

# Research on the Legal Regulation of Property Division After the Termination of Cohabitation Without Marriage

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## ABSTRACT

Cohabitation without marriage refers to a stable and continuous living state formed by heterosexuals who have reached the legal marriage age, are unmarried, and live together without going through marriage registration procedures. The growing trend of cohabitation without marriage is driven by factors such as increasing life pressure and the development of individual awareness. As a form of family formation, cohabitation without marriage, especially the property relations therein, should be subject to legal regulation. However, due to the particularity of cohabitation without marriage, the handling of its property relations cannot directly copy the rules applicable to marital relations. For parties with an agreement on property, their agreement shall be followed. In the absence of such an agreement, the ownership of respective properties shall be determined based on the separate property system, and the joint property shall be divided with the joint tenancy system as a supplement. In addition, the compensation rule for housework labor shall be taken into account to protect the interests of the vulnerable party in the cohabitation relationship.

## KEYWORDS

Cohabitation without marriage; Property relations; Joint tenancy; Compensation for housework labor

## 1. THE DEVELOPMENT TREND OF COHABITATION WITHOUT MARRIAGE

### 1.1. The Development Trend of Cohabitation Without Marriage in Foreign Countries

From the perspective of traditional legal systems, the regulation of marriage forms has existed since ancient Roman law. However, concubinage, a living mode for men and women outside marriage, was also recognized and developed into a complete system of "concubinage and cohabitation". Although the premise of the cohabitation discussed in this paper is that both parties are unmarried, the system of "concubinage and cohabitation" under Roman law indicates that cohabitation has a long history and was recognized and regulated by law as early as the Roman law period. This system is also in line with the historical tradition of Roman law from the family perspective. Inheriting the concept of private law from Roman law, European law also proceeds from the family perspective and recognizes different forms of family formation in society regardless of their legality. Moreover, with the development of the regulation of cohabitation without marriage, Europe also recognizes that same-sex cohabitation without marriage can form a family.

From the perspective of social development, from the late 20th century to the early 21st century, global economic changes, policy evolution and cultural development have led to social changes. The improvement of women's economic status and the weakening of patriarchal culture have resulted in the gradual transformation of public attitudes towards marriage and family. Society has become more tolerant of cohabitation without marriage outside of marriage, which has thus become an alternative

form of union between men and women besides marriage. In addition, in the 1970s, European and American countries began the "second demographic transition", with the rise of individual awareness. The lifestyle of individuals choosing to live independently has made cohabitation a global trend. For young men and women, living together before marriage to understand each other can solve the problem of information asymmetry before marriage and enhance the stability of marriage after marriage. For divorced or widowed elderly people, cohabitation without marriage is also a choice to seek spiritual support for companionship compared with getting married, and this method is more convenient.

On the whole, with the development of society and the change of public attitudes, the way for men and women to form a family has transitioned from the institutionalized way of "marriage" to a combination of institutionalized and deinstitutionalized ways of "marriage" and "cohabitation without marriage". Cohabitation without marriage has become an important choice for men and women to form a family and live together besides marriage. And with the highly developed society, individual awareness will be more deeply rooted in people's hearts, and the release of the concept of freedom will lead individuals to form heterosexual relations and establish families more through cohabitation without marriage.

## **1.2. The Development Trend of Cohabitation Without Marriage in China**

Regarding the current development trend of cohabitation without marriage in Chinese society, this paper mainly focuses on the unmarried youth group. The main reason is that although cohabitation without marriage also exists among divorced and widowed elderly people, unmarried youth are the indicator of the future trend of marriage changes in society. Some scholars have conducted a survey on young people aged 18-35 and found that unmarried young people hold a more independent attitude towards marriage and are reserved about the concept of "must marry". In addition, unmarried young people have severe anxiety about the economy, children, and post-marital life in marriage, so the future of Chinese unmarried young people entering marriage and forming families is unclear. Other scholars have taken contemporary college students as the research object and based on the analysis of more than 30,000 survey data, found that contemporary college students also emphasize the free choice of marriage. Although they have expectations for marriage, they still have anxiety about marriage such as "conflict between marriage and career", and their acceptance of "cohabitation without marriage" has been greatly improved.

