

**Application No. 11313/02, M.W. v. United Kingdom**  
**European Court of Human Rights, Fourth Section**

**WRITTEN COMMENTS OF FIDH, ICJ, AIRE CENTRE & ILGA-EUROPE**  
**Submitted on 5 November 2008**

1. Prof. Robert Wintemute, School of Law, King's College, University of London, respectfully submits these Written Comments on behalf of FIDH (*Fédération Internationale des ligues des Droits de l'Homme*), ICJ (International Commission of Jurists), AIRE Centre (Advice on Individual Rights in Europe), and ILGA-Europe (European Region of the International Lesbian and Gay Association). Their interest and expertise are set out in their "Application for leave to submit written comments" of 15 May 2007, granted on 12 June 2007, under Rule 44(2) of the Rules of Court. These Written Comments are a shortened and updated version of the Written Comments submitted on behalf of FIDH, ICJ, AIRE Centre and ILGA-Europe in a case raising similar issues, Application No. 30141/04, Horst SCHALK & Johann KOPF v. Austria (First Section).

**Introduction**

2. Since 1989, national legislatures and courts in Council of Europe (CoE) member states and other democratic societies have been accepting, at an ever faster rate, that lesbian women and gay men have the same human capacity as heterosexual women and men to fall in love with another person, to establish a long-term emotional and sexual relationship with them, to set up a joint home with them, and possibly to raise children with them. These national institutions have understood that same-sex couples therefore have the same emotional and practical needs as different-sex couples to have their relationships recognised by the law, and that same-sex couples can justly claim access to the same rights and obligations as different-sex couples.

3. The first judgment of the European Court of Human Rights (ECtHR) or the European Court of Justice (ECJ) to reflect these legal and social developments was *Karner v. Austria* (24 July 2003). The ECtHR held that unmarried same-sex couples must generally be granted the same rights and obligations as unmarried different-sex couples. *M.W. v. United Kingdom* raises the question of whether European consensus with regard to equal treatment of same-sex couples has now grown enough to permit the ECtHR to interpret Art. 14 of the European Convention on Human Rights (EConvHR) combined, in this case, with Article 1 of Protocol No. 1 (protection of property), as prohibiting CoE member states from: (a) attaching rights and obligations to legal marriage, (b) excluding same-sex couples from legal marriage, and (c) providing same-sex couples with no other means of proving their relationships in order to qualify for these rights and obligations.

**I. If the EConvHR does not yet require equal access to legal marriage for same-sex couples, is it indirect discrimination based on sexual orientation (contrary to Art. 14 combined, in this case, with Article 1 of Protocol No. 1) to limit a particular right or benefit to married different-sex couples, but provide no means for same-sex couples to qualify?**

4. On 28 Nov. 2006, the ECtHR's 4th Section declared inadmissible Application No. 42971/05, *Wena & Anita Parry v. UK*, in which a gender reassignment had converted a different-sex couple into a same-sex couple. The Parrys' choices were to remain married as a legally different-sex couple and forgo legal recognition of Wena's gender reassignment, or to divorce, obtain legal recognition that Wena is female, and register a civil partnership as a same-sex couple. Under Art. 8, the 4th Section ruled that: "the applicants may ... give [their relationship] a legal status akin, if not identical to marriage, through a civil partnership which carries with it almost all the same legal rights and obligations". The 4th Section also concluded: "Art. 12 ... enshrines the traditional concept of marriage as being between a man and a woman ... While it is true that there are a number of Contracting States which have extended marriage to same-sex partners, this reflects their own vision of the role of marriage in their societies and does not ... flow from an interpretation of the fundamental right [in Art. 12] ... [T]he matter falls within the appreciation of the Contracting State ..."

5. *Parry* suggests that the ECtHR might not be ready yet to interpret Arts. 12 and 14 as requiring equal access to legal marriage for same-sex couples. However, it is important to stress that the two women in *Parry* could secure almost all the rights and obligations attached to legal marriage through a UK "civil partnership". In its letter of 18 Jan. 2007 to the lawyer of Mr. Schalk & Mr. Kopf (their case raises issues similar to those in *M.W. v. United Kingdom*), the 1st Section of the ECtHR mentions (in connection with the claim of sexual orientation discrimination violating Art. 14 combined with Art. 8) that it has asked Austria: "In particular, should [the applicants] be afforded a possibility to have their relationship recognised by law?" Implicitly, the 1st Section has raised the possibility that recognition of the applicants' relationship through a means other than access to legal marriage might comply with the EConvHR, and that failure to provide any form of legal recognition might violate it.

