



Second Study Commission
Civil law and procedure

Meeting in Siofok, 27 September - 2 October 2006

Conclusions

LEGAL RULES REGARDING PATRIMONIAL INTERESTS, SUCCESSION AND DUTIES
OF COUPLES LIVING TOGETHER BUT NOT BEING MARRIED

The subject for discussion at this year's meeting was - Legal rules regarding patrimonial interests, succession and duties of couples living together but not being married. The number of national reports received by the president was 32, of which six arrived too late for inclusion in the General Report. The report from Israel was sent to the secretariat in time but regrettably did not reach the president of the Commission. The meeting of the Commission was attended by delegates from 30 countries.

The discussions ranged widely over a number of matters. Some delegates pointed to particular features of the law in their country and some stressed the social policy aspects of the subject. Thus delegates from West Africa pointed out that homosexual relationships were socially quite unacceptable in their society..

The members of the Study Commission discussed the extent to which cohabiting couples should be free to regulate their relationship by means of contracts which would be recognised and enforced by the courts. A further topic of discussion was the institution of civil partnerships, particularly whether, if provision were made for such partnerships, they should be available to heterosexual couples as an alternative to marriage. It was observed that fundamental rights - such as a principle of non-discrimination - enshrined in a constitution or international convention could have the effect of leading to greater recognition of non-marital cohabitation and its approximation to marriage. Delegates from those countries which had introduced official recognition of same sex relationships described some of the resulting difficulties, for example in regard to the paternity of children.

Subject to one amendment the delegates were content with the summaries and analyses contained in the General Report, which was adopted unanimously. The amendment was to the effect that in the first paragraph of section C, Sweden should appear in the second category there mentioned and not in the first.

After the discussions the following conclusions were reached:

1 It must be recognised that the extent to which the law should recognise and regulate non marital cohabitation is primarily a matter involving questions of social policy having regard to the standards of public morality and public opinion prevailing in the country or society in question.

Subject to that observation -

2 Most delegates take the view that heterosexual couples who are cohabiting but are not married (or, where applicable, in a registered civil partnership) should be able to regulate their patrimonial arrangements by contract.

3 Where a homosexual relationship is given official recognition by the legislature, consequential problems may remain in such fields as the paternity or adoption of children or, in terms of private international law, in the recognition of the validity of such a relationship in other States.

4 From the perspective of fundamental rights, particularly the principles of equality and non-discrimination, many delegates recognise an argument that, where a State provides for registered civil partnerships, such partnerships should be available to both heterosexual couples and homosexual couples.

The first conclusion was adopted unanimously. The remaining conclusions were adopted by all except Ireland, whose delegate wished to derogate.

The subject chosen for next year is: Sanctions for parties' inactivity in civil litigation a topic proposed by Slovenia.