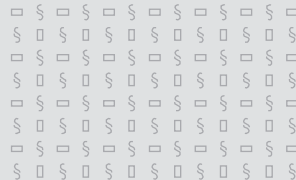




MASARYK UNIVERSITY
FACULTY OF LAW

SAME SEX FAMILIES AND THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

Zdeňka Králíčková, Czech Republic

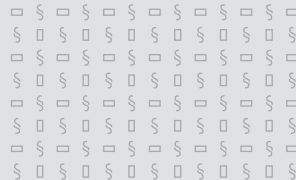


INTRODUCTION AND CONTENT

- Constitution: family and family life
- FA, CC: marriage only for a man and a woman
- ARP: civil union only for same sex people

- European Court of Human Rights

- Constitutional court



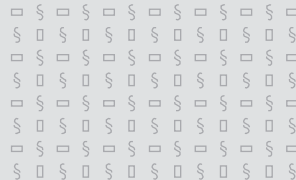
THE NATURE OF REGISTERED PARTNERSHIP

ARP: Act No. 115/2006 Coll.

- „act on registration“
- NOT „act on rights and duties of partners“
- „political compromise“

▶ since 1. 7. 2006

- permanent cohabitation of two persons of the same sex
- NOT a marriage
- NOT allowed for a man and a woman

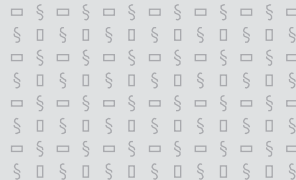


PERSONAL RIGHTS AND DUTIES OF PARTNERS

- EQUALITY
- NO duty to live together, to be faithful to each other, to mutually respect their honour and human dignity, to help each other and to create healthy living environment and background
- DUTY to decide jointly common matters
- DUTY to represent each other

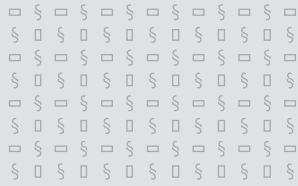
PARTNERS PROPERTY LAW

- NO joint property of spouses/NO community of property
- only co-ownership with shares towards things
- maintenance duty - the same living standard
- NO common household
- NO protection of family dwelling
- SELDOM CONTRACTS!



PARTNERS AS PARENTS

- NO right to adopt a child together (or to become step-adopter) or to become common foster parents („only“ spouses)
- New: right to become common guardians (NCC: spouses „as a rule“)
- New: right to adopt a child during registered partnership - single adoption (case law of CC)



CONSTITUTIONAL COURT DECISION I

Pl ÚS 7/15 (issued in 2016), cancelled § 13/2 ARP: „Continued partnership impedes one of the partners from becoming the adopter of a child.“

CONSTITUTIONAL COURT ARGUMENTS:

- 1) ABSURD, ILLOGIC LAW IN THE CZECH REPUBLIC
- 2) EVOLUTION OF LEGISLATION OF EU MEMBER STATES AND CASE LAW OF ECHR
- 3) NO VIOLATION OF THE RIGHT TO RESPECT FOR FAMILY LIFE
- 4) VIOLATION OF THE RIGHT TO RESPECT FOR PRIVATE LIFE

+ DISSENTING OPINIONS



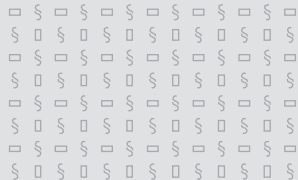
CONSTITUTIONAL COURT DECISION II

I. ÚS 3226/16 (issued in 2017): „The best interest of the child must prevail over the abstract principles“

- TWO MEN (ONE CZECH), SURROGATE MOTHER, ONE CHILD BORN IN THE USA
- REJECTION OF RECOGNITION OF THE CIVIL STATUS OF THE CHILD BY THE CZECH SUPRIME COURT

CONSTITUTIONAL COURT ARGUMENTS:

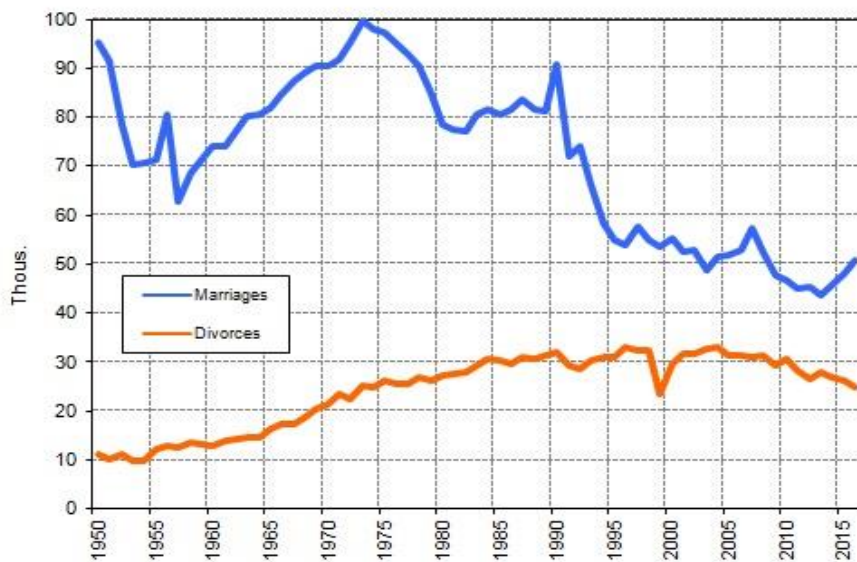
- 1) HARMONY BETWEEN BIOLOGICAL, SOCIAL AND LEGAL PARENTHOOD
- 2) FAMILY LIFE
- 3) THE BEST INTEREST OF THE CHILD



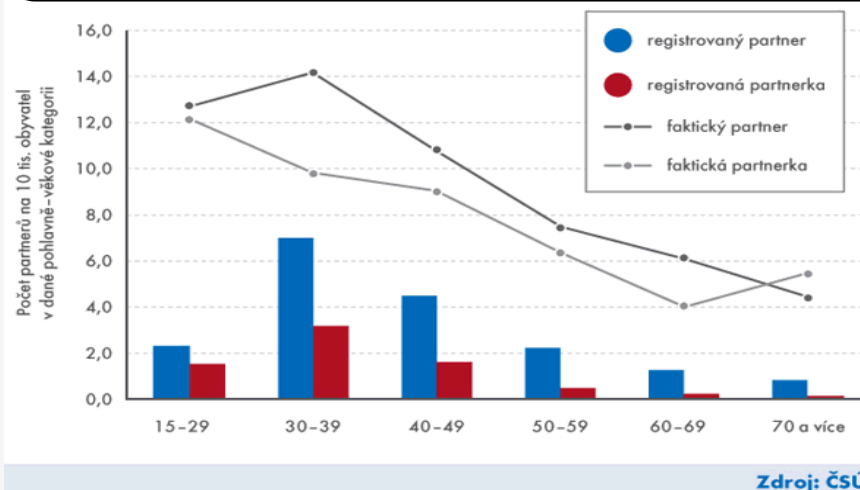
CONCLUSIONS

Data: Czech Statistical Office

Marriages and divorces, 1950-2016



People in lasting registered partnership (2 243) and cohabitation (8 112) according to age (on 10 000 inhabitants, 2011)
blue: men, red: women



Do registered partners want more rights and duties?
Is there a need for gender neutral marriage?