**A. Excluding same-sex couples from particular rights or benefits attached to legal marriage is prima facie indirect discrimination based on sexual orientation.**

6. In *Thlimmenos v. Greece* (6 April 2000), the ECtHR recognised that: "44. [t]he [Art. 14] right not to be discriminated against in the enjoyment of [EConvHR] rights ... is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different. ... 48. ... [Greece] violated the applicant's right not to be discriminated against in the enjoyment of his right under Art. 9 ... by failing to introduce appropriate exceptions [eg, for persons convicted because of their religious beliefs] to the rule barring persons convicted of a felony from the profession of chartered accountants." The *Thlimmenos* reasoning applies to a same-sex couple who seek a right or benefit attached to marriage but are legally unable to marry. Failure to treat them differently

because of their legal inability to marry, by providing them with another means of qualifying for the right or benefit, requires an objective and reasonable justification.

7. The concept of indirect discrimination, recognised by the ECtHR for the first time under Art. 14 in *Thlimmenos*, is spelled out in greater detail in Council Directive 2000/78/EC, Art. 2(2)(b). Indirect discrimination occurs where "an apparently neutral ... criterion [eg, requiring a marriage certificate] ... would put persons having a ... particular sexual orientation at a particular disadvantage compared with other persons unless [it] is objectively justified by a legitimate aim and the means of achieving that aim are appropriate [suitable] and necessary."

8. The ECJ effectively granted an exemption from a marriage requirement in *K.B.*, Case C-117/01, [2004] ECR I-541, which involved a legally same-sex but factually different-sex couple. It was implicit in the ECJ's judgment that Ms. K.B. and Mr. R. (her transsexual male partner) were entitled to an exemption from the marriage requirement until UK legislation was amended. If Ms. K.B. had died on 8 Jan. 2004, the day after the ECJ's judgment, Mr. R. would have been entitled to a survivor's pension despite his not being married to Ms. K.B., because the Gender Recognition Act 2004, implementing *Christine Goodwin v. UK* (11 July 2002) and allowing Mr. R. to marry Ms. K.B., did not come into force until 4 April 2005.

9. An ECtHR or ECJ judgment extending the reasoning in *K.B.* to same-sex couples would establish a principle preventing a public authority from creating an employment, social security or other benefit of great value to couples, and then attaching to that benefit a condition (being married) which same-sex couples are legally unable to satisfy. The public authority could justifiably maintain the condition for different-sex couples<sup>1</sup> (just as the rule on felony convictions could be maintained in *Thlimmenos*), but would have to exempt same-sex couples and find some alternative means for them to qualify for the benefit (eg, presenting a registered partnership certificate, a sworn statement, or other reasonable evidence of a committed relationship).

10. In *Christine Goodwin*, the ECtHR required CoE member states to legally recognise gender reassignment, but left the details of recognition to each member state. An obligation to exempt same-sex couples from a marriage requirement, to avoid indirect discrimination, would leave to member states the choice of the method used to do so. The ECtHR's approach in *Christine Goodwin* (paras. 85, 91, 103) applies *mutatis mutandis*: "The Court ... attaches less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems [of same-sex couples], than to the clear and uncontested evidence of a continuing international trend in favour not only of increased social acceptance of [same-sex couples] but of legal recognition of [their relationships]."

11. A member state would find at least 5 options within its margin of appreciation: (1) it could grant same-sex couples, who could prove the existence of their relationship for a reasonable period, a permanent exemption from the marriage requirement attached to the right or benefit, like the implicit exemption in *K.B.*; (2) it

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<sup>1</sup> See *Irizarry v. Board of Education of City of Chicago*, 251 F.3d 604 (7th Cir. 2001).

could grant the same exemption to unmarried different-sex couples; (3) it could grant a temporary exemption to same-sex couples until it had created an alternative registration system, with a name other than marriage, allowing same-sex couples to qualify; (4) it could grant access to the same system to different-sex couples; or (5) if it did not wish to grant the right or benefit to unmarried couples or create an alternative registration system, it could grant a temporary exemption to same-sex couples until it had time to pass a law granting them equal access to legal marriage. A member state would also be able to decide (subject to ECtHR supervision) whether any exceptions could be justified, eg, in relation to access to parental rights.

