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RĪGAS STRADIŅA UNIVERSITĀTE

Inga Kudeikina

PROBLEMS OF THE INSTITUTION OF CO-OWNERSHIP IN REAL ESTATE TRANSACTIONS

Summary of the doctoral thesis
to obtain the degree of the Doctor of Laws

Specialty – Law
Branch – Civil Law

Riga, 2015

Rīgas Stradiņa universitāte

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DESCRIPTION OF THE DOCTORAL THESIS

Real estate is one of the cornerstones of any economic system. Real estate is the target of civil transactions regardless of the number of owners, which refers to both unitary and co-owned properties. The optimal legal arrangement of real estate transactions is an essential element of the national legal policy. The effective legal regulation facilitates economic growth and social welfare.

Property rights viewed concurrently as a key pre-condition for and means of conducting real estate transactions represent one of the most complex institutions of civil law. Globalisation, changing socio-legal values and technological development: these factors have brought about new tendencies in the evaluation and legal regulation of property rights. Co-ownership is also affected by transformations. Latvia has a large number of co-owned immovable properties due to its historical situation. The existence of properties owned by several rightholders not only expands and complicates the internal structure of rightholders but also leads to the formation of new social systems among co-owners.

In the context of transactions with co-owned properties, the main theoretical issue is that property rights cannot be traditionally perceived by individual rightholders as the individual power over their 'own' properties. Both the special manner of exercising property rights and the necessity of the agreed declaration of intention with regard to transactions involving co-owned property affect all aspects of transactions, including the subjective perception of transactions by co-owners through the prism of exercising their rights and obligations.

Considering the demands of the modern world concerning legal transactions (procedural savings, legal and actual certainty, usefulness, balancing of individual and public interests, prevention of disputes), the legal

regulation of co-ownership should be revised with respect to transactions involving co-owned real estate.

The thesis analyses the legal regulation of co-ownership regarding divided real estate (land and constructions or land) through the prism of transactions. In Latvia, the regulation of divided co-ownership still remains at the level of the 30-ies of the 20th century, and the relevant sections of the Civil Law have not been changed since 1937 when it was adopted. Economic, legal and social developments indicate the need to carry out complex and consistent regulatory reforms targeted on transactions with co-owned real estate, on the basis of the legislative framework tuned in to the spirit of the times.

The arrangement of legislation by introducing up-to-date regulation could allow considerable improvement of the legal framework dealing with co-owned real estate. These efforts would result in the elimination of contradictory interpretations and foster justice, rendering the institution of co-ownership less contradictory, which would serve as a means of preventing civil disputes and minimise litigation.

The current relevance of the study is based on the following aspects:

1) the importance of real estate (also co-owned properties) in the life of each individual and society as a whole, considering the multi-functional nature of real estate;

2) transformation of the perception of property relationships;

3) demands of the modern world (globalisation, technological development) in respect of transactions;

4) deficiencies of the legal regulation of co-ownership.

The integrated analysis of co-ownership problems from the viewpoint of real estate transactions represents **the scientific novelty of the study**.

The study deals with issues, which have not been described in scientific literature before, such as the evaluation of co-ownership in terms of the

legitimacy and effectiveness of transactions, the analysis of legal relationships among co-owners from the standpoint of legal sociology, the axiological assessment of co-ownership as part of the legal system, as well as the availability of new means of the protection of rights and the solution of disputes.

The doctoral thesis is a complete scientific study. In the course of the study, the author conducts a successive analysis of the elements of co-ownership and their impact on the performance of transactions. The approach pursued by the author makes it possible to identify pre-requisites for the unification and modernisation of the co-owned real estate environment.

The conclusions and suggestions presented in the doctoral thesis could underpin the legal policy concept in the field of property law.

This study is extremely important for the evolution of the science of law. Innovative solutions are offered for certain issues of concern. Moreover, it is one of the latest studies in the branch concerned, and the conclusions drawn as a result of this study can be used both for any subsequent studies on the problems of property law and as a reference source of novelties.

The practical value of the doctoral thesis is that it can be utilised as an additional source by students of law and a reference source by all stakeholders to solve issues related to transactions involving co-owned real estate.

Theoretical materials used in the development of the thesis include works of contemporary and classical scholars of civil law, both Latvian and foreign.

Empirical materials employed for the purposes of this study comprise laws, court judgments, including those of the Latvian Constitutional Court, documents on specific transactions, as well as real estate data of the Land Registry and documents pertaining to transactions.

The goal of the doctoral thesis is to analyse and interpret legislation, case-law and legal doctrine with reference to each other in order to demonstrate the nature of the institution of co-ownership in real estate transactions by analysing the existing problems and controversies and formulating suggestions for the improvement of the legal framework.

The tasks of the doctoral thesis are as follows:

1) to identify and interpret laws governing transactions with co-owned real estate;

2) to assess whether the notions used in the Civil Law in relation to the institution of co-ownership are up-to-date;

3) to establish whether the existing practice complies with legislative requirements, based on the summary of opinions of legal scholars and the analysis of case-law and Land Registry data, as well as specific agreements;

4) to aggregate foreign experience in securing the legitimacy and effectiveness of transactions by assessing its potential and desirable incorporation into national law;

5) to identify the place of co-ownership in the legal system by analysing its role in the context of legal axiology;

6) to analyse the impact produced by the exercise of co-owners' rights on transactions;

7) to identify and classify the causes of disputes among co-owners;

8) to perform a legal analysis of the substantive basis of disputes among co-owners;

9) to analyse the potential use of the mediation option to solve disputes among co-owners;

10) to formulate suggestions for the enhancement of the effectiveness and strengthening of the legitimacy of transactions by improving the legal framework and unifying the existing practice.

The target of the study is co-ownership as an individual institution of law in the field of real estate transactions.

The subject of the doctoral thesis is the impact produced by the legal regulation on the structure and dynamics of legal relationships among co-owners and their relationships with third parties in transactions with co-owned real estate.

The questions to be answered by the study are as follows:

1) what impact is produced by the characteristic elements of co-ownership (undivided share, constraints on actions) on transactions?

2) to what extent does co-ownership affect the procedure of legal transactions and required documents?

3) may co-ownership be regarded only as a legal encumbrance?

4) what impact is produced by transactions with co-owned real estate on public interests and rights in the field of environmental law and does the existing legislation offer an adequate solution to safeguard public interests?

5) what are the options of preventing disputes among co-owners?

6) can mediation be used in co-ownership relationships?

The doctoral thesis relies on **general scientific and special legal research techniques**. The historical method is applied to examine the origin and further evolution of co-ownership. The comparative method is used to analyse the opinions of various authors about the intrinsic elements of co-ownership (undivided interest, divided use of co-owned property, pre-emptive right) and their place in the legal system. Analytic and synthetic methods are utilised to determine the distinguishing features of co-ownership, elaborate the thesis and formulate conclusions and suggestions. Empirical materials are

developed by means of induction and deduction. Theoretical modelling is applied to illustrate the applicable legislation and support the potential models of action in line with statutory requirements.

The doctoral thesis comprises the introduction, five main chapters, conclusions and suggestions, as well as the list of literature. The thesis is structured in a way allowing for the logical and gradual presentation of problems of the institution of co-ownership concerning real estate transactions.

The introduction explains the current relevance of the study, indicates the goal and tasks, subject and target of the study, as well as describes scientific methods employed.

In the first chapter of the thesis, the author analyses the legal nature of co-ownership, defining the components of co-ownership as an encumbrance on property and assessing their impact on real estate transactions.

The second chapter of the thesis deals with matters concerning the transformation of property rights as an absolute right in transactions involving co-owned real estate. This chapter analyses the protection of public interest in carrying out transactions with co-owned real estate in the context of the environmental and spatial planning legislation, as well as problems associated with the socialisation of co-owners in their co-owned property.

In the third chapter of the doctoral thesis, the author discusses problems concerning the sharing of responsibility for infringements committed in real estate transactions and the unification of transactions, focusing on the streamlining of practice with statutory requirements in transactions arising from the divided use of co-owned property.

