

## Death and legal family formats in Poland

by Krzysztof Smiszek<sup>1</sup>

*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](http://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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<sup>1</sup> Dr Krzysztof Smiszek (Polish Society of Antidiscrimination Law) is grateful for the useful comments that dr Dorota Pudzianowska (Faculty of Law and Administration, University of Warsaw; Helsinki Foundation for Human Rights) made on an earlier version of the answers in this section of the database.

<sup>2</sup> [Grotius Centre for International Legal Studies](#), Leiden University, Netherlands, [www.leiden.edu](http://www.leiden.edu).



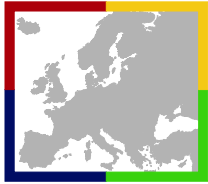
<sup>3</sup> Institut national d'études démographiques, Paris, France, [www.ined.fr](http://www.ined.fr).



**Recommended citation:**  
K. Smiszek, 'Death and legal family formats in Poland', 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](http://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](http://www.familiesandsocieties.eu).



# FamiliesAndSocieties

## Disclaimer

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## 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](http://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](http://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 Poland

The answers concerning Poland 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](http://www.LawsAndFamilies.eu)):

#### Formalisation of legal family formats in Poland by Krzysztof Smiszek (Section 1)

#### Income, troubles and legal family formats in Poland by Dorota Pudzianowska (Section 2)

#### Parenting and legal family formats in Poland by Dorota Pudzianowska (Section 3)

#### Migration and legal family formats in Poland by Dorota Pudzianowska (Section 4)

#### Splitting up and legal family formats in Poland by Krzysztof Smiszek (Section 5)

#### Death and legal family formats in Poland by Krzysztof Smiszek (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.

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Jurisdiction: **Poland**

Source: K. Smiszek, "Death and legal family formats in Poland". 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PL-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 1964	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2012	2015 Yes 2012
				Doubt 0000	Doubt 0000
<b>References to legal sources:</b> Art. 691 ustawa z dnia 23 kwietnia 1964 (Art. 691 of the law from 23 April 1964: Civil Code).		<b>References to legal sources:</b>		<b>References to legal sources:</b> Resolution of the Supreme Court from 28 November 2012 (III CZP 65/12).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            The law regulates that in the event of the death of a tenant, the following persons may enter in the the lease contract: a spouse who is a co-tenant, tenant's children and his spouse, any other persons to whom he/she was obliged to pay alimony, and the person who actually remained in cohabitation with the tenant.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>            The Court stated that the person actually remaining in cohabitation with the tenant - in the meaning of Art. 691 § 1 of the Civil Code - is a person connected with the tenant by bond of emotional, physical and economic nature. It also includes a person of the same sex.</p> <p>The Supreme Court ruling from 2012 was preceded by the European Court of Human Rights judgment of 2010 in the case of Kozak against Poland (No 13102/02), which concerned a similar legal and factual situation. The Supreme Court ruling refers to the standards of protection set up by the ECtHR.</p>	

Jurisdiction: **Poland**

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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 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
<b>References to legal sources:</b>		<b>References to legal sources:</b>		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> Provided that the partners did not sign any other marital contract.		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Poland**

Source: K. Smiszek, "Death and legal family formats in Poland". 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PL-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 1964	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
<b>References to legal sources:</b> Art. 931 § 1 ustawa z dnia 23 kwietnia 1964 (Art. 931 § 1 of the law from 23 April 1964: Civil Code).		<b>References to legal sources:</b>		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> The first to inherit are children of the deceased and his/her spouse. They inherit in equal shares. However, the inheritance part of the spouse shall not be less than one quarter of the entire estate.		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	



Jurisdiction: **Poland**

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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 2007	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
No 0000					
<b>References to legal sources:</b> Art. 4a. ustawa z dnia 28 lipca 1983 r. o podatku od spadków i darowizn (Art. 4a of the law of 28 July 1983 on inheritance and donation tax).		<b>References to legal sources:</b>		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> The law from 1983 was amended in 2007 according to which the surviving spouse is exempted from paying inheritance taks.		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Poland**

Source: K. Smiszek, "Death and legal family formats in Poland". 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PL-Section6.pdf](#) (please use this full citation when citing any information from this table).

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 No 0000	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
References to legal sources:		References to legal sources:		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Polish law does not provide any entitlement to the survivor's pension in the situation when one partner dies while being employed.</p> <p>However, according to the art. 70 of the law of 17 December 1998 on pensions and benefits from the Social Insurance Fund, the widow is entitled to a survivor's pension if:</p> <ol style="list-style-type: none"> <li>1) at the time of her husband's death she reached the age of 50 years and was unable to work; or</li> <li>2) she raises at least one of the children, grandchildren or siblings entitled to a survivor's pension after the death of her husband, who has not reached 16 years of age or 18 years if the child is educated at school, or if she has custody of a child who is completely unable to live independently or completely unable to work and who is entitled to a survivor's pension; or</li> <li>3) she reached the age of 50 or has become unable to work after her husband's death, but not later than within five years after his death or after the cessation of raising any persons as mentioned above under 2.</li> </ol> <p>The above provisions are also applicable to the widower.</p> <p>According to the art. 73.1.1 the survivor's pension is for one entitled person – 85% of the benefit which the deceased was entitled to receive. What has to be underlined, is that the survivor's pension is granted to eligible family members of a person who at the time of death had established a right to a retirement pension.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Poland**

Source: K. Smiszek, "Death and legal family formats in Poland". 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PL-Section6.pdf](#) (please use this full citation when citing any information from this table).

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, but 1964	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 Doubt 1964	2015 Doubt 1964
<b>References to legal sources:</b> Art. 446 ustawa z dnia 23 kwietnia 1964 (Art. 446 of the law from 23 April 1964 Civil Code).		<b>References to legal sources:</b> Art. 446 ustawa z dnia 23 kwietnia 1964 (Art. 446 of the law from 23 April 1964 Civil Code).		<b>References to legal sources:</b> Art. 446 ustawa z dnia 23 kwietnia 1964 (Art. 446 of the law from 23 April 1964 Civil Code).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      In case of death of a person, the perpetrator is obliged to repair the damage and should pay medical expenses and funeral to whoever incurred them. The person in respect of which the deceased was under a statutory obligation to pay maintenance (alimony), may require the perpetrator to pay a pension calculated according to the needs of the victim and to the earning capacity and property of the deceased by the time the probable duration of the maintenance obligation. The same pension may be requested by other close persons that were supported financially by the victim voluntarily.</p> <p>The court may also grant family members of the deceased appropriate compensation if as the result of his/her death there was a significant deterioration in their economic situation.</p> <p>The court may also grant the family members of the deceased adequate amount of pecuniary compensation for the damage suffered.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>                      The court practice is unknown in this respect. But it has to be taken into account that the Civil Code stipulates that the pension may be requested by other close persons that were supported financially by the victim voluntarily if circumstances indicate that it is required by the rules of social coexistence (general rules included into The Civil Code which are open to interpretation by the courts; they provide possibility to assess concrete situations in the light of such values as social justice, good manners etc.).</p>	