands,<sup>23</sup> Extremadura<sup>24</sup> and Cantabria<sup>25</sup> enacted legislation on unmarried couples. These laws are very often rather thin in substance, since they deal with very limited areas of public law that are open to regulation by the Autonomous Community, such as public housing, benefits for the family situation of civil servants and some aspects of tax law. Secondly, the Spanish Parliament, which has competence to legislate on private matters for these territories, did not approve any of the various bills that were presented<sup>26</sup> in the period between 1996 and 2004. This can be explained by the fact that large sectors of the party that governed, the Conservative *Partido popular*, strongly supported the views on family and morality of the Catholic Church. At the Spanish national level, the approach towards informal relationships has been a piecemeal approach – they were dealt with in the course of different reforms on single issues like adoption or leasehold.

In 2005, the Socialist Party won the elections. Family law became prominent on the political agenda. Marriage was opened up to same-sex couples; divorce law was reformed in order to make divorce more easily accessible to couples that no longer wished to be married. Informal relationships, though on the increase in Spanish

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<sup>18</sup> Ley Foral 6/2000, de 3 de julio, para la igualdad jurídica de las parejas estables (BOE núm. 214, de 6 de septiembre de 2000).

<sup>19</sup> Valencia (Ley 1/2001, de 6 de abril, por la que se regulan las uniones de hecho (BOE núm. 112, 10.05.2001)), Balearic Islands (Ley 18/2001, de 19 de diciembre, de Parejas Estables (BOE núm.14, 16.01.2002)), Basque Country (Ley 2/2003, de 7 de mayo, reguladora de las parejas de hecho (BOPV núm. 100, 23.05.2003)) and Galicia (provision in Ley 2/2006, de 14 de junio, de derecho civil de Galicia (BOE núm. 191, 11.08.2006)).

<sup>20</sup> Ley 11/2001, de 19 de diciembre, de Uniones de Hecho de la Comunidad de Madrid (BOE núm. 55. 05.03. 2002).

<sup>21</sup> Ley del Principado de Asturias 4/2002, de 23 de mayo, de Parejas Estables (BOE. Núm. 157, 02. 07.2002).

<sup>22</sup> Ley 5/2002, de 16 de diciembre, de Parejas de Hecho (BOE núm.11., 13.01.2003).

<sup>23</sup> Ley 5/2003, de 6 de marzo, para la regulación de las Parejas de Hecho en la Comunidad Autónoma de Canarias (BOC núm. 54, 19.03.2003).

<sup>24</sup> Ley 5/2003, de 20 de marzo, de Parejas de Hecho de la Comunidad Autónoma de Extremadura, (DOE núm.42, 08.04.2003).

<sup>25</sup> Ley de Cantabria 1/2005, de 16 de mayo, de Parejas de Hecho de la Comunidad Autónoma de Cantabria (BO Cantabria núm. 98, 16.05.2005).

<sup>26</sup> There have been more than ten proposals. See J.M. MATA DE ANTONIO, 'Parejas de hecho ¿equiparación o discriminación?: análisis de la normativa autonómica', *Acciones e investigaciones sociales*, 2002, pp. 187-254.

society, were ignored in the period 2004-2011, when the Socialist party was in government, and later on, when the *Partido popular* regained power in 2011. Probably the need for specific legislation was felt to be less strong once all couples, regardless of sexual orientation, could get married.<sup>27</sup> From a political point of view, it may also have seemed unnecessary, given the different laws enacted by the Autonomous Communities.

In 2010 the Catalan legislature decided to amend its 1998 Law. Originally, in 1998, the option had been to legislate about stable couples outside the family law book of the Catalan Civil Code. Twelve years later, when the Catalan Parliament decided to enact Book II of the Catalan Civil Code, containing all the regulations on Persons and Family Law, this separation could no longer be justified. The Catalan legislature also took the opportunity to revise its legislation on stable couples. Whereas originally matters during the relationship were also regulated, the present legislation mainly concentrates on the effects after break-up. In the Preamble this is justified by reference to sociological data, even though it is not clear how they were obtained. The legislature assumes that in Catalan law informal relationships are essentially trial marriages.

In 2013 the Constitutional Court delivered two decisions in connection with the domestic partnership laws of Madrid and Navarre. The second decision, STC 93/2013, is noteworthy because it found that provisions which contain detailed regulation which cannot be eliminated by an agreement between the parties (i.e., no possibility of opt-out), are unconstitutional because they interfere with individual freedom. In 2014 a new decision by the Constitutional Court, STC 40/2014, held that a provision on survivor's pension in the Law on Social Security which deferred to Autonomous Communities' regulations on partnerships, was unconstitutional because it infringed the principle of equality between Spaniards.

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

There are no recent proposals for reform in this area in Spain.

**B. Statistics and estimations**

**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.**

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<sup>27</sup> C. GONZALEZ BEILFUSS, 'Die Regelung der Paarbeziehungen im neuen spanischen Familienrecht', in: B. HEIDERHOFF and A. RÖTHEL (eds.), *Regelungsaufgabe Paarbeziehung: Was kann, was darf, was will der Staat?*, Wolfgang Metzner Verlag, Frankfurt am Main, pp. 89-102; M. NAVARRO-MICHEL, 'Same sex couples in Spain and Catalonia', *International Journal of Legal Information*, 2014, pp. 47-54.

Year	Total number of Marriages <sup>28</sup>	Marriage rate (per 1,000 inhabitants)	Civil unions (formalised before a notary) <sup>29</sup>
2000	216,451	5.33	-
2001	208,057	5.07	-
2002	211,522	5.06	-
2003	212,300	4.99	-
2004	216,149	5.00	-
2005	209,415	4.76	-
2006	207,766	4.64	-
2007	204,772	4.48	1,598
2008	197,216	4.25	1,853
2009	177,144	3.78	2,327
2010	170,440	3.62	2,389
2011	163,338	3.46	6,014
2012	168,556	3.56	5,803
2013	-	-	5,026

Same-sex marriage has been legal since Law 13/2005, 1 July, which modifies the Civil Code on the right to marriage. The total number of marriages since 2005 therefore includes both heterosexual and same-sex marriages.

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

There are no official statistics available for informal relationships.

According to the population census of 2011, the number of couples living together has increased 195.8% since 2001. However, this information does not make a distinction between couples in a civil union or an informal partnership.<sup>30</sup>

<sup>28</sup> Statistics are from the National Institute of Statistics (*Instituto Nacional de Estadística*), Latest report 2014 (*Anuario Estadística de España 2014*), available at: [www.ine.es](http://www.ine.es). Includes data up to 1 January 2013.

<sup>29</sup> Statistics are from the Centro de información estadística del notariado, del Consejo General del Notariado, available at: [www.cienotariado.org](http://www.cienotariado.org).

<sup>30</sup> See Instituto Nacional de Estadística, 'Censos de Población y Viviendas 2011, Datos detallados', *Notas de prensa*, 12 December 2013.

Year	Total number of Marriages	Same-sex Marriages	Male Marriages	Female Marriages
2005	209,415	1,269	914	355
2006	207,766	4,313	3,000	1,313
2007	204,772	3,193	2,141	1,052
2008	197,216	3,194	2,051	1,143
2009	177,144	3,082	1,984	1,098
2010	170,440	3,193	1,955	1,238
2011	163,338	3,540	2,073	1,467
2012	168,556	3,455	1,935	1,520

According to research conducted by Domínguez-Folgueras and Mastro-Martín<sup>31</sup> cohabitation has spread significantly since 2006 among younger age groups and hence can no longer be considered as playing a marginal role in the family formation process. The authors used data from the 2006 Spanish Fertility, Family and Values Survey.