**B. Excluding same-sex couples from particular rights or benefits attached to legal marriage generally cannot be justified.**

12. As the ECtHR said in *Karner*: "41. In cases in which the margin of appreciation ... is narrow, as ... where there is a difference in treatment based on ... sexual orientation, the principle of proportionality does not merely require that the measure chosen is ... suited for realising the aim sought. It must also be shown that it was necessary in order to achieve that aim to exclude ... persons living in a homosexual relationship ..." The ECtHR found no evidence of necessity where the difference of treatment was between unmarried different-sex and same-sex couples. Similarly, the necessity test will be very hard to satisfy with regard to prima facie indirect discrimination resulting from applying a marriage requirement to same-sex couples who are unable to satisfy it. It will be difficult to demonstrate how excluding unmarried same-sex couples benefits married different-sex couples.

**C. Consensus in European and other democratic societies increasingly supports finding an obligation to use some means to legally recognise same-sex couples.**

13. There is an emerging consensus, in European and other democratic societies (see Appendix), that a government may not limit a particular right, benefit or obligation to married couples, and then tell same-sex couples that it is impossible for them to qualify for it, because they are not permitted to marry. Of the 47 CoE member states, 19 or 40% have already passed some kind of legislation recognising same-sex couples: Andorra, Belgium, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Luxembourg, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, and the UK. Legislation is expected soon in Ireland.<sup>2</sup>

14. Outside of Europe, legislation has been adopted in all eight states and territories of Australia, at the federal level and in all 13 provinces and territories of Canada, in New Zealand, and in South Africa. In the US, of the 20 states and the District of Columbia that prohibit employment discrimination based on sexual orientation<sup>3</sup> (as Directive 2000/78/EC does), 10 states and the District of Columbia have granted substantial legal recognition to same-sex couples, under a registration system resulting from legislation or a judicial decision: Calif., Connecticut, Hawaii, Maine, Mass., New Hampshire, New Jersey, Oregon, Vermont, and Washington.

<sup>2</sup> See [http://www.justice.ie/en/JELR/Pages/General\\_Scheme\\_of\\_Civil\\_Partnership\\_Bill](http://www.justice.ie/en/JELR/Pages/General_Scheme_of_Civil_Partnership_Bill) (June 2008).

<sup>3</sup> [http://www.thetaskforce.org/downloads/reports/issue\\_maps/non\\_discrimination\\_05\\_07\\_color.pdf](http://www.thetaskforce.org/downloads/reports/issue_maps/non_discrimination_05_07_color.pdf).

15. As for the specific argument that a marriage requirement puts same-sex couples at a particular disadvantage compared with different-sex couples, and is therefore indirect discrimination based on sexual orientation, it has been accepted by at least 3 US appellate courts,<sup>4</sup> and by South Africa's Constitutional Court in at least 4 cases.<sup>5</sup> In *Satchwell*, the South African Court held that unmarried same-sex partners of judges are entitled to the same employment benefits as married different-sex partners of judges.

16. The Parliamentary Assembly of the CoE has recommended: (a) that member states "review their policies in the field of social rights and protection of migrants in order to ensure that homosexual partnership[s] and families are treated on the same basis as heterosexual partnerships and families", Recommend. 1470 (2000); and (b) that they "adopt legislation which makes provision for registered [same-sex] partnerships", Recommend. 1474 (2000), para. 11(iii)(i).<sup>6</sup> The EU's European Parliament called for equal treatment of different-sex and same-sex couples in a 1994 resolution seeking to end "the barring of [same-sex] couples from marriage or from an equivalent legal framework".<sup>7</sup> In 2000, it again urged EU member states "to ... recognis[e] registered partnerships of persons of the same sex and assign[] them the same rights and obligations as ... [marriages] between men and women".<sup>8</sup>

