

LEGAL REGULATION OF DE FACTO MARRIAGE

REGULAÇÃO LEGAL DO CASAMENTO DE FATO

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Received: 05 Dec 2022

Accepted: 15 Jan 2023

Published: 23 Feb 2023

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implementar mecanismos legais para proteger os interesses das pessoas nessas relações. No decurso do estudo, métodos sistêmico-estruturais, comparativos, lógicos e linguísticos, análise, síntese, indução, dedução, abstração e idealização foram aplicados a materiais de estudo e processamento no campo da orientação reguladora do casamento de facto. Além disso, um inquérito por questionário serviu para esclarecer na prática certas questões nesta área. No decurso do estudo, foram delineadas as tendências mais importantes da literatura científica sobre a questão das relações matrimoniais de facto. Com base nos resultados de um questionário, o autor esclarece o ponto de

Abstract: Nowadays, apart from the existence of the institution of marriage in the traditional sense, the world is witnessing the spread of the model of men and women, as well as same-sex persons, living together as a family without official state registration of the fact of creating such a family. The issue of de facto marriage is becoming increasingly widespread and socially important in society. Every year, fewer people want to register their family relationships. At the same time, the legislator is trying to develop, improve and implement legal mechanisms to protect the interests of people in such relationships. In the course of the study, systemic-structural, comparative, logical, and linguistic methods, analysis, synthesis, induction, deduction, abstraction, and idealization were applied to study and process materials in the field of regulatory guidance of de facto marriage. Moreover, a questionnaire survey served to clarify certain issues in this area in practice. In the course of the study, the most important trends in the scientific literature on the issue of actual marital relations have been outlined. Based on the results of a questionnaire survey, the author elucidates the point of view of practicing lawyers and scholars who study marital relations on certain practical aspects of this issue.

Keywords: State registration of marriage. Same-sex marriage. Family law. Traditional family. Civil partnership. Marriage and family relations.

Resumo: Atualmente, para além da existência da instituição do casamento no sentido tradicional, o mundo assiste à difusão do modelo de homens e mulheres, bem como de pessoas do mesmo sexo, que vivem juntos como uma família sem registo oficial do Estado do facto de terem criado uma tal família. A questão do casamento de facto está a tornar-se cada vez mais generalizada e socialmente importante na sociedade. Todos os anos, menos pessoas querem registar as suas relações familiares. Ao mesmo tempo, o legislador está a tentar desenvolver, melhorar e

vista dos advogados e estudiosos praticantes que estudam as relações conjugais sobre certos aspectos práticos desta questão.

Palavras-chave: Registo estatal do casamento. Casamento entre pessoas do mesmo sexo. Direito de família. Família tradicional. Parceria civil. Casamento e relações familiares.

1. Introduction

Despite the widespread use of de facto marital relations in society, the legislation of the vast majority of countries does not provide for the sufficiently complete legal regulation of these relations. However, this does not apply to countries whose legal framework regulates relations between unmarried couples on an equal basis with married couples.

The concept, components, and main features of the regulatory framework for de facto marriage in the world are analyzed in the theoretical part of this study.

The practical part of the study includes an assessment of the degree of severity of the trends in the regulation of cohabitation between men and women in de facto relationships, which, according to the survey participants, will become most widespread in the future. In this part of the study, the authors identify the main aspects that deserve prior attention in terms of arguments for giving legal force to the fact of joint ownership of property by a woman and a man who are not married but in a de facto marriage. Besides that, the authors identify the most crucial issues in the area of de facto marital relations which require additional scientific study. Moreover, the position of the respondents on the direction of development of the gender issue in de facto relationships in the coming years is also determined.

Based on the results of the study, conclusions were drawn regarding the issues raised. In particular, in the course of the survey, the respondents determined that the most widespread trend in the future will be to regulate relations in cohabitation in de facto marriage. The survey showed the main issues that deserve the most attention in terms of arguments to give legal force to the fact of joint ownership of property acquired in a de facto joint relationship. These include evidence that a man and a woman live as a family, run a household together, and have mutual rights and obligations. It also includes evidence of the time and sources of financial resources for the acquisition of the property. At the same time, the respondents identified the most important issue in the field of de facto marriage that requires additional scientific elaboration. This is the registration of civil status acts in de facto relationships. Moreover, according to the survey participants, today, in the

context of globalization and democratization of social processes, including the legal sphere, the gender issue in de facto relationships will develop in the following thematic areas shortly: "Peculiarities of legislation on de facto marriage in countries where same-sex marriages are allowed", as well as "Peculiarities of the rights and obligations of partners in de facto marriage".