For Meil Landwerlin,<sup>32</sup> most partnerships are trial marriages, particularly in cases where it is the first shared life project with cohabitation; and becomes an alternative to marriage if it is a second or subsequent relationship. This author also highlights that the probability of women entering into a partnership rather than a marriage is three times higher for women with a university degree.<sup>33</sup> However, men present the same statistics even though their job or professional prospects are not affected by their family situation (fatherhood and division of tasks in the household).

The Preamble to the Catalan Civil Code also deems informal relationships to be trial marriages.

**12. What percentage of the persons living in an informal relationship are:**  
**a. Under 25 years of age?**

There is no information available for informal relationships.

**b. Between 26-40 years of age?**

There is no information available for informal relationships.

According to the population census of 2011 the percentage of people between 25 and 34 years of age who live in a partnership without children is 20%; the percentage of people between 25 and 34 years of age who live in a partnership with children is

<sup>31</sup> M. DOMÍNGUEZ-FOLGUERAS and T. CASTRO-MARTÍN, 'Cohabitation in Spain: no Longer a Marginal Path to Family Formation', *Journal of Marriage and Family*, 2013, pp. 422-437.

<sup>32</sup> G. MEIL LANDWERLIN, 'Actitudes y uso social de las uniones de hecho en España', *Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid*, 2006, pp. 95-111, at p. 107.

<sup>33</sup> G. MEIL LANDWERLIN, 'Actitudes y uso social de las uniones de hecho en España', *Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid*, 2006, pp. 95-111 at p. 109.

22%. However, this information does not make a distinction between married couples, people in a civil partnership or in an informal partnership.<sup>34</sup>

**c. Between 41-50 years of age?**

There is no information available for informal relationships.

**d. Between 51-65 years of age?**

There is no information available for informal relationships.

**e. Older?**

There is no information available for informal relationships.

**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?**

This information is not available.

**14. How many informal relationships are terminated:**

- a. Through separation of the partners?**
- b. Through the death of one of the partners?**

This information is not available for informal relationships.

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

There is no information available for informal relationships.

As regards formalised relationships, there are no Spanish statistics on their duration.

**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 Spanish National Institute of Statistics provides information on the percentage of children born outside marriage.<sup>35</sup>

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<sup>34</sup> See Instituto Nacional de Estadística, 'Censos de Población y Viviendas 2011, Datos detallados', *Notas de prensa*, 12 December 2013.

<sup>35</sup> See the 2014 Report, available at: [www.ine.es/prodyser/pubweb/anuario14/anu14\\_02demog.pdf](http://www.ine.es/prodyser/pubweb/anuario14/anu14_02demog.pdf).

<b>Year</b>	<b>Percentage of children born outside marriage</b>
2005	26.5%
2006	28.4%
2007	30.2%
2008	33.2%
2009	34.5%
2010	35.5%
2011	37.3%
2012	38.9%

The percentage of children born outside marriage is on the increase. However, there is no information as regards the relationship which the mothers are in, namely whether they are in a formal relationship (besides marriage) or an informal relationship.

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

This information is not available.

**18. How many children are adopted within an informal relationship:  
a. By one partner only?**

Statistical information is not available.

Both the Spanish Civil Code (Art. 175 Spanish Civil Code) and the Catalan Civil Code (Art. 235-30 Catalan Civil Code) allow adoption by a single person.

**b. Jointly by the couple?**

Statistical information is not available.

A couple in an informal relationship may adopt jointly. Spain has allowed this since the passing of law 21/1987, 11 November. The Catalan Civil Code mentions this possibility in Art. 235-30.2 Catalan Civil Code.

**c. Where one partner adopted the child of the other?**

Statistical information is not available.

One partner may adopt the child of the other, both in Spain and in Catalonia. See Art. 175.4 Spanish Civil Code, and Art. 235-32.1 Catalan Civil Code.

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

This information is not available.

**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?**

In the absence of an agreement, there is no legal duty in the Spanish Civil Code for partners to an informal relationship to support each other. Partners are neither relatives nor spouses and therefore do not fulfil the requirements of Art. 143 Spanish Civil Code. A claim for maintenance between partners to an informal relationship would be dismissed in court. If, however, partners support each other spontaneously, this is considered as performance of a so-called 'natural obligation' or moral duty. This means that there is no possibility of requesting reimbursement of payments made.

The same holds for Catalan law. The legal provisions contained in the Catalan Civil Code concentrate on the effects after break-up and do not regulate matters during the relationship. Article 234-3 Catalan Civil Code establishes that during the relationship matters are governed by the partners' agreements. In the absence of an agreement, there is no legal duty for partners to support each other since they do not qualify under Art. 237-2 Catalan Civil Code.

**b. Where there are common children in the household?**

Parents have a duty to support their children, but not each other if they are not married.

**c. Where there are other children in the household?**

Partners have no duty to support each other. The fact that there are children in the household is irrelevant as to the relationship between the partners. It may give rise to maintenance duties towards the children.

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

Neither the Spanish nor the Catalan Civil Codes foresee any general duty to contribute to the costs and expenses of the common household in the absence of agreement. The Catalan Law on stable couples (1998), that was in force before the enactment of Book II Catalan Civil Code (2010), established a duty to contribute to common expenses, for which the partners were jointly and severally liable. This provision was removed and present legislation concentrates mainly on the effects after break-up.

**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?**

No, at least not during the relationship. After its termination, the partner might have a right to remain in the home, particularly if there are children and the partner who is not the owner or tenant is granted custody rights.

**23. Are there specific rules on a partner's rights of occupancy of the home:**

**a. In cases of domestic violence?**

In cases of domestic violence a judge can order the perpetrator to leave the home and can prohibit return (Art. 64.1 *Ley de Protección Integral contra la Violencia de Género*).<sup>36</sup>

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

Under the Spanish Law of leasehold<sup>37</sup> there are special rules that apply where the partner renting the home abandons the home. The partner to an informal relationship has the right to notify the owner within a month that he or she wishes to substitute his or her name for that of the absent partner in the contract. For this purpose an informal relationship is required to have lasted for at least two years unless there are common children.

If the home is owned by the absent partner, the partner might be able to stay without title under a so-called *derecho de precario* which would equate to possession. This situation entails that the partner can be ousted by the title-holder.

Under Spanish law a declaration of absence can be requested in cases where a person disappears from his or her habitual residence for more than one year and there is no information about his or her whereabouts. Such declaration can be requested by a spouse, but not by a partner, unless the partners entered into a prior specific agreement to this effect. The spouse would be the first person to be called upon by the judge in order to administer the property, which would guarantee that he or she could continue to occupy the family home. If the person declared to be absent lived in an informal relationship, his adult children and failing them, his parents, would be called upon to represent and administer, which might have as a consequence that the partner would be ousted from the home.

If the partner declared to be absent held the home on lease, the other partner would have the right to notify the owner that he or she wished to subrogate under Art. 12 of the Spanish Law on leasehold.

**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?**

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<sup>36</sup> Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género (BOE núm. 313, de 29 de diciembre de 2004).

<sup>37</sup> Ley de Arrendamientos Urbanos (BOE núm 282 de 25 de Noviembre de 1994), at Art. 12.

In the Spanish Civil Code there are no special rules on transactions concerning the home of partners. If the home is jointly owned, the ordinary rules of joint ownership apply. Under Art. 399 Spanish Civil Code each partner may conclude transactions concerning his or her property rights in the home. If the partners are married, any transaction concerning the home would require both spouses' consent and failing that, authorization by the judge (Art. 1320 Spanish Civil Code). This provision may also apply to partners to an informal relationship by analogy, but this is by no means certain.

