Same Sex Marriage

Argentina • Chile • France • Nordic Countries

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ARGENTINA

Under the current Argentine Civil Marriage Law [2] the diversity of sex is one of the structural elements of the marriage. Article 172 of the Civil Code [3] provides the necessity of the consent in person before the proper authority by a woman and a man for the existence of marriage. Any act not complying with this requirements will have no legal effects even when performed in good faith.

Therefore, under Argentine Law a same sex marriage will be legally nonexistent and deprived of any legal effect.

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[2] *Law No. 23.515*, of June 21, 1987 in *Regimen Legal del Matrimonio Civil*, Maria Josefa Mendez Costa, Rubinzal-Culzoni Editories, Santa Fe, 1987, pag. 84.

[3] *Codigo Civil de la Republica Argentina*, Editorial Zavalia, Buenos Aires , 1989, Art. 172.

CHILE

The Chilean Civil Code [1] defines marriage as a solemn contract between a woman and a man to live in a indissoluble union for good in order to procreate and assist to each other.

It is clear, from the words of the Law, that same sex marriages are not allowed.

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[1] *Codigo Civil*, Official Edition, Editorial Juridica de Chile, 1987, Art. 102.

FRANCE

Marriage between members of the same sex

French society has been tolerant towards people of the same sex who live together and has received people such as Oscar Wilde who were prosecuted in their own countries for their sexual preference, but has not until today allowed legal same sex marriage. The condition that the marital partners be of different sexes has been so obvious that the French Civil Code does not bother to mention it, but it is implicit in the last paragraph of article 75 that refers to husband and wife.[1] Evidence of different sexes, although usually obvious, must be proved by the presentation of a birth certificate by each spouse at the time of the marriage. Among other things, according to article 57 of the Civil Code, the birth certificate must state "...the sex of the child and the first name given to it." [2]

Before the Revolution, the capability of the spouses to procreate was a condition for the validity of a marriage. However, the framers of the Civil Code wanted to avoid all the abuses that had occurred before to prove this purpose and, at the same time maintain that procreation is one of the purposes of marriage. The courts however have long recognized that sterility was not an obstacle to marriage. Although some recent court decisions have held that ignorance of one spouse that the other cannot procreate is considered to be a mistake on the substantial qualities of marriage, it does not mean that sterility is now an obstacle to a valid marriage,[3] only that ignorance of this by one spouse may be invoked in court if annulment of the marriage is sought.

A more complicated issue arises when the sexual distinction of the spouses is different but incomplete. The courts in such cases have made a comparison with natural impotence and have decided that the marriage is valid. But this subtle distinction nowadays is of marginal importance because divorce in France has been eased to the point that any spouse can seek divorce without establishing any ground for it. However it is worth noting that while neither sterility, impotence or genital malformation are hindrances to a valid marriage, the parties to the marriage being of the same sex is such a hindrance. Moreover, the law as it is now makes it very easy for a non married spouse to prove that the disappearance of the companion has deprived him or her of the usual income especially if the relation was stable, continuous, and well known.

This status is called concubinage and entitles the surviving concubine to social security rights, health insurance, family allowance, military allowance, death insurance and compensatory benefits. These rights have not however been extended to people of the same sex even if their relationship has been stable for a long time.[4]

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[1] Code Civil 94 Paris Dalloz 1988-9

[2] *Id*. art. 83

[3] Tribunal civil de Grenoble 495 March 13 and November 20 1958 Paris Dalloz 1959

[4] Guide juridique Dalloz, Concubinage, 20 Mise a jour 1989 Paris 1989

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NORDIC COUNTRIES

The marriage laws in the Nordic countries of Europe do not recognize a formal marriage between the members of the same sex. The 1987 Swedish Marriage Law, in particular, expressly proclaims that only a man and a woman can be married (art. 1).

However, during the 1980s, both Denmark and Sweden enacted laws which have provided certain legal rights for co-habitants, including homosexuals. Thus, according to the Danish Law of 1989 concerning the Registration of Partnership (No. 821, Dec. 19, 1989), homosexuals may enter a registered partnership. Consequently, with a few exceptions such as the right to adopt children, a partnership registration provides the parties with the same rights and obligations as a married couple.

The 1987 Swedish Law on Co-habitation (SFS 1987:813), gives the parties in such relationships equal rights over all property acquired for joint use. This Law also provides certain rights and obligations for homosexual co-habitants under various branches of the Swedish law, such as a limited right to inheritance, taxation, real-estate, and procedural laws.

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