The study aims to determine the point of view of practicing lawyers and scholars who study marriage relations on certain practical aspects of the legal regulation of de facto marriage.

2. Literature review

Under the norms of the vast majority of countries, marriage is defined as a family union of a woman and a man registered in the State Register of Laws on Civil Status (Banerjee & Rao 2022).

It is emphasized that the most important characteristics of an officially recognized family and marriage are heterosexuality (the opportunity to marry is granted exclusively to two people of different sexes - a woman and a man), and registration of marriage following a legally defined procedure and by a body determined by law. These features are not complete; other characteristics of marriage are its voluntariness (i.e., the voluntary consent of both spouses), the attainment of the marriageable age of the woman and man entering into marriage, monogamy (the possibility of being in only one marriage at a time), and equality of rights and obligations of spouses. The characteristics of marriage also include the absence of civil status acts on marriage registered by state registration authorities, either between both spouses or between one of the spouses and third parties. Marriage must include the intention of a woman and a man to build a stable relationship inherent in marriage, permanent living together, joint housekeeping, mutual financial support and care, and publicity of the relationship (Perelli-Harris et al, 2019).

Thus, as can be seen from the above list, the institution of de facto marital relations is characterized by the vast majority of characteristics defined by countries as signs of marriage. However, the most important constitutional feature of de facto marital relations is missing from the list of features of de facto marital relations - registration of such relations following the procedure legally defined by law, i.e. their official state registration.

The above difference means that a characteristic such as the emergence of mutual rights and obligations of spouses is absent (Saxey et al, 2022).

Family legislation in the vast majority of countries does not take a clear position on the regulation of de facto marital relations. On the one hand, it does not recognize de facto marital relations as an alternative form of family ties to marriage, but on the other hand, it partially regulates the legal consequences of such de facto marriage (Zhao et al, 2022).

Marital property acquired in a "de facto marital relationship" is generally governed by civil law. In particular, if a woman and a man live in the same family, are not married, but are not in another marriage, the such property belongs to the joint property acquired during their cohabitation (Namira, Isma & Turnip, 2019).

This means that the provisions of family law governing legal relations concerning spouses' property are applied to material things acquired during the de facto relationship (Zhao et al, 2022).

At the same time, as some scholars emphasize, the law does not recognize the rights and obligations of spouses as a basis for creating a union of a woman and a man living in a de facto marriage, but it does establish their rights to joint property (Cheng & Yan, 2021).

3. Materials and methods

A practical study of current trends in the regulation of de facto marriage was performed by interviewing 211 practicing lawyers and 182 academics engaged in research and teaching activities. This survey was conducted based on HEIs of Law in Volyn, Khmelnytsky, Odesa, and Kyiv oblasts of Ukraine. The survey was carried out using the Survio service.

4. Results

In the course of the survey, respondents identified the following degree of intensity of the main trends in the regulation of relations between men and women in de facto marriages before their legalization, which are favored by legislators in the vast majority of countries and which, according to the survey participants, will become more widespread in the future (Figure 1).

According to the survey, respondents believe that the trend of regulating cohabitation relationships as de facto relationships will be most widespread in the future, although the gap between this position and the opposite view is not significant.

