

Death and legal family formats in Belgium

by Geoffrey Willems¹

The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples

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Published by INED, Paris, 2017, www.LawsAndFamilies.eu

Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 6 – Death)

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of the answers in this section of the database.

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Recommended citation:

G. Willems, 'Death and legal family formats in Belgium', in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, www.LawsAndFamilies.eu (question 6.x).

Acknowledgment

The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under grant agreement no. 320116 for the research project FamiliesAndSocieties, www.familiesandsocieties.eu.



FamiliesAndSocieties

Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at www.LawsAndFamilies.eu. There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

About the questionnaire

The [full text of the questionnaire](#) can be found in the paper: K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), www.familiesandsocieties.eu.

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

| | |
|---------------|---|
| Yes | Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less. |
| Yes, but | Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”. |
| No, but | No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes. |
| No | No, this is not so in the law of this country/jurisdiction. |
| Doubt | The law is unclear (the law does not “know” the answer). |
| ? | No information was available. |
| N/A | Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples). |
| X | This question was not asked for this legal family format. |
| Open question | Question without answer codes like Yes and No. |
| Empty cell | For this year the question was not asked or not answered. |

The six papers about Belgium

The answers concerning Belgium can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, www.LawsAndFamilies.eu):

Formalisation of legal family formats in Belgium

by Paul Borghs (Section 1)

Income, troubles and legal family formats in Belgium

by Geoffrey Willems (Section 2)

Parenting and legal family formats in Belgium

by Paul Borghs (Section 3)

Migration and legal family formats in Belgium

by Geoffrey Willems (Section 4)

Splitting up and legal family formats in Belgium

by Paul Borghs (Section 5)

Death and legal family formats in Belgium

by Geoffrey Willems (Section 6)

So this paper is based on **Section 6 (Death)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

6.1 Tenancy continuation

6.2 Property at death

6.3 Inheritance

6.4 Inheritance tax

6.5 Survivor’s pension

6.6 Wrongful death

6.7 General background regarding death

In the following pages of this paper, first the answer to question 6.7 is presented, followed by the answers to questions 6.1 to 6.6.

6.07 - General background regarding death (Open question)

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding death, then please do so here.

–

Jurisdiction: **Belgium**

Source: **G. Willems**, "Death and legal family formats in Belgium". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-BE-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.01 - Tenancy continuation**

When the partner who holds the rental contract dies, does the other partner then have a right to continue to rent the home?

| Marriage | | Registered partnership | | Cohabitation | |
|---|---------------------|--|---------------------|-------------------------------------|--------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2015 Yes 2007 | 2015 Yes 2007 | 2015 Yes 2007 | 2015 Yes 2007 | 2015 No 0000 | 2015 No 0000 |
| No 0000 | No 2003 | No 2000 | No 2000 | | |
| | N/A 0000 | N/A 0000 | N/A 0000 | | |
| References to legal sources: Art. 745bis, § 3, Civil Code (as introduced by law of 28 March 2007 about inheritance rights of the surviving partner, Moniteur belge 8 May 2007, p. 24928). | | References to legal sources: Art. 745octies Civil Code (as introduced by law of 28 March 2007 about inheritance rights of the surviving partner, Moniteur belge 8 May 2007, p. 24928). | | References to legal sources: | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|---|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: Article 215 Civil Code provides special protection for the family home but only for the duration of the marriage thus not when it is dissolved by the death of one of the spouses.</p> <p>Nevertheless, in 2007, the legislature expressly created a right for the surviving spouse to continue to rent the home (art. 745bis, § 3, Civil Code).</p> <p>See: M. van Molle, "Le point sur les modifications récentes du Code civil en matière de baux à loyer", Recueil général de l'enregistrement et du notariat, 2007, p. 264.</p> | | <p>Explanations and nuances: Article 1477 Civil Code provides special protection for the family home but only for the duration of the legal cohabitation thus not when it is dissolved by the death of one of the partners.</p> <p>Nevertheless, in 2007, the legislature expressly created a right for the surviving partner to continue to rent the home (art. 745bis, § 3, Civil Code).</p> <p>See: Y.H. Leleu, "Les biens et le logement du couple non marié", in Le couple non marié à la lumière de la cohabitation légale, Bruxelles, Bruylant, 2000, pp. 192-193.</p> | | <p>Explanations and nuances:</p> | |

Jurisdiction: **Belgium**

Source: **G. Willems, "Death and legal family formats in Belgium".** In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-BE-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.02 - Property at death**

When one partner dies, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship? (In other words: would the surviving partner be deemed to own 50% of these possessions, while the other 50% are subject to relevant rules of inheritance law?)