From the perspective of social life, in recent years, the concepts of freedom of marriage and love, individual freedom, and gender equality have been deeply rooted in people's hearts and developed vigorously, and the phenomenon of cohabitation without marriage has become increasingly obvious. It is common for men and women to live together in a romantic relationship, and there are also cases where men and women with the tendency of "celibacy" form a family only by living together without going through marriage registration. Young people are afraid of the high risks of marriage and divorce and build intimate heterosexual relations through cohabitation. Men and women also use the way of "trial marriage" through cohabitation to understand each other before marriage, avoid the risk of information asymmetry between the two parties, and enhance the stability of marriage. Therefore, the phenomenon of cohabitation without marriage is the result of diversification, a "microcosm of heterosexual union in modern society", and is bound to develop continuously in the future.

Cohabitation without marriage has been widely recognized and accepted by the public, and its proportion in society is also increasing. For both parties, if there is no legal regulation, the legal liabilities borne by both parties will be much less than those in marital relations, which is not conducive to the protection of the rights and interests of both parties. Moreover, the expansion of the phenomenon of cohabitation without marriage means the continuous expansion of the group of cohabitation without marriage, so the social problems arising from cohabitation without marriage can no longer be ignored by the law.

### 1.3. The Policy Evolution of Cohabitation Without Marriage in China

Since the founding of the People's Republic of China, some scholars believe that the policy evolution of cohabitation without marriage in China can be generally summarized as a transition from "illegal" to "legal". Some scholars have summarized the policy changes as "Prohibition - Neutrality - Appropriate Protection", and others as "Crackdown - Wait-and-see". This paper holds that although the simple classification of "illegal" and "legal" can show the general direction of China's policy evolution on cohabitation without marriage, it is too rough to reflect the details in the policy. The "Wait-and-see" description is also inconsistent with the current regulatory situation of the active regulation of property division in cohabitation cases in the Interpretation (II). Therefore, this paper introduces the policy evolution of cohabitation without marriage in China since the founding of the People's Republic of China based on the logic of "Prohibition - Neutrality - Appropriate Protection".

**The First Stage: Prohibition Stage.** The Marriage Law of 1950 and its two subsequent amendments all regarded marriage registration as a necessary condition for the formation of a marriage, and regarded all cohabitation without marriage as illegal cohabitation. Therefore, at the beginning of the founding of the People's Republic of China, the status of marital relations was significantly higher than that of cohabitation without marriage. This is mainly because at the beginning of the founding of the People's Republic of China, the country needed the more stable family form of "small family" formed by marriage compared with cohabitation without marriage to promote national development and stability. In addition, due to the traditional Chinese culture that opposed heterosexual relations outside marriage in ancient times, there were not a large number of cohabitation without marriage cases at the beginning of the founding of the People's Republic of China, so there was no need for legal regulation or protection in itself.

**The Second Stage: Neutrality Stage.** Article 5 of the Supreme People's Court's Interpretation (I) of the Application of the Marriage Law of the People's Republic of China in 2001 removed the word "illegal" from "illegal cohabitation", no longer referring to cohabitation as "illegal cohabitation", but adopting the neutral term "cohabitation". In addition, the Notice of the Supreme People's Court on Issuing the Revised Provisions on the Causes of Civil Cases listed "dispute over property division due to cohabitation" as a cause of action. Although it did not provide specific legal remedies for the property relations in cohabitation without marriage, such claims would not be rejected by the court. This indicates that the legislation at this stage was neutral towards cohabitation without marriage, neither opposing it as in the first stage nor advocating or actively protecting or regulating it.

**The Third Stage: Appropriate Protection Stage.** After entering the 21st century, with the rapid economic development and the deep-rooted individual awareness, the phenomenon of cohabitation has increased, and the legal attention to the regulation of personal and property relations in cohabitation has been increasing. Article 3 of the Supreme People's Court's Interpretation (I) of the Application of the Marriage and Family Section of the Civil Code of the People's Republic of China (hereinafter referred to as the "Interpretation (I)") in 2020 clearly stipulates that the people's court shall accept lawsuits filed by parties for property division or child custody during the cohabitation period. Although it does not clarify the specific trial basis or rules for property division and child custody, it at least provides the possibility of legal protection and regulation for them. Article 4 of the Interpretation (II) in 2024 refines the provisions on the handling of property acquired during the cohabitation period in cases of dispute over property division due to cohabitation on the basis of the Interpretation (I). Although it deletes the housework compensation rule in Paragraph 3 of Article 3 of the Draft Interpretation, it further clarifies that some rules in the Marriage and Family Section of the Civil Code can be applied to cohabitation relations, providing legal regulation for cohabitation relations.