17. In 2004, the EU's Council amended the Staff Regulations to provide for benefits for the non-marital partners of EU officials.<sup>9</sup> The Regulations now state that "non-marital partnership shall be treated as marriage provided that ... the couple produces a legal document recognised as such by a Member State ... acknowledging their status as non-marital partners, ... [and] ... has no access to legal marriage in a Member State". In 2005, the Statute of the Members of the European Parliament was amended so as to provide that "[p]artners from relationships recognised in the Member States shall be treated as equivalent to spouses".<sup>10</sup>

18. In 2006, the International Labour Organisation's Administrative Tribunal held that the ILO must treat German and Danish same-sex registered partnerships as equivalent to different-sex marriages for the purpose of employment benefits.<sup>11</sup> The United Nations' Administrative Tribunal had reached the same conclusion in 2004 in relation to a French same-sex civil solidarity pact.<sup>12</sup>

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<sup>4</sup> *Tanner v. Oregon Health Sciences Univ.*, 971 P.2d 435 (Oregon Ct. of Appeals 1998); *Levin v. Yeshiva Univ.*, 754 N.E.2d 1099 (New York Ct. of Appeals 2001) (justification not considered); *Alaska Civil Liberties Union v. State of Alaska*, 122 P.3d 781 (Supreme Ct. of Alaska 2005).

<sup>5</sup> *National Coalition*, Case CCT10/99 (2 Dec. 1999); *Du Toit*, CCT40/01 (10 Sept. 2002); *Satchwell*, CCT45/01, CCT48/02 (25 July 2002, 17 March 2003); *J. & B.* (28 March 2003), CCT46/02.

<sup>6</sup> See also Resolution 1547 (2007), para. 34.14.

<sup>7</sup> "Resolution on equal rights for homosexuals ... in the EC" (8 Feb. 1994), OJ C61/40 at 42, para. 14.

<sup>8</sup> "Resolution on respect for human rights in the [EU] ..." (16 March 2000), A5-0050/00, para. 57.

<sup>9</sup> Staff Regulations of [EC] officials ..., Article 1d(1) and Annex VII, Article 1(2)(c) and Annex VIII, Art. 17, as amended by Council Regulation 723/2004/EC (22 March 2004), OJ L124/1.

<sup>10</sup> Decision No. 2005/684/EC of the European Parliament, Art. 17(9) (28 Sept. 2005), OJ L262/6.

<sup>11</sup> *A.H.R.C.-J. v. ILO* and *D.B. v. ILO*, 101st Session, Judgments Nos. 2549 and 2550 (12 July 2006).

<sup>12</sup> *Jean-Christophe Adrian v. Secretary-General*, 30 Sept. 2004, Case No. 1276, Judgment No. 1183.

19. Finally, in 2006, the Committee of Ministers of the CoE agreed to add to the Staff Regulations of the CoE the principle that: "[s]taff members shall be entitled to equal treatment under the Staff Regulations without direct or indirect discrimination, in particular on grounds of ... sexual orientation ..."<sup>13</sup>

## **II. Should the result be different if national legislation has removed the indirect discrimination after the application was made, but without retroactive effect?**

20. This question was analysed in the following extract from an article published in the *European Human Rights Law Review* in 2006:<sup>14</sup>

"A court can view a change in the law in between the time the facts arose and the date of its judgment as either (i) confirming that the treatment was discriminatory ..., or (ii) as evidence of a process of gradual change that could not have been expected earlier .... It is true that some ECtHR judgments adopt the second approach, for example, *Petrovic v. Austria* [27 March 1998] and *Stec v United Kingdom* [12 April 2006]. But what these judgments seem to have in common is that: (a) the differences in treatment could be seen as assisting or compensating women, the group defined by sex that has a history of discrimination; (b) similar differences in treatment could still be found in the majority of Council of Europe Member States, many years after [Council Directive 76/207/EEC] expanded the prohibition of sex discrimination in employment, and the ECtHR declared in 1985 that only "very weighty reasons" could justify a difference in treatment based on sex [*Abdulaziz v. UK*, 28 May 1985]; and (c) the [ECJ] had already held that EC sex discrimination law did not prohibit these differences in treatment [Case 184/83 *Hofmann* [1984] ECR 3047, which preceded *Petrovic*, and Case C-196/98 *Hepple* [2000] ECR I-3701, which preceded *Stec*] ...