| Marriage | | Registered partnership | | Cohabitation | |
|---|--------------------------|---|-------------------------|-------------------------------------|--------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2015 Yes, but 0000 | 2015 Yes, but 2003 | 2015 No, but 2000 | 2015 No, but 2000 | 2015 No 0000 | 2015 No 0000 |
| | N/A 0000 | N/A 0000 | N/A 0000 | | |
| References to legal sources: Art. 1387 et seq. Civil Code (as amended by Law of 14 July 1976 on matrimonial property, Moniteur belge, 18 September 1976, p. 11697). | | References to legal sources: Art. 1478 Civil code (as amended by law of 23 November 1998 on legal cohabitation, Moniteur belge, 12 janvier 1999, p. 786). | | References to legal sources: | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: In the absence of a marriage contract, spouses are subject to the statutory community of property regime (art. 1390 Civil Code). In this case, possessions acquired after the marriage by either of the spouses are considered joint property (art. 1405 Civil Code).</p> <p>In case of death of a spouse, the surviving spouse will be deemed to own 50% of these possessions (art. 1445 Civil Code).</p> <p>However, spouses may choose a contractual separation of property regime (art. 1466 Civil Code). In this case, possessions acquired after the marriage by each spouse remain his or her sole property (art. 1466 Civil Code).</p> <p>Nevertheless, a presumption of indivision applies between spouses married under this regime (art. 1468 Civil Code). If sole property is not proven, the assets will be considered joint property (art. 1468 Civil Code).</p> <p>In case of death of a spouse, his or her own assets are subject to the relevant rules of inheritance law (see 6.03). The surviving spouse will be deemed to own 50% of the assets considered joint property according to the legal presumption of indivision.</p> | | <p>Explanations and nuances: Legal cohabitants are in the same position as spouses married under the separation of property regime.</p> <p>Possessions acquired after the registration of the legal cohabitation by each partner remain his or her sole property (art. 1478, al. 1 Civil Code).</p> <p>Nevertheless, a presumption of indivision applies between registered partners (art. 1478, al. 2, Civil Code). If sole property is not proven, the assets will be considered joint property (art. 1478 Civil Code).</p> <p>In case of death of a partner, his or her own assets are subject to the relevant rules of inheritance law (see 6.03). The surviving partner will be deemed to own 50% of the assets considered joint property according to the legal presumption of indivision.</p> | | <p>Explanations and nuances:</p> | |

Jurisdiction: **Belgium**

Source: **G. Willems**, "Death and legal family formats in Belgium". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-BE-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.03 - Inheritance**

When one partner dies without testament, is the other partner then an inheritor?

| Marriage | | Registered partnership | | Cohabitation | |
|--|---------------------|---|--------------------------|-------------------------------------|--------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2015 Yes 1981 | 2015 Yes 2003 | 2015 Yes, but 2007 | 2015 Yes, but 2007 | 2015 No 0000 | 2015 No 0000 |
| Yes, but 1896 | N/A 0000 | No 2000 | No 2000 | | |
| No, but 0000 | | N/A 0000 | N/A 0000 | | |
| References to legal sources: Art. 745bis Civil Code (as amended by law of 14 May 1981 about inheritance rights of the surviving spouse, Moniteur belge, 27 May 1981, p. 6908). | | References to legal sources: Art. 745octies Civil Code (as amended by law of 28 March 2007 about inheritance rights of the surviving partner, Moniteur belge 8 May 2007, p. 24928). | | References to legal sources: | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|---|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: The extend of the surviving spouse's ab intestat rights depends on the status of the other heirs (art. 745bis Civil Code).</p> <p>If the predeceased spouses leaves descendants, then the surviving spouse receives the usufruct of the entire succession (art. 745bis, § 1, al. 1, Civil Code).</p> <p>If the predeceased spouses leaves other heirs, then the surviving spouse receives full property of the part of the de cuius in the common assets (if married under the common property regime) and the usufruct of the de cuius proper assets (art. 745bis, § 1, al. 2, Civil Code).</p> <p>If there are no other heirs, the surviving partner receives full property of the entire succession (art. 745bis, § 1, al. 3, Civil Code).</p> <p>Even if the deceased made donations and legacies, the surviving spouse has a reserved portion: he cannot be deprived of a minimal usufruct right on the half of the succession (art. 915bis Civil Code).</p> <p>Between 1896 and 1981, the surviving spouse has been recognised some limited inheritance rights (law of 20 November 1896). Before 1896, the inheritance rights of the surviving spouse were almost non existent (Civil Code 1804).</p> | | <p>Explanations and nuances: Unlike the surviving spouse's ab intestate rights, the extend of the surviving partner's statutory inheritance rights does not depend on the status of the other heirs (art. 745octies Civil Code).</p> <p>In any case, he benefits from an usufructuary right on the partners' common residence and on the furniture of this residence (art. 745octies, § 1, al. 1, Civil Code).</p> <p>However, this does not apply when the surviving partner is a descendant of the deceased (art. 745octies, § 1, al. 3, Civil Code).</p> <p>Most importantly, the surviving partner has no reserved portion of the succession and as a consequence he can be wholly disinherited (see: B. Delahaye, F. Tainmont and V. Lèbe-Dessard, <i>La cohabitation légale</i>, Bruxelles, Larcier, 2013, p. 119).</p> | | <p>Explanations and nuances:</p> | |

