

Abstract

Unmarried Cohabitation in Private Law / Nesezdané soužití v soukromém právu

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1. State of the art / current state of the problem

Unmarried cohabitation constitutes a widespread and socially significant form of intimate life in contemporary Europe. Despite its growing prevalence, legal systems differ substantially in the extent to which they recognise and regulate such relationships. While some jurisdictions have developed comprehensive statutory regimes or quasi-status solutions for unmarried couples, others, including Czech Republic, have chosen a fragmented and largely non-status-based approach. As a result, the legal position of unmarried partners is often constructed indirectly, through a combination of general private-law concepts and selectively applicable legal institutions.

In Czech legal scholarship, the private-law aspects of unmarried cohabitation have so far been addressed only marginally. Existing monographs and textbooks on family law typically devote limited attention to the topic, often treating it as a residual or peripheral phenomenon¹. Several journal articles and case-law commentaries focus on isolated issues such as housing,² unjust enrichment³ or succession⁴, but a comprehensive and systematic doctrinal account has been missing. Moreover, some earlier doctrinal positions, particularly those equating family exclusively with biological reproduction, have become increasingly difficult to sustain in light of constitutional developments and the European Court of Human Rights case law.

¹ Radvanová, S., Štěpina, J. Majetkové otázky v manželství a rodině. Praha: Orbis, 1967, pp. 90–98; Mates, P. Žena a paragrafy: právní postavení ženy v Československu. Praha: MONA, 1988, pp. 43–46; Gregorová, Z., Králíčková, Z. Nesezdané soužití v právním řádu České republiky. Právní rozhledy, 1998, 5, pp. 209 et seq.; Králíčková, Z. Jiné formy soužití muže a ženy a majetková práva neprovdané matky. In: Králíčková, Z., Hrušáková, M., Westphalová, L. et al. Rodinné právo. Praha: C. H. Beck, 2022, p. 141 et seq; Francová, M., Dvořáková Závodská, J. Rozvody, rozchody a zánik partnerství. Praha: Wolters Kluwer, 2014, pp. 83–90.

² Zatloukalová, L. Ochrana obydlí nesezdaných partnerů v českém právu. Právo a rodina, 2021, 6, pp. 15 et seq.; Rogalewiczová, R. Manželství versus nesezdané soužití, 1. část. Právo a rodina. 2018, 5., pp. 8–13; Rogalewiczová, R. Manželství versus nesezdané soužití, 2. část. Právo a rodina. 2018, 6, pp. 9–13.

³ Straka, L. Nesezdané soužití a ekonomické dopady rozdělení rodinných rolí: právo na kompenzaci po ukončení vztahu? Jurisprudence, 2025, 3, pp. 38 et seq.

⁴ Talandová, I., Talanda, A. Postavení tzv. spolužijící osoby v dědickém právu. Právo a rodina, 2017, 6., pp. 11–15.; Talanda, A., Horák, O. Spolužijící osoba – od výdobytku socialismu k realitě dneška? Ad Notam, 2023, č. 1, pp. 8–14.

By contrast, foreign legal literature, especially in German⁵, Austrian⁶, Polish⁷, English⁸ and Nordic⁹ contexts, has developed more elaborate analytical frameworks. These works frequently combine doctrinal analysis with comparative¹⁰ and socio-legal insights, addressing questions of property relations, maintenance, succession and the consequences of relationship breakdown. At the international level, significant contributions have been made through comparative projects such as those conducted under the auspices of the Commission on European Family Law (CEFL)¹¹, which have articulated principles concerning property, maintenance and succession rights of couples in de facto unions.

Against this background, a clear research gap exists in Czech private-law scholarship. There has been no monographic treatment that would comprehensively analyse unmarried cohabitation as a legally relevant social phenomenon and systematically examine the rights and obligations that may arise between unmarried partners under existing Czech law. The absence of a distinct legal status has often led to the implicit assumption that unmarried cohabitation is either legally irrelevant or normatively inferior to marriage, an assumption that obscures the actual operation of numerous legal norms affecting such relationships.

Czech doctrine has lacked a coherent conceptual framework for addressing unmarried cohabitation across different areas of private law. Questions concerning the applicability of marital rules by analogy, the legal meaning of concepts such as “close persons” and “household”, the legal bases of joint household management, and the treatment of mutual performances after the termination of cohabitation have remained under-theorised. This fragmentation has contributed to legal uncertainty both in judicial practice and in legal counselling, and it has limited the ability of legal scholarship to engage critically with legislative policy choices.

