

Cohabitation, legal policies, and cultural systems: divergence across post-Soviet space

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Many studies have documented the remarkable increase in cohabitation and childbearing within cohabitation in Western countries (Perelli-Harris et al 2010, Perelli-Harris et al forthcoming, Kiernan 2004, Heuveline and Timberlake 2004). With the exception of some studies on Russia and parts of Eastern Europe (Perelli-Harris and Gerber 2011, Hoem et al 2009), few studies have examined the increase in cohabitation and nonmarital childbearing across the former Soviet Union. As can be seen in Table 1, the increase in nonmarital childbearing is no less remarkable than in Western Europe. The increase in nonmarital childbearing since the breakup of the Soviet Union has been nearly universal, and yet the countries have diverged considerably in the speed of the increase. Thus, the countries of the former Soviet Union represent an interesting case study for better understanding the role of laws and culture on changing behavior.

In this paper, we explore the reasons behind the divergence in nonmarital childbearing and cohabitation, paying particular attention to the legal policies related to marriage and cohabitation in each country. During the Soviet period, all countries were under the same legal jurisdiction and political system, possibly leading to similar behaviors and perceptions of marriage and childbearing outside of marriage. After the breakup of the Soviet Union, each country enacted different laws that govern marriage and parenthood. These different legal policies may or may not have led to changes in behavior. It is also important to recognize that the form of cohabitation may differ considerably in the different cultural systems of the former Soviet Union. Some manifestations of cohabitation may be similar to those in Western Europe, reflecting modern ideas of autonomy and individualization. In other regions, the increase in cohabitation may signify a return to archaic, pre-legal-monogamous-marriage, systems. In the Caucasus, for example, cohabitation may be related to non-monogamous relationships of men who are simultaneously married and cohabiting with another woman, likely having children in both relationships. In some post-Soviet states, cohabitation may simply be a lack of registering marriages due to a rejection of state regulations, while in others, cohabitation may even be associated with a return to pre-arranged marriages with underage girls, marriages that cannot be registered with the State, but celebrated only according to religious rituals.

Thus, the goal of this paper is to compare the approach to cohabitation and marriage in the cultural and legal systems of 11 Post-Soviet countries. Following the approach discussed in Perelli-Harris and Sanchez Gassen (2010), we document and analyze policies and laws that govern marriage and might have been extended to cohabitation. Using secondary sources, legal documents, and official websites, we have created a database of 19 policy dimensions for each country. This database allows us to construct a systematic analysis of legislation related to cohabitation for each country. We then evaluate each country according to the coherence of the dimensions and position them along a spectrum with countries that have enacted laws equalizing cohabitation and marriage at one end and those that treat marriage and cohabitation differently at the other. Finally, we discuss some of the countries in greater detail and delve deeper into how the legal and cultural systems within the country may create the family situation we see today. We also note where there is no correspondence between policies and the rise in cohabitation or childbearing. Taken as a whole, this analysis will provide insights into the changing institution of marriage and meaning of cohabitation across Post-Soviet space.

Historical background

In Soviet Russia in December 1917, the religious registration of marriages and births was exchanged for civil marriages. All children, regardless of whether their parents were married, were

then considered legitimate. However, the Family Code of 1918 maintained the rule of separate property of spouses, which placed both divorced and cohabiting women at a disadvantage. In 1926, the Soviet government updated the Family Code. In all Soviet republics except Azerbaijan, Uzbekistan, Turkmenistan, and Tajikistan registered and non-registered unions were equalized, given the couple lived in a common household and could establish proof of a “long-term” sexual relationship, mutual financial support, and a common upbringing of children. Property rights to cohabiting and divorced women were restored at this time. Soon, however, the government’s position changed again. During the Stalin era, the conservative government downgraded the status of cohabiting couples and required all cohabiting couples to marry. This Decree of 1944 forbade unmarried fathers to establish paternity or receive any rights towards their children. In 1968, the New Family Code changed the rules again: the establishment of paternity was restored but on a restricted basis; the father had to be willing to recognize paternity and financially support the child. As a result of this Soviet-wide legislation, policies and legislation across the Soviet Union were almost identical until the empire dissolved in 1992. Now states have changed policies according to different developments in the 1990’s and specific cultural factors. Nonetheless, all family codes, with few exceptions, stem from the same Soviet foundation and maintain a substantial portion of the text and spirit of the law.