The fourth chapter deals with the termination of co-ownership as a manner of the exercise of co-owner’s rights, particularly focusing on the legal framework related to the actual division of co-owned property and its impact on the exercise of the right to divide co-owned property.

In the fifth chapter of the thesis, the author analyses legal aspects of civil disputes arising from co-ownership relationships and possibilities of preventing such disputes.

Evaluation of the results of the doctoral thesis.

Scientific articles published on the topic of the doctoral thesis:

1. O.Joksts, I.Kudeikina "Kriminālās un civiltiesiskās atbildības nošķiršanas problēmas darījumos ar nekustamajiem īpašumiem". Baltijas Starptautiskās akadēmijas zinātniski teorētiskais žurnāls "Administratīvā un krimināla justīcija", 2012., Nr.1 (58), 32.–39.lpp. ISSN 1407–2971.
2. I.Kudeikina "Transformation of Property Right as a Fundamental Right into Joint Property". Mediterranean Journal of Social Sciences, Special Issue Vol. 4, Nr.11, October 2013, MCSER Publishing, Rome-Italy, 441.–445.pp. ISSN 2039–9340 (print), ISSN 2039–2117 (online). Iekļauts SCOPUS un Directory of Open Access Journals (DOAJ) datu bāzēs.
3. I.Kudeikina "Problems of authentication of the declaration of intention of co-owners". Academic Journal of Interdisciplinary Studies. Vol 3, No 3 (2014), Special Issue - June 2014, MCSER Publishing, Rome-Italy, 205.–209.p.p. ISSN 2281–3993 (print) ISSN 2281–4612 (online). Iekļauts Directory of Open Access Journals (DOAJ) datu bāzē.
4. I.Kudeikina "Kopīpašumā esoša nekustamā īpašuma reālā sadale reģionālās attīstības kontekstā". 7.Starptautiskās zinātniskās konferences "Sociālās zinātnes reģionālajai attīstībai 2012: finanšu kapitāla ietekme uz reģiona konkurētspēju" materiāli (2012.gada 8.–11.novembris). II daļa "Valsts un tiesību aktuālās problēmas". Daugavpils: Daugavpils Universitātes akadēmiskais apgāds "Saule", 2013. 27.–36.lpp. ISSN

2255–8853; ISBN 978–9984–14–638–6. Iekļauts GESIS SocioGuide datu bāzē.

5. I.Kudeikina "Kopīpašuma tiesību attīstība Kontinentālās Eiropas tiesību loka valstīs". Daugavpils Universitātes 55.starptautiskās zinātniskās konferences rakstu krājums// Proceedings of the 55th International Scientific Conference of Daugavpils University. Daugavpils: Daugavpils Universitātes Akadēmiskais apgāds "Saule", 2014., 563.–568.lpp. ISBN 978–9984–14–665–2. Iekļauts EBSCO Host datu bāzē.
6. И.Кудейкина "Понятие правовой природы института реального раздела долевой собственности". V Международная научно-практическая дистанционная конференция "Проблемы и перспективы социально-экономического реформирования современного государства и общетсва". Москва: Изд-во Спецкнига, 2011. С. 157.–161. ISBN 978–5–91891–099–3.
7. I.Kudeikina "Indivīdu tiesiskās socializācijas problēmas kopīpašnieku tiesiskajās attiecībās". Daugavpils Universitātes 54.starptautiskās zinātniskās konferences materiāli// Proceedings of the 54th International Scientific Conference of Daugavpils University. Daugavpils: Daugavpils Universitātes Akadēmiskais apgāds "Saule", 2013., 405.–413.lpp. ISBN 978–9984–14–613–3.
8. I.Kudeikina "Pirmpirkuma tiesības vieta mūsdienu tiesību sistēmā". Sociālo Tehnoloģiju augstskolas 5.starptautiski zinātniski praktiskās konferences "Moderno tiesību attīstības teorētiskās un praktiskās problēmas" rakstu krājums. Rīga: Sociālo tehnoloģiju augstskola, 2012., 27.–30.lpp. ISBN 978–9984–748–39–9.
9. I.Kudeikina "Understanding of Joint Ownership Rights in the Context of Environmental Law Genesis". Proceedings of the 4th International Interdisciplinary Scientific Conference. Rīga, November 22–23, Volume

10–2014, EDP Sciences, France, 2014. Raksts iekļauts Directory of Open Access Journals (DOAJ), Web of Science datu bāzēs.

10. I.Kudeikina "Kopīpašuma kā apgrūtinājuma raksturojošo elementu kvintesence". II starptautiskās jauno pētnieku un studentu zinātniski praktiskās konferences "Izaicinājumu un iespēju laiks: problēmas, risinājumi, perspektīvas" rakstu krājums. Rēzekne, 2012. 406.–408.lpp. ISBN 978–9984–47–064–1.
11. I.Kudeikina "Mediācija kā nekustamā īpašuma kopīpašnieku strīdu pirmstiesas risināšanas instruments". III starptautiskās zinātniski praktiskās konferences "Psiholoģijas, biznesa un sociālā darba perspektīvas un iespējas mūsdienīgā Eiropā" (2012.gada 24.–25.maijā) rakstu krājums, 8.sējums II daļa. Rīga, 2012, 142.–146.lpp. ISSN–1691–6913.
12. I.Kudeikina "Tiesību satura sadalījums domājamās daļās kopīpašumā un tā ietekme uz kopīpašnieka tiesību apjomu". 07.12.2012. Starptautiskās zinātniski praktiskās konferences rakstu krājums. Rīga, Baltijas Starptautiskā akadēmija, 2013. 247.–254.lpp. ISBN–978–9984–47–076–4.
13. I.Kudeikina "Kopīpašuma izbeigšanas procesuālie aspekti". III starptautiskās jauno pētnieku un studentu zinātniski praktiskās konference "Izaicinājumu un iespēju laiks: problēmas, risinājumi, perspektīvas" rakstu krājums. Rēzekne, 2013. 333.–337.lpp. ISBN 978–9984–47–077–1.
14. I.Kudeikina "Civiltiesisko strīdu materiāltiesiskie aspekti nekustamā īpašuma kopīpašnieku savstarpējās tiesiskajās attiecībās". II Starptautiskās zinātniski praktiskās konferences "Transformācijas process tiesībās, reģionālajā ekonomikā un ekonomiskajā politikā: ekonomiski politisko un tiesisko attiecību aktuālās problēmas" rakstu

krājums. Rīga, Baltijas Starptautiskā akadēmija, 2014. 101.–105.lpp. ISBN–978–9984–47–096–2.

The author has made oral presentations of the results of the study at 17 international and four local scientific conferences.

SYNOPTIC PRESENTATION OF THE DOCTORAL THESIS

1. THE EFFECT OF THE PERCEPTION OF THE CHARACTERISTIC ELEMENTS OF CO-OWNERSHIP AS AN ENCUMBRANCE ON THE FACTUAL CIRCUMSTANCES OF THE LEGAL TREATMENT OF TRANSACTIONS WITH CO-OWNED REAL ESTATE

The opinions of legal scholars about the content of property rights do not essentially differ: a property right is the broadest of all real rights, granting powers to define the procedure for maintaining and using property exclusively to the owner, thereby exercising economic management.[1]

The content and pattern of the exercise of property rights are considerably different when exercising the power over co-owned property. The legal nature of co-ownership is characterised by the restriction attaching to the exercise of property rights. Legal scholars describe co-ownership as follows: "it is only the content of a right that is divided in co-ownership."[2]

Co-ownership can in no way be an obstacle to transactions. However, the matters referring to co-owned property as a whole and transactions involving such property are subject to special regulation. It is necessary to reconcile the intention of co-owners, ensure respect of the rights and legitimate interests of co-owners and third parties and organise the proper maintenance and administration of co-owned property.

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[1] Суханов, Е.А. Общие положения о праве собственности и других вещных правах. *Хозяйство и право*, 1995, №6.с.29.