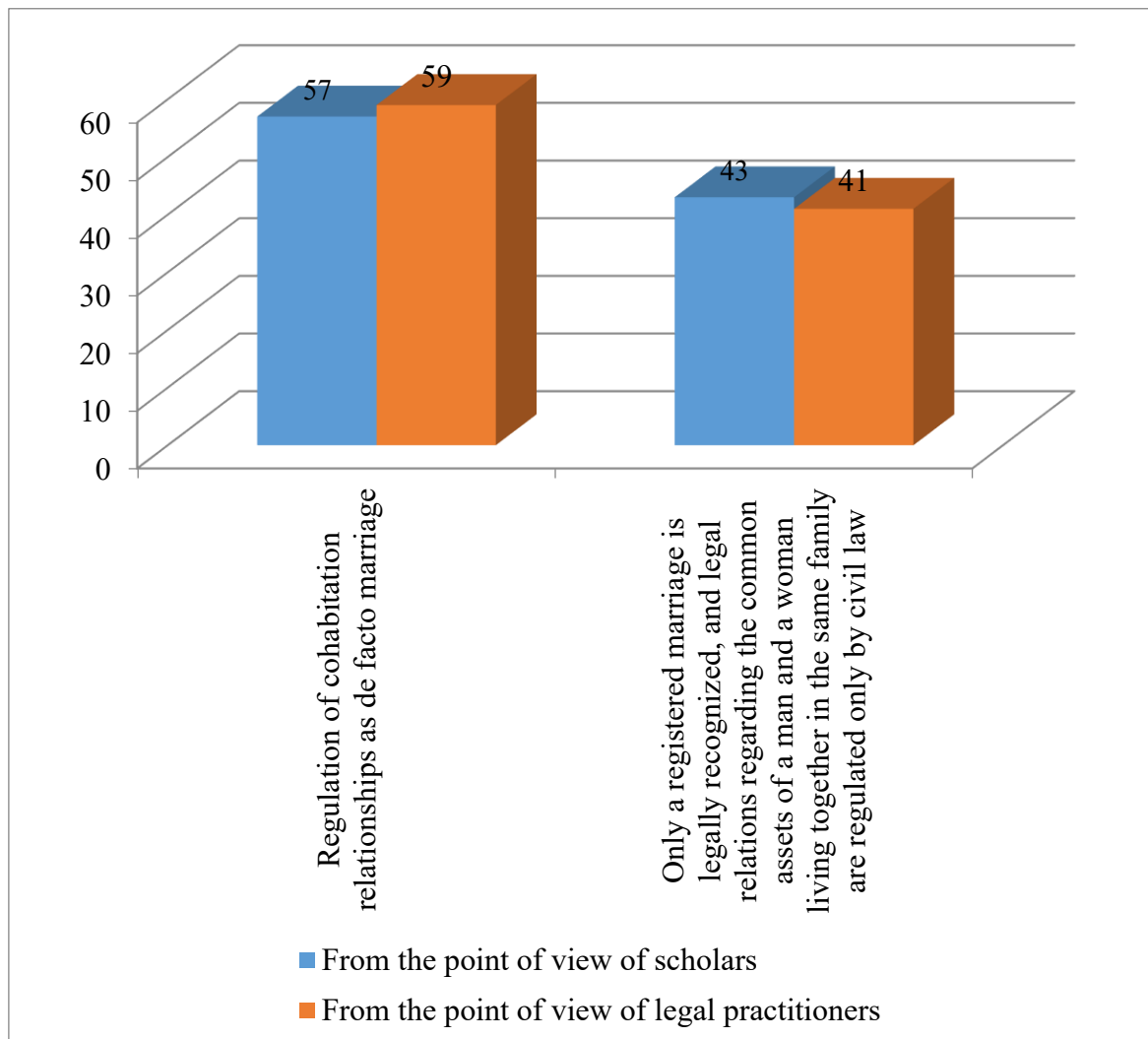


Figure. 1. Degree of the intensity of trends in regulation of cohabiting men and women in de facto marriage, which, according to the survey participants, will become most widespread in the future, %

Source: built by the authors.

As is well known, the fact that a woman and a man who are not married jointly acquire property is not an unconditional basis for recognizing such property as a joint one.

At the same time, the aspects that deserve the most attention in terms of arguments for giving legal force to the fact of joint ownership of such property are (Figure 2):

- evidence that a man and a woman living in the same family, run a household together, and have mutual rights and obligations;

– evidence of time and sources of financial resources for the acquisition of property.