Current variation across the region

As can be seen in Figure 1, the percent of births outside of marriage began to diverge in the late 1980s and 1990s. A number of processes have led to these developments. To illustrate these processes, we highlight several countries and briefly describe their pattern of family formation. These country examples (which will be flushed out more in the final paper) are meant to portray the cultural backdrop on which the laws are being enacted. They also demonstrate that although policies may influence behavior, cultural factors may be much more relevant.

Estonia. First, we focus on Estonia, where the percent of births outside of marriage is higher than those in marriage. In fact, Estonia has one of the highest nonmarital birth rates in Europe, exceeded only by Iceland. According to the Estonian Gender and Generations Survey, extramarital childbearing in Estonia in 2005-2007 exceeded 58% (Katus et al 2007). The 1964-68 birth cohort was the last in which marital childbearing was higher than extramarital childbearing. In the 1979-1983 cohort, fewer than 30% of first births were marital. About 70% were to cohabiting mothers and only about 10% to single mothers.

In many respects, Estonia is more similar to the Nordic countries, although some specifics can be associated with the Soviet period of history. Historically, Estonia, like Scandinavia, appears to have been more tolerant towards non-marital childbearing. Culturally, the women are “strong”, with higher levels of education than men, on average. In fact, the gap between the average female educational level and that of men is one of the largest in the world. Thus, the large share of non-marital childbearing and childbearing within cohabitation may be due to ‘strong’ women who themselves decide how they will live, and in some cases may be more resourceful than their men. Nonetheless, since wealth is lower and social protection weaker than in Scandinavia, the overall fertility level is also lower (Katus et al. 2009).

What is surprising, however, is that recently the Estonian Parliament decided not to accept the Law on Cohabitation, and in the Civil Code only officially registered couples are considered proper unions. According to officials, the fear behind this decision is due to the legalization of same-sex unions (Tere 2009). Thus, property rights for cohabiting couples are still unregulated. Accordingly, Estonia seems to be an example of cultural norms determining practices more than policies and laws.

Georgia. As shown on Figure 1, the percent of births outside of marriage in Georgia is also very high. According to some authors (Meladze, 2002, Badurashvili et al., 2008), this is due to

childbearing within cohabitation and mainly not to single mothers (the percentage of children born to single mothers is only about 4.5% of overall fertility). On the other hand, this might not be cohabitation in the Western sense, but the result of most unions being celebrated by church ceremonies or private festivities, and not registered with the state. This can be one of the manifestations of overall country de-legalization and over-privatization that happened in Georgia in the 1990's, after the collapse of the Soviet Union. For example, the state privatized all medicine, eliminated state health insurance, and reduced pensions almost to the extent of elimination (Avalishvili et al., 2010). Despite the restoration of some of the state safety net since the early 2000s, cultural norms have changed in such a way that the population now has very little trust in state institutions. Particularly in the mountainous areas, people live on their own, surviving based on their lands or other crafts, receiving nothing from the state and paying no taxes. As a result, a large part of the population reverted to traditional forms of marriage, no longer relying on the state to register the marriage. The law provided little protection and did not uphold the rights or duties of the cohabitants. These traditional marriages became much more patriarchal. Nonetheless, although cohabiting women do not seem to be protected by law, they are protected by common customs instead (for example, in the case of wrongdoing by the male partner, the male relatives of the female partner are expected to protect her (Badurashvili et al., 2008; Avalishvili et al., 2010)). Finally, the exemption of single mothers from income tax, at least during some time period, may also be one of the reasons that couples avoid legal marriage, especially among the poor.

Ukraine. Ukraine represents a country with relatively low cohabitation and childbearing within cohabitation. According to Figure 1, 20% of births occurred outside of marriage in 2005, although a substantial proportion of these would be to single mothers. Since the breakup of the Soviet Union, Ukraine has gone through a rapid change in family formation, primarily manifest in the decline to very low fertility (Perelli-Harris, 2008). Some new factors, however, also relate to cohabitation. While marriage has been unstable for decades, resulting in high divorce rates, people may be becoming more reluctant to register their marriage. In general, however, traditions in family sphere are still strong, and the majority does continue to marry. Nonmarital childbearing is more of a marginal behavior, practiced by the youngest and oldest mothers. For example, among women younger than 18 years 29.5% of mothers were unmarried in 2001, and in 2005-2006 the percentage was already 42.0% (Kurilo et al., 2007). Nonmarital childbearing also differs across the country, with it being higher in the East and North (in more "Russian" regions), and lower in the West (in more traditional and rural 'Ukrainian' parts (Kurilo et al., 2007)).

