



EUROPEAN AND INTERNATIONAL COMPARATIVE LAW MARRIAGE & FAMILY

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Below is a selection of provisions on marriage and family from European constitutions (I) and European (II) and International (III) law and treaties.

I. SELECTION OF EUROPEAN CONSTITUTIONAL PROVISIONS

Constitution of Albania (1998)

Article 53

1. Everyone has the right to marry and have a family.
2. Marriage and family enjoy special protection of the state.

Constitution of Armenia (1995)

Article 35.

The family is the natural and fundamental cell of the society.

Men and women of marriageable age have the right to marry and found a family according to their free will. They are entitled to equal rights as to marriage, during marriage and divorce.

Dismissal from work for reasons connected with maternity is prohibited. Every woman employee shall, in case of pregnancy and childbirth, have the right to a paid maternity leave and a leave to care for a newborn child or to adopt a child.

Constitution of the Azerbaijan Republic

Article 34. Right for marriage

- I. Everyone has the right to marry on reaching the age specified by legislation.
- II. Marriages shall be concluded voluntarily. Nobody should be forced into marriage.
- III. Family and marriage are protected by state. Maternity, paternity and childhood are protected by the law. The state provides support to large families.
- IV. Rights of wife and husband are equal. Care and education of children constitute both right and responsibility of parents.
- V. Responsibility of children is to respect parents, look after them. Children who are of age (18) and capable of working must support disabled parents.

Constitution of Belarus (1996)

Article 32.

Marriage, the family, motherhood, fatherhood, and childhood shall be under the protection of the State.

On reaching the age of consent women and men shall have the right to enter into marriage on a voluntary basis and start a family. A husband and wife shall be equal in family relationships.

Parents or persons in loco parentis shall be entitled and required to raise their children and to take care of their health, development and education. No child shall be subjected to cruel treatment or humiliation or used for work that may be harmful to its physical, mental or moral development. Children shall care for their parents or persons in loco parentis and render them assistance.

Children may be separated from their family against the consent of their parents or persons in loco parentis only according to the verdict of the court of law, if the parents or persons in loco parentis fail in their duty towards their children.

Women shall be guaranteed equal rights with men in their opportunities to receive education and vocational training, promotion in labour, socio-political, cultural and other spheres of activity, as well as in creating conditions safeguarding their labour and health.

The young people are guaranteed the right for their spiritual, moral and physical development.

The State shall create all necessary conditions for the free and effective participation of the young people in the political, social, economic and cultural development of society.

Constitution of the Republic of Bulgaria (1991)

Article 46

1. Matrimony shall be a free union between a man and a woman. Only a civil marriage shall be legal.

2. Spouses shall have equal rights and obligations in matrimony and the family.

3. The form of a marriage, the conditions and procedure for its conclusion and termination, and all private and material relations between the spouses shall be established by a law.

Article 47

1. The raising and upbringing of children until they come of legal age shall be a right and obligation of their parents and shall be assisted by the state.
2. Mothers shall be the object of special protection on the part of the state and shall be guaranteed prenatal and postnatal leave, free obstetric care, alleviated working conditions and other social assistance.
3. Children born out of wedlock shall enjoy equal rights with those born in wedlock.
4. Abandoned children shall enjoy the protection of the state and society.
5. The conditions and procedure for the restriction or suspension of parental rights shall be established by a law.

Constitution of the Republic of Croatia as amended in 2013

Article 62

The family shall enjoy special protection of the state.

Marriage is a life union of a woman and a man. (In Croatian: Brak je životna zajednica žene i muškarca.)

Marriage and legal relations in marriage, common-law marriage and the family shall be regulated by law.

Article 63

The State shall protect maternity, children and young people, and shall create social, cultural, educational, material and other conditions conducive to the realization of the right to a decent life.

Constitution of the Czech Republic (1992)

Article 32

(1) Parenthood and the family are under the protection of the law. Special protection is guaranteed to children and adolescents.

(2) Pregnant women are guaranteed special care, protection in labor relations, and suitable labor conditions.

(3) Children, whether born in or out of wedlock, enjoy equal rights.