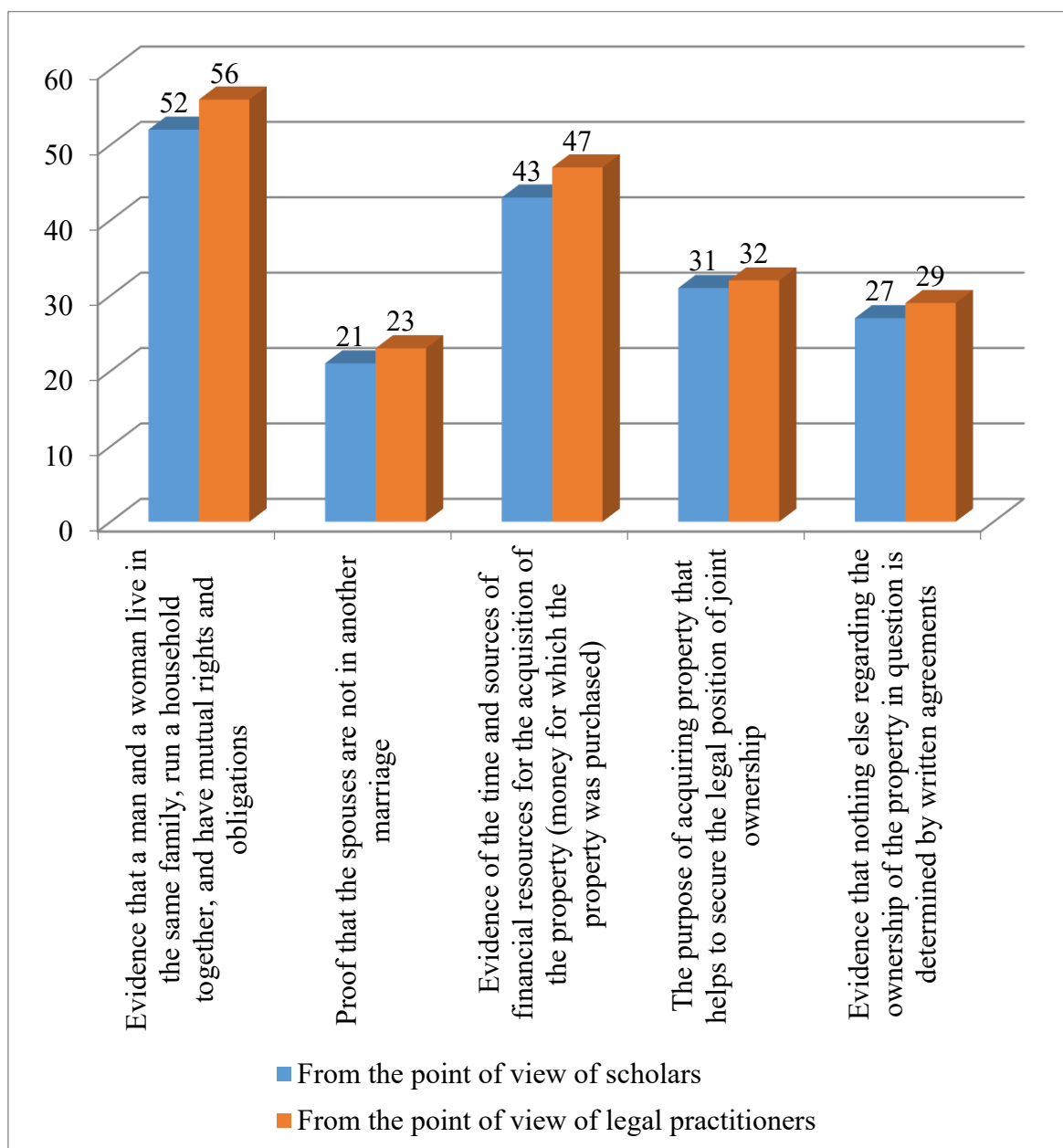


Figure. 2. Aspects that deserve the most attention in terms of the rationale for giving legal force to the fact of joint ownership of property by a woman and a man who are not married but in a de facto relationship, %

Source: built by the author

Regarding the most important issues in the field of de facto marriage, which, according to respondents, require additional scientific refinement in the scientific field, respondents named (Figure 3).

As can be seen from Figure 3, the area of civil registration in de facto relationships requires the most additional research.