In *Karner*, *Godin-Mendoza* [[2004] UKHL 30] and *Secretary of State for Work and Pensions v. M*, the difference in treatment did not compensate same-sex couples, the group with a history of discrimination. As Baroness Hale argued forcefully [in *M*]: "historical disadvantage [could be used] . . . to justify some compensatory treatment for the excluded group . . . [but not] to justify continued . . . exclusion of the excluded group" [[2006] UKHL 11 at paras. 114–115]. Unlike in *Petrovic* and *Stec*, which involved widely accepted exceptions to the long-established principle of equality of women and men, in *Karner*, *Godin-Mendoza* and *Secretary of State for Work and Pensions v M*, there was a recent and clear trend in Europe towards equal treatment of unmarried same-sex and unmarried different-sex couples. ... And

<sup>13</sup> Art. 3(1), as amended by CM Resolution 2006 (4), 3 May 2006 (emphasis added).

<sup>14</sup> Robert Wintemute, "Same-Sex Couples in *Secretary of State for Work and Pensions v. M*: Identical to *Karner* and *Godin-Mendoza*, Yet No Discrimination?", [2006] *European Human Rights Law Review* 722 at 733.

*Karner* did not risk contradicting the primary reasoning of any ECJ judgment."<sup>15</sup>

21. The ECtHR should view national legislation removing (without retroactive effect) direct or indirect discrimination against a historically excluded group, such as women, racial or ethnic minorities, or same-sex couples, as confirming that the abolished treatment was discriminatory, and therefore as not precluding a finding by the ECtHR of discrimination in cases that arose before the legislation was passed. This is especially true if the respondent government cannot provide any evidence that a substantial number of similar pre-legislation claims for compensation could still be made.

### **Conclusion**

22. There is a growing consensus in European and other democratic societies that same-sex couples must be provided with some means of qualifying for rights or benefits attached to marriage. As the ECtHR noted in *Smith & Grady v. UK* (27 Sept. 1999): "104. ... even if relatively recent, the Court cannot overlook the widespread and consistently developing views and associated legal changes to the domestic laws of Contracting States on this issue".

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<sup>15</sup> The ECJ held that Case C-249/96 *Grant v South-West Trains* [1998] ECR I-621 involved discrimination based not on sex but on sexual orientation, a ground which EC anti-discrimination law did not cover at the time. In *Karner*, the open-ended list of grounds in Article 14 permitted the ECtHR to find discrimination based on sexual orientation.

## APPENDIX – NATIONAL (FEDERAL, REGIONAL, LOCAL) LEGISLATION RECOGNISING SAME-SEX COUPLES<sup>16</sup>

### Council of Europe Member States

**Andorra** - *Llei 4/2005, del 21 de febrer, qualificada de les unions estables de parella*, (23 March 2005) 17 *Butlletí Oficial del Principat d'Andorra* no. 25, p. 1022 ("unions estables de parella"; "stable unions of couples")

**Belgium** - *Loi du 23 novembre 1998 instaurant la cohabitation légale*, *Moniteur belge*, 12 Jan. 1999, p. 786 ("cohabitants légaux"; "statutory cohabitants"); *Loi du 13 février 2003 ouvrant le mariage à des personnes de même sexe et modifiant certaines dispositions du Code civil*, *Moniteur belge*, 28 Feb. 2003, Edition 3, p. 9880, in force on 1 June 2003

**Croatia** - *Zakon o istospolnim zajednicama, koji je donio Hrvatski sabor na sjednici 14. srpnja 2003*, Law on Same-Sex Civil Unions, passed by Parliament on 14 July 2003, signed by President on 16 July 2003 ("partneri" or "partnerice"; "partners")

**Czech Republic** - *Zákon ze dne 26. ledna 2006 o registrovaném partnerství a o změně některých souvisejících zákonů* (Act no. 115/2006 Coll. on Registered Partnership and on the Change of Certain Related Acts)

**Denmark** - Law on Registered Partnership (*Lov om registreret partnerskab*), 7 June 1989, nr. 372 ("registrerede partnere"; "registered partners")

**Finland** - Law 9.11.2001/950, Act on Registered Partnerships (*Laki rekisteröidystä parisuhteista*) ("parisuhteen osapuolet"; "registered partners")

**France** - *Loi no. 99-944 du 15 novembre 1999 relative au pacte civil de solidarité*, ("partenaires"; "partners"); also inserting a new Art. 515-8 into the *Code civil*: "Le concubinage est une union de fait, caractérisée par une vie commune présentant un caractère de stabilité et de continuité, entre deux personnes, de sexe différent ou de même sexe, qui vivent en couple."