According to Art. 231-9 Catalan Civil Code, neither spouse is allowed to dispose of, mortgage, or carry out any other transaction on the family home without consent, even of their individual share of the property. Such consent may not be excluded by agreement or granted in general. In the absence of consent, the judicial authority may authorise the act, taking account of the interests of the family, or if there is another just cause.

An act performed without consent or authorisation is voidable, at the request of the other spouse if the other spouse is living in the same dwelling, within four years of having knowledge thereof or from the time that the act is recorded in the Property Registry.

An act remains effective if the purchaser acts in good faith and for consideration and the owner stated that the property was not a family dwelling, even though it was an inaccurate representation. There is no good faith if the purchaser knew or could reasonably have known at the time of the acquisition that it was a family dwelling. In any case, the spouse who disposed thereof is liable for the damages caused, in accordance with the applicable laws.

This provision is also applicable to informal partnerships (Art. 234-3.2 Catalan Civil Code).

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

There are no special rules protecting the family home in the Spanish Civil Code that apply to partners to an informal relationship. The partner who owns the home is therefore free to conclude any transactions on the home. Article 1320 Spanish Civil Code, which requires that the consent of both spouses for acts of disposal on the matrimonial home, may apply by analogy, but this is by no means certain.

According to Art. 231-9 Catalan Civil Code, neither spouse is allowed to dispose of, mortgage, or carry out any other transaction on the family home without consent. Such consent may not be excluded by agreement or granted in general. In the absence of consent, the judicial authority may authorise the act, taking account of the interests of the family, or if there is another just cause.

An act performed without consent or authorisation is voidable, at the request of the other spouse if the other spouse is living in the same dwelling, within four years of

having knowledge thereof or from the time that the act is recorded in the Property Registry.

An act remains effective if the purchaser acts in good faith and for consideration and the owner stated that the property was not a family dwelling, even though it was an inaccurate representation. There is no good faith if the purchaser knew or could reasonably have known at the time of the acquisition that it was a family dwelling. In any case, the spouse who disposed thereof is liable for the damages caused, in accordance with the applicable laws.

This provision is also applicable to informal partnerships (Art. 234-3.2 Catalan Civil Code).

A spouse or partner who wants to obtain a mortgage on their right in the family home must obtain the non-owner spouse's or partner's consent (Art. 569-31 Catalan Civil Code). In the absence of consent, judicial authorisation may be sought.

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

If the partners are married, any transaction concerning the home would require the consent of both spouses and, failing that, authorization by the judge (Art. 1320 Spanish Civil Code). This provision may also apply to partners to an informal relationship by analogy, but this is by no means certain.

According to article 231-9 Catalan Civil Code, neither spouse is allowed to dispose of, mortgage, or carry out any other transaction on the family home without consent. This provision applies as well to the rented family home. Such consent may not be excluded by agreement or granted in general. In the absence of consent, the judicial authority may authorise the act, taking account of the interests of the family, or if there is another just cause.

This provision is also applicable to informal partnerships (Art. 234-3.2 Catalan Civil Code).

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

The Law on Urban Leasehold, applicable throughout Spain, establishes in Art. 12 that when the household is rented, if the tenant does not wish to renew, or decides to terminate the agreement, the cohabitant spouse or partner may continue in the household, under the same conditions. The same will apply if the tenant abandons the household without any express declaration as to renewal or termination of the agreement.

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

There are no special rules in this regard. The ordinary rules of the contract of mandate apply (see Art. 1709 to 1739 Spanish Civil Code).

There is a general rule that establishes that nobody can act as an agent for another, unless authorisation is given (Art. 1259 Spanish Civil Code). Authorisation may be tacit, derived from conclusive acts (Art. 1710 Spanish Civil Code); but an informal relationship, per se, does not establish agency.

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

Partners can acquire assets jointly under the ordinary rules of joint acquisition both in Catalan civil law and in Spanish civil law. This is the common situation when partners acquire an immovable.

Even though it has been disputed in academic legal writing, case law establishes that partners are free to agree that their property relations are to be governed by the matrimonial property regime of community of acquisitions (STS 18-5-1998, 21-10-1992, 23-07-1998). This would entail that assets acquired by any of them during the relationship would belong to the community and would be subject to division upon termination of the relationship. Such an agreement would be based upon the general principle of party autonomy (Art. 1255 Spanish Civil Code) in the Spanish Civil Code system and upon a special provision about party autonomy contained in Art. 234-3.1 Catalan Civil Code, which applies to informal relationships qualifying as a stable couple.

Case law related to the separation of a couple has sometimes held that partners to an informal relationship had created a community of property over an asset, or the assets acquired during the relationship, even though there was no express agreement to this effect, when there were conclusive facts which revealed that the partners actually wanted to create such a community (STS 22-02-2006). This would however require a decision by a judge and in practice would apply retroactively in order to distribute property when the relationship has broken up.

**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 on household goods that apply to partners to an informal relationship in Spanish or Catalan law. In some cases it has been held that partners may tacitly agree to create a community of property under ordinary civil law provisions (see Art. 392 Spanish Civil Code and 552-1 Catalan Civil Code). Partners would have equal shares in the household goods, unless there is proof to the contrary.

Household goods are defined in provisions related to the general rights and duties of marriage. They are described as movables for the ordinary use of the family (Art.

1320 Spanish Civil Code; Art. 231-9 Catalan Civil Code). Jewellery, works of art and antiques are excluded, as are any goods of outstanding value (Art. 1321.2 Spanish Civil Code and Art. 346 Catalan Civil Code).

**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?**

Case law related to a couple's separation has sometimes held that partners to an informal relationship had created a community of property over an asset or assets acquired during the relationship, even though title belonged to one partner only. In order to reach this conclusion, there had to be conclusive facts revealing that the partners actually wanted to create such a community (STS 22-02-2006). However, this would require a decision by a judge and in practice would apply retroactively in order to distribute property when the relationship has broken up. In cases in which the non-owner financed the acquisition of an asset by his or her partner, the non-owner might argue that he or she is a fiduciary owner. Case law however has sometimes held that the financial contribution was a donation (STSJ of Catalonia 22-05-2003, STS 13-02-2003) or compensated for other contributions (STS of 5-12-2005).

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

There are no specific rules as regards property between partners to an informal relationship. As regards movables, the ordinary means of proof of ownership is the title of acquisition of the asset. The assets belong to the partner who appears as purchaser in the title of acquisition or as the owner in the documents resulting from the transaction. If no title can be found, possession will be taken into account.

As regards immovables, the registered owner will be considered to all effects and purposes to be the owner, unless challenged. Immovable property, if not registered in the Land Registry, will be owned by the person who has the latest title of acquisition.

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

The general rules apply. As regards movables, the ordinary means of proof of ownership is the title of acquisition of the asset. The assets belong to the partner who appears as purchaser in the title of acquisition or as the owner in the documents resulting from the transaction. If no title can be found, possession will be taken into account.

As regards immovables, the registered owner will be considered to all effects and purposes to be the owner, unless challenged. Immovable property, if not registered in the Land Registry, will be owned by the person who has the latest title of acquisition.

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

Under the Spanish Civil Code and the Catalan Civil Code partners only become jointly liable for debts which they incurred jointly.

**32. On which assets can creditors recover joint debts?**

If both partners have incurred a debt jointly, the creditor can recover the debts from the personal assets of each of them in proportion to their share in the property.

**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.**

No there are not. If assets are jointly owned, the ordinary rules on the administration of assets in co-ownership will apply. According to these rules acts of administration can only take place if there is agreement between the co-owners.

**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?**

In the Spanish Civil Code, in the absence of written rules, case law has granted economic compensation to a former spouse if the breakdown of the marriage has caused economic prejudice. The legal basis for such compensation is, however, uncertain.