[2] Konradi, F., Walter, A. (sast.) *Civīllikumi ar paskaidrojumiem. Otrā grāmata. Lietu tiesības*. Rīga: Grāmatrūpnieks, 1935. 40.lpp.

The author distinguishes between objective and subjective sides of co-ownership. The objective side represents the body of legislation, which defines, governs and safeguards the ownership of property by two or more persons, while the subjective side means that two or more persons (co-owners) may manage, use and dispose of their co-owned property at their sole discretion, having achieved the unified declaration of intention.

The national legal system of Latvia does not treat co-ownership as an individual type of property rights. This is a restriction, which refers to the property in its entirety. Laws do not provide any explanation of the restriction as a legal phenomenon. According to Professor V.Sinaiskis, "the Civil Law construes co-ownership as a restriction of the power granted to the owner (respectively, the co-owner) rather than that of the property".[3]

It should be concluded that co-ownership is an encumbrance for co-owners in exercising their property rights because, according to Professor O.Joksts, "to encumber" means to make any action difficult.[4]

By means of legislation, the law-giver only deals with the inherent rights and obligations of co-owners, considering their special legal status, requirements as to mutual relations, the procedure for building relations with third parties and disposal of the co-owned property.[5]

The extent of undivided interest is a yardstick for the rights and obligations of co-owners. Each co-owner holds a certain share of property rights in the co-owned property rather than a specific privilege granted by property rights or a duty arising therefrom. This means that the agreed

[3] Sinaiskis, V. *Latvijas civiltiesību apskats: Lietu tiesības. Saistību tiesības*. Rīga: Latvijas Republikas Tieslietu ministrijas Tiesiskās Informācijas centrs, 1996. 71.lpp.
[4] Joksts, O., Girgensone, B. *Terminu skaidrojošā vārdnīca civiltiesībās (lietu tiesības, saistību tiesības)*. Rīga: Drukātava, 2011. 16.lpp.
[5] Civillikums. Trešā daļa. Lietu tiesības: Latvijas Republikas likums, adopted on 28.01.1937, entered into force on 01.09.1992. Published: Valdības Vēstnesis, Nr. 44, 24.02.1937, Sections 1067–1075.

declaration of intention by co-owners is necessary for the purposes of transactions involving co-owned property.

Professor J.Rozenfelds has developed the theoretical classification of the content of co-ownership, dividing it into negative and positive aspects.[6] In the opinion of the author, both the positive and negative content of co-ownership have one feature in common: any action (the positive aspect) involving co-owned property requires the agreed declaration of intention by all co-owners; otherwise, any co-owner may protest (the negative aspect) against the action, which has not been accepted by other co-owners. Components forming the content of co-ownership may be classified as tangible (co-owned property and co-owners) and intangible (the content of and the procedure for exercising property rights).

The encumbrance of co-ownership takes the form of the allocation of the content of property rights among co-owners: when engaging in any transactions with co-owned real estate, the parties must comply with all general requirements of a legal transaction and co-ownership legislation.

A pre-emptive right is one of the forms of encumbrances. The opinion voiced by some scholars that the pre-emptive right has become obsolete cannot be accepted.[7] The pre-emptive right has a positive aspect: it permits minimisation of the number of co-owners. However, the two-month period allowed for the exercise of this right is too long in the current circumstances, hindering civil transactions.

A discussion about the registration of the waiver of pre-emptive rights with the Land Registry is indeed topical. In 2011 the Department of Civil Cases

[6] Rozenfelds, J. *Lietu tiesības*. Rīga: Zvaigzne ABC, 2004. 73.–74.lpp.
[7] Prütting, H. *Sachenrecht. Juristische Kurz-Lehrbücher. 34., neubearb.Aufl.* München: Beck Juristischer Verlag, 2010, S.394.

of the Senate of the Latvian Supreme Court[8] changed the case-law concerning the legal nature of the pre-emptive right and its legal effect, concluding that there are no legal grounds for registering the waiver in the Land Registry because the pre-emptive right has the nature of a personal right. This opinion is shared by Professor J.Rozenfelds,[9] scholars G.Višņakova and K.Balodis.[10] The above interpretation has certain deficiencies. The classification of this right as a personal right selected as the sole criterion leads to the limitation of the Land Registry's functions. The pre-emptive right arises from real estate; therefore, the author believes that the official registration of the waiver of the pre-emptive right with the Land Registry should be viewed positively provided that the law-giver has authorised such registration and the special waiver form (the unilateral declaration of intention by a co-owner according to the procedure set out in Section 82[11] of the Notariate Law) is complied with.

Undivided interest should be mentioned as another element of the encumbrance. With regard to co-ownership, undivided interest should be understood as a component of property rights. The undivided interest of each co-owner demonstrates its position in respect of the co-owned property as a whole. Moreover, undivided interest determines legal relationships among co-owners. Undivided interest with respect to co-ownership is a real right (property right), which concurrently has certain features of a personal right because it determines specific rights and obligations towards third parties.

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[8] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2011.gada 21.septembra lēmums lietā Nr.SKC-1089/2011. [viewed on 22.02.2013] Available on: http://www.at.gov.lv/files/archive/department1/2011/1089-mainita%20judikatura.doc

[9] Rozenfelds, J. *Lietu tiesību jēdziens Latvijas civiltiesību sistēmā*. [viewed on 23.02.2013] Available on: http://www.rozenfelds.lv/lv/news/42

[10] Višņakova, G., Balodis, K. *Latvijas Republikas Civillikuma komentāri: Lietas. Valdījums. Tiesības uz svešu lietu (841.–926.p., 1130.–1400.p.).* Rīga: Mans īpašums, 1998. 13.lpp.

[11] Notariāta likums: Latvijas Republikas likums, adopted on 01.06.1993, entered into force on 01.09.1993. Published: Latvijas Vēstnesis, Nr. 48, 09.07.1993, Section 82.

The extent of undivided interest in co-owned property is the bearer of property rights also in the subjective sense. The author concludes that the allocation of the content of the right to a specific rightholder depends on the extent of his/her undivided interest. The majority of rights and obligations correlate with undivided interest. All co-owners equally hold the pre-emptive right, the right to divide co-owned property and the right of veto concerning the disposal of co-owned property. The right of veto should be particularly emphasised in the context of encumbrances. The legislation does not allow making decisions by majority vote, and situations when a co-owner refuses to give his/her consent or cannot be found are not governed by law at all.

The author has aggregated opinions about the essence of undivided interest and concluded that the opinion that undivided interest is part of the title to the entire property is prevalent in legal literature. It should be understood that the extent of property rights is not separated or assigned to rightholders, it is rather 'horizontally' distributed among several holders, with property rights remaining unified. Any co-owner may concurrently own undivided interest and utilise the physical share of the property to the extent of his/her undivided interest. Undivided interest is defined on an individual basis, it incorporates the undivided share of a tangible property, whereto the exclusive right is assigned to a certain individual rightholder and, above all, it cannot be claimed by other co-owners. It is not necessary to determine the physical share. The agreed declaration of intention by all co-owners is required to determine the physical share (i.e. they must reach an agreement on the determination of physical shares). There exist no valid legal grounds for making additions in the Land Registry about a specific apartment used by a co-owner referring to the acquisition of undivided interest rather than an agreement of co-owners; however, it is a common practice, which produces an adverse impact on the

authenticity, transparency and relevance of Land Registry entries for the purposes of transactions.

Undivided interest is a not only a yardstick for the rights and obligations but also an independent target of civil transactions. This view is both set out in the civil law theory[12] and confirmed by case-law.[13]

Due to the structure of co-ownership, intention and the form of its declaration have come to the foreground. The declaration of intention means the public announcement of each rightholder's individual intention, with the result that such individual intention is perceived and understood by other rightholders, as Professor V.Jakubaņecs has stated: "The declaration of intention should be interpreted as the expression of will or consent to something".[14]

Nowadays, the presumption of legality of the declaration of intention is still prevalent. The declaration of intention must present the individual intention of a rightholder correctly and accurately, complying with the form prescribed by law.