## **2. THE LEGAL BASIS FOR THE LEGAL REGULATION OF COHABITATION WITHOUT MARRIAGE AND THE CURRENT JUDICIAL ADJUDICATION STATUS**

The Civil Code regards marriage registration as the only necessary condition for the formation of a marital relationship and also the only criterion for distinguishing marital relations from cohabitation without marriage. However, the above elaboration can prove that: whether in foreign countries or in China since the founding of the People's Republic of China, the phenomenon of cohabitation without marriage has been developing, and the attitude of China's legal norms towards it has changed from "illegal" to "legal". Therefore, cohabitation without marriage must have its inherent particularity and value worthy of legal regulation and protection.

### **2.1. The Justification Basis for the Legal Regulation of Cohabitation Without Marriage**

At present, Article 4 of the Interpretation (II) clarifies the rules for the division of property acquired during the cohabitation period in cases of property division due to cohabitation, and the rules inevitably apply the principles of property division upon divorce stipulated in the Marriage and Family Section of the Civil Code. This provision is a preliminary exploration of the handling of property relations in cohabitation without marriage, and there is still room for its interpretation and application. Therefore, exploring the legal basis for the legal regulation of cohabitation without marriage is the basis for its further interpretation and application, and can also lay the foundation for the future regulation of cohabitation without marriage.

#### **2.1.1. Cohabitation Without Marriage is One of the Ways to Form a Family**

Marriage registration is the only necessary condition for the formation of a marital relationship and the distinction between marriage and cohabitation. Then, is cohabitation without marriage completely unrelated to marital relations just because it lacks the registration requirement?

For marital relations, first of all, marriage registration is merely an administrative confirmation, which is the confirmation of the parties' establishment of a marital relationship and should be a regulatory norm rather than a constitutive norm. Some scholars believe that although the marriage registration system has the advantage of facilitating national management and the performance of functions, it has no other characteristics besides this. It is mainly manifested in the following aspects. First, the marriage registration system in principle does not allow subjects other than the marriage parties to access the marriage registration files, so it does not have the so-called publicity effect. Second, the formal examination of marriage registration is also difficult to truly avoid the occurrence of invalid marriages. Third, wedding customs are not backward cultures, and the marriage registration system only adds conditions for establishing marital relations at the institutional level, not for the purpose of abolishing wedding customs, so the purpose of the marriage registration system to eliminate old customs and ideas cannot be achieved. Fourth, administrative confirmation itself has no effect of granting rights, and marriage registration is only the state's recognition of the marital relationship between men and women. Therefore, marriage registration cannot endow marriage with substantive emotional and ethical significance beyond the national management level; it is an administrative procedure in public law and only has a coupling relationship with the marriage consent.

Through the interpretation of the marriage registration system, we can see that the marriage registration system only confirms the marital relationship from the perspective of administrative law, and has no other characteristics besides this. Then, is the essence of cohabitation without marriage the same as that of marital relations? Or is the core of cohabitation without marriage consistent with that of marital relations?

Cohabitation without marriage, like marital relations, can be the foundation of forming a family.

First, Paragraph 1 of Article 1041 of the Civil Code stipulates that "marriage and family are protected by the state", and the general provisions of Chapter I of the Marriage and Family Section have been emphasizing the protection of "family". It is a common sense that family relations are mainly formed by the bond of marital relations, and the core connotation of establishing a marital relationship is also to form a family. However, from the understanding of reality, we can also know that some cohabitation without marriage includes not only the relationship between men and women, but also the upbringing of children born out of wedlock. At this time, can the family relationship formed by them be denied just because they have not gone through marriage registration? Moreover, the Civil Code's recognition of the inheritance right of children born out of wedlock also indirectly confirms the law's recognition that cohabitation without marriage can form a family. Therefore, cohabitation without marriage should also be one of the ways to form a family.

Second, some scholars also believe that although cohabitation relations have not been recognized by law, for cohabitation without marriage, the parties do not have the status of family members, but they live together and form a stable and continuous relationship, which needs legal protection equal to that of "family members" in the Marriage and Family Section but in a different form. Scholars' compromised argument for the protection of cohabitation without marriage also confirms that the core purpose of cohabitation without marriage and marital relations is still to form a family, which should be subject to legal regulation.