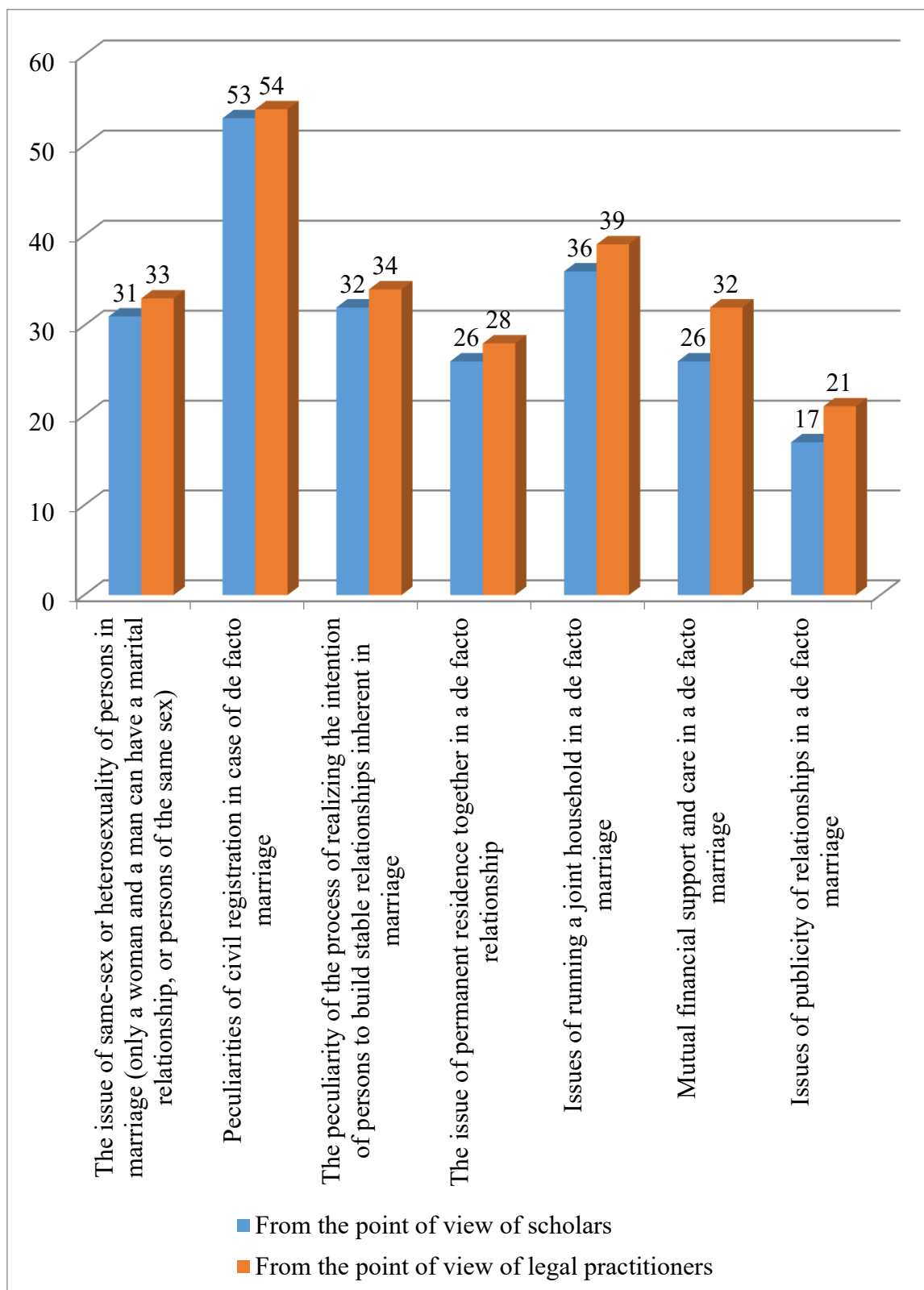


Figure. 3. The most important issues in the field of de facto marriage that require additional scientific research, %

Source: built by the authors.

According to the survey participants, in the context of globalization and democratization of social processes, including the regulatory and legal sphere, the gender issue in de facto marriage will develop in the following thematic areas in the foreseeable future (Figure 4):