Depending on persons declaring their intention in transactions involving co-owned property, the author distinguishes between the joint intention of all co-owners and the individual intention of each co-owner. Documents supporting the intention expressed by co-owners in real estate transactions may not cause any doubts as to their authenticity, which can be achieved by means of notarial certification because "the sworn notary shall bear responsibility for the legitimacy and balance the legitimate interests of various persons,

[12] Rozenfelds, J. Publiskās ticamības princips, kopīpašuma tiesības uz nekustamu īpašumu un sacīkstes princips. *Latvijas Republikas Augstākās tiesas biļetens*, 2011, Nr. 3, 10.lpp.

[13] Latvijas Republikas Augstākā Tiesa. Kopīpašums: tiesu prakses apkopojums, 2011. [viewed on 14.02.2013] Available on: http://at.gov.lv/files/uploads/files/docs/2011/kopipasums.doc.

[14] Jakubaņecs, V. *Juridiski terminoloģiskā skaidrojošā vārdnīca.* Rīga: Latvijas Policijas akadēmija, 2001. 72.lpp.

explaining potential consequences to all actors in the transaction."[15] The legislation requires that, in order to have legal effect, the co-owner's intention may be recorded in a separate document, which may be issued as a notarial act or certified by the custody court, and it may be expressed in a document intended for registration purposes (e.g. an agreement) and an application for registration of title, seeking the registration, modification or annulment of a right. Documents to support the declaration of intention vary considerably in terms of the manner of issue and certifying officials. The issue concerning the power of custody courts to certify the declarations of intention is debatable because the competence of custody courts cannot be equated with that of sworn notaries.

There are no legal grounds for treating the verification of legal capacity (performed when certifying applications for registration of title) as a tool for making a document an official record. As regards the differences between private and public documents, the author shares the opinion of Dr.iur. L.Damane that "the certification of the authenticity of a signature by a notary means public notarisation, with a private document being kept. The certification of a notarial act means public notarisation, making the document an official record."[16] Only a notarial act is a document in which the content, signatory's identity, legal capacity and powers of representation are authentic; therefore, it is the best option for recording the declaration of co-owners' intention from the legal viewpoint.

[15] Latvijas Notariāta funkcijas un tā sniegtās juridiskās palīdzības pieejamība, to izvērtējums (Pielikums Nr. 1, Pielikums Nr. 2, Pielikums Nr. 3, Pielikums Nr. 4, Pielikums Nr. 5, Pielikums Nr. 6, Pielikums Nr. 7) [viewed on 21.05.2014] Available on: http://www.tm.gov.lv/lv/nozares-politika/petijumi, 60.lpp.

[16] Damane, L. Notariāls apliecinājums kā notariāls akts un zvērināta notāra veikts apliecinājums. *Latvijas notārs*, 2013. 54.lpp.

2. TRANSFORMATION OF THE ABSOLUTISM OF PROPERTY RIGHTS WITH REGARD TO THE INSTITUTION OF CO-OWNERSHIP IN THE CONTEXT OF THE GENESIS OF THE PUBLIC AND PRIVATE LAW

When engaging in transactions with co-owned property, a co-owner is restricted both in law (statutory requirements) and in fact (due to the need to consider the rights and interests of other parties). Private property should be viewed as an exercise of personal freedom. Some authors assert that there is no essential difference between what we may term the private law and the public law of property.[17] This opinion can be accepted only partly. The public law will always give precedence to public interests, which might not coincide with individual interests in some aspects.

The Constitution of the Republic of Latvia contains provisions aimed at protecting property.[18] However, property rights should not be regarded as absolutely inviolable because they serve the interests of not only the owner but also the public.[19] It is stated in scientific literature on the necessity of restrictions and the inter-connection with property rights that "...the persistence of private property depends upon the continuing consent of the community,

[17] Byrne, J.P. The Public Nature of Property Rights and the Property Nature of Public Law . In: Malloy, R.P., Diamond, M. (eds.) *The Public Nature of Private Property*. Farnham, Surrey, England ; Burlington, VT: Ashgate, 2011, pp.1.

[18] Latvijas Republikas Satversme, adopted on 15.02.1922, entered into force on 07.11.1922. Published: Latvijas Vēstnesis, Nr. 43, 01.07.1993.

[19] Latvijas Republikas Satversmes tiesas 20.05.2002. spriedums lietā Nr. 2002-01-03. Published: Latvijas Vēstnesis, Nr. 75, 21.05.2002.

which protects and gives endurance to specific private interests in resources because it enhances human welfare more generally."[20]

With regard to co-ownership, certain restrictions are set to serve public interests. When exercising property rights, co-owners are inter-connected and subjected to the agreed declaration of intentions, and there exist conceptual restrictions in the division of co-owned property in favour of public interests: to comply with laws governing the planning of a specific territory and the preservation of its environment when performing the actual division of co-owned property. Actual division must be in conformity with the requirements set for the planning of the territory of the relevant municipality, including the minimum area of new land plots. There is no doubt that the private law and the public law have different regulatory tools and subjects. Harmonisation of the public law and the private law is a priority in the development of law.[21] The matter concerning the actual division of property and the adequacy of public interests has not been harmonised.

The author is of the opinion that there are no sufficient legal grounds for extending the regulation dealing with spatial planning to the actual division of co-owned property. As a result, the extent of property rights of each co-owner is transformed. Actual division has no effect on public interests. Meanwhile, the impossibility of actual division leads to the substantial limitation of property rights of rightholders.

The analysis of problems concerning the exercise of co-owners' property rights would be incomplete without consideration being given to the problem of divided property. These are legal relationships that are not typical for civil law:

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[20] Byrne, J.P. The Public Nature of Property Rights and the Property Nature of Public Law . In: Malloy, R.P., Diamond, M. (eds.) *The Public Nature of Private Property*. Farnham, Surrey, England ; Burlington, VT: Ashgate, 2011, pp.1.

[21] Collins, H. *The European Civil Code. The Way Forward.* Cambridge: Cambridge University Press, 2008. pp.110.

forced rent, non-compliance with the principle of the unity of land and buildings, restrictions as to the exercise of property rights. The author believes that the prevention of divided property should have been analysed upon initiating the land reform. No solutions that cause additional hindrances to co-owners or block the unified reform to eliminate divided property can be allowed. The government must assume responsibility for the current situation, which means that State support must be provided to co-owners seeking to eliminate divided property.

In the modern world, there has been a clear shift of public attitudes towards the utilisation of property. The potential increase of the limit of owner's responsibility has come to the foreground with regard to the sustainable use of real estate. In the research study about environmental principles, Professor N. De Sadeleer indicates that "precaution, i.e. careful assessment of whether measures that could have environmental impacts are needed"[22] must be exercised.

Each rightholder seeks to derive maximum benefits from its property, exercising its property right to the fullest extent possible. There are grounds to disagree with Professor I.Čepāne, who asserts that "without understanding the meaning of sustainable development, environmental protection requirements might be reduced excessively while pursuing economic interests"[23] because the treatment of property solely as a subject of economic activity, without considering property rights as an absolute value, unreasonably reduces the possibilities of exercising co-owners' property rights.

Environmental laws are aimed at the regulation of construction (as an environmentally transformative activity). The legitimate goal of the division of

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[22] de Sadeleer, N. *Environmental Principles from Political Slogans to Legal Rules.* Oxford: Oxford University Press Inc., 2002., pp.21-225.

[23] Čepāne, I. Tiesību uz īpašumu un labvēlīgu vidi līdzsvara meklējumi Satversmes tiesas praksē. *Jurista Vārds*, 2011, Nr.47. 6.lpp.

co-owned property is the elimination of such property rather than land development or any other utilisation of land for business purposes. There is a fundamental difference between the following two situations: whether the actual division of land is carried out by co-owners to terminate co-ownership or by a single owner to dispose of and use the new land plots for business purposes. There are no grounds for applying uniform principles and laws to both these situations because of the difference in their essence. As concerns the study, the author believes that environmental laws do not meet the legitimate goal. The division of real estate (co-owned property) per se cannot pose any threat to facilities protected by environmental laws. No environmental harm can be caused by the division of a property (e.g. land).

