

## The “Civil Solidarity Pact” (PACS) in France: an impossible evaluation

Patrick FESTY \*

In the fall of 1999, the French Parliament passed a law offering the possibility for unmarried couples to acquire a legal status thanks to the “Civil Solidarity Pact” (*Pacte Civil de Solidarité*), or PACS. The PACS is open to both heterosexual and homosexual couples. From the date the law was enacted — November 15, 1999 — until the end of March 2001, approximately 37,000 PACS were registered (6,211 in 1999, 23,644 in 2000, and 7,238 during the first quarter of 2001).

Northern European countries were the first, about twelve years ago, to make provisions for the legal recognition of unmarried couples; southern European countries gradually followed suit. Nonetheless, the countries which have implemented such laws are a small and heterogeneous group: in Scandinavia, only homosexual couples are concerned by new protection laws, and their rights are very similar to those of heterosexual married couples; in the Netherlands, in France and in other countries where similar bills are now under study, the law targets both homosexual and heterosexual couples and offers them an option which is often quite different from marriage (1).

To this date, statistics have been drawn up in five countries which have recently created an alternative legal status for unmarried couples: three Scandinavian countries (Denmark since 1989, Norway since 1993 and Sweden since 1995), the Netherlands since 1998 and France since November 1999. In all these countries but France, these legalized unions are referred to as “registered partnerships”.

Statistical data is poor and heterogeneous. The data of the French Ministry of Justice is by far the poorest: there is no classification by age, and, especially, no distinction by gender and type of union, which would make it possible to compare the frequency of

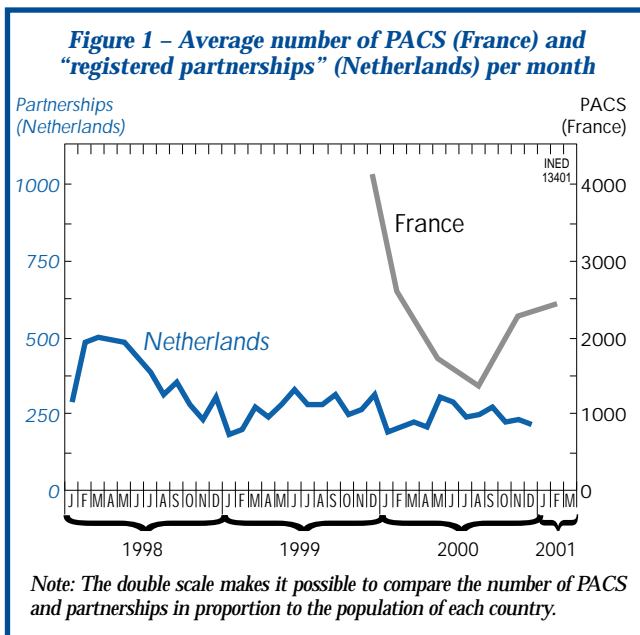
homosexual partnerships in France and in Scandinavian countries, and compare the distribution of same-sex/different sex couples in France and in the Netherlands. Without this basic data, it is impossible to comment on French results, in order, for example, to determine whether many or few couples have chosen to enter a PACS. Earlier foreign experience may nevertheless have something to tell us on this subject.

### ◆ Is the French PACS more popular than the Dutch “registered partnership”?

A comparison can be made between the 37,000 PACS registered in France during the first 16.5 months following the enactment of the law and the 5,700 partnerships registered in the Netherlands over a similar period, from January 1st, 1998 to the present. Since the Dutch population is about four times smaller than the French (15,750,000 as of January 1, 1998 in the Netherlands, and 60,200,000 in France, overseas departments included, according to the March 1999 census), for purposes of comparison, the number of partnerships registered in the Netherlands must be multiplied by four in order to respect the relative demographic size of both countries: thus,  $5,700 \times 4 = 22,800$ . This means that the French PACS were more numerous by about 60% than the partnerships registered in the Netherlands during the months following

(1) As of April 1, 2001, in the Netherlands, same-sex couples can get legally married in the same conditions as heterosexual couples. The procedure is simplified for those who have already entered a legal partnership. The statistics for these marriages are not yet available; in this article, we will only use the data concerning partnerships registered between January 1, 1998 and December 31, 2000. Another law, passed at the same time as the first, allows two persons of the same sex, regardless of their legal status as a couple (marriage, partnership or free union) to adopt children. The child must have been born in the Netherlands.

\* Institut national d'études démographiques.



the enactment of the new law.