⁵ Grziwotz, H. *Nichteheliche Lebensgemeinschaft*. München: C. H. Beck, 2006; Hanewinkel, I. (ed). *Rechtsregeln für nichteheliches Zusammenleben*. Bielefeld: Giesecking, 2009; Hausmann R., Hohloch, G. et al. *Das Rech der nichtehelichen Lebensgemeinschaft*. Handbuch. Berlin: Erich Schmidt, 2004.

⁶ Möschl, E. *Die nichteheliche Lebensgemeinschaft*. Wien: LexisNexis, 2006 nebo Deixler-Hübner, A., Fucik, R. *Scheidung, Ehe und Lebensgemeinschaft: rechtliche Folgen der Ehescheidung und Auflösung einer Lebensgemeinschaft*. Wien: LexisNexis, 2019.

⁷ Damasiewicz, A. *Intercyzy i umowy między konkubentami: klauzule umowne*. Warszawa: LexisNexis Polska, 2013.

⁸ Barlow, A., Duncan, S, James, G. A Park, A. *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century*. Oxford, Portland: Bloomsbury Publishing, 2005; Barlow, A. *Cohabitation Law Reform – Messages From Research*. *Feminist Legal Studies*, 2006, č. 2; Wood, H., Lush, D., Bishop, D. *Cohabitation: law, practice and precedents*. Bristol: Family Law, 2005.

⁹ Asland, J. *Nordic Cohabitation Law*. Cambridge: Intersentia, 2015.

¹⁰ Palazzo, N. *Legal Recognition of Non-Conjugal Families New Frontiers in Family Law in the US, Canada and Europe*. Oxford, New York: Hart Publishing, an imprint of Bloomsbury Publishing, 2021; Probert, R., Thompson, S. et al. *Research Handbook on Marriage, Cohabitation and the Law*, 2024.

¹¹ Boele-Woelki, K. et al. *Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions*. Cambridge: Intersentia, 2019.

2. Aims and objectives of the work

The primary aim of my habilitation thesis is to fill this gap by providing the first comprehensive doctrinal analysis of unmarried cohabitation from the perspective of Czech private law. The book seeks to systematise the existing legal framework and to demonstrate how Czech law currently reflects the factual formation, existence and termination of unmarried cohabitation, despite the absence of a dedicated statutory regime.

The monograph deliberately adopts an approach analogous to the analysis traditionally applied to status relationships such as marriage. While fully acknowledging that unmarried cohabitation does not constitute a legal status, the text aims to examine which rights and obligations arise in connection with its existence, how they are structured, and what limits the non-status nature of the relationship imposes. Emphasis is placed on property acquisition, joint household management, protection of the shared home and post-separation claims. At the same time, the analysis also addresses selected status-related, personal and parental issues where they are necessary for a coherent understanding of the legal position of unmarried partners.

3. Methodology

Methodologically, the monograph is grounded in doctrinal legal analysis of substantive private-law norms, with a primary focus on the Czech Civil Code. Standard interpretative methods are employed, including grammatical, systematic and teleological interpretation, with particular emphasis on an objectively recent understanding of legislative intent. Where relevant, the analysis also considers constitutional principles, especially those relating to the protection of family life, equality and the autonomy of the will.

Comparative insights play a complementary but essential role. The book draws selectively on the legal systems of neighbouring jurisdictions, especially Austria, Germany and Poland, which share historical connections and similar value foundations with Czech law. These systems typically refrain from granting unmarried cohabitation a status equivalent to marriage, yet they recognise the need to protect certain factual relationships in specific areas of private law. Comparative analysis is used not to advocate wholesale transplantation of foreign solutions, but to clarify interpretative options and to test the coherence of Czech doctrinal positions.

4. Main results and contributions

The monograph demonstrates that, despite the absence of a comprehensive statutory framework, Czech private law attributes considerable legal relevance to unmarried cohabitation through a network of general legal concepts and specific provisions. It shows that unmarried partners may qualify as “close persons” and may form a “household” within the meaning of various Civil Code provisions, and that these

classifications generate significant legal consequences both *inter se* and vis-à-vis third parties.

A key finding concerns the limits of analogical application of marital rules. Czech law does not permit a general analogy to marriage, as this would contradict the legislature's deliberate choice not to establish a status-based regime for unmarried cohabitation. However, it also identifies narrowly defined situations in which selective analogy may be justified, provided it is grounded in constitutional values and does not undermine legal certainty.

In the field of property relations, the monograph clarifies the legal bases of joint household management and distinguishes between different types of mutual performances. With respect to the termination of cohabitation, it develops a nuanced approach to unjust enrichment claims, arguing for the primacy of the *condictio ob rem* in cases involving extraordinary contributions. In the area of maintenance, it critically reassesses the regulation of support for unmarried parents and highlights constitutional tensions arising from existing temporal limitations. Finally, in succession law, the book identifies structural deficiencies that leave long-term unmarried partners insufficiently protected.