Scientific literature also stresses the necessity of assessing the adequacy of applying the stringent principles of environmental laws.[24] The author shares the opinion that the principles set out in environmental laws are essential but not absolute, and they do not prevail over the principles provided for by other laws.

The socialisation of co-owners also has certain features of the public law. The co-owners of a certain co-owned property form a specific closed social group having its own social relationships. With regard to transactions, legal relationships are established as follows: 1) among co-owners, 2) between a group of co-owners (as a whole) and third parties, 3) between an individual co-owner and third parties when the co-owner disposes of or pledges his/her undivided interest in the co-owned property. The ability of co-owners to cooperate and express their attitude to the transaction involving the co-owned property is vital. The author would like to emphasise that the revision of the procedure for obtaining consents (permits, approvals) for the purposes of

[24] de Sadeleer, N. *Environmental Principles from Political Slogans to Legal Rules.* Oxford: Oxford University Press Inc., 2002., pp.301.

transactions should be discussed in respect of situations when a co-owner cannot be found at his/her place of residence or his/her residence is unknown.

Legal behaviour is determined by both statutory requirements and social standards. A legal transaction must concurrently fulfil statutory requirements and the co-owners' intention expressed in specific legal instruments. Co-ownership has a dual function with regard to its exercising, the rights conferred on the co-owner are balanced with his/her obligations and the contribution made by the co-owner to the co-owned property and other co-owners. The legal regulation of co-ownership is aimed at equity, balance and safeguarding of each individual's rights and legitimate interests during the exercise of rights. This is confirmed by the opinion provided in scientific literature that the compliance with the checks and balances system is essential in the field of co-ownership, which means that any encumbrances of co-ownership relations must be minimised for both each individual co-owner and all co-owners jointly.[25]

In 2011 the Latvian Supreme Court aggregated the case-law concerning co-ownership[26], from which it can be inferred that disputes among co-owners largely have social causes.

As it can be concluded from the analysis of co-ownership from the viewpoint of the sociology of law, co-ownership as a legal structure is not suitable for the complete exercise of property rights inherent in individuals.

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[25] Филатова, У.Б. *Право общей собственности в России, Германии, Австрии и Швейцарии (историко-компаративистское исследование.* Москва: Юриспруденция, 2012. с.107.

[26] Latvijas Republikas Augstākā Tiesa. Kopīpašums: tiesu prakses apkopojums, 2011. [viewed on 30.01.2013.] Available on: http://at.gov.lv/files/uploads/files/docs/2011/kopipasums.doc.

3. UNIFICATION OF THE ENVIRONMENT OF TRANSACTIONS WITH CO-OWNED REAL ESTATE BY SOLVING THE ISSUES CONCERNING THE SEPARATION OF LEGAL RESPONSIBILITY IN TRANSACTIONS AND THE LEGAL NATURE OF THE AGREEMENT ON THE DIVIDED USE OF CO-OWNED PROPERTY

With a view to ensuring the legal environment of transactions, it is vital to draw a distinction between the types of responsibility for infringements of laws. A civil transaction on real estate division, change, sale, etc., which, prima facie, has all components of a legal transaction may still be subject to certain circumstances rendering the transaction illegal. If this is the case, the initiation of criminal or civil proceedings should be considered.

As it can be inferred from the analysis of the disposition of constituent elements of criminal offences committed with intent and to become enriched, real estate may be the subject of fraud, misappropriation and extortion. Fraud is a type of criminal offences, which is hard to classify in practice. Both deceit and abuse of trust are not merely criminal notions. These are institutions of civil law. Infringements in the field of real estate transactions can be different: the sale of real estate to several buyers, the disposal of co-owned property by a single co-owner, the conclusion of an earnest money agreement without intending to enter into a sale agreement, the conclusion of an earnest money agreement on the same subject with several persons, etc. It is practically impossible to choose any criteria for the uniform classification of different infringements. The legal status of the infringer with regard to the target of the infringement (real estate) can be used for classification purposes: 1)

infringements of law committed by the real estate owner against third parties, 2) infringements of law committed by third parties against the real estate owner. According to the case-law, infringements committed by third parties do not normally cause any classification difficulties.

As a rule, problems with the determination of responsibility and the classification of infringements come up when the real estate owner (or his/her attorney) performs an unlawful act, mainly selling his/her property to several buyers and entering into several agreements. According to the interpretation of 'fraud', fraud can only be practised against the real estate owner or legal possessor. No infringement of law committed by the owner (legal possessor) can be classified as fraud; it is only a civil dispute to be solved according to the civil procedure. The author believes that this interpretation unjustifiably narrows the range of subjects which can be recognised to have committed fraud as a criminal offence. It is admitted in legal literature that "an owner, which has concluded a second disposal agreement, is no longer acting within the scope of his/her rights"[27]. Any activity outside the scope of rights conferred upon an individual should be regarded as deceit towards persons affected by the individual's activity. When making a distinction between civil and criminal responsibility, all the factual circumstances of the infringement and the subjective attitude of the infringer towards the infringement should be taken into consideration, the infringer's intention could become an essential element of the classification.

The legal aspects of the divided use of co-owned property are crucial for the general unification of the transaction environment. The divided use of co-owned property is one of the rights granted to co-owners, and it also has practical relevance. There exist various interpretations as to the subject-matter

[27] Синайский, В. *Основы гражданского права. Выпуск II*. Рига: Валтерс и Рапа, 1926. с. 21.

of the agreement on the divided use of co-owned property and the registration of the agreement with the Land Registry because this kind of an agreement is not defined by laws. The author stresses that, judging by the essence of co-ownership, the divided use of co-owned property entails only the right of **use**, but it cannot be attributed to the recognition of property rights to the share of co-owned property transferred for use and/or new properties constructed on the land plot handed over to the co-owner for individual use. Legal scholars emphasise in their works that "in determining the divided use, it is the use rather than the common property itself that is divided".[28] Co-ownership is not terminated by setting the procedure for using co-owned property.[29]

With this in view, the issue concerning the public nature of the agreement on the divided use of co-owned property and options of its official registration is essential. Based on the concept of the public registration of legitimate interests by the British scholar R. J. Smith, the objective of public registration is to protect both owners from potentially illegal acts of third parties and, vice versa, third parties from threats that could be caused by real estate owners in transactions.[30] Public registration individualises real estate and related rights. Laws do not require the registration of agreements on the divided use of co-owned property with the Land Registry by way of notes; the making of relevant entries can, however, be discussed. In the author's opinion, the registration of agreements on the divided use of co-owned property with the Land Registry is exaggerated from the viewpoint of public protection. The right of the divided use of co-owned property is provided for by law, it is a real right. Meanwhile, obligations arising out of the agreement on the divided use of co-

[28] Grūtups, A., Kalniņš, E. *Civillikuma komentāri. 3.daļa. Lietu tiesības. Īpašums*. Otrais, papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2002. 261.lpp.

[29] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2007.gada 24.oktobra spriedums lietā Nr.SKC-0703-07. [aplūkots 16.08.2014.] Pieejams: http://tiesas.lv/e-pakalpojumi/judikatura/dati/453.

[30] Smith, R.J. *Property Law*. Harlow, England : Pearson/Longman, 2006. pp.219.

owned property (e.g., disputes over management, damages, etc.) among co-owners should be settled under the agreement as a personal right for which the official registration is immaterial.