Economic compensation after separation can be based on three different grounds:

- the existence of a non-contractual obligation;
- unjust enrichment; or
- the analogous application of the *prestación compensatoria* envisaged in divorce law.

The existence of non-contractual liability has been recognised in very few cases essentially because it presupposes an action that is wrongful. Unjust enrichment principles have been applied mostly in cases in which one of the partners has worked in the other's business. It requires proving that the increase in the assets of one partner and the corresponding decrease is unjust and therefore is not adapted to the realities of informal relationships.

Recent Supreme Court case law tends to be in favour of applying the legal provisions on *pensión compensatoria* of Art. 97 Spanish Civil Code, by analogy, even though this provision belongs to the rules on divorce or legal separation. This kind of economic compensation is granted in cases in which the break-up causes an economic imbalance between the partners. It may consist of periodic, usually monthly, payments or a lump sum payment. Depending on the circumstances it may be for life

or be limited in time. Even though it is strictly speaking not a maintenance claim it will be developed in the following sections.

In the Catalan Civil Code, Art. 234-10 allows either partner to claim maintenance from the other, if such maintenance is needed to provide proper care for his or her living needs, in any of the following cases:

- when cohabitation has diminished the ability of the applicant to earn income;
- when the applicant has the custody of common children in circumstances where his ability to earn an income is diminished.

Agreements to waive maintenance are null and void to the extent that they compromise the ability of the partner entitled thereto to meet his basic needs, unless such agreements are incorporated into a proposed settlement pursuant to Art. 234-6 Catalan Civil Code.

If either partner dies within one year from the termination of the partnership, the other partner may, within three months following the death, claim from the heirs his or her right to maintenance. The same rule applies if the proceedings to claim maintenance end by reason of the death of the obligor partner.

According to Art. 234-11 Catalan Civil Code maintenance may be awarded in the form of a lump sum or as an allowance. Without an agreement on the form of payment, the judicial authority will decide. Maintenance in the form of an allowance is temporary, with a maximum of three annual instalments, unless maintenance is based on the reduced ability of the creditor to earn an income resulting from the custody of common children. In this case, maintenance may be awarded for the duration of the custody.

**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?**

According to the Spanish Civil Code the judge takes into consideration the creditor's needs and the debtor's ability to pay in order to decide both whether to grant economic compensation and then to fix the amount payable. Article 97.2 Spanish Civil Code contains a non-exhaustive list of factors. An advanced age and poor health are usually important factors in order to be granted economic compensation. The ability to pursue gainful employment is also taken into account; in this context it is worthwhile highlighting that case law usually considers that this employment should be in accordance with the partner's education and social status. The economic means of the debtor and the creditor are also relevant in order to decide whether there is an economic imbalance between the partners and if so to grant compensation and decide its amount.

Catalan law only awards maintenance to a partner who is in need if such need is related to the relationship. The creditor needs to prove that:

- cohabitation has diminished the ability of the creditor to earn income; or

- the creditor's ability to earn an income is diminished because he or she has the custody of common children (Art. 234-10 Catalan Civil Code).

Case law usually relates the amount of maintenance to the economic means and ability to pay of the debtor (S TSJ Catalonia 9-05-2005).

**b. The creditor's contributions during the relationship (such as the raising of children)?**

Article 97 of the Spanish Civil Code specifically mentions past and future contributions to the family as a factor to be taken into account, essentially because the raising of children is considered to be an obstacle to full professional development.

Under Catalan law the creditor's contributions during the relationship are indirectly taken into account only if they have diminished his or her ability to earn income (Art. 234-10.1 Catalan Civil Code).

**c. The standard of living during the relationship?**

The whole purpose of *pension compensatoria* under Spanish law is to restore the imbalance between the economic situation of each of the partners after break-up. Though not specifically mentioned as a factor to be taken into account, the standard of living during the relationship plays a decisive role because the economic situation of each partner needs to be compared with that enjoyed in the past.

The provisions of the Catalan Civil Code do not refer to the standard of living enjoyed during the relationship.

**d. Other factors/circumstances (such as giving up his/her career)?**

Other factors mentioned in the Spanish Civil Code (Art. 97) include participation in the business or profession of the other partner, the duration of the marriage and an eventual loss of pension rights. The list is open-ended and any other factor may be taken into account. The fact that the creditor has given up his or her career can also be taken into account when it comes to considering contributions to the family.

The approach of Catalan law is rather restrictive and does not seem to allow taking into account any other factors.

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

The law does not specify any particular mode of calculation nor are there any official guidelines, but in practice it seems that between 20 to 30% of the income of the debtor is in most cases considered adequate. However, it also depends on whether there are other concurring maintenance claims.

As regards maintenance for children, there are some guiding tables to determine claims issued by the Consejo General del Poder Judicial.<sup>38</sup>

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

Under Spanish law the judicial authority has discretion to decide whether to limit compensation to a specific period of time or grant it for life. The factors listed under Art. 97 Spanish Civil Code also operate as factors in order to decide the duration of maintenance.

Article 234-11.3 Catalan Civil Code limits the duration of maintenance to three years. If maintenance is granted because the custody of children diminishes the ability of the creditor to earn income, it might be extended for the duration of custody.

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

Maintenance can be modified if circumstances have substantially changed in a manner that is not temporary and changes have not been brought about intentionally. Whether or not this modification will be granted by the courts very much depends on the facts of the case. Retirement and unemployment are factors that very often lead to a reduction of the amounts due. Maintenance can also be modified if the creditor inherits property, receives a pension or substantially improves his or her economic situation. See Art. 142 Spanish Civil Code, and 237-9 and 237-13 Catalan Civil Code.

**39. Is the maintenance claim extinguished upon the claimant entering:  
a. Into a formal relationship with another person?**

Yes, see Art. 101 Spanish Civil Code and 233-19.1b) Catalan Civil Code.

**b. Into an informal relationship with another person?**

Yes, see Art. 101 Spanish Civil Code and 233-19.1b) Catalan Civil Code.

**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?**

There are no clear-cut rules on this issue in the Spanish Civil Code. However, it seems that, in evaluating the debtor's ability to pay, this will be taken into account.

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<sup>38</sup> Tablas orientadoras para determinar las pensiones alimenticias de los hijos en los procesos de familia elaboradas por el CGPJ, available at: [www.poderjudicial.es/cgpj/es/Servicios/Utilidades/Calculo-de-pensiones-alimenticias](http://www.poderjudicial.es/cgpj/es/Servicios/Utilidades/Calculo-de-pensiones-alimenticias).

Partners to an informal or formal relationship are however not entitled to maintenance during the relationship under Spanish law.

Article 233-18.2 Catalan Civil Code establishes that the new family expenses of the debtor need to be taken into account when evaluating his or her ability to pay. This means that the claims of his new partner come first.

**b. The debtor's previous spouse, registered partner, or partner in an informal relationship?**

In principle these claims would be taken into account in evaluating the debtor's ability to pay. They might be considered to come before the claims of a new partner because the debtor cannot modify maintenance claims for circumstances brought about by himself or herself. Case law is however divided on this issue.

**c. The debtor's children?**

Maintenance claims for children always come first. When evaluating the debtor's ability to pay and deciding about whether to grant maintenance, and for what amount, to a partner in an informal relationship, the maintenance claims of children will be deducted from the debtor's income.

Article 237-8 2 Catalan Civil Code specifically establishes that priority should be given to claims from the debtor's children.

**d. The debtor's other relatives?**

There are no clear-cut rules on this issue. However, it seems that, in evaluating the debtor's ability to pay, this will be taken into account.