Jurisdiction: **Belgium**

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Section: **6 - Death**

Question: **6.04 - Inheritance tax**

Is the surviving partner exempted from paying inheritance tax (or required to pay less than a mere friend would have to pay)?

| Marriage | | Registered partnership | | Cohabitation | |
|---------------------|---------------------|------------------------|---------------------|-------------------------|-------------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2015 Yes 0000 | 2015 Yes 2003 | 2015 Yes 2001 | 2015 Yes 2001 | 2015 No, but 2001 | 2015 No, but 2001 |
| | N/A 0000 | No 2000 | No 2000 | No 0000 | No 0000 |
| | | N/A 0000 | N/A 0000 | | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|---|----------|--|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>References to legal sources: Art. 48 Inheritance Rights Code (Brussels Region). Art. 48 Inheritance Rights Code (Walloon Region). Art. 1.1.0.0.2. and 2.7.4.1.1. Codex Vlaamse Fiscaliteit (Flemish Region).</p> | | <p>References to legal sources: Art. 48 Inheritance Rights Code (Brussels Region) (as amended by Ordonance of 16 May 2002, Moniteur belge, 31 May 2002, p. 24157). Art. 48 Inheritance Rights Code (Walloon Region) (as amended by Regional Decree of 14 November 2001 on inheritance tax between legal cohabitants, Moniteur belge, 29 November, 2001, p. 41076). Art. 1.1.0.0.2. and 2.7.4.1.1. Codex Vlaamse Fiscaliteit (Flemish Region) (as amended by Regional Decree of 30 June 2000, 17 August 2000, p. 27886).</p> | | <p>References to legal sources: Art. 1.1.0.0.2. and 2.7.4.1.1. Codex Vlaamse Fiscaliteit (Flemish Region) (as amended by Regional Decree of 30 June 2000, 17 August 2000, p. 27886).</p> | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|--|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: In Belgium, the surviving spouse benefits in the three regions from the lowest taxation rate just as direct descendants.</p> <p>Since 2014, in the Brussels Region, the surviving spouse also benefits from a full tax inheritance exemption on the family home.</p> <p>Since 2014, in the Walloon Region, the surviving spouse also benefits from a partial tax inheritance exemption on the family home.</p> <p>Since 2007, in the Flemish Region, the surviving spouse also benefits from a full tax inheritance exemption on the family home.</p> | | <p>Explanations and nuances: Between 2001 and 2002, the different Belgian Regions took the decision to apply to legal cohabitants the same rates of inheritance tax applied to spouses.</p> <p>Since 2014, in the Brussels Region, the surviving registered partner also benefits from a full tax inheritance exemption on the family home.</p> <p>Since 2014, in the Walloon Region, the surviving registered partner also benefits from a partial tax inheritance exemption on the family home.</p> <p>Since 2007, in the Flemish Region, the surviving registered partner also benefits from a full tax inheritance exemption on the family home.</p> | | <p>Explanations and nuances: The Flemish Region is the only one to have extended these rates to de facto partners.</p> <p>According to article 1.1.0.0.2. and 2.7.4.1.1. Codex Vlaamse Fiscaliteit, they will benefit from the lowest taxation rate if they cohabited for at least one year with the deceased person and lived in a common household with him or her.</p> <p>Since 2007, in the Flemish Region, the surviving de facto partner also benefits from a full tax inheritance exemption on the family home but only if he or she cohabited for at least three years with the deceased person and lived in a common household with him or her.</p> | |

Jurisdiction: **Belgium**

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Section: **6 - Death**

Question: **6.05 - Survivor's pension**

When one partner dies while being employed, is the surviving partner then normally entitled to a survivor's pension?