Third, in Europe, same-sex unions can form a family, so the heterosexual cohabitation without marriage discussed in this paper can better form the foundation of a family. Moreover, with the development of society, the mode of "family" in China has also entered a diversified stage, and the family formed by cohabitation without marriage is a kind of diversified family mode.

Fourth, from a philosophical perspective, the essence of a family is a collection of population production relations, economic relations and emotional relations. In cohabitation without marriage, the emotional communication, economic support, housework undertaking, child rearing and other aspects between partners also assume family functions similar to those of marriage. The characteristics of the family formed by cohabitation without marriage are very similar to those of the family formed by marriage. It can be said that cohabitation without marriage should form a family in a broad sense.

Therefore, the law cannot be biased to only protect families formed by marital relations with marriage registration and ignore families formed by cohabitation without marriage with similar core connotations. Instead, it should simultaneously regulate cohabitation without marriage to realize multiple protections in the field of families in a broad sense.

### 2.1.2. Similarities Between Invalid/Revocable Marriages and Cohabitation Without Marriage

Article 1051 of the Civil Code stipulates invalid marriages, and Articles 1052 and 1053 stipulate revocable marriages. Paragraph 1 of Article 1054 clearly stipulates that "an invalid or revoked marriage shall have no legal effect ab initio, and the parties shall not have the rights and obligations of husband and wife". The fact that an invalid or revoked marriage has no legal effect ab initio indicates that the cohabitation relationship between men and women before the declaration of invalidity or revocation of these two types of marriages is not a marital relationship but a cohabitation relationship, and their personal and property relations naturally cannot be completely handled in accordance with the rules for divorce.

However, Article 1054 also stipulates that the "property acquired during the cohabitation period" shall be handled in accordance with the property division rules upon divorce stipulated in Article 1087 of the Civil Code. It can be seen that the relationship between the parties in an invalid or revoked marriage is a cohabitation relationship, and their personal and property relations are handled with reference to the divorce system. Invalid and revocable marriages are cohabitation relations arising

from negative evaluations. According to the principle of argumentum a maiore ad minus, ordinary cohabitation without marriage that has not received negative evaluations should also be handled with reference to the divorce system.

### **3. THE DEFINITION OF COHABITATION WITHOUT MARRIAGE**

At present, there is no definition of cohabitation without marriage in the Civil Code system, and cohabitation is only a description of the state of the relationship between men and women. To legally regulate the property relations of cohabitation without marriage, it is necessary to define the concept of cohabitation without marriage to distinguish the cohabitation without marriage that should be regulated by legal norms from that which should not be regulated by legal norms.

#### **3.1. Compliance with the Marriage Conditions**

First, both parties shall act voluntarily. According to Article 1046 of the Civil Code which stipulates that "marriage shall be based on the complete free will of both men and women" and the principle of freedom of will in civil law, although cohabitation without marriage is different from marital relations, their cores are similar. Therefore, cohabitation without marriage must also be based on the true will of both parties.

Second, both parties shall be unmarried. Roman law recognized the legality of concubinage, but in China, cohabitation without marriage should refer to the cohabitation between two unmarried parties, which is different from concubinage. At the criminal law level, a married person cohabiting with another person shall be subject to the crime of bigamy. At the civil law level, Paragraph 2 of Article 1042 of the Civil Code stipulates that "it is forbidden for a married person to cohabit with another person". A married person cohabiting with another person will damage China's monogamy system and family harmony, which will inevitably receive negative legal evaluations and is also inconsistent with the principle of public order and good morals.

Third, the parties must be a man and a woman. Although the phenomenon of same-sex love and subsequent cohabitation has become increasingly common in society, and the social concept has increasingly respected the freedom of same-sex love, China still does not recognize same-sex marriage. In addition, Article 1046 of the Civil Code clearly stipulates that the parties to a marriage are a man and a woman. If the same-sex cohabitation without marriage is recognized, it will lead to conflicts within the civil law system.