**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 general rules apply. As regards movables, the ordinary means of proof of ownership is the title of acquisition of the asset. The assets belong to the partner who appears as purchaser in the title of acquisition or as the owner in the documents resulting from the transaction. If no title can be found, possession will be taken into account.

As regards immovables, the registered owner will be considered to all effects and purposes to be the owner, unless challenged. Immovable property, if not registered in the Land Registry, will be owned by the person who has the latest title of acquisition.

Since in practice, particularly after a long relationship, it may be difficult to determine who owns certain assets, the rules of community of property may be held

to be applicable. This however requires a tacit agreement evidenced by acts performed by the partners. Such facts could be:

- having a common bank account that is indistinguishably used by both partners;
- giving a general authorization to a partner allowing him or her to dispose of a bank account held by the other partner;
- common professional activities;
- sharing income and expenses (one common pot);
- making economic contributions to the acquisition of an asset held by the other partner.

**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?**

There are no special rules on property division that apply to assets jointly owned by the partners to an informal relationship. The ordinary rules on property division apply. If the parties do not agree on how to divide the property jointly owned, they may apply for division in court proceedings by exercising the so-called *actio communi dividendi*. If assets cannot be divided materially they will be divided economically, either by attributing them to one of the partners by way of compensation or by selling the assets and dividing the income according to the respective shares of ownership. Catalan law provides that, at the request of one of the partners, the judge may make the assets up into two lots and allocate one lot to one partner and the second lot to the other partner.<sup>39</sup>

**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)?**

There are preferential rights concerning the use, but not the property, of the family home and household goods, that apply essentially if there are children. Article 234-8 Catalan Civil Code establishes that the judge can allocate the use of the family home and household goods depending on the circumstances of the case according to the following rules. If one parent has sole custody of the child or children he or she will be granted the use of the family home and household goods for the duration of custody. In cases of joint custody the use of the family home will be granted to the parent who is more in need.

The Spanish Civil Code does not have rules regarding the home and household goods of partners to an informal relationship. Case law tends to apply the provisions contained in Art. 96 Spanish Civil Code on the allocation of the matrimonial home. In the absence of agreement the use is granted to the children and thus indirectly to the

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<sup>39</sup> Disp. Ad. 5<sup>a</sup> of the Ley 25/2010, de 29 de julio, del libro segundo del Código civil de Cataluña, relativo a la persona y la familia (BOE núm. 203, de 21-08-2010).

residential parent. In cases where there is an alternative residence the family home and household goods are usually attributed to the parent who is more in need.

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

Joint debts vis-à-vis third parties are not affected by the break-up of the relationship. Partners continue to be liable according to ordinary rules.

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

**a. The assets?**

The date at which the relationship is terminated is decisive for the determination and the date at which division is undertaken is decisive for the valuation.

**b. The debts?**

The date at which the relationship is terminated is decisive for the determination and the date at which division is undertaken is decisive for the valuation.

**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?**

The so-called *pensión compensatoria* established by the Spanish Civil Code in cases of divorce or legal separation is a hybrid between maintenance and compensation. For clarity's sake it was described in Questions 34 and 35. This kind of economic compensation is granted in cases in which the break-up causes an economic imbalance between the spouses and also tends to be applied to partners in an informal relationship. In the absence of agreement the judge determines the amount payable by taking into account factors such as: the age and health of the partners; the professional qualifications and possibilities of pursuing gainful employment; past and future work for the family; cooperation in the other partner's business or profession; the duration of the relationship; the eventual loss of pension rights; and the economic means and needs of the partners. The list is not exhaustive. Compensation can be granted for a certain period or indefinitely, as a lump sum or in instalments.

Catalan law provides for compensation for work performed in Art. 234-9 Catalan Civil Code. This kind of compensation is equally established for married couples under the legal regime of separation of property. The partner who has worked substantially more for the family or who has worked for the other without or with insufficient remuneration has a right to be compensated. This however requires additionally that at the moment of the termination of the relationship the debtor partner has experienced an increase in his assets. In determining the amount of compensation, regard will be paid to the duration and extent of the work performed and in the case of work in the home the fact that it included the raising of children or the care of other family members who live with the family. In principle, the

compensation is limited to 25% of the difference between the increases in assets experienced by either partner. The judge may however raise the amount payable if the creditor proves that his or her contribution was substantially higher. Catalan law has rules on calculation and methods of payment (Art. 232-6 and Art. 232-8 Catalan Civil Code).

## **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?**

In the absence of a will, the Spanish Civil Code does not provide any inheritance rights for the surviving partner. Given that the Spanish Civil Code does not include any reference to informal relationships in its regulation of succession, surviving partners are treated as strangers to the deceased to all intents and purposes.

According to the Spanish Civil Code, if a person dies without an effective will, the order/hierarchy of intestate heirs is as follows: descendants (Art. 930 Spanish Civil Code), ascendants (Art. 935 Spanish Civil Code), surviving spouse (Art. 943 Spanish Civil Code), collateral relatives up to the fourth degree (Art. 954 Spanish Civil Code), and finally, in the absence of all of the above, the State (Art. 956 Spanish Civil Code).

When the surviving spouse does not become intestate heir to the deceased, he/she will have a usufruct over a portion of the estate. The amount will vary depending on who the intestate heir is. If there are descendants, the surviving spouse will have a usufruct over one-third of the estate (Art. 834 Spanish Civil Code); if there are ascendants, the usufruct will be over one-half of the estate (Art. 837 Spanish Civil Code).

The Catalan Civil Code does provide inheritance rights in favour of the surviving partner. There are provisions that equate the surviving partner to the surviving spouse, giving them the same inheritance rights in the case of intestate succession. According to the Catalan Civil Code, if a person dies without an effective will, the order/hierarchy of intestate heirs is as follows: descendants (Art. 442-1 Catalan Civil Code), surviving spouse or partner (Art. 442-3 Catalan Civil Code), ascendants (Art. 442-8 Catalan Civil Code), collateral relatives up to the fourth degree (Art. 442-9 Catalan Civil Code), and finally, in the absence of all the above, the Catalan Government (Art. 442-12 Catalan Civil Code).

When the surviving spouse does not become intestate heir to the deceased, he/she will have a usufruct over the entire estate (Art. 442-3 Catalan Civil Code).

However, there are doubts as regards the constitutionality of these Catalan rules. The Spanish Constitutional Court, in its ruling 93/2013, 23 April, has deemed the Navarra Law to be unconstitutional because it imposes a set of mandatory rules and regulations on informal couples, regardless of the couples' wishes, which is against

constitutional rights, namely, Art. 10 (free development of personality), Art. 18 (right to privacy) and Art. 32 Spanish Constitution (in its negative dimension, the right not to marry). This would mean that any autonomous community regulation (including that of Catalonia) with mandatory provisions must be applicable only to registered couples.

**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?**

According to the Spanish Civil Code, the surviving partner has no claims on the estate. Given that the Spanish Civil Code does not include any reference to informal relationships in its regulation of succession, surviving partners are treated as strangers to the deceased to all intents and purposes.

Under the Catalan Civil Code, the surviving partner has a right to maintenance for one year after the partner's death (Art. 231-31 Catalan Civil Code), as well as a right to compensation by reason of work (Art. 234-14 Catalan Civil Code). When one partner has worked for the household substantially more than the other or has worked for the other partner without any (or insufficient) remuneration, that partner is entitled to financial compensation for this involvement if, at the end of the cohabitation, the other partner has accrued more assets (Art. 234-9 Catalan Civil Code). The surviving partner also has a right to the *cuarta viudal* (one-quarter of the deceased's estate) when the surviving partner's estate plus any property allocated by the deceased is insufficient for the survivor's maintenance, taking into account the standard of living enjoyed by the couple before death (Art. 452-1 Catalan Civil Code). However, given the ruling of the Spanish Constitutional Court 93/2013, these regulations should only be applied to registered couples.