(4) It is the parents' right to care for and bring up their children; children have the right to parental upbringing and care. Parental rights may be limited and minor children may be removed from their parents' custody against the latter's will only by the decision of a court on the basis of the law.

(5) Parents who are raising children have the right to assistance from the state.

(6) Detailed provisions shall be set by law.

The Constitution of Finland (1999)

Section 19 [The right to social security]

Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care.

Everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider.

The public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population. Moreover, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.

Basic Law for the Federal Republic of Germany (1949)

Article 6 [Marriage and the family; children born outside of marriage]

- (1) Marriage and the family shall enjoy the special protection of the state.
- (2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.
- (3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect.
- (4) Every mother shall be entitled to the protection and care of the community.
- (5) Children born outside of marriage shall be provided by legislation with the same opportunities for physical and mental development and for their position in society as are enjoyed by those born within marriage.

Constitution of Greece (1975)

Article 21

1. The family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State.

Fundamental Law of Hungary (2011)

Article L

- (1) Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the nation's survival. Family ties shall be based on marriage and the relationship between parents and children.
- (2) Hungary shall support the commitment to have children.
- (3) The protection of families shall be regulated by a cardinal Act.

Article 15

The Republic of Hungary shall protect the institutions of marriage and the family.

Article 67

- (1) In the Republic of Hungary all children have the right to receive the protection and care of their family, of the State and of the society which is necessary for their proper physical, mental and moral development.
- (2) Parents have the right to choose the education to be given to their children.
- (3) Separate regulations shall establish the responsibilities of the State with regard to the condition and protection of the family and youth.

Act CCXI of 23rd December 2011 on the Protection of Families.

The law expresses that “the family is an autonomous community established in human history before the emergence of law and the State, which rests on moral grounds.” The law also recognises family as “the most important national resource of Hungary. As the basic unit of society the family is the guarantee for the nation’s survival and the natural environment of the development of human personality, which must be respected by the State”.

“The State shall protect the institutions of family and marriage, also by reason of their own dignity and value”.¹ Section 7 adds that the family is “a system of relations which generates an emotional and economic community of natural persons, based on the marriage of a man and a woman, next of kinship or adoptive guardianship”.²

Marriage is “the solid ground for the establishment of the family”.³

The law provides that the State shall “assist parents in fulfilling their commitment to have children”⁴ (Sect. 1-3)

Constitution of the Republic of Ireland (1937)

The Family

Article 41

1^o The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2^o The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

2. 1^o In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2^o The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

3. 1^o The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

2^o A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that

i. at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years.

ii. there is no reasonable prospect of a reconciliation between the spouses.

iii. such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and

iv. any further conditions prescribed by law are complied with.

3^o No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this

¹ Act, supra note 6 at sec. 1.

² Act, supra note 6 at sec. 7.

³ Hungarian Act on the Protection of the Family, pmb. l.

⁴ Act, supra note 6 at pmb. l.

Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved.

Education

Article 42

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.
2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
3. 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.
4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.
5. In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

Constitution of the Italian Republic (1947)

Article 29

The Republic recognizes the rights of the family as a natural society founded on matrimony.

Matrimony is based on the moral and legal equality of the spouses within the limits laid down by law to guarantee the unity of the family.

Article 30

It is the duty and right of parents to support, instruct and educate their children, even those born outside of matrimony.

In cases of the incapacity of the parents, the law provides for the fulfilment of their duties.

The law ensures to children born outside of marriage full legal and social protection, compatible with the rights of members of the legitimate family.

The law lays down the rules and limitations for ascertaining paternity.

Article 31

The Republic assists through economic measures and other provisions the formation of the family and the fulfilment of its duties, with particular consideration for large families.

It protects maternity, infancy and youth, promoting the institutions necessary thereto.

Constitution (Satversme) of the Republic of Latvia (1922)

Article 110

The State shall protect and support marriage - a union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence.

Constitution of the Republic of Lithuania (1992).

Article 38

The family shall be the basis of society and the State.

Family, motherhood, fatherhood, and childhood shall be under the care and protection of the State.

Marriage shall be entered into upon the free consent of man and woman.