It should be stressed that the right of the divided use of co-owned property and the agreement on the divided use of co-owned property are not identical notions. The right of the divided use of co-owned property is materialised in the respective agreement. The agreement establishes personal rights of co-owners. The *numerus clauses* principle does not allow treating agreements on the divided use of co-owned property as a real right, while other scholars insist that this principle is not absolute.[31] The author shares the opinion offered by N.Salenieks, Senator of the Latvian Supreme Court: "with a view to safeguarding legal stability and trust of third parties in building own legal relationships so that they could acquire the proprietary force owing to the registration with the Land Registry, these rights should be legitimased by law."[32]

A statutory right of co-owners to agree on the divided use of co-owned property should not be subject to extended interpretation. Co-owners may agree on the divided use of co-owned property, while law does not provide for any right of possession being granted to them. This approach is in conformity with the substance of co-ownership.

[31] Бабаев, А.Б. *Система вещных прав*. Москва: Wolters Kluwer, 2006. с.315.

[32] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta senatora Normunda Salenieka atsevišķās domas Rīgā, 2011.gada 15.decembrī lietā Nr.SKC–781/2011 skatīt: Tiesības ierakstīt zemesgrāmatā vienošanos par nekustamā īpašuma lietošanas kārtību. [viewed on 17.08.2014.] Available on: http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/hronologiska-seciba_1/2011-hronologiska-seciba/.

4. TERMINATION OF CO-OWNERSHIP AS AN EXERCISE OF PROPERTY RIGHTS OF CO-OWNERS FROM THE VIEWPOINT OF PROBLEMS ASSOCIATED WITH THE ACTUAL DIVISION OF CO-OWNED PROPERTY

The division of co-owned property is a special form of the termination of ownership.[33] A right to terminate co-ownership is an exclusive right conferred upon co-owners. It is a real right.[34] Co-owned property may be divided on the basis of an agreement of co-owners or a court judgment. The Civil Law does not restrict co-owners in their choice of the manner of property division in any manner whatsoever. The Civil Law does not recognise the notion 'withdrawal from co-ownership", which refers to situations when a co-owner withdraws from the co-ownership, while the property concerned remains undivided. The result of dividing a co-owned property is the termination of co-ownership but co-ownership does not cease to exist in the case of withdrawal of any co-owner, whether voluntary or compulsory. In terms of civil procedure, the division of co-owned property is subject to special conditions. The task of the court is "to opt for the manner of division, which is the most appropriate and equitable, considering all the circumstances."[35] It should be stressed that the actual division of co-owned property must comply with the regulations on the use and construction of the territory adopted by the local government and

[33] Sinaiskis, V. Īpašuma tiesību robežas un ierobežojumi sakarā ar īpašuma tiesību jēdzienu (teorētiski – dogmatisks apskats). *Tieslietu ministrijas vēstnesis*, 1931, Nr.3/4. 81.–87.lpp.

[34] Latvijas Republikas Augstākā Tiesa. Kopīpašums: tiesu prakses apkopojums, 2011. [viewed on 20.08.2014.] Available on: http://at.gov.lv/files/uploads/files/docs/2011/kopipasums.doc

[35] Grūtups, A., Kalniņš, E. *Civillikuma komentāri. 3.daļa. Lietu tiesības. Īpašums*. Otrais, papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2002. 278.lpp.

other statutory requirements. Claims for the division of co-owned property may not be dismissed by the court.[36] However, it is not the only opinion existing in the legal doctrine. To disprove the arguments of opponents, it should be emphasised that there are no grounds to refer to the court's right to dismiss claims because, if the option of division offered by the claimant cannot be accepted, the court is free to choose any other forms of the division of co-owned property listed in laws. Judgments in such division cases are constitutive. The termination of co-ownership leads to the change or expiry and establishment of new rights.

The actual division of co-owned property is acknowledged as the most equitable and least socially traumatic way of the termination of co-ownership because it represents the division of a common property into several independent items, each of them being allocated to the relevant co-owner as his/her individual property.[37] The co-owned property ceases to exist in its original form. Considering the physical transformation of property, only physically divisible items can be divided. Ancient Roman lawyers treated the indivisibility of property (*res indivisae)* as a legal fiction because any item can be divided physically, but it might acquire a different economic impact or alter as a result of the division.[38] Each share must obtain required qualities and individual features so that the State Land Service and the Land Registry could draw up the real estate file.[39] 'Divisibility' is not a static value; on certain occasions, an item, which has been originally indivisible, may be rendered

[36] Krauze R. Kopīpašuma lietošana, dalīšana un apsaimniekošana. *Latvijas Republikas Augstākās tiesas biļetens*, 2011, Nr.3. 8.lpp.
[37] Grūtups, A., Kalniņš, E. *Civillikuma komentāri. 3.daļa. Lietu tiesības. Īpašums*. Otrais, papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2002. 279.lpp.
[38] Зайков, А.В. *Римское частное право в систематическом изложении: учебник*. Москва: Ун-т Дмитрия Пожарского, 2012. с.212.
[39] Par nekustamā īpašuma ierakstīšanu zemesgrāmatās: Latvijas Republikas likums, pieņemts 30.01.1997, stājas spekā 06.03.1997. Publicēts: Latvijas Vēstnesis, Nr.52/53, 20.02.1997.

divisible by means of a construction design developed according to the statutory procedure.

In legal literature, an opinion prevails that "in dividing co-owned property, each co-owner must receive a physical share that would be proportionate to his/her undivided interest. This is a principle of the actual division of co-owned property, and the physical share must be equal to the undivided interest".[40] Otherwise, compensation payable to the co-owner, which has received a smaller share, is the tool offered by several legal experts to solve such situations.[41] The author cannot accept this opinion and believes that this approach does not agree with the substance of the institution of co-ownership as a whole and Article 1070(1) of the Civil Law in particular.

[40] Joksts, O. *Zemes reforma Latvijā un tās tiesiskais nodrošinājums (1990.–2005.g.)*. Rīga: Multineo, 2006. 148.lpp.
[41] Grūtups, A., Kalniņš, E. *Civillikuma komentāri. 3.daļa. Lietu tiesības. Īpašums*. Otrais, papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2002. 279.lpp.

5. LEGAL ASPECTS OF CO-OWNERSHIP DISPUTES AND PROCEDURAL SOLUTIONS: SUBSTANTIVE DETAILS AND PRE-TRIAL SOLUTIONS

Disputes can be classified on the basis of subjects: 1) disputes among real estate co-owners, 2) disputes between co-owners as the owner of real estate (as a whole) and third parties. In the exercise of rights, legitimate rights of a co-owner are opposed to analogous rights of other co-owners. The provisions of the Civil Law concerning the exercise of property rights granted to co-owners should not be interpreted in any manner restricting the right to property, which is a fundamental right, in spite of being restrictive in their essence. Otherwise, the extension of any co-owner's right to dispose of a co-owned property will inevitably lead to the reduction of the scope of other co-owners' rights.[42]

Naturally, co-ownership implies that the right of an individual co-owner to co-owned property is restricted to a greater extent than the sole owner's right to undivided property. The study has demonstrated that co-ownership per se may give rise to pre-conditions for disputes among co-owners. The restriction on property rights of co-owners provided for by laws is of a dual nature, simultaneously safeguarding co-owner's rights. It is the factual circumstances of the exercise of rights that form the substantive basis of disputes among co-owners.

