UNMARRIED COUPLES LAW IN ARAGON

Preamble to the Unmarried Couples Law

The Spanish society in general and the Aragon society in particular has been demanding normative regulation of the so called unmarried couples for a long time.

Since the first and only Congress about unmarried couples took place in 1982, with auspice from the Europe Council, many European Union countries have been adopting their respective legislation in one way or another to this phenomenon, tending to equal, totally or partially, these couples to married couples.

In Spain, although there is some shy normative regulation in that respect, like the new Urban Leasing Law, in the last years it is the justice tribunals and especially the Constitutional Tribunal the ones who have been applying conjectural or emergency solutions to the specific cases that arrive; solutions that do not fully satisfy anyone.

Because it does not seem like it is Justice who must substitute the legislator in this aspect, since it is the legislator who has been constitutionally attributed the normative faculty and who must solve, through the viable legislative treatment, the questions these types of situations bring up.

Also, next to the stable heterosexual couple, there is another similar phenomenon, although of a very different nature and consequences, which is the stable marital homosexual couple living together, now ceasing to be something strange and marginal. The individual freedom principle that the Constitution fundaments, and which has traditionally constituted the essence and base of Aragon civil Right, forces the legislator to accept that every person has a right to establish a relationship according to their own sexuality.

It is in both cases a growing phenomenon, generally accepted and assumed by society, which legislative oppression only generates problems with tough solutions, and causes important injustices: in some cases, for the members of the couple; in others, and this is much graver, for the couple's progeny.

Not knowing the phenomenon from the legislative point of view implies worsening these situations of injustice that today only the Justice Tribunals try to solve.

Also, and even when the Spanish legislator tries to regulate the phenomenon from a general point of view, given the singularities of the Aragon civil order, it seems that the Aragon Courts still can't arrange the special treatment that these types of relationships need to have in our Community. That is what in a special way justifies this Law.

Articles of the Unmarried Couples Law

Article 1.- Area of application.

The present Law will be applied to non minors who, meeting the requisites and formalities established in it, are part of a stable unmarried couple in which there is a relationship of mutual affectivity.

Article 2.- Administrative registry.

Every stable unmarried couple must be inscribed in a Registry of the Aragon General Depute for the administrative measures regulated by the present Law to

be applied, as well as noted or mentioned in the competent Civil Registry if the state legislation foresaw it.

Article 3.- Existence of unmarried stable couple.

1.. It is considered a stable unmarried couple when the marital couple has lived together for an uninterrupted period of two years, at least, or there is a petition to constitute it through public writing.

2.. The credit of the existence of a stable unmarried couple and the course of the two reference years, if there wasn't public writing, can be done through any means of proof admitted in law, especially, through the notoriety act or judiciary document that credits cohabitation.

Article 4.- Capacity requirements.

The following will not be allowed to constitute a stable unmarried couple of those regulated in the present Law:

a) Those who are linked in matrimony.
b) The parents in straight line of descendancy or adoption.
c) The collateral from descendancy or adoption to the second degree.
d) Those who form a stable couple with another person.

Article 5.- Cohabitation regime and supplementary application norms.

1.. The cohabitation of the couple and the corresponding rights and obligations can be regulated in its persona aspects and patrimonies through the convene stated in the public writing, guided by the the liberty of pacts principle, as long as they don't intrude in the rights or dignity of any of the receivers, and are not contrary to the imperative norms applicable in
Aragon.

2.. The temporal character or condition of a stable unmarried couple cannot be agreed to.

3.. In case of a lack of agreement, the members of the stable couple will contribute to the maintenance of the home and common spending with their recourses, in proportion to their respective incomes and, if they are insufficient, according to their patrimonies, without harming the capability of keeping their property, administration and enjoying their own belongings. Self-maintenance and that of common or not children that live with them, including the right to food, education, medical/sanitary attention and home will be considered common spending.

4.. Both members of the couple respond with solidarity to third persons to the obligations acquired by the spending to which the previous number refers, if social uses are made adequate; in any other case, only the person acquiring the obligation would respond.

Article 6.- Causes of extinction.

1.. The stable unmarried couple extinguishes:
a) When one of the members dies.
b) Through mutual agreement.
c) Through unilateral decision.
d) In case of separation for more than a year.
e) In case of matrimony of one of its members.

1.. Any member of the stable couple can proceed, unilaterally, to its revocation, notifying the other person.