However, these results are somewhat qualified if one looks at the frequency of registration per month and per quarter. In the Netherlands, from February to May 1998, approximately 500 partnerships were registered every month. This figure rapidly declined and settled before the end of that year at a rate of about 250/month (see figure 1). Since then, this average rate — 250 partnerships per month and 3,000 partnerships per year — has remained stable, in 1999 as well as in 2000 (this rate would be the equivalent of 12,000 PACS per year in France). A seasonal factor can be observed: the frequency of registrations is slower in the first part of the year, from January to April, especially as concerns homosexual unions; it then rises in May and June and reaches a peak in December, especially for heterosexual unions. In France, over a shorter period of time, the variations are much more marked. During the first months, there were proportionally many more PACS in France than registrations in the Netherlands, but by the spring and summer 2000, the French rate had dropped to a level equivalent to the Dutch, after the same period. Thus, there was reason to expect that after a rather more spectacular beginning than in the Netherlands, the French PACS would settle down to a similar rate. However, the rates for end 2000 and early 2001 contradict these forecasts, since over the past six months, the number of PACS has considerably increased, compared to the two previous quarters. However, it is still too early to provide an interpretation of these differences.

#### ◆ Homosexual partnerships: variable frequency from one country to the next

Homosexual partnership was first introduced in Denmark in 1989, and soon after in the other

**Table 1 – Homosexual partnerships registered each year in Scandinavia and in the Netherlands (number of male or female couples per million inhabitants)**

	Denmark		Norway		Sweden		Netherlands	
	M	F	M	F	M	F	M	F
1990	62	22	-	-	-	-	-	-
1991	34	17	-	-	-	-	-	-
1992	28	16	-	-	-	-	-	-
1993	25	12	26	9	-	-	-	-
1994	21	18	19	11	-	-	-	-
1995	24	15	14	8	28	9	-	-
1996	21	16	18	10	11	7	-	-
1997	15	20	17	10	9	6	-	-
1998	17	23	16	11	9	5	107	84
1999	-	-	-	-	-	-	57	55
2000	-	-	-	-	-	-	51	49

Sources : *Befolkningens bevægelser* (Denmark), *Befolkningsstatistikk* (Norway), *Befolkningsstatistik* (Sweden), *Maandstatistiek van de bevolking* (Netherlands).

Scandinavian countries. The laws governing these partnerships are similar in these countries, and very close to those governing heterosexual marriage, the main difference being the impossibility of adopting a child. However, according to Dutch and Norwegian law, if one of the partners has a child, the partners can share parental authority. According to Swedish law, a judge must be appealed to in case of separation.

One can compare the frequency of partnerships in different countries by calculating their incidence per million inhabitants (see table 1). The year the law was enacted, the number of homosexual partnerships ranged from one to six according to countries: from 35 in Norway or 37 in Sweden to 191 in the Netherlands, with Denmark occupying an intermediary position. By 2000, the frequency had significantly decreased, but unevenly, regardless of how much time had passed since the law was enacted: a limited drop in Denmark and Norway (40%), a slightly more significant decrease in the Netherlands (45%); in Sweden however, the decline reached 60%. The gap between extremes widened: the difference ranges from 1 to 7 between Sweden (14 partnerships per 1,000,000) and the Netherlands (100 partnerships per 1,000,000) (2).

The share of male and female homosexual partnerships differs according to countries, and changes over time. The year the law was passed, a vast majority of male partnerships were registered in all three Scandinavian countries (about 75% male against 25% female), a smaller majority in the Netherlands (60% against 40% during the first months, gradually evening out towards the end of the year). In all the countries concerned, male and female couples are

(2) Can the low frequency of homosexual partnerships in Sweden be explained by the fact that separations require appealing to a judge? Due to lack of information, we cannot as yet answer this question.

gradually reaching a balance; this balance was reached quite soon in the Netherlands and more gradually in Scandinavian countries. In Norway, and especially in Sweden, where the partnership law is more recent, male partnerships are still the majority (60% against 40% female); in Denmark, however, the share of female partnerships has been growing and they are now more numerous (60 female couples for barely over 40 male couples).