Nowadays, the pre-trial settlement of disputes is becoming increasingly popular because it allows saving resources and achieving a more stable social and legal balance. The out-of-court settlement procedure could be suitable for

[42] Latvijas Republikas Satversmes tiesas 2011.gada 25.oktobra spriedums lietā Nr.2011–01–01 Par Civillikuma 1068.panta pirmās daļas atbilstību Latvijas Republikas Satversmes 105.pantam. Published: Latvijas Vēstnesis, Nr.171, 28.10.2011.

co-ownership disputes because co-owners are free to make an objective choice of their legal behaviour model and the most effective solution for the co-owned property. When speaking about the pre-trial settlement options and court proceedings, Dr.iur. I.Kronis has mentioned that "the alternative dispute resolution and judicial settlement may not contradict each other. These are two absolutely different dispute resolution options, which must supplement and be an alternative to each other to attain social peace based on amicable settlement."[43] Mediation is a resource that may and, as the author considers, must be applied because: "it helps people understand the situation and existing problems from the neutral standpoint."[44] In the long term, mediator's assistance should be viewed as a means of preventing disputes. There exists pluralism of opinion about the necessity of mediation. Several authors refer to the voluntary nature of mediation. For instance, A.Golichenkov stresses that mandatory (forced) mediation is in contradiction to the institution of mediation[45], and a similar opinion is expressed by I.Reshetnikova, who asserts that mediation must be voluntary as no forced reconciliation is possible[46]. The author would sooner accept the opinion of legal scholars, who admit that mediation could also be mandatory. For instance, K.Maki argues that mandatory mediation is effective; therefore, conflicting parties must be forced to a certain extent to resort to mediation.[47] The adoption of the Mediation Law on 22 May 2014 entailed respective amendments to the Civil Procedure Law, which require that the

[43] Kronis, I.*Civiltiesisko strīdu alternatīvs risinājums,* Rīga: Latvijas vēstnesis, 2007. 19.lpp.
[44] Artūra Trosena (*Arthur Trossen)* saruna ar Baltijas Franšīzes fonda priekšsēdētāju Tatjanu Meļehovu. Mediācija. [aplūkots 08.07.2014.] Pieejams: http://www.franchising.lv/index.php/en/home/point-of-view/399-mediacija-lv.
[45] Голиченков, К.А. Нужно формировать потребность в медиации. *Медиация и право*, 2009, №1. с.18.
[46] Решетникова, И.В. Нас всех надо учить толерантности. *Медиация и право*, 2007, №.4. с.30.
[47] Маки, К. Просто хорошая практика. *Медиация и право*, 2007, №.4. с.48.

judge (court) must offer the parties to solve their dispute by means of mediation.[48] It should be noted that the court will have to comply with this requirement starting from 1 January 2015. The effectiveness of mediation conducted by court can only be verified in practice and in the long term.

Mediation can be as follows: 1) pre-trial mediation as a pre-requisite for court proceedings, 2) judicial mediation, by suspending court proceedings for a certain period. Considering the principle of procedural savings, the author prefers mediation as a pre-requisite for court proceedings.

[48] Grozījumi Civilprocesa likumā: Latvijas Republikas likums, adopted on 22.05.2014., entered into force on 18.06.2014. Published: Latvijas Vēstnesis, Nr.108, 04.06.2014.

CONCLUSION

As concerns real estate transactions, including those with co-owned property, the modern world has introduced new demands as to the effectiveness of transactions, legal security of the parties, balancing of the interests of the public and parties to transactions, sustainable development, social responsibility and dispute resolution innovations. Considering these paradigms, both the legal regulation of co-ownership and the exercise of rights should be revised.

The procedure applied to transactions involving co-owned real estate is different from that referring to sole ownership. First, the differences are due to the fact that the target of a transaction with co-owned real estate may be as follows:

1) real estate as a whole;
2) physical share of the property;
3) undivided interest.

Second, transactions involving co-owned real estate may be performed by the following persons:

1) co-owners among themselves;
2) co-owners as a whole with third parties;
3) an individual co-owner with third parties.

The study has highlighted co-ownership problems in different facets for each type of transactions. Co-ownership as an encumbrance becomes more evident at the time of transactions, i.e. when property rights are being exercised in an active manner. When static, encumbrances are not obvious, or their significance and impact are minimal.

The problems identified during the study are mostly associated with deficiencies and inaccuracies of laws and the transformation of the modern perception of property rights and mechanisms for exercising these rights. Co-

ownership is one of the oldest legal institutions. In Latvia, the co-ownership legislation is relatively recent, it was developed at the beginning of the 20th century when the State of Latvia was founded and the national legal system was designed. Since then, the legal framework governing co-ownership has not been updated, while the legal system has been supplemented with laws, which indirectly produce a noteworthy impact on transactions with co-owned property. The transaction environment is not isolated; transactions are covered by and subject to laws governing the evolution of the institution of property more widely (e.g. environmental sustainability, the utilisation of land as a resource, etc.)

The study has found answers to the questions brought up. The answers are structured, and the following **conclusions** have been made:

1. Problems related to the legal nature of co-ownership.

Having analysed the problem, the author has drawn a conclusion that transactions, their process and required documentation are affected by the characteristic elements of co-ownership (undivided interest, constraints on actions):

1.1. In conducting legal transactions involving real estate, co-owners must take into account additional requirements arising out of the legal nature of co-ownership, including respect of the rights of other co-owners.

1.2. A pre-emptive right is one of the forms of encumbrances, pursuing a legitimate objective, which is the safeguarding of the legitimate interests and rights of co-owners.

1.3. The statutory period allowed for the exercise of the pre-emptive right is too long, and it fails to meet the current capacity for transactions.

1.4. The existing legislation does not deal with the registration of waivers of pre-emptive rights with the Land Registry, and there exists no consistent practice in this respect.

1.5. As regards co-ownership, the extent of property rights is expressed as undivided interest, which is a yardstick for the rights and obligations of co-owners (except for the right of veto).

1.6. Undivided interest in co-owned property is an independent target of civil transactions.

1.7. The established practice of making additions in the Land Registry about a specific apartment used by a co-owner in a co-owned apartment building on the basis of any transactions (e.g. sale, donation) rather than an agreement on the divided use of co-owned property signed by co-owners is contrary to statutory requirements.

1.8. Entries made in the Land Registry regarding transactions whereby undivided interest is pledged by co-owners are not in conformity with statutory requirements.

1.9. The proportion of transactions with co-owned real estate, which require the declaration of intention by co-owners, is essential.

1.10. Documents containing the declaration of intention by co-owners may be different, depending on the legal force of the respective document.

1.11. Co-ownership does not give rise to joint and several liability of co-owners.

1.12. Criminal or civil proceedings may be initiated in real estate transactions over infringements of law depending on their nature, circumstances and the subjective attitude of the infringer towards the infringement committed.

2.Problems associated with the divided use of co-owned property.

The author is of the opinion that the analysis of the divided use of co-owned property should consider whether co-ownership may be viewed only as a legal encumbrance. It has been established that, to a great extent, the divided use of co-owned property demonstrates that co-ownership has the nature of a factual encumbrance. This leads to a conclusion that co-ownership is shown as an encumbrance outside the scope of laws, including the following:

2.1. The divided use of co-owned property is an essential right of co-owners, which arranges relationships among co-owners and the management of their co-owned property.

2.2. The scope of the agreement on the divided use of co-owned property defined by law is not observed because the clauses concerning not only the divided use of co-owned property but also possession and even property rights are included.

2.3. There is no uniform understanding of the legal nature of the agreement on the divided use of co-owned property and legal grounds for registering these agreements in the Land Registry.

2.4. The importance of the public registration of agreements on the divided use of co-owned property is exaggerated in terms of the safeguarding of the rights of co-owners and third parties.

3. Problems related to the division of co-owned property.

The division of co-owned property has a tendency to safeguard public interests, balancing them with the possibilities of exercising co-owners' rights, which gives strong grounds to conclude that the actual division of co-owned property is a type of transactions, which the law-giver has recognised as impairing public interests, providing the following special regulation:

3.1. The term “division of co-owned property” does not represent the entire range of legal actions to be carried out when terminating co-ownership, nor does it provide the comprehensive list of legal effects.

3.2. The actual division of co-owned property is a private act whose objective is to terminate co-ownership.

3.3. With regard to the actual division of co-owned property, co-owners are bound by restrictions as to environmental protection and spatial planning adopted for the benefit of the public.

3.4. The termination of co-ownership in respect of any co-owner should not be acknowledged as the division of co-owned property within the meaning of Article 1074 of the Civil Law.

3.5. The divisibility of a tangible item is determined by the following two components: its factual divisibility and legal divisibility.

3.6. Laws do not provide for any compensation payable to co-owners in situation when the physical share is not equal to undivided interest as a result of the actual division of co-owned property.