(For example on the basis of statutory law, and/or on the basis of a collective labour agreement or arrangements of the employer.)

| Marriage | | Registered partnership | | Cohabitation | |
|--|---------------------|---|--------------------|--|--------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2015 Yes 1967 | 2015 Yes 2003 | 2015 No 2000 | 2015 No 2000 | 2015 No 0000 | 2015 No 0000 |
| ? 0000 | N/A 0000 | N/A 0000 | N/A 0000 | | |
| References to legal sources: Art. 17 of the Royal Decree n° 50 of 24 October 1967 on retirement benefit and survivor's pension of employees (Moniteur belge, 27 October 1967, p. 11246). | | References to legal sources: Art. 17 of the Royal Decree n° 50 of 24 October 1967 on retirement benefit and survivor's pension of employees (Moniteur belge, 27 October 1967, p. 11246). C. const., 60/2009, 25 March 2009, Moniteur belge, 29 May 2009, p. 39365. | | References to legal sources: Art. 17 of the Royal Decree n° 50 of 24 October 1967 on retirement benefit and survivor's pension of employees (Moniteur belge, 27 October 1967, p. 11246). C.A., 94/2001, 12 July 2001, Moniteur belge, 13 November 2001, p. 38681. | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|--|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: The surviving spouse must have been married to the deceased spouse during one year before the death (but pre-marital legal cohabitation can be taken into account).</p> <p>The one year requirement does not apply if:</p> <ul style="list-style-type: none"> - a child is born during the marriage (or the legal cohabitation) - there is a dependent child at the time of the death for whom the deceased spouse received welfare benefit - the death is attributed to an accident or an occupational illness subsequent to the marriage. | | <p>Explanations and nuances: The Constitutional Court expressed doubts on the legitimacy of this difference. Nevertheless, the constitutional judges considered that the further extension of the assimilation between spouses and legal cohabitants rests with the legislature (C. const., 60/2009, 25 march 2009).</p> <p>This inequality between spouses and registered partners is one of the last remaining differences in Belgian social law (B. Delahaye, F. Tainmont et V. Lèbe-Dessard, La cohabitation légale, Bruxelles, Larcier, 2013, pp. 155-157 and 163).</p> | | <p>Explanations and nuances: The Constitutional Court considered that difference is admissible because of the objective difference between marriage and de facto partners and because people have the choice to marry or not. The assimilation between spouses and de facto partners rests with the legislature (C.A., 94/2001, 12 juillet 2001, Moniteur belge, 13 November 2001, p. 38681).</p> <p>This inequality between spouses and de facto partners is one of the last remaining differences in Belgian social law (B. Delahaye, F. Tainmont et V. Lèbe-Dessard, La cohabitation légale, Bruxelles, Larcier, 2013, pp. 155-157 and 163).</p> | |

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Section: **6 - Death**

Question: **6.06 - Wrongful death**

In case of wrongful death of one partner, is the other partner then entitled to compensation from the wrongdoer?

| Marriage | | Registered partnership | | Cohabitation | |
|--|---------------------|--|---------------------|--|---------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2015 Yes 0000 | 2015 Yes 2003 | 2015 Yes 2000 | 2015 Yes 2000 | 2015 Yes 1967 | 2015 Yes 2000 |
| | N/A 0000 | N/A 0000 | N/A 0000 | No 0000 | Doubt 1967 |
| | | | | | No 0000 |
| References to legal sources: Art. 1382 Civil Code. | | References to legal sources: Art. 1382 Civil Code. | | References to legal sources: Art. 1382 Civil Code. Cass., 26 June 1967, Pasicrisie, 1967, p. 1260. Cass., 1 February 1989, Journal des Tribunaux, 1989, p. 354. Cass., 15 February 1990, Journal des Tribunaux, 1990, p. 216. | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|---|----------|--|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: The surviving spouse is entitled to material and non-pecuniary damages.</p> | | <p>Explanations and nuances: The surviving partner is entitled to material and non-pecuniary damages.</p> | | <p>Explanations and nuances: In 1967, the Belgian Court of cassation ruled that a de facto partner could be compensated in case of death of his or her partner. In 1989 and 1990, the Court confirmed that this applies even if the relationship is adulterous.</p> <p>A majority of courts evaluate the damage caused by the wrongful death in exactly the same way as for spouses (if the relationship is proven to be stable) (for instance: Mons, 18 January 1996, <i>Revue Générale des Assurances de Responsabilité</i>, 1997, n° 12.820 and Brussels, 15 May 2003, <i>Revue Générale des Assurances de Responsabilité</i>, 2004, n° 13.899).</p> <p>However, some judges tend to apply a less favourable approach based on the difference between marriage and de facto cohabitation (see: D. de Callatay and N. Estienne, <i>La responsabilité civile : Chronique de jurisprudence 1996-2007</i>, Vol. 2, <i>Le dommage et sa réparation</i>, Bruxelles, Larcier, 2009, pp. 392-395).</p> <p>Since 2000, there is no doubt that a de facto homosexual partner is entitled to a compensation in case of death of his or her partner. Indeed, the law on legal cohabitation voted in 1998 and entered into force in 2000 implies an express legal recognition of homosexual couples.</p> <p>Obviously, this right could have been judicially recognised even before the law on legal cohabitation. However, to our knowledge, there is no published case law on this matter.</p> | |