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

Under Spanish Law, if the lease of the home was under the name of the partner who died, the surviving partner will have a right to the transmission of tenancy (Art. 16.1.b Spanish Tenancy Act 24 November 1994). This law is applicable in all of Spain (including Catalonia).

According to the Catalan Civil Code, the surviving partner is entitled to personal chattels (Art. 231-30 Catalan Civil Code), and may also be given the right to live in the home for a year after the partner's death (Art. 231-31 Catalan Civil Code).

**50. Can a partner dispose of property by will in favour of the surviving partner:  
a. In general?**

Yes, as with any other stranger. The testator may designate the informal partner as legal heir, or legatee. However, one must take into account that the free share is limited under the Spanish Civil Code. The descendants of the testator have a forced share of two-thirds of the estate (Art. 808 Spanish Civil Code). In the absence of

children or other descendants, the ascendants have a forced share of one-half of the estate (Art. 809 Spanish Civil Code).

The Catalan Civil Code establishes a different amount of free share: one-quarter of the estate (Art. 451-5 Catalan Civil Code). Forced heirs are, firstly, the deceased children and other descendants (Art. 451-3 Catalan Civil Code) and, if there are no descendants, the deceased's parents (but no further removed ascendants) (Art. 451-4 Catalan Civil Code). The surviving spouse or cohabitant is not included in this list of beneficiaries. But he/she has the right to a maximum of one-quarter of the estate (the so-called widow's quarter) if, taking into account the spouse's or cohabitant's own means as well as what he/she may have received from the deceased, they require support (Art. 452-1 to 452-6 Catalan Civil Code).

**b. If the testator is married to or is the registered partner of another person?**

Yes, as with any other stranger. The Spanish Civil Code states that if the testator is married, the surviving spouse has a life interest in one-third of the estate if the deceased leaves children or other descendants (Art. 834 Spanish Civil Code); if there are ascendants, the life interest is on half of the estate (Art. 837 Spanish Civil Code). In the absence of the abovementioned relatives, the life interest is on two-thirds of the estate (Art. 837 Spanish Civil Code).

The Catalan Civil Code does not provide a right to usufruct for the surviving spouse or partner. But they do have a right to the *cuarta viudal* (one-quarter of the deceased's estate) when the surviving partner's estate plus any property allocated by the deceased is insufficient for the survivor's maintenance, taking into account the standard of living enjoyed by the couple before death (Art. 452-1 Catalan Civil Code).

**c. If the testator has children?**

Yes, as with any other stranger. However, if the testator has children, one must take into account that they are the testator's forced heirs and therefore the percentage of free share is, according to the Spanish Civil Code, limited to one-third of the estate (Art. 808 Spanish Civil Code).

The Catalan Civil Code establishes a different amount of free share. If the testator has children, they are entitled, as forced heirs, to one-quarter of the estate (Art. 451-3 and 451-5 Catalan Civil Code).

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

**a. In general?**

According to the Spanish Civil Code, joint wills are not legal; they are prohibited under Art. 669 Spanish Civil Code.

The Catalan Civil Code does, in fact, allow joint wills in Art. 431-1 Catalan Civil Code.

Succession agreements may only be executed, according to Art. 431-2 Catalan Civil Code, with the following individuals:

- the spouse or future spouse;
- the cohabitant in a stable relationship;
- relatives in a direct line with no limitation in terms of the degree, or in a collateral line up to the fourth degree, in terms of both consanguinity and affinity;
- relatives by consanguinity in a direct or collateral line within the second degree of the other spouse or cohabitant.

Any person can be a beneficiary (Art. 431-3 Catalan Civil Code).

**b. If either testator is married to or is the registered partner of another person?**

According to the Spanish Civil Code, joint wills are not legal; they are prohibited under Art. 669 Spanish Civil Code.

The Catalan Civil Code allows cohabitants in an informal relationship to make joint wills (Art. 431-2.b) Catalan Civil Code). If the testator is married to another person, the fact that he/she is in an informal relationship will be evidence that there is a *de facto* separation from the spouse, and therefore he/she can make a joint will with the 'new' partner. If, however, either testator has already entered into a succession agreement with their spouse or registered partner, they will be precluded from making a joint will with their 'new partner', given that the previous succession agreement will still be valid. Article 431-17 Catalan Civil Code sets out the rule: 'the annulment of the marriage, a marital separation and divorce, or the breaking up of a stable relationship involving any of the testators does not alter the effectiveness of succession agreements, unless agreed otherwise'.

**c. If either testator has children?**

According to the Spanish Civil Code, joint wills are not legal; they are prohibited under Art. 669 Spanish Civil Code.

The Catalan Civil Code allows this in Art. 431-1 Catalan Civil Code. The beneficiaries of the joint will do not have to be the testator's children. The fact that the testator has children will not affect the validity of the joint will. Once the joint will is made, if one of the testators has children, this will not be a cause to challenge or revoke the succession agreement (Art. 431-9.3 Catalan 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:**

**a. In general?**

Gifts upon death, yes, as legatees. But the Spanish Civil Code does not allow agreements between testator and heir.

The Catalan Civil Code allows agreements as to succession (Art. 431-1 Catalan Civil Code), including those made by cohabitants (Art. 431-2.b) Catalan Civil Code).

**b. If either partner is married to or is the registered partner of another person?**

Gifts upon death, yes, as legatees. But the Spanish Civil Code does not allow inheritance agreements between testator and heir.

The Catalan Civil Code does not include any limit as to who the beneficiary of the succession agreement is.

**c. If either partner has children?**

Gifts upon death, yes, as legatees. But the Spanish Civil Code does not allow inheritance agreements between testator and heir.

The Catalan Civil Code allows agreements as to succession (Art. 431-1 Catalan Civil Code). The fact that the testator has children will not affect the validity of the joint will. Once the joint will is made, if one of the testators has children, this will not be a cause to challenge or revoke the succession agreement (Art. 431-9.3 Catalan Civil Code).

**53. Is the surviving partner entitled to a reserved share<sup>40</sup> 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?**

No. According to the Spanish Civil Code, the surviving spouse has a life interest in the estate (Art. 834 et seq. Spanish Civil Code), but the surviving partner has no similar right.

The Catalan Civil Code gives the surviving partner the right to the *cuarta viudal* (one-quarter of the deceased's estate) when the surviving partner's estate plus any property allocated by the deceased is insufficient for the survivor's maintenance, taking into account the standard of living enjoyed by the couple before death (Art. 452-1 et seq. Catalan Civil Code).

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

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<sup>40</sup> 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.

No, there are not.

**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 are statistics about the total number of wills per year in Spain, without further information about their content or designated heirs.<sup>41</sup>

**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?**

No. The Registry of life insurance contracts (*Registro de contratos de seguros de cobertura de fallecimiento*) does not include this information.

**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?**

The Spanish Civil Code does not include any reference either to civil partnerships or informal relationships. There is a consensus that partners may agree on issues about their relationship or break-up, which would be valid on the grounds of the principle of liberty and the person's free development of personality (in Art. 10 Spanish Constitution), and the principle of equality (Art. 14 Spanish Constitution). Article 1323 of the Spanish Civil Code allows married couples to enter into agreements, and it is thought that members of a partnership should be able to do so as well. The Spanish Supreme Court has upheld the validity of agreements on patrimonial aspects made by partners in informal relationships since 1992. In particular, see STS 18 May 1992 and 21 October 1992.

Any agreement between informal partners would have to comply with Art. 1255 Spanish Civil Code on the validity of agreements, in general, which states that 'contracting parties may establish the pacts, clauses and conditions they deem advisable, provided they are not contrary to the law, morals, or public policy'.