An interpretation of these differences requires data concerning unmarried couples in order to measure the frequency of registrations among persons who might be likely to do so. Here is an example from the Netherlands: according to the Dutch Central Bureau of Statistics, as of January 1, 1995, the number of persons of the same sex living together as a couple was evaluated at 25,500 men (or 12,750 male couples) and 13,200 women (or 6,600 female couples) without children, to which one must add 2,000 couples with children, mostly women. Homosexuals living together as a couple represent only 0.5% of the male population aged 20 to 69 (26,000/5,200,000), whereas the proportion is only 0.33% among women (17,000/5,100,000). Furthermore, every year, about 1,700 men and as many women choose to enter a "registered partnership" — a figure which now seems stable in the Netherlands — or 6.5% of male homosexual couples (1,700/26,000) and 10% of the women (1,700/17,000). In Scandinavia, these proportions are probably much lower than in the Netherlands, since the number of registered partnerships is much smaller. But is this small figure due to the low proportion of homosexual couples among the population or to the low proportion of homosexual couples choosing to enter a "registered partnership"?

Elements for comparison are very few and disparate. A general overview of homosexual practices in Western Europe shows little difference between countries (see table 2). The proportion of men who have had at least one male sexual partner during their life

ranges from 2.7% to 4.1%. The frequency is lower for women. The results concerning the last five years are probably more reliable and they corroborate the other results. Last, there is little information on current situations and situations of cohabitation with a partner of the same sex, and whatever information there is, it is based on small figures. The frequency of homosexual cohabitation seems lower in France and Great Britain than in the Netherlands; however, given the variety of sources of information and means of observation, one can only say that the incidence of homosexual cohabitation is comparable from one country to the next and that it is lower for women than for men.

As a result, the wide gaps observed in the partnership registration figures correspond mostly to variations in the incidence of registration of existing couples. The high number of registered couples in the Netherlands shows that Dutch couples have a higher tendency to legalize their situation, compared to Scandinavian couples; the difference in the actual number of couples, whether registered or not, is minor.

The next step is to find out why Dutch homosexual couples tend to register more often than Scandinavian couples. One hypothesis, based on the research carried out by J. Binnie, would be to characterise the attitude of different European countries towards homosexuality by the immigration possibilities offered to those who justify their request on the basis of a such a relationship. Indeed, there is a stark contrast between the liberal attitude of the Dutch (and the Danes) and the rigid position of the British (3).

In the Netherlands, it is not necessary to be a Dutch citizen to register a partnership: two foreigners can do so if they have a valid residence permit. In Denmark however, according to the 1989 law, at least one of the partners had to be a Danish citizen and resident. An amendment passed in 1998 softened these conditions, since foreigners can now register if they have been living in the country for at least two years

or if they are citizens of a country whose laws in this domain are similar to Danish laws. The other Scandinavian countries then followed suit. The gradual legal changes from the Netherlands to Norway and Sweden match that observed in the frequency of registered homosexual couples.

French law limits the access of foreigners to the PACS. This restriction, in particular the fact that "the registration of a PACS represents only one element

(3) Binnie, J. "Invisible Europeans: sexual citizenship in the New Europe" *Environment and Planning*, 1997, 2, p.237-248. One may also read Sandfort, T. "Homosexual and bisexual behaviour in European countries", in Hubert, M. et al. (eds.), *Sexual Behaviour and HIV/AIDS in Europe*, UCL Press, p. 68-105.

**Table 2 - Proportion of persons who have (had) partners of the same sex (in %)**

	Denmark (1)		Norway (2)		Netherlands (3)		France (4)		Britain (5)	
	H	F	H	F	H	F	H	F	H	F
During lifetime	2.7	-	3.5	3.0	-	-	4.1	2.6	3.5	1.7
In the past 5 years	-	-	0.9*	0.9*	-	-	1.4	0.4	1.4	0.6
In the past year	-	-	-	-	-	-	1.1	0.3	1.1	0.4
Current cohabitation	-	-	-	-	0.50	0.33	0.31	<0.1	0.24	0.11

\* In the past 3 years.

Sources : (1) MELBYE M., R.J. BIGGAR, "Interactions between persons at risk for AIDS and the general population in Denmark", *American Journal of Epidemiology*, 1992, 135, p. 593-601.

(2) SUNDET J.M., et al., "Prevalence of risk-prone behaviour in the central population of Norway", in A.F. Fleming et al. (eds), *The Global Impact of Aids*, New York: A. R. Liss, 1989, 427 p.

(3) CROES M.M., "Samenwoners van gelijk geslacht", *Maandstatistiek van de bevolking, oktober 1996*.

(4) SPIRA A., BAJOS N. et le groupe ACSF, *Les comportements sexuels en France, La documentation française, 1993*.