Fourth, the parties must have reached the legal marriage age and have full capacity for civil conduct. Some scholars believe that cohabitation relations do not necessarily require the parties to have reached the legal marriage age, because the requirement of acting on the basis of the parties' independent will implies that the parties have the ability to make independent choices, and at this time the parties already have full capacity for civil conduct. The provisions on the legal marriage age in the Civil Code are a policy control on the marriage system. Cohabitation without marriage is different from marital relations and belongs to the field of the parties' self-determination, so cohabitation without marriage does not necessarily require the parties to have reached the legal marriage age. This paper holds a reserved attitude towards this view. First, from the criminal law level, having sexual relations with a child under the age of 14 is deemed as the crime of rape. To ensure the internal harmony of the legal system, the parties must reach the legal marriage age, which can also protect minors. Second, from the civil law level, minors and mental patients do not have full capacity for civil conduct and lack independent discrimination ability for forming a family, so the protection of minors should be strengthened. In addition, recognizing cohabitation without marriage for parties who have not reached the legal marriage age is also inconsistent with the principles and spirits of the Marriage and Family Section of the Civil Code. Therefore, any cohabitation without

marriage involving minors or persons without full capacity for civil conduct shall be prohibited, and men and women must reach the legal marriage age to establish a cohabitation without marriage.

Fifth, there shall be no prohibited marital kinship between the parties. Article 1048 of the Civil Code clearly stipulates that lineal blood relatives and collateral blood relatives within the third degree of kinship are prohibited from marrying. Marriage between such relatives is against ethics and inconsistent with the principle of public order and good morals. Therefore, the parties to cohabitation without marriage shall not have prohibited marital kinship.

### **3.2. Living Together to Form a Stable and Continuous State**

First, the parties shall live together. The reasons are as follows: First, Paragraph 3 of Article 1045 of the Civil Code stipulates that "close relatives living together are family members". Since family members are required to live together, men and women forming a family through cohabitation should be more required to live together. Second, the character "Tong" in "Tongju (cohabitation)" means joint, and the character "Ju" originally means "residence" and "living". The Modern Chinese Dictionary clearly refers to "Tongju" as the common living of husband and wife and the common living of men and women without marriage. Therefore, "cohabitation" must require men and women to live together. Third, according to Article 5 of the Interpretation (I), if a husband and wife have gone through marriage registration procedures but have not actually lived together, the payee may claim the return of betrothal gifts after divorce. It can be seen that for married couples who have gone through marriage registration, those who have not lived together can claim the return of betrothal gifts, indicating that the law does not recognize the emotional connection and the formation of a stable and continuous family between the couple at this time. Therefore, if this is the case for married couples who have gone through marriage registration, the cohabitation without marriage should not be recognized for men and women who have not gone through marriage registration and do not live together.

Second, the parties shall form a stable and continuous state. The reasons are as follows: First, if cohabitation without marriage only requires living together but not forming a stable and continuous state, it will lead to moral problems. Although China's law is generally wait-and-see towards cohabitation relations, it once recognized "de facto marriage", in which men and women live in the name of husband and wife and form a stable and continuous state. Therefore, for cohabitation without marriage to be protected and regulated by law, the parties must also live together to form a stable and continuous state, so as to exclude acts where the parties only aim at sexual transactions without living together from cohabitation without marriage, such as "keeping a mistress" and "prostitution". Second, from the perspective of foreign legislation, the French Civil Code defines a cohabitation relationship as "a factual union of common life with a certain degree of stability and continuity", and French courts point out that: "Partners in a cohabitation relationship usually have a common residence, common economic activities and long-term reciprocal behaviors". Third, how to define the judgment standard of stability and continuity? Through the search of China's court adjudications, it can be seen that the main factor for courts to recognize a cohabitation relationship is the "duration of cohabitation", because the longer the duration of cohabitation, the greater the possibility of forming a stable relationship and the more stable the formed relationship. In addition, if men and women jointly raise children born out of wedlock in a cohabitation relationship, it shall also be deemed that a stable and continuous state has been formed. Therefore, the stable and continuous state is mainly judged by conditions such as the duration of cohabitation or whether the parties jointly raise children born out of wedlock.

To sum up, cohabitation without marriage refers to a stable and continuous living state formed by heterosexuals who have reached the legal marriage age, are unmarried, and live together without going through marriage registration procedures.

