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The Danish Report

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The Finnish Report

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The Norwegian Report

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The Swedish Report

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Foreword

Since the youth revolution in 1968, it has been a challenge for many Western countries to legislate on the increasing number of unmarried cohabitantes. Over the years, unmarried cohabitation has been widely and socially accepted as a family form, often as a trial marriage.

Denmark, Norway and Sweden constitute Scandinavia, and together with Finland and Iceland they constitute the Nordic countries. These countries have a shared tradition of trying to harmonise family law as they are neighbours and their cultures and social conditions are very similar. Seen in a global perspective, the Nordic countries have played an important role in shaping family laws in Europe. Especially, the Danish Registered Partnership Act on same-sex couples from 1989 has inspired legislators in many countries.

From a Nordic perspective, the legal regulation – or lack thereof – of unmarried cohabiting relationships is a topic of special interest. Each Nordic country has found its own legal way in solving financial settlements on termination of cohabitation. One important difference between the countries is whether a solution is based on principles of property law or whether special family law rules have been introduced for unmarried cohabitantes. Likewise, there is a difference as to whether the legal status of unmarried cohabitantes corresponds in whole or in part to that of married couples, or whether cohabitantes are given a less extensive legal status. These differences are found elsewhere in Europe and in other places in the world. The legal regulations in the Nordic countries illustrate some of the most common approaches to the division of property of cohabiting couples.

The legal situation in Denmark and Norway is characterised by non-statutory law and solutions in case law based on property law principles. For many years, Sweden was the only Nordic country with special legislation on the financial circumstances of cohabitantes, the Swedish Cohabitantes Act 1987. In 2010, Finland became the second country to introduce overall legislation dealing with the dissolution of cohabitation.

Iceland has no legislation on cohabitation. Due to language barriers, this book will not describe the Icelandic legal position.

Contrary to the intense cooperation that took place between Denmark, Norway and Sweden in the early 1910s preparing new marriage laws, there has been no cooperation at all regarding the legal status of unmarried cohabitantes. Therefore, the subject of cohabitantes' legal status is particularly suitable for comparative analysis both in terms of legal development in general and in the description of details in selected areas.

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Against this background, it has been interesting to take on the task as the Nordic Academic Supervisor for the reports of four Nordic student groups of the European Law Students' Association (ELSA). For a number of years I have worked intensively with teaching and research relating to the legal position of unmarried cohabitants. I am the author of a Danish dissertation, *the Family Economy*,¹ and co-author of a Nordic book: *Nordisk Samboerrett/Nordic Cohabitation Law*.² The last mentioned book I have written together with my professor colleagues from the other Nordic countries, among others Tone Sverdrup who has been one of the Academic Supervisors from Norway on the present project. As a Danish national expert at the Commission of European Family Law, I have contributed to the Commission's national reports and the guiding principles.³ All the books mentioned contain proposals for further legislation on cohabitants in Denmark, the Nordic countries and Europe, respectively.

My first task as a Nordic Academic Supervisor was to choose the topic for this project. It was obvious to choose the division of property between unmarried cohabitants on the termination of cohabitation. Most disputes between cohabitants concern claims that the less well-off party make in order to obtain a share of the other party's wealth. Next, I had to prepare research questions with related sub-points. For a start, the authors had to explain the rules and practices of unmarried cohabitants in other areas than family law and to identify the factors taken into account to provide a definition on unmarried cohabitants. Then, the research questions focused on three key issues: joint ownership of assets, compensation upon dissolution of the relationship, and agreements between cohabitants during the relationship and at the end of the cohabitation. Of particular interest is whether indirect contributions are accepted as relevant in the form of housework, upbringing of children and contributions to daily living expenses. Surprisingly, there are considerable differences between the Nordic countries.

Based on the answers to the research questions the authors had to point out which legal questions were to be considered the most problematic in his or her country, in particular with a view to protecting the economically weaker party and to ensuring good living conditions for the children in the future.

¹ Ingrid Lund-Andersen, *Familieøkonomien – Samlevendes retsforhold, ægtefællers retsforhold, retspolitik* (Jurist- og Økonomforbundets forlag 2011).

² John Asland, Margareta Brattström, Göran Lind, Ingrid Lund-Andersen, Anna Singer og Tone Sverdrup: *Nordisk Samboerrett* (Norsk Gyldendal 2014) and in English: John Asland, Margareta Brattström, Göran Lind and others: *Nordic Cohabitation Law* (Intersentia 2015).

³ Katharina Boele-Woelki, Charlotte Mol and Emma van Gelder (eds) *European Law in Action, volume V: Informal Relationships* (Intersentia 2015) and Katharina Boele-Woelki, Frédérique Ferrand, Christina González Beifuss and others: *Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions* (Intersentia 2019).

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Finally, the authors should make an overall assessment of the legal position in his or her country and make suggestions to improve the legal position.

My second task was to provide feedback on all reports in the first and second drafts, in particular assessing the professional level and ensuring the consistency of the reports.

This book is an impressive research work prepared by students in their spare time. The publication can be useful for legal practitioners, academics at universities as well as for politicians and lawmakers. Personally, it has been a pleasure to me to follow the process and to collaborate with the dedicated students within the Nordic Legal Research Group on Family Law.

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