(5) WELLINGS K. et al., *Sexual Behaviour in Britain*, Penguin Books, 1994, 464 p.

among others for the evaluation of a person’s personal bonds in France (...) in view of obtaining a residence permit”, was severely criticized by the groups and associations concerned (4).

French law prohibits statistical records on the type of PACS and the gender of the partners, putting forward that such figures — despite the fact that they are anonymous — would represent a violation of privacy, since they reveal the sexual preferences of individuals. In fact, this position, if one compares it to that of the Netherlands and Scandinavian countries regarding statistical records, is rather the sign of a greater reluctance on the part of the French to accept the fact of homosexual couples.

As a hypothesis, one may suggest that the incidence of registrations of homosexual couples is lower in France than in countries which have a more liberal attitude in this respect, such as the Netherlands. Though the proportion of homosexual couples seems to be the same in France and in the Netherlands, the number of registrations is probably lower in France (proportionally to the size of the population). According to this hypothesis (which is impossible to verify), the number of homosexual PACS registered in France since November 1999 — less than 14,000 — would be inferior to that registered in the Netherlands in 16.5 months (230 per million inhabitants).

#### ◆ **Heterosexual partnership: an alternative to marriage?**

Another approach would be to start from the other end, with the available figures concerning heterosexual couples. In 1998, by mid-year, there were 700,000 unmarried heterosexual couples in the Netherlands. Among these, about 1,600, or 2.3‰, had legalized their situation that year through a registered partnership. More recently, the annual number of registered partnerships has settled at a level slightly lower than 1,400, representing an incidence of 2‰. Over the same period, the number of registered heterosexual partnerships declined, though much less than homosexual partnerships. Although during the first year, the former constituted a minority (35% of registered couples), they now stand just about even with homosexual partnerships (46%).

In France, in early 2000, the number of unmarried heterosexual couples slightly exceeded 2,500,000, a little less, proportionally, than in the Netherlands. If French couples had registered at the same rate as in the Netherlands during the first year, their number would have been under 6,000 ( $2,500,000 \times 2.3‰$ ) over a period of 12 months, and less than 8,000 for a period of 16.5 months, from November 15, 1999 to the end of March 2001. This would mean that the remaining 29,000 PACS are homosexual, which in turn would

(4) Law 99-944 of 15 November 1999, pertaining to the Civil Solidarity Pact. In the enforcement circular of the Ministry of the Interior, this restriction is made even more stringent.

mean that homosexual couples registered much more frequently in France than in other countries in the year following the passage of the law. However, given the situation described above in France, this seems hardly likely.

A more realistic version would be to suggest that there were many more registrations of heterosexual couples in France than in the Netherlands. This leads to the question of why unmarried French couples choose to register more often than their Dutch counterparts. In this case, it may be useful to examine the role of children in the life of couples and the marriage institution.

First, it must be noted that unmarried heterosexual couples are more often childless in the Netherlands than in France: less than 20% of these couples have children, as opposed to 45% in France. In addition, the proportion of children born out of wedlock is lower in the Netherlands than in France: respectively 23% and 41% in 1999. Last, the proportion of pregnancies leading to marriage before the birth of the child is under 10% in France, whereas it is still as high as 25% in the Netherlands. These elements seem to show that in the Netherlands, more than in France, couples prefer to get married when they are expecting children, even though in both countries this is much less true now than it was thirty years ago.

In the Netherlands, the more frequent recourse to marriage when a child is expected may correspond to the wish to give the child a clear legal status. In any case, the incidence of registered heterosexual unions is low, even in France, compared to the number of unmarried couples who are potential candidates for registration. If, in France, 37,000 PACS have been registered since November 15, 1999 (part of which concern homosexual couples), nearly 350,000 marriages were celebrated during the same period; the vast majority of these couples had lived together before marrying.

#### ◆ **PACS and statistics**

In Scandinavian countries and in the Netherlands, the National Institutes of Statistics keep detailed records of partnerships and publish their results on a regular basis, along with other current demographic data. It is most unfortunate that French statistics are unable to provide even such basic information as the type of PACS and gender of the partners. The reasons for this restriction remain obscure, given the existence of a wide variety of anonymous and exhaustive statistics on subjects which are no less delicate (abortion, causes of death, prison time, illiteracy, etc.) and which have never given rise to any violations of privacy, thanks to legal provisions implemented to that effect. By forbidding the collection of such information, the law deprives itself of a crucial instrument for the evaluation of the impact of the PACS. As a result, we find ourselves reduced to making conjectures, a poor substitute for precise statistical data.