### **Germany**

Federal Level - Law of 16 Feb. 2001 on Ending Discrimination Against Same-Sex Communities: Life Partnerships (*Gesetz zur Beendigung der Diskriminierung gleichgeschlechtlicher Gemeinschaften: Lebenspartnerschaften*), [2001] 9 *Bundesgesetzblatt* 266 ("Lebenspartner"; "life partners")

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<sup>16</sup> An earlier version appeared in R. Wintemute (ed.) & M. Andenæs (hon. co-ed.), *Legal Recognition of Same-Sex Partnerships* (Oxford, Hart Publishing, 2001).



**Hungary** – Civil Code, Art. 685/A, as amended by Act No. 42 of 1996 ("Partners – if not stipulated otherwise by law – are two people living in an emotional and economic community in the same household without being married."); 2007. évi CLXXXIV. törvény a bejegyzett élettársi kapcsolatról (Registered Partnership Act)

**Iceland** – Law on Confirmed Cohabitation (*Lög um staðfesta samvist*), 12 June 1996, nr. 87 ("parties to a confirmed cohabitation")

**Luxembourg** - *Loi du 9 juillet 2004 relative aux effets légaux de certains partenariats*, *Mémorial A*, nr. 143, 6 August 2004 ("partenaires"; "partners")

**Netherlands** - Act of 5 July 1997 amending Book 1 of the Civil Code and the Code of Civil Procedure, concerning the introduction therein of provisions relating to registered partnership (*geregistreerd partnerschap*), *Staatsblad* 1997, nr. 324 ("geregistreeerde partners"; "registered partners"); Act of 21 December 2000 amending Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening Up of Marriage), *Staatsblad* 2001, nr. 9 ("echtgenoten"; "spouses")

**Norway** – Law on Registered Partnership (*Lov om registrert partnerskap*), 30 April 1993, nr. 40 ("registrerte partnere"; "registered partners"); Law on changing the marriage law, etc (*Lov om endringer i ekteskapsloven, etc.*), 17 June 2008, nr. 91

**Portugal** – *Lei No. 7/2001 de 11 de Maio, Adopta medidas de protecção das uniões de facto*, [2001] 109 (I-A) *Diário da República* 2797 ("uniões de facto"; "de facto unions")

**Slovenia** - *Zakon o registraciji istospolne partnerske skupnosti (ZRIPS) Ur.l. RS, št. 65/2005* (Registered Partnership Law)

## **Spain**

Spanish State – see, e.g., Law on Urban Leasing (*Ley de Arrendamientos Urbanos*) of 24 Nov. 1994, Art.s 12, 16, 24, *disposición transitoria segunda B(7)*: housing rights granted to a person cohabiting "in a permanent way in an emotional relationship analogous to that of spouses, without regard to its sexual orientation [*con independencia de su orientación sexual*]"; *Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio* (Law 13/2005, of 1 July, providing for the amendment of the Civil Code with regard to the right to contract marriage), *Boletín Oficial del Estado* no. 157, 2 July 2005, pp. 23632-23634 (in force 3 July 2005)

Autonomous Communities (*Comunidades Autónomas*):