The State shall register marriages, births, and deaths. The State shall also recognise marriages registered in church.

In the family, spouses shall have equal rights.

The right and duty of parents is to bring up their children to be honest individuals and loyal citizens, as well as to support them until they come of age.

The duty of children is to respect their parents, to care for them in old age, and to preserve their heritage.

Article 39

The State shall take care of families bringing up children at home, and shall render them support in the manner established by law.

The law shall provide for paid maternity leave before and after childbirth, as well as for favourable working conditions and other privileges.

Children who are under age shall be protected by law.

Constitution of the Republic of Macedonia (1991)

Article 40

The Republic provides particular care and protection for the family. The legal relations in marriage, the family and cohabitation and regulated by law.

Parents have the right and duty to provide for the nurturing and education of their children. Children are responsible for the care of their old and infirm parents.

The Republic provides particular protection for parentless children without parental care.

The Constitution of the Republic of Montenegro

Article 71 - Marriage

Marriage may be entered into only on the basis of a free consent of a woman and a man.

Marriage shall be based on equality of spouses.

Article 72 - Family

Family shall enjoy special protection.
Parents shall be obliged to take care of their children, to bring them up and educate them.
Children shall take care of their own parents in need of assistance.
Children born out of wedlock shall have the same rights and responsibilities as children born in marriage.

The Constitution of the Republic of Moldova (1994)

Article 48 [Family]

(1) The family is the natural and fundamental group unit of society and as such has the right to be protected by the State and by society.
(2) The family is founded on the freely consented marriage of husband and wife, on the spouses equality of rights and on the duty of parents to ensure their children's upbringing and education.
(3) The law shall establish under which conditions a marriage may be concluded, terminated or annulled.
(4) Children have a duty to look after their parents and help them in need.

Article 49 [Protection of Family and Orphaned Children]

(1) By economic and other actions the State shall support the formation and development of families, and the fulfillment of their duties.
(2) The State shall protect the motherhood, the children and the young and promote the development of the institutions required to put that protection into effect.
(3) All efforts aimed at maintaining, bringing up and educating orphaned children and those children deprived of parental care constitute the responsibility of the State and of society. The state promotes and supports charitable activities for the benefit of these children.

The Constitution of the Republic of Poland (1997)

Article 18

Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

Article 71

1. The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from public authorities.
2. A mother, before and after birth, shall have the right to special assistance from public authorities, to the extent specified by statute.

Constitution of the Portuguese Republic (Seventh Revision 2005)

Article 36 [Family, Marriage and Filiation]

1. Everyone has the right to form a family and to marry under conditions of full equality.

2. The law shall regulate the requisites for and the effects of marriage and its dissolution by death or divorce, regardless of the form in which it was entered into.
3. Spouses have equal rights and duties in relation to their civil and political capacity and to the maintenance and education of their children.
4. Children born outside wedlock may not be the object of any discrimination for that reason, and neither the law, nor official departments or services may employ discriminatory terms in relation to filiation.
5. Parents have the right and the duty to educate and maintain their children.
6. Children may not be separated from their parents, save when the latter do not fulfil their fundamental duties towards them, and then always by judicial decision.
7. Adoption shall be regulated and protected in accordance with the law, which must lay down swift forms for completion of the respective procedural requirements.

The Constitution of Romania (1991)

Article 48 [Family]

(1) The Family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children.

(2) The terms for entering into marriage, dissolution and nullity of marriage, shall be established by law. Religious wedding may be celebrated only after civil marriage.

(3) Children born out of wedlock are equal before the law with those born in wedlock.

Constitution of the Russian Federation (1993)

Article 7

“... support of family, motherhood, fatherhood and childhood, disabled and elderly persons shall be guaranteed (...).”

Article 38

1. Maternity, childhood and family shall be protected by the state.
2. The care of children and their upbringing shall be an equal right and duty of parents.
3. Able-bodied children who have attained 18 years shall be obliged to care for their not able-bodied parents.

Constitution of the Republic of Serbia

Article 62 – Right to enter into marriage and equality of spouses

Everyone shall have the right to decide freely on entering or dissolving a marriage.