Married couples are free to enter into agreements, within certain limits. These limits would also be applicable to informal relationships. Some are set out in the Spanish Constitution, such as the principle of equality of spouses (Art. 32), and the protection of children, regardless of legal filiation (Art. 39). The Spanish Civil Code also includes these principles, such as equality in rights and duties of spouses (Art. 66).

The Catalan Civil Code specifically allows partners in informal partnerships to enter into agreements to regulate the consequences of cohabitation (Art. 234-3.1), as well as the consequences of break-up (Art.234-5).

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<sup>41</sup> These are available at: [www.cienotariado.org](http://www.cienotariado.org).

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

**a. The division of tasks as between the partners?**

There is no provision in the Spanish Civil Code containing any reference to agreements made by partners in an informal relationship. It seems that this could be valid as long as any such agreement was based on the principles of equality.

The Catalan Civil Code allows agreements in a general provision (Art. 234-3), without including any reference to a pact on the division of tasks.

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

There is no provision in the Spanish Civil Code containing any reference to agreements made by partners in an informal relationship. This would be an atypical agreement that could be valid as long as it was based on the principles of equality.

The Catalan Civil Code allows agreements in a general provision (Art. 234-3), without any specific reference to a pact on the contributions to costs and expenses of the household.

**c. Their property relationship?**

There is no provision in the Spanish Civil Code containing any reference to agreements made by partners in an informal relationship. This would be an atypical agreement that could be valid as long as it was based on the principles of equality.

The Catalan Civil Code allows agreements in a general provision (Art. 234-3), without referring specifically to a pact on property relationships. Catalan law allows partners in an informal relationship to buy property with a tontine clause (Art. 234-3.3 Catalan Civil Code).

**d. Maintenance?**

There is no provision in the Spanish Civil Code containing any reference to agreements made by partners in an informal relationship. This would be an atypical agreement that could be valid as long as it was based on the principles of equality.

The Catalan Civil Code allows agreements made by partners in an informal relationship to regulate the consequences of cohabitation (Art. 234-3.1), as well as the consequences of break-up (Art. 234-5). As regards maintenance, 'agreements to waive maintenance are null and void to the extent that they compromise the ability of the partner entitled thereto to meet his basic needs' (Art. 234-10.2 Catalan Civil Code).

**e. The duration of the agreement?**

Even though there are no specific provisions in the Spanish Civil Code on informal relationships, an agreement on the duration of the informal relationship would seem to be invalid, on the grounds of public policy. If there is freedom to enter into the relationship, there should be freedom to end it.

The Catalan Civil Code allows agreements to regulate the consequences of cohabitation (Art. 234-3.1), as well as the consequences of break-up (Art. 234-5). An agreement on the duration would seem to be invalid on the grounds of public policy.

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

The Civil Code in Spain does not include any reference to civil partnerships or informal relationships. Any agreement between informal partners would have to comply with Art. 1255 Spanish Civil Code on the validity of agreements, in general, which states that 'contracting parties may establish the pacts, clauses and conditions they deem advisable, provided they are not contrary to the law, morals, or public policy'.

The Civil Code in Catalonia has provisions on informal partnerships, and includes the possibility of agreements to regulate the consequences of the separation of such partners (Art. 234-5 Catalan Civil Code).

**60. Are the agreements binding:**

**a. Between the partners?**

The Civil Code in Spain does not include any reference to civil partnerships or informal relationships. Any agreement between informal partners would have to comply with general rules on validity of contracts and, if they did so, the agreements would be binding between the partners of the informal relationship.

The Civil Code in Catalonia specifically mentions that agreements on the consequences of break-up are valid between partners of an informal relationship. These can be made during cohabitation (Art. 234-5 Catalan Civil Code) or after cohabitation has ended (Art. 234-6 Catalan Civil Code).

For agreements made during cohabitation, we must turn to Art. 231-20 Catalan Civil Code, which contains several rules on the validity of these agreements.

- Art. 231-20.3 Catalan Civil Code: Agreements waiving or limiting rights must be reciprocal and they must clearly specify the rights limited or waived.
- Art. 231-20.4 Catalan Civil Code: The spouse claiming enforcement of an agreement in anticipation of a marriage breakdown has the burden of proving that the other party had, at the time of its execution, sufficient information about his assets, incomes and financial perspectives, if such information was relevant in relation to the content of the agreement.

- Art. 231-20.5 Catalan Civil Code: Agreements in anticipation of a breakdown which pose a serious harm to any spouse at the time of their intended performance are null and void if such spouse proves that important changes of circumstances have arisen which were unforeseen or could not be reasonably foreseen at the time of execution of the agreement.

For agreements made after the end of cohabitation, we must turn to Art. 233-4 and 233-5 Catalan Civil Code. If an agreement is made in a public deed, it will be binding on partners (Art. 233-5.1 Catalan Civil Code). However, agreements adopted after the breakdown of cohabitation without independent legal aid for each spouse may be annulled at the request of any spouse within three months from the date of their adoption and no later than the date of the response to the claim or, where appropriate, the counterclaim in the matrimonial proceedings where enforcement of such agreements is sought (Art. 233-5-2 Catalan Civil Code).

As regards any children, the Catalan Civil Code includes the following provision: 'agreements regarding custody and personal relations with minor children or maintenance in their favour are only effective if they conform to their interests at the time enforcement is sought' (Art. 233-5.3 Catalan Civil Code).

**b. In relation to third parties?**

Agreements made by informal partners would not bind third parties. There is no way to register this agreement, and so third parties would not be privy to it.

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

Agreements would only be binding between partners in the informal relationship.

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

The Spanish Civil Code does not contain any rules on either registered or informal relationships.

The Catalan Civil Code does, in fact, regulate informal relationships. The relationship during cohabitation is governed exclusively by the agreements made by the partners, while cohabitation lasts (Art. 234-3.1 Catalan Civil Code). Even though the law states that relations are governed 'exclusively' by the couple's agreements, this is not entirely accurate, as there are mandatory rules on the disposal of the family dwelling (Art. 234.3-2 Catalan Civil Code).

Article 231-9.1 Catalan Civil Code will be applicable to partnerships; it states that the spouse who is sole owner of the family dwelling may not, without the consent of the other spouse, perform any act of alienation, encumbrance or, in general, disposal of his right on the family dwelling or on the ordinary furniture that could impair their use. The act performed without the spouse's consent or judicial authorisation is

voidable, at the request of the spouse who lives in such dwelling, within four years of having knowledge thereof or from the time that the act is recorded in the Property Registry. Article 231-9.3 Catalan Civil Code concludes by saying that 'The act remains effective if the purchaser acts in good faith and for consideration and the owner stated that the property was not a family dwelling, even though it was an inaccurate representation. There is no good faith if the purchaser knew or could reasonably have known at the time of the acquisition that it was a family dwelling. In any case, the spouse who disposed thereof is liable for the damages caused, in accordance with the applicable laws.' In practice, however, it will be difficult for the buyer to know that there is an informal relationship and that the home he/she wants to buy is a family dwelling, which has an impact on good faith. Couples may not opt out of this rule.

As regards the consequences of break-up, the Catalan Civil Code allows the couple to make agreements (Art. 234-5 Catalan Civil Code). The Catalan Civil Code establishes some rules on compensation by reason of work (Art. 234-9 Catalan Civil Code), which partners may opt out of (Art. 432-7 Catalan Civil Code), and some rules on maintenance (Art. 234-10 Catalan Civil Code). Rules on maintenance may be opted out from, or waived, but in this case, there is some judicial control, as 'agreements to waive maintenance are null and void to the extent that they compromise the ability of the partner entitled thereto to meet his basic needs' (Art. 234-10.2 Catalan Civil Code).