Andalucía - *Ley de parejas de hecho*, (5 Dec. 2002) 422 *Boletín Oficial del*

- Parlamento de Andalucía 23987 ("parejas de hecho"; "de facto couples")  
 Aragón - *Ley relativa a parejas estables no casadas*, (26 March 1999) 255  
*Boletín Oficial de las Cortes de Aragón* ("parejas estables no casadas"; "unmarried stable couples")
- Asturias - *Ley 4/2002, de 23 de mayo, de Parejas Estables* ("parejas estables"; "stable couples")
- Balearic Islands - *Llei 18/2001 de 19 de diciembre, de parelles estables* ("parelles estables"; "stable couples")
- Basque Country - *Ley 2/2003, de 7 de mayo, reguladora de las parejas de hecho*, (9 May 2002) 92 *Boletín Oficial del Parlamento Vasco* 9760 ("parejas de hecho"; "de facto couples")
- Canary Islands - *Ley 5/2003, de 6 de marzo, para la regulación de las parejas de hecho*, (13 March 2003, V Legislatura) 150 *Boletín Oficial del Parlamento de Canarias* 2 ("parejas de hecho"; "de facto couples")
- Cantabria - *Ley 1/2005, de 16 de mayo, de parejas de hecho*, (24 May 2005) 98 *Boletín Oficial de Cantabria* ("parejas de hecho"; "de facto couples")
- Catalonia - *Llei 10/1998, de 15 de juliol, d'unions estables de parella*, (10 July 1998) 309 *Butlletí Oficial del Parlament de Catalunya* (BOPC) 24738 ("unions estables de parella"; "stable unions of couples")
- Extremadura - *Ley de Parejas de Hecho*, (26 March 2003) 377 *Boletín Oficial de la Asamblea de Extremadura* 13 ("parejas de hecho"; "de facto couples")
- Madrid - *Ley de Uniones de Hecho de la Comunidad de Madrid*, (28 Dec. 2001) 134 *Boletín Oficial de la Asamblea de Madrid* (V Legislatura) 160003 ("uniones de hecho"; de facto unions)
- Navarra - *Ley Foral 6/2000, de 3 de julio, para la igualdad jurídica de las parejas estables*, [7 July 2000] 82 *Boletín Oficial de Navarra* ("parejas estables"; "stable couples")
- Valencia - *Ley por la que se regulan las uniones de hecho*, (9 April 2001) 93 *Boletín Oficial de las Cortes Valencianas* 12404 ("uniones de hecho"; "de facto unions")

**Sweden** – Homosexual Cohabitees Act (*Lag om homosexuella sambor*), SFS 1987:813 (replaced by SFS 2003:376); Law on Registered Partnership (*Lag om registrerat partnerskap*), 23 June 1994, SFS 1994:1117 ("registrerade partner"; "registered partners")

## Switzerland

Federal Level - *Bundesgesetz vom 18. Juni 2004 über die eingetragene Partnerschaft gleichgeschlechtlicher Paare (Partnerschaftsgesetz)*, *Bundesblatt*, 2004, No. 25 (29 June 2004), p. 3137; *Loi fédérale du 18 juin 2004 sur le partenariat enregistré entre personnes du même sexe (Loi sur le partenariat)*, *Feuille fédérale*, 2004, No. 25 (29 June 2004), p. 2935 ("Partner/Partnerinnen"; "partenaires"; "partners") (approved by 58% of voters in a referendum on 5 June 2005; entered into force on 1 January 2007)

**United Kingdom** - Civil Partnership Act 2004 ("civil partners")

### **Other Democratic Societies**

#### **Argentina**

Buenos Aires (Autonomous City) - *Ley No. 1.004, Reconócese las Uniones Civiles*, 12 December 2002 ("members of the civil union")

#### **Australia**

Australian Capital Territory – eg, Domestic Relationships Act 1994 ("parties to a domestic relationship"); Family Provision (Amendment) Act 1996 ("eligible partners"); Legislation (Gay, Lesbian and Transgender) Amendment Act 2003 ("domestic partners"); Civil Partnerships Act 2008 ("civil partners")

New South Wales - Property (Relationships) Legislation Amendment Act 1999; Miscellaneous Acts Amendment (Relationships) Act 2002 (eg, "de facto spouses", "de facto partners", "parties to a de facto relationship")

Northern Territory - Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003, Act. No. 1 of 2004 ("de facto partners")

Queensland - eg, Property Law Amendment Act 1999 ("de facto spouses")

South Australia - Statutes Amendment (Domestic Partners) Act 2006 ("domestic partners")

Tasmania - Relationships Act 2003, Relationships (Consequential Amendments) Act 2003 ("partners" include two persons in a "significant relationship", ie, "who have a relationship as a couple", and who may register a "deed of relationship")

Victoria – Statute Law Amendment (Relationships) Act 2001 ("domestic partners")

Western Australia - Acts Amendment (Lesbian and Gay Law Reform) Act 2002 ("de facto partners")