Armenia. Of the former Soviet countries, Armenia has one of the most conservative family systems. During the Soviet period, divorce rates in Armenia were the lowest in the Soviet Union, and after the Soviet Union collapsed, marriage rates fell, but divorce rates fell even more. Accordingly, marriage has been relatively stable, and cohabitation has not increased much. In general, gender roles are still largely traditional. Families and relatives still maintain strong control over women, and family ties are stronger in Armenia in comparison to other countries at a comparable stage of demographic development (i.e. low fertility). While rates of non-marital childbearing are increasing, they are not increasing quickly, and some of the increase may be due to the decrease in marital childbearing. The changes that are happening are affecting mainly more educated inhabitants of the capital city, especially older women who are themselves breadwinners (and so feel empowered); although the women may have become breadwinners because of the out-migration of large numbers of men. Cohabitation is also spreading among more educated part of young generation in Yerevan (WHO survey 2001, Tiomkina 2010).

Data and methods

Our study examines policies related to cohabitation and marriage in 11 countries in the Post-

Soviet region: Russia, Ukraine, Belarus, Moldova, Latvia, Lithuania, Estonia, Armenia, Georgia, Azerbaijan and Kazakhstan. These countries represent a broad cross-section of “European” or “Europeanized” state ideologies. We consider only national legislation. The information we use is mainly synthesized from legal documents, but in some cases it is supplemented with secondary sources and official websites. With the exception of Georgia, we examine codes of law and individual pieces of legislation in Russian or English. For Georgia, we used help of a professional translator. In the present paper, we focus on laws that were in effect in late 2010.

To better understand the legal situation across the Soviet Union, we systematically examine 19 policy areas that typically govern marriage. Parts of Civil or Family Codes related to marriage, divorce, and, when applicable, cohabitation, were studied for each country. Because it is not the aim of the paper to compare marriage law across countries, we focus predominantly on whether cohabitants are treated similarly to married people. Often we consider laws that target single mothers, since in some regions these are often the only group which can be cohabiting with children, and therefore the laws affecting them in reality might concern cohabiting couples. Table 1 shows an example of the policies for Ukraine. We place the individual policies into different groups: protection of the surviving partner; property disputes after union dissolution; protection of the financially weaker partner; taxation and benefits; father-child relationships; and rights for special groups.

We have completed the policy database for all countries and are in the process of synthesizing the results. Using the approach first advocated by Neyer and Andersson (2008) and then employed by Perelli-Harris and Sanchez Gassen (2010), we will first describe how each country treats cohabitation within a given policy area. Then we will examine the coherence of the policies by summing the number of policies that provide cohabitants and married couples with similar rights or obligations. This will allow us to place the countries on a spectrum from those countries that harmonize cohabitation and marriage to those that treat marriage and cohabitation differently. In this way, we can get a better sense of how the policies related to cohabitation and marriage have diverged across the region. Finally, we will loosely compare the relationship between the spectrum of legal system and nonmarital childbearing and cohabitation. Although we will not be able to show that policies and family formation behavior are causally linked, we may find a rough association. On the other hand, we may find very little correspondence between policies and nonmarital childbearing, which would also provide insights into the role of policies on behavior.

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Figure 1. The percent of births outside of marriage in 11 countries of the former Soviet Union