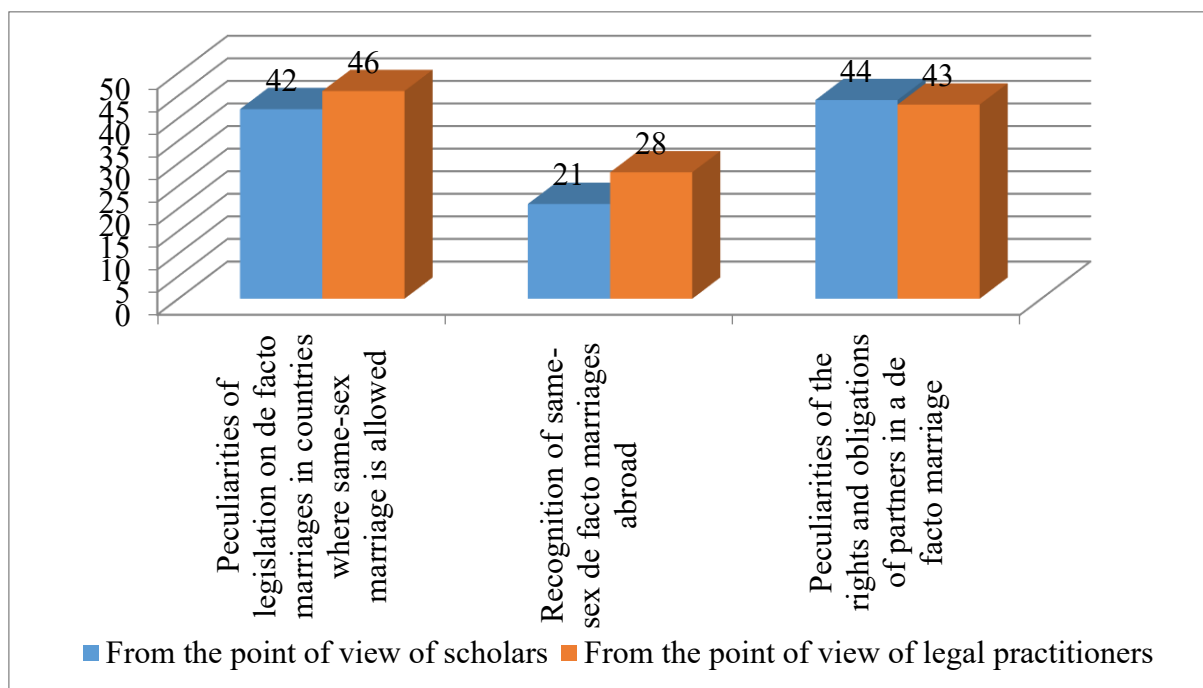


Figure. 4. Position of the respondents on the directions of development of the gender issue in de facto marriage in the coming years, %

Source: built by the author

- peculiarities of legislation on de facto marriage in countries where same-sex marriage is allowed;
- peculiarities of the rights and obligations of partners in same-sex de facto marriage.

5. Discussion

Despite several regulatory aspects that are legally enshrined in the current legislation of many countries, there are still many problems that make actual marital relations significantly inferior to the legal guarantees of an officially registered marriage (Dew, Saxey & Mettmann, 2022), (Paez et al, 2020).

As the analysis of scientific literature and the regulatory framework of countries around the world has shown, the legal consequences of personal relationships that arise between people who have the right to start a family but are in no hurry to enter into an official marriage are not equally regulated by the legislation of different countries (Van Tilburg & Suanet, 2019).

In recent years, the number of European countries recognizing various forms of guest marriages has increased. This list includes such countries as Norway, Iceland, France, Belgium, Spain, Germany, Sweden, Switzerland, Ukraine, and others. It is noteworthy that for most European countries, gender de facto relations for same-sex couples are an alternative to legal marriage (DeRose et al, 2021).

Interestingly, in the vast majority of countries, the concept of marriage is established following their domestic legislation and usually contradicts this European vision (Lin et al, 2022).

One of the states whose legislation provides for legal consequences of cohabitation of men and women without marriage registration is Hungary, although it is not an innovator in this area. Sweden was the first European country to legally recognize and regulate the relationship between partners in de facto family relationships, adopting the Domestic Partnership Act in 1987 (Dew, Trujillo & Saxey, 2022), (Rose et al, 2021).

Currently, this country is considered a leader among European countries in terms of the number of family unions that live outside the official registration of marriage relations (Jeanfreau et al, 2021).

It should be recognized that the legislator is trying to legally define existing and widespread relationships between people. Therefore, it is hardly appropriate to say that the law destroys the de facto family by limiting its regulation. Recently, the trend towards an increase in the number of de facto marriages has been observed, as a rule, in European countries. The almost doubling of de facto unions over the past twenty years requires the development and improvement of appropriate legal regulation (Ye, DeMaris & Longmore, 2018), (Pan & Liu, 2021), (Nutz, Nelles & Lersch, 2022).

The growth in the number of de facto marriages in European countries has led to the refinement of family law (Isma & Turnip, 2019).

In particular, in the area of regulating the property of the subjects of actual marital relations, determining the obligation of each spouse to participate in the costs of securing property, actual cohabitation, the consent of a partner to the execution of transactions by

the other partner, liability for each other's debts, etc. are of utmost importance (Park & Choi, 2020), (Jeanfreau, Holdon & Brazeal, 2020).

6. Conclusions

Thus, the analysis of the scientific literature on the research topic and the results of the questionnaire survey have shown that in European and other countries of the world, there are different approaches to regulating the property of partners in de facto relationships.

Legislation in this area should be improved in the direction of providing for the obligations of each partner, taking into account the rights and costs of maintaining a joint property.

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