#### **Canada**

Federal Level - Modernization of Benefits and Obligations Act, Statutes (S.) of Canada 2000, chapter (c.) 12 ("common-law partners", "*conjoints de fait*"); Civil Marriage Act, Statutes of Canada 2005, c. 33 ("spouses", "*époux*")

#### Provinces and Territories:

Alberta - Adult Interdependent Relationships Act, S.A. 2002, c. A-4.5 ("adult interdependent partners")

British Columbia - Definition of Spouse Amendment Acts, S.B.C. 1999, c. 29, S.B.C. 2000, c. 24 ("spouses")

Manitoba - Charter Compliance Act, S.M. 2002, c. 24 and Common-Law Partners' Property and Related Statutes Amendment Act, S.M. 2002, c. 48 (registered and unregistered "common-law partners")

New Brunswick - eg, Family Services Act, N.B. Acts, c. F-2.2, section (s.) 112(3), as amended in 2000 (spousal support obligations of unmarried persons living in a family relationship)

Newfoundland - Same Sex Amendment Act, S.N. 2001, c. 22 ("cohabiting partners")  
Northwest Territories - Family Law Act, S.N.W.T. 1997, c. 18, s. 1(1), as amended by S.N.W.T. 2002, c. 6 ("spouses")  
Nova Scotia - Law Reform (2000) Act, S.N.S. 2000, c. 29  
(unregistered "common-law partners", registered "domestic partners")  
Nunavut - eg, An Act to amend the Labour Standards Act, S. Nunavut 2003, c. 18  
("common-law partners")  
Ontario - Amendments Because of the Supreme Court of Canada Decision in *M. v. H.* Act, S.O. 1999, c. 6 ("same-sex partners"); An Act to amend various statutes in respect of spousal relationships, S.O. 2005, c. 5 ("spouses")  
Prince Edward Island - Family Law Act, R.S.P.E.I. 1988, c. F-2.1, s. 29(1), as amended by S.P.E.I. 2002, c. 7 ("common-law partners")  
Québec - "An Act ... concerning de facto spouses", S.Q. 1999, c. 14, 1st session, 36th legislature, Bill 32 ("*conjoints de fait*", "de facto spouses"); "An Act instituting civil unions ...", S.Q. 2002, c. 6, 2nd session, 36th legislature, Bill 84 ("*conjoints en union civile*" or "civil union spouses"; capacity to become "*conjoints mariés*" or "*époux*" or "married spouses" is governed by the 2005 federal law)  
Saskatchewan - Miscellaneous Statutes (Domestic Relations) Amendment Acts, 2001, S.S. 2001, cc. 50-51 ("common-law partners", or persons "cohabiting as spouses" or "cohabiting in a spousal relationship")  
Yukon Territory – eg, Family Property and Support Act, R.S.Y. 1986 (Vol. 2), c. 63, ss. 1, 30, 31, as amended by S.Y. 1998, c. 8, s. 10 ("spouses")

## **Mexico**

Federal District (Mexico City) - *Decreto de Ley de Sociedad de Convivencia para el Distrito Federal*, *Gaceta Oficial*, 16 November 2006 ("*convivientes*")

**New Zealand** - Civil Union Act 2004, Relationships (Statutory References) Act 2004 ("parties to a civil union")

**South Africa** - Civil Union Act, No. 17 of 2006 (same-sex or different-sex "civil union partners", who include "spouses in a marriage" and "partners in a civil partnership")

**United States** (specific citations can be provided)

- California - "domestic partners" - 1999, 2001, 2003
- Connecticut - "parties to a civil union" - 2005
- District of Columbia - "domestic partners" - 1992
- Hawaii - "reciprocal beneficiaries"- 1997
- Maine - "domestic partners" - 2004
- Massachusetts - "spouses" - 2004
- New Hampshire - "spouses in a civil union" - 2007
- Oregon - "domestic partners" - 2007
- New Jersey - "civil union partners" - 2006

- Vermont - "parties to a civil union" - 2000
- Washington - "domestic partners" - 2007

**Uruguay** - *Ley No. 18.246 de Unión Concubinaria*, published in *Diario Oficial*, 10 Jan. 2008, No. 27402 (same-sex or different-sex "*concubinos*")