Some scholars advocate the typed construction of cohabitation without marriage, distinguishing three types of cohabitation relations: "only heterosexual union", "having children" and "loss of marital effect". However, this paper does not classify it for two reasons: First, China's legal regulation of cohabitation without marriage is not perfect and even in the exploratory stage. Such detailed classification at this stage is more unfavorable for courts to adjudicate the application of rules. Second, these types generally belong to cohabitation without marriage. According to Article 4 of the Interpretation (II), the joint property shall be divided according to factors such as the situation of common life, the presence or absence of children, and the size of contributions to the property. Courts can use discretionary power to solve specific problems in different cases. Excessively detailed classification may affect courts to make different adjudications according to different situations.

## **4. THE PRINCIPLES FOR THE HANDLING OF PROPERTY DURING COHABITATION WITHOUT MARRIAGE**

After recognizing the cohabitation without marriage between men and women, according to Article 4 of the Interpretation (II), the property acquired during the cohabitation period shall be handled in accordance with the rules of "following the agreement if there is one, and taking the separate property system as the basis and joint property division as the supplement if there is no agreement". For cases where there is an agreement, the parties' expression of intention shall be respected in accordance with the principle of autonomy of will, so this paper will not discuss such cases. For cases where there is no clear agreement between men and women, there are different opinions in academic and practical circles, and such cases account for the majority in reality. Therefore, this paper mainly discusses the principles of property division when there is no agreement between men and women.

### **4.1. Taking the Separate Property System as the Basis**

Article 4 of the Interpretation (II) takes the separate property system as the basis. In the absence of a clear agreement between the two parties, the property acquired during the cohabitation period is distinguished and handled. It clearly stipulates that the respective wages, bonuses, remuneration for labor services, income from intellectual property rights, property inherited or donated, or income from independent production, operation and investment of each party shall belong to the individual. The reasons for this handling principle based on the separate property system are as follows:

First, cohabitation without marriage is different from marital relations. Since cohabitation without marriage has not gone through marriage registration, although its core is similar to that of marital relations, its particularity of not requiring marriage registration results in that the property jointly acquired during the cohabitation without marriage cannot be directly handled in accordance with the rules for joint tenancy property in marital relations. A compromised handling method should be selected between the two for differential treatment, which also means that the regulation of cohabitation without marriage should be distinguished from that of marital relations. The principle of taking the separate property system as the basis in Article 4 of the Interpretation (II) is in line with this view. Second, from the perspective of foreign legislation, French law also holds that in the absence of an agreement between the two parties, the economic behaviors of both parties in cohabitation without marriage shall be independent of each other, and the property transfer behaviors between the two parties are different from the economic mutual assistance between husband and wife. Third, from the practical perspective, most courts also hold that the respective income of the parties during cohabitation shall belong to the individual in accordance with Article 4 of the Interpretation (II). For example, the People's Court of Haidian District, Beijing clearly stated in the judgment: "In the absence of an agreement between the two parties on the property acquired during the cohabitation period, the respective income of both parties shall belong to the individual". The People's Court of Yining City, Xinjiang Uygur Autonomous Region also clearly stated in the judgment: "In this case, since the funds for the plaintiff to purchase the above gold jewelry and pay the down payment for the

vehicle are from the plaintiff's business income, the court supports the plaintiff's claim for the defendant to return 24,821 yuan for the purchase of gold jewelry and 54,435 yuan for the vehicle down payment". Therefore, it is reasonable to handle the respective property acquired during cohabitation without marriage based on the separate property system.

## **4.2. Taking the Joint Tenancy System as a Supplement**

According to Article 308 of the Civil Code, the property acquired by husband and wife during the existence of the marital relationship is joint tenancy property. Article 22 of the Interpretation (I) also stipulates that in a marriage declared invalid or revoked, the marriage is invalid ab initio, the men and women are in a cohabitation relationship, and the property acquired during this period shall be handled as joint tenancy property. For other cohabitation without marriage, only the way of dividing the property as joint property is determined, but the type of joint ownership is not specified. In judicial interpretations, such joint ownership was once collectively referred to as "general joint ownership", but there are only two types of joint ownership in China: co-ownership by shares and joint tenancy, and the division methods of the two types are different. Therefore, there is a question about which of the two types the "general joint ownership" in Article 4 of the Interpretation (II) belongs to.