Marriage shall be entered into based on the free consent of man and woman before the state body.

Contracting, duration or dissolution of marriage shall be based on the equality of man and woman.

Marriage, marital and family relations shall be regulated by the law.
Extramarital community shall be equal with marriage, in accordance with the law.

The Constitution of the Slovak Republic (1992)

Article 41

(1) "Marriage is a unique union between a man and a woman. The Slovak Republic broadly protects and promotes its good⁵. Matrimony, parentage, and family shall be protected by law. Special protection shall be enjoyed by children and young persons.

(2) Pregnant women shall be entitled to special treatment, terms of employment, and working conditions.

(3) Equal rights shall be guaranteed to both children born of legitimate matrimony and those born out of lawful wedlock.

(4) Child care and upbringing shall be the right of parents; children shall have the right to parental care and upbringing. The rights of parents may be limited and minor children may be separated from parents against the parents' will only by a court order as provided by law.

(5) Parents taking care of their children shall have the right to assistance provided by the State.

(6) Further details of the rights defined in sections (1) to (5) of this Article shall be set by law.

The Constitution of the Republic of Slovenia (1991)

Article 53 [Marriage and the Family]

Marriage is based on the equality of each spouse. The ceremony of marriage shall be performed by the appropriate civil authority.

Marriage, the legal rights and obligations flowing from marriage, the legal rights and obligations within the family, together with the legal rights and obligations arising by reason of relationships outside marriage, shall be determined by statute.

The State shall protect the family, motherhood, fatherhood, children and young people and shall provide proper conditions for effecting such protection.

Article 54 [The Rights and Obligations of Parents]

Parents shall have the right and obligation to maintain, educate and guide their children. In accordance with statute, such right or obligation may be abrogated in whole or in part, but only in so far as is necessary to protect the interests of such children.

Children born out of wedlock shall have the same rights as children born within marriage.

Spanish Constitution (1978)

Article 32

1. Men and women are entitled to marry on a basis of full legal equality.

⁵ Explanatory notes appended to an earlier version of the legislation explicitly state that, because of this definition of marriage, "*marriage therefore cannot arise between persons of the same sex.*"

2. The law shall regulate the forms of marriage, the age at which it may be entered into and the required capacity therefor, the rights and duties of the spouses, the grounds: for separation and dissolution, and the consequences thereof.

Article 39

1. The public authorities shall ensure the social, economic and legal protection of the family.

Federal Constitution of the Swiss Confederation of April 18, 1999 (Status of 23 September 2012)

Article 41 c.

The Confederation and the Cantons shall strive to ensure that, in addition to personal responsibility and private initiative, (...)

c. the family as a community of adults and children shall be protected and encouraged;

Article 116 [Family Allocations and Maternity Insurance]

1 In fulfilling its tasks, the Confederation shall take into account the needs of the family. It may support measures to protect the family.

Constitutions of Ukraine (1996 & 2014)

Article 51

Marriage is based on the free consent of a woman and a man. Each of the spouses has equal rights and duties in the marriage and family.

Parents are obliged to support their children until they attain the age of majority. Adult children are obliged to care for their parents who are incapable of work.

The family, childhood, motherhood and fatherhood are under the protection of the State.

II. EUROPEAN LAW

European Convention on Human Rights (1950)

Article 12 – *“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”*

European Social Charter (revised) (1996)

Article 16 - *The right of the family to social, legal and economic protection: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”*

Charter of Fundamental Rights of the European Union (2000)

Article 9 - “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights”;

Article 33 – Family and professional life: “The family shall enjoy legal, economic and social protection.”

III. INTERNATIONAL LAW

Universal Declaration of Human Rights (1948)

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Declaration of the Rights of the Child (UN General Assembly Resolution 1386 (XIV) of 10 December 1959)

“WHEREAS the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,...”

International Covenant on Economic, Social and Cultural Rights (entry into force 3 January 1976)

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

International Covenant on Civil and Political Rights (entry into force 23 March 1976)

Article 23

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

Convention on the Rights of the Child (adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989)

Preamble

“Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,…”

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 7

The child (...) *“shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”*

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity (...)

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.