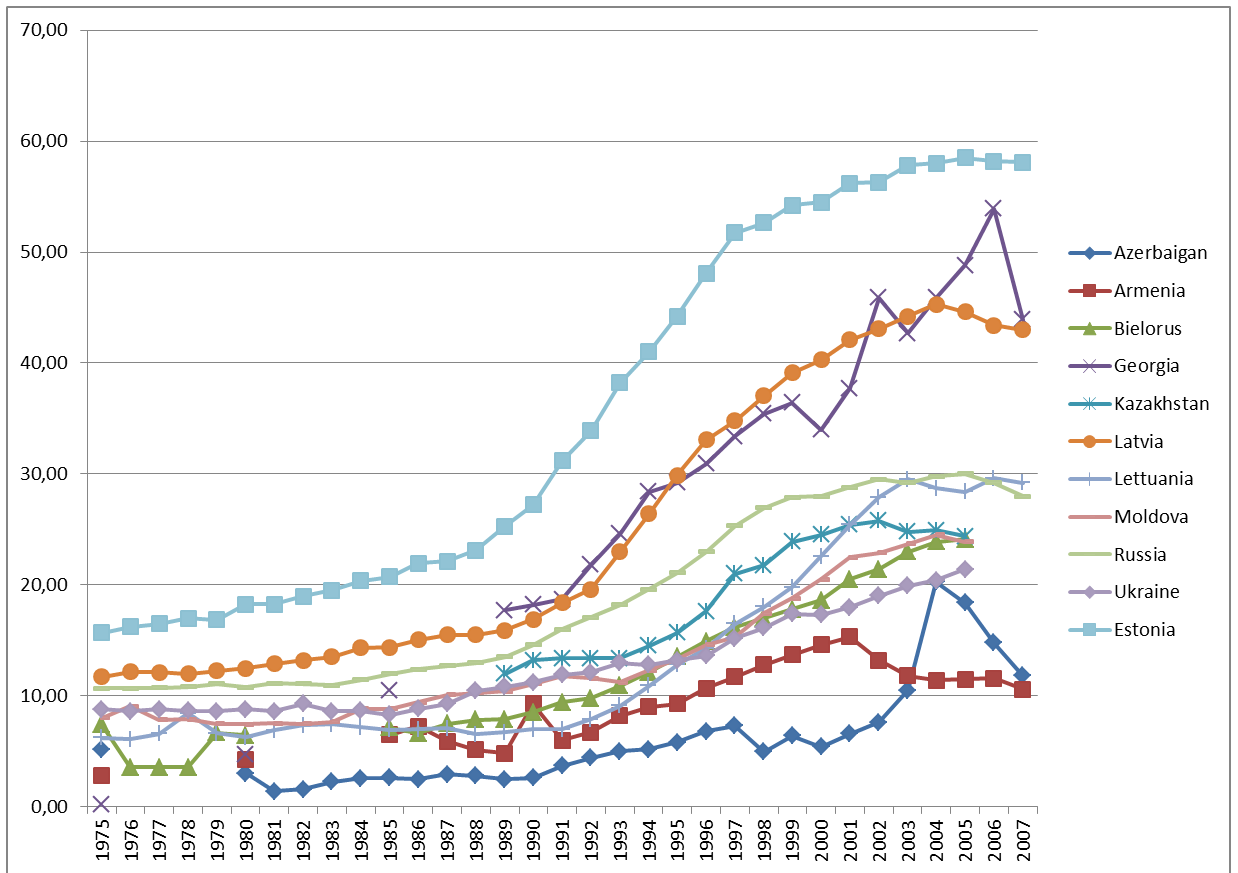


Table 1: The legal rights and obligations of married and cohabiting couples in Ukraine (2010)

Policy dimensions		Legal consequences	
		Spouses	Cohabitors
Protection of the surviving partner	Inheritance rights	Yes	Yes - if there are no heirs of 1st, 2nd and 3rd turn (no spouses, children, parents, etc.)
	Inheritance tax	No inheritance tax (still small inheritance duty)	The same duty for everyone
	Survivor pension (pension upon loss of breadwinner)	Yes, but only if certain conditions are fulfilled	No
Property disputes after union dissolution	Household goods	Yes	Yes
	Assets	Yes (rules on the property acquired during marriage)	Yes
Protection of financially weaker partner	Financial maintenance	Yes	Yes
	Alimony	Yes	Yes, if fatherhood was established by law
	Debts	Yes, but only as regards debts which do not concern personal property (personal belongings) - flat, car and other expensive assets are included into the common property so the debts are common	Yes, but only as regards debts which do not concern personal property (personal belongings) - flat, car and other expensive assets are included into the common property so the debts are common
Taxation and benefits	Income tax	No - Yes in case of having children (-1000 per each child)	Yes since they might be treated as single parents (in case of having a child) and pay less than married people (-1000 rubles) per each child
	Social security benefits	No	No
	Health insurance	No, it is individual and in case of working citizens linked to the employer	No, it is individual and in case of working citizens linked to the employer
Paternal relations	Paternity	Yes	No, but the father can acquire paternity by acknowledging the child with the consent of the mother (they can register a child together, can be proven by court with anyone initiative, a father can register a child alone if the mother is missing but State Guardianship should agree)
	Joint custody	Yes	Yes
	Family name	Yes	Yes, If the paternity is legally established
Rights for special groups	Residence permit	Yes	No
	Citizenship	Yes	No
	Adoption	Yes	Yes through court decision
	Reproductive technologies	Yes, informally more chances to get a quota for free treatment	Yes, since single woman has the right to use ART; but single man has no such a right - thus limitations for same-sex cohabitations; can apply for a quota

Source: Own analyses based on legal documents and secondary sources (list of sources available upon request)