2.. Both members of the couple are to cancel the public writing if it was issued, whether separately or not.

3.. In case of an end of cohabitation, the parts can't formalize a stable unmarried couple again through public writing until six months have passed since the previous cohabitation public document was canceled.

4.. The extinction of the stable unmarried couple implies the revocation of the powers that any of the members gave in favor of the other.

Article 7.- Patrimony effects of extinction in life.

1.. In case of extinction of the stable unmarried couple for a cause different to death or declaration of death, and if the cohabitation has caused a situation of patrimonial unfairness between both cohabitants that implies an unjust enrichment, an economic compensation for the affected cohabitant can be required in these cases:
a) When the cohabitant has contributed economically or with his/her work to the acquisition, conservation or improvement of any of the common or private goods of the stable unmarried couple.
b) When the cohabitant, without retribution or with insufficient retribution, has dedicated his/her time to the home, or the common children or the other cohabitant, or has worked for him/her.

1.. At the time of the extinction of the cohabitation for the foreseen causes, any one of the cohabitants can ask for a pension from the other, if it was needed, in the supposed case that the care of the common children didn't allow for the performance of work activities or made them seriously difficult. The pension will extinguish when the care of the children ceases for any reason, or when they become legal aged or emancipate.

1.. The reclamation by any of the members of the couple of the rights regulated in the previous paragraphs must be formulated in the maximum time period of a year counted from the time of extinction of the stable unmarried couple, calculated in respect to the duration of the cohabitation.

Article 8.- Common progeny.

1.. In the case of rupture of the cohabitation with a cause different from death or declaration of death, whatever the couple has accorded in terms of the custody of the common progeny and visits, communication and visits regime is what will be done. Either way, the judge can equally moderate what was agreed, when in his/her judgement it is gravely harmful for any of the members or the common progeny.

1.. In case of failure to agree, the judge can agree what he/she feels appropriate in respect to the common progeny, in benefit of the children and with their presence if they have enough judgement or are twelve years of age or older.

Article 9.- Rights in case of death of one of the cohabitants.

In case of death of one of the members of the couple, the survivor will have the right, whatever the content of the constitution writing, the testament or the successor pacts, to the furniture, utensils and instruments of work that constitute the habitual home, excluding only jewelry or artistic objects of extraordinary value or those goods of family precedence. Also, the survivor can, no matter what hereditary right he/she was issued, reside freely in the habitual home for the time period of one year.

Article 10.- Adoption.

Unmarried heterosexual stable couples can adopt together.

Article 11.- Representation of the absent.

In case of judicial declaration of the absence of a member of the couple, and to the effects of his/her representation and administration of patrimony, the other will occupy the same position of the mate, in the terms foreseen in article 8 of the Aragon Compilation of Civil Law.

Article 12.- Guardianship permission.

In the supposition that one of the members of the couple was declared judicially incapable, the other will occupy the first place in the order of preference for guardianship.

Article 13.- Right to food.

The members of the couple are compelled to share food, with preference to any other people legally compelled.

Article 14.- Non-existence of relativity.

The stable unmarried couple does not generate any relative relationship between its members and the relatives of the other.

Article 15.- United testament.

The members of the stable unmarried couple can testament as united in conformity conforming to what is exposed in the Aragon succession legislation.

Article 16.- Pacts of succession.

The members of the stable unmarried couple can give pacts of succession in the terms foreseen in the Aragon succession legislation.

Article 17.- Trust.

Each member of the stable unmarried couple can order the succession of the other through trust according to what is regulated in the Aragon succession legislation.

Article 18.- Public Rights Aragon Normative.

The rights and obligations established for the couple in the Public Rights Aragon Normative, without a tributary character, will be of equal application for the members of the stable unmarried couple.

First additional disposition.- Matrimonial Capitulation.

The regime of cohabitation and rights and obligations of the stable unmarried couple, agreed in public writing, will acquire the value of matrimonial capitulation, in the case that the members of the couple married, if they had so accorded it expressively in the writing.

Second additional disposition.- Time for the creation of the administrative Registry.

In the time period of six months since the publication of this Law, the General Aragon Deputy will regulate the creation and regime of functioning of the administrative Registry of stable unmarried couples.

Final disposition.- Beginning of the Law application.

The present Law will be applied six months from its publication in the Aragon Official Bulletin.