Although the Interpretation (II) clearly stipulates that the property jointly acquired during the cohabitation without marriage shall be divided, this article also avoids determining the form of joint ownership of the property jointly acquired during the cohabitation without marriage. Therefore, there is a question about which type of joint ownership shall be applied to the division of property acquired during cohabitation without marriage other than invalid and revoked marriages, and there are the following views on this point.

For the claim of co-ownership by shares, some courts hold that property division shall be based on the principle of co-ownership by shares. A civil judgment in Chongqing in 2024 held that: Wang and Gan had not registered their marriage, so there was no basic fact of a marital relationship, and the property during the cohabitation period could not be applied to the legal provisions on the joint property of husband and wife. For the involved house, although both parties had contributed to the involved house, there was no evidence to prove that the contribution was from the income of joint operation, nor was there evidence to prove that the two parties agreed on the joint tenancy of the involved house. Therefore, the court affirmed the judgment of the first instance that, in accordance with Article 308 of the Civil Code, the cohabitation without marriage in this case did not constitute a family relationship, and the joint property was deemed to be co-owned by shares by default. Some scholars also hold that for the joint property part in cohabitation without marriage, the principle of co-ownership by shares shall be the main one and joint tenancy shall be the supplement, fully considering the degree of contribution of both parties to the joint income, and dividing it in accordance with the principle of fairness when the degree of contribution cannot be clearly determined.

Compared with the handling principle of co-ownership by shares, this paper holds that the handling principle of joint tenancy is more appropriate for the following reasons:

First, learning from foreign legislation, the French Civil Code classifies partnership relations in detail. The cohabitation without marriage similar to marriage discussed in this paper is similar to the "PACS" (Pacte Civil de Solidarité) in the French Civil Code, that is, the civil partnership contract relationship. Under the "PACS" relationship, French courts invoke the theory of de facto partnership to handle the property liquidation upon the termination of the cohabitation relationship. In China's legal system, although according to the provisions of the Civil Code, the establishment of a joint tenancy relationship is based on partnership and family, the fact that cohabitation without marriage does not belong to the situation of forming a family through marriage registration does not mean that there can be no joint tenancy relationship in cohabitation without marriage. According to Article 967 of the Civil Code, the core of a partnership relationship is that the partners share interests and risks for a

common business purpose. In cohabitation without marriage, men and women will inevitably invest interests for common life to maintain the stability of the cohabitation relationship, and maintaining the stability of the cohabitation relationship is the common purpose of both parties. While investing interests for common life, both parties will inevitably share risks. In addition, the Civil Code does not take a partnership agreement as a necessary condition for the establishment of a partnership. Therefore, in essence, cohabitation without marriage is a kind of partnership relationship.

Second, although cohabitation without marriage is different from marital relations, it is also a way to form a family in a broad sense and has certain commonalities with marital relations. In addition, in order to maintain emotional stability, men and women in a cohabitation relationship generally do not conduct property notarization before the establishment of the cohabitation relationship, and even less clearly distinguish personal property from joint property during the existence of the cohabitation relationship. The property of both parties is highly commingled. Therefore, presuming the joint property formed during cohabitation without marriage as joint tenancy property is also in line with the facts and harmonious with the internal legal system.

To sum up, for the property relations during cohabitation without marriage, if there is no agreement between the parties, the respective property acquired by each party shall be applicable to the separate property system, and the jointly acquired property shall be divided with reference to the rules on joint tenancy in marital relations.

## **5. APPLYING THE COMPENSATION RULE FOR HOUSEWORK LABOR TO PROTECT THE RIGHTS AND INTERESTS OF THE VULNERABLE**

Article 1088 of the Civil Code establishes the compensation rule for housework labor upon divorce; Paragraph 2 of Article 3 of the Draft Interpretation clearly stipulates that the compensation rule for housework labor is applicable to cohabitation without marriage, and the amount of compensation for the party who bears more housework labor during the cohabitation without marriage shall be determined according to different situations. However, it is deleted in Article 4 of the Interpretation (II). This paper holds that the compensation rule for housework labor should also be applied upon the termination of cohabitation without marriage.

The compensation rule for housework labor is applicable to the joint property system of husband and wife in marital relations. In marital relations, although housework cannot directly create economic value, it plays an important role in maintaining the stability of family relations and saving family expenses, and "housework labor has relative value or implicit value". In addition, families often maintain their daily lives in the way of "one party focusing on family affairs and the other on external affairs". Both are equally important for family relations, and the party "focusing on family affairs" has less contact with society and higher costs of "resocialization" after divorce. Therefore, the party who undertakes more housework labor shall be compensated upon divorce.