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

The Spanish Civil Code does not contain any rules on either registered or informal relationships. Agreements are generally valid, but both case law and legal doctrine only mention agreements made during or after cohabitation. If we look for an analogy with marriage, we must turn to Art. 1334 Spanish Civil Code, which states that agreements made prior to marriage will only be valid if the couple marries within one year of the agreement.

The Catalan Civil Code specifically mentions agreements made during the relationship (Art. 234-3 and 234-5 Catalan Civil Code), and after the relationship (Art. 234-6 Catalan Civil Code). Article 234-5 Catalan Civil Code refers to Art. 231-20 Catalan Civil Code, on agreements made on the consequences of marital breakdown. This provision is applicable to informal relationships,<sup>42</sup> with the necessary adjustments, which may give rise to some difficulties. In particular, Art. 231-20.1 Catalan Civil Code states that agreements made before marriage are only valid if they are made within thirty days prior to the marriage date. As regards informal relationships, it may be difficult to give a precise date for the beginning of the relationship.

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

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<sup>42</sup> P. DEL POZO CARRASCOSA, A. VAQUER ALOY, E. BOSCH CAPDEVILA, *Derecho Civil de Catalunya. Derecho de familia*, Marcial Pons, Madrid, 2013, at p. 339.

**a. As between the partners?**

The Spanish Civil Code does not mention any specific formal requirements for the validity of contracts. Therefore, the liberty of form principle applies (Art. 1278 Spanish Civil Code).

The Catalan Civil Code allows couples to enter into agreements about their cohabitation with no formal requirements (Art. 234-3 Catalan Civil Code). However, agreements on the consequences of break-up must be made in a public deed (Art. 234-5 and 231-20.1 Catalan Civil Code).

**b. In relation to a third party?**

Agreements made by informal partners are not binding on third parties, regardless of formal requirements.

**65. Is independent legal advice required?**

The Spanish Civil Code does not regulate informal partners' agreements, and therefore the question of independent legal advice does not arise.

The Catalan Civil Code contains a provision that states that 'agreements adopted after the breakdown of cohabitation without independent legal advice for each spouse may be annulled at the request of any spouse within three months from the date of their adoption and no later than the date of the response to the claim or, where appropriate, the counterclaim in the matrimonial proceedings where enforcement of such agreements is sought' (Art. 233-5.2 Catalan Civil Code). This is applicable to partnerships, according to Art. 234-5 Catalan Civil Code.

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

No, there are not.

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

No, there are not.

**G. Disputes**

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

Disputes between partners belong to the competence of civil courts. In certain parts of the country, which are more densely populated, there are civil courts which specialize in family matters and which deal with cases arising in connection with

marriage and parental responsibility. These courts are competent to deal with disputes between partners in connection with children (custody and access rights, child support and the use of the family's home). Other disputes between partners (in matters, for example, of division of property or financial relief) do not fall under the competence of these special Family Courts but are dealt with by ordinary civil courts.

In 2004 Special Courts on Violence against women were created to deal with cases of domestic violence. These *Juzgados de Violencia sobre la mujer* are competent to deal with all consequences of the break-up of couples, regardless of whether they are married or not, if break-up is linked to domestic violence.

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

The answer to this question is not straightforward. In principle, disputes between spouses and partners belong to the competence of courts belonging to the civil order. In certain parts of the country which are more densely populated, special Family Courts belonging to the civil order were created in 1981 (RD 1322/1981). These courts have jurisdiction in matters of parental responsibility, regardless of whether or not the parents are married. This typically includes disputes about custody and access, child support and in connection with that, the attribution of the use of the family home. Other disputes between the partners in an informal relationship (typically about property division or financial relief) are not dealt with by these Family Courts (where they exist), but belong to the jurisdiction of Ordinary Courts, whereas they would be dealt with by Family Courts if they arose between spouses.

Exceptionally, the General Council for the Judiciary can decide to attribute all disputes arising in connection with informal relationships to Family Courts, or the judges belonging to one district can take the decision themselves to attribute certain disputes between partners to the Family Courts. This decision has, for example, been taken in the Judicial District of Barcelona in connection with financial relief claims between partners.

If the dispute is connected to domestic violence it would always be the same courts (*Juzgados de Violencia sobre la mujer*).

To conclude, the answer is 'yes' in certain parts of the country and 'no' in others and 'yes or no' depending on the type of dispute.

**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?**

Agreements reached by the partners to an informal relationship in relation to children need to be validated by a judge in order to be legally enforceable. The judge scrutinizes the agreement in order to verify that the best interests of the child have been respected. The scope of scrutiny is the same as in the case of children whose parents are married.

Other agreements that do not affect children do not require to be validated by a competent authority in order to become binding if they are made by partners to an informal relationship; whereas agreements made between spouses will be incorporated in the divorce or legal separation decision once validated. According to Art. 90 Spanish Civil Code a judge may refuse to validate agreements that are seriously detrimental to one of the spouses. This provision is not applied to agreements between partners to an informal relationship.

If the agreements between partners in an informal relationship are not complied with, parties can seek enforcement through court proceedings. In the course of these proceedings agreements will not be scrutinized.

In practice, interference with party autonomy is rather limited as regards issues not affecting children in both matrimonial cases and cases dealing with informal relationships. Judges tend to uphold the principle of party autonomy. It therefore seems that, as regards the law in action, the difference in treatment between married and unmarried couples on this issue is less marked than it might seem.

**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)?**

No, unless the agreement refers to matters that are not in the parties' disposition, that is, generally in matters relating to children. In matters concerning the relationship between the partners, judges tend to uphold the agreements.

If circumstances have changed significantly since the agreement was concluded and the agreement is brought to court, typically because it is not being complied with, a judge might modify the agreement in order to adapt it to the new circumstances by applying general principles such as *rebus sic stantibus*.

**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?**

Many Spanish Autonomous Communities have legislation on mediation in family matters. This legislation covers disputes arising from the break-up of both formal and informal relationships. The most relevant legislation is *Ley de mediación en asuntos civiles y mercantiles*.<sup>43</sup> In Catalonia mediation is regulated in *Ley de mediación en el ámbito del derecho privado*.<sup>44</sup>

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<sup>43</sup> Ley 5/2012, de 6 de julio, de mediación en asuntos civiles y mercantiles (BOE núm. 162, de 7 de julio de 2012).

<sup>44</sup> Ley 15/2009, de 22 de julio, de mediación en el ámbito del derecho privado (BOE núm. 198, de 17 de agosto de 2009).

Mediation is offered to partners as an alternative to judicial proceedings. The agreements reached may be incorporated into a judicial decision in order to become legally enforceable (Art. 777.2 Spanish Law of Civil Procedure).

Mediation may also be resorted to in the course of judicial proceedings which will then be suspended until the outcome of the mediation (Art. 770.7 Spanish Law of Civil Procedure). The judge needs to inform the partners in writing about mediation and counselling (Art. 440.1 Spanish Law of Civil Procedure). At the first hearing the parties need to communicate their decision and give reasons for not resorting to mediation. The judge may invite them to attend an informative session.

**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?**

Art. 6.2 of a statute that implements the Spanish law on mediation<sup>45</sup> establishes that if there is a written agreement subjecting disputes to mediation, the parties to the agreement need to comply with the agreement before going to court. There is no obligation to actually solve the dispute through mediation, but parties to the agreement need to resort to mediation and to act in good faith before seising the competent authority.

**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?**

No there are not.

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<sup>45</sup> Real Decreto-Ley 5/2012, de 5 de marzo, de mediación en asuntos civiles y mercantiles (BOE núm. 56, de 6 de marzo de 2012).