The compensation rule for housework labor should also be applied to cohabitation without marriage for the following reasons: First, cohabitation without marriage can form a family in a broad sense, so in the daily life of cohabitation without marriage, the distribution of housework labor the same as that in marital relations will also occur to maintain family stability, so the compensation rule for housework labor should also be applied. Second, "housework labor should be interpreted expansively, including all labor needed for the common life of the family". In cohabitation without marriage, there must be housework labor to maintain family stability, not to mention that some cohabitation without marriage also involves the upbringing of children born out of wedlock. Therefore, the compensation rule for housework labor should be more applied to compensate the party who undertakes more housework labor. Third, according to Article 4 of the Interpretation (II), the property during the cohabitation period is based on the separate property system, and the respective income of each party belongs to the individual. Therefore, compared with the division of joint property upon divorce, the

economic protection for both parties upon the termination of cohabitation without marriage is inherently weaker than that upon divorce. Therefore, if the party who undertakes more housework labor in the cohabitation relationship is not compensated, the injustice to the vulnerable party will be aggravated. Fourth, if the compensation rule for housework labor is not applied to cohabitation without marriage, the legal liabilities borne by the parties will be less than those in marital relations. Then, cohabitation without marriage may become the first choice for some people with improper ideas, who deceive women's emotions for the purpose of marriage and then evade legal liabilities. This is not only unfavorable to the protection of women's rights and interests, but also will fuel the antagonism between men's and women's rights and interests in society.

Some scholars believe that at this stage, under China's "wait-and-see" policy towards cohabitation without marriage, the special marital systems such as compensation for housework labor upon divorce and economic assistance upon divorce can only be applied when the parties in cohabitation without marriage expressly or impliedly express the intention that "cohabitation is marriage". If the parties have no such express or implied agreement and only have an agreement on the joint ownership of property, such systems cannot be applied.

This paper holds a reserved attitude towards this view for the following reasons: First, the establishment of cohabitation without marriage does not require the parties to have the intention of establishing a marriage. Based on the elaboration in the previous part of this paper, the establishment of cohabitation without marriage only requires the parties to meet the marriage conditions and live together to form a stable and continuous state, and does not require the intention of establishing a marriage. Therefore, requiring the parties to have the intention of establishing a marriage here is illogical. In addition, the phenomenon of cohabitation between men and women without the intention of marriage is common in society, and the intention of establishing a marriage should not be an obstacle to achieving the regulatory purpose. Second, according to the elaboration in this paper, the reason why the regulation of cohabitation without marriage can refer to the system of the Marriage and Family Section is that both cohabitation without marriage and marriage are ways to form a family with the same core purpose. The intention of establishing a marriage is not the core purpose of their similarity, so it should not be taken as a prerequisite for the application of the compensation system for housework labor.

To sum up, the emergence of the compensation rule for housework labor in the Draft Interpretation is of great significance, but the deletion of it in the Interpretation (II) is most likely to control the intensity of regulation on property relations in cohabitation without marriage. However, to protect the rights and interests of the vulnerable party, which is often reflected as women's rights and interests in daily life, the compensation rule for housework labor should be applied to cohabitation without marriage that can form a family in a broad sense.

## **6. CONCLUSION**

The only difference between cohabitation without marriage and marital relations is whether marriage registration is carried out. As a lifestyle parallel to marriage, cohabitation without marriage can also be the foundation of forming a family. Moreover, the expansion of the phenomenon of cohabitation without marriage makes it necessary for cohabitation without marriage to be subject to legal regulation. However, there are still differences between cohabitation relations and marital relations. Therefore, in cohabitation without marriage, if men and women have no clear agreement on the ownership of property, the separate property system shall be taken as the basis, and the respective income of each party shall belong to the individual; the joint tenancy system shall be taken as a supplement, and the jointly acquired property shall be divided in accordance with the principle of joint tenancy. At the same time, the compensation rule for housework labor shall be considered to compensate the party who undertakes more housework labor. The increase of social life pressure and

the development of individual awareness will inevitably lead to the increase of the phenomenon of cohabitation without marriage, and it is still necessary to conduct standardized adjustment on it.

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