4. Problems associated with the solution of disputes among co-owners.

When answering the questions about the possibilities of preventing disputes among co-owners and resorting to mediation in co-ownership relationships, the following conclusions have been drawn:

4.1. The perception of co-ownership by co-owners and fairness in exercising their rights and obligations, as well as interpersonal relationships are an essential pre-requisite for encumbrances of co-owned property.

4.2. Co-ownership as a legal structure creates pre-conditions for disputes among co-owners.

4.3. It is the factual circumstances of the exercise of rights that form the substantive basis of disputes among co-owners.

4.4. Possibilities of extra-judicial settlement of disputes, including mediation, are not utilised sufficiently to solve disputes among co-owners.

Having analysed the deficiencies detected in the legal regulation with reference to each other, their impact on the factual circumstances of transactions, considering recent legal developments, the author would like to make the following **suggestions:**

1. To set a one-month period for the exercise of pre-emptive rights, laying down the respective period in Articles 1073(1) and 2061(1) of the Civil Law and restate Article 1073(1) of the Civil Law as follows:

   "If any of co-owners of an immovable property alienates his/her share to a person other than a co-owner, the other co-owners shall have a pre-emptive right (Articles 2060(2) and 2062) for a period of one month, counted from the date of receipt of a copy of the sale agreement, but in cases where the pre-emptive right cannot be exercised through the fault of the alienor – the option to purchase (Article 1381 et seq.)" and restate Article 2061(1) of the Civil Law as follows: "If the buyer wishes to resell a property purchased by exercising the contractual pre-emptive right, the buyer shall offer it to the holder of this right immediately after entering into the new contract; but the latter shall give notice as to whether he/she intends to use this right: immediately – for movable property, within one month - for immovable property."

2. To grant co-owners a right to waive their pre-emptive rights to undivided interest in real estate that could be disposed of by other co-owners in the future by means of an unilateral declaration of intention drawn up as a notarial act, following the procedure set out in Article 82 of the Notariate Law, with the relevant waiver note made in the Land Registry. To this end, to supplement Article 1073 of the Civil Law with Paragraph three as follows: "Any co-owner may waive its pre-emptive right to undivided interest in real estate that could be disposed of by other co-owners in the future by means of a notarial act, with the relevant waiver note made in the Land Registry." Accordingly, Article 45 of the Land Registry Law should be supplemented with a provision as follows: "co-owner's waiver of the pre-emptive right".
3. To provide that specific apartments used by co-owners in co-owned apartment buildings will be determined on the basis of a written agreement of co-owners registered by means of a note in the Land Registry. For this purpose, Article 1070 of the Civil Law should be supplemented with the following provision: "Co-owners of a co-owned apartment building shall enter into a written agreement on the right to use a specific apartment based on the undivided interest in real estate owned by the respective co-owner, whereon a respective note shall be made in the Land Registry". Accordingly, the Land Registry Law should be amended by supplementing Article 45 with a provision as follows: "an agreement by co-owners of an apartment building on the apartment used by each co-owner."
4. With a view to specifying the relevant provision, to supplement Article 1067 of the Civil Law as follows: "Undivided interest is a virtual value expressed as a fraction", supplement Article 1072 of the

Civil Law with the following provision: “Undivided interest is an independent target of civil transactions”, and supplement Article 1069 of the Civil Law as follows: “Co-owners shall not bear joint and several liability.”

5. With a view to ensuring that the Land Registry constitutes an official record, maintaining safety of transactions and keeping the uniform practice, to provide that documents to be submitted to the Land Registry by which co-owners declare their intention, issuing consents, certifications or approvals, must be drawn up as notarial acts. The author suggests amending Article 1068 of the Civil Law and restating Paragraphs one and two of this Article as follows: “The consent of all co-owners drawn up as a notarial act shall be required to dispose of the co-owned property, either as a whole or by individual shares; if one of them acts individually, such an action shall have no effect and also impose a duty on the relevant co-owner to indemnify the others for loss caused thereby.

   No individual co-owner may, without the consent of all the others drawn up as a notarial act, encumber the co-owned property with property rights, nor alienate it as a whole or in part, nor alter it in any manner whatsoever.” Accordingly, Article 68 of the Land Registry Law should be amended by introducing Paragraph three as follows: “if the consent is issued by the co-owner, by a document drawn up as a notarial act.”

6. In order to fully secure the right of co-owners to divide their co-owned property laid down in Article 1074 of the Civil Law, the author suggests further discussing changes in the legal regulation of the actual division of co-owned property. Given that the actual division of co-owned property is a private act aimed at exercising

relevant property rights of co-owners, the actual division of co-owned property as a legal fact does not produce any adverse environmental impact, nor does it impair the legitimate rights and interests of other rightholders, the author believes that the actual division of co-owned property should be regarded as an exception, which should not be governed by general laws on the division of real estate. The author suggests deleting Article 15(1) of the Land Survey Law: "Co-owners may not request the division of co-owned land into physical shares, if the portion of the designed territory to be separated does not conform to the regulations on the use and construction of the territory adopted by the local government, as well as requirements set out in other laws."

7. As a suggestion for further discussions and research about the termination of co-ownership, the author's proposal is that the State could alienate co-owned land for public needs and thereafter transfer the ownership of buildings to owners by means of a legal transaction.
8. In order to comply with the legal content of the agreement on the divided use of co-owned property, gain assurance as to the genuine intention of co-owners and their understanding of legal effects of the agreement, considering practical observations, the author suggests introducing a requirement that agreements on the divided use of co-owned property must be drawn up as a notarial act, recognising it as an adequate limitation of the principle of freedom of contract. The registration of agreements on the divided use of co-owned property with the Land Registry provided for by law would eliminate various interpretations of this matter and contribute to the stability of transactions and the protection of legitimate expectations. The author suggests amending and supplementing Article 1070(1) of the Civil

Law as follows: “The divided use of a co-owned property with the result that the physical share of this property is transferred to the co-owner for individual use shall only be allowed when this property may be divided, but also in this case the use shall be proportionate to the size of the individual shares. The divided use of co-owned property shall not give rise to possession and property rights to the physical share of the co-owned property and items created after the signature of the agreement on the divided use of co-owned property.

The agreement on the divided use of co-owned property shall be drawn up as a notarial act and be binding on third parties only as soon as it is registered with the Land Registry.” Article 45 of the Land Registry Law should be supplemented with the respective provision concerning notes to be made on rights in the Land Registry as follows: “the agreement on the divided use of co-owned property.”

9. Considering the effects and nature of encumbrances of co-ownership, with a view to ensuring the effectiveness and legitimacy of transactions and preventing disputes, the author suggests that all transactions involving co-owned real estate and transactions resulting in the establishment of co-ownership should be executed by means of a notarial act. Accordingly, Article 1474(1) of the Civil Law should be supplemented as follows: “A notarial act shall be mandatory for transactions involving co-owned real estate and transactions resulting in the establishment of co-ownership.”
10. To minimise encumbrance effects in co-ownership and secure transactions with co-owned related estate, in situations when the consent (permit, approval) of a co-owner is necessary, while he/she cannot be found at his/her place of residence or his/her residence is

unknown, the author makes a suggestion to be discussed that the court could then be granted an exclusive right to make a decision and adopt a procedural document. It should be discussed whether this procedure is adequate and conforms to the fundamental principles of the legal nature of co-ownership.

11. In view of the fact that certain disputes among co-owners may have social causes, the inadequate understanding by rightholders of co-ownership and co-owner's rights and duties, the author suggests that, in order to prevent disputes, the Latvian Council of Sworn Notaries, the Latvian Council of Sworn Advocates and local governments should organise awareness-raising campaigns, during which free information booklets about co-ownership would be developed and disseminated.
12. To enhance the effectiveness of the settlement of disputes among co-owners by involving co-owners in the settlement procedure, reduce social tensions and ensure achievement of the long-term solution in legal relationships among co-owners, the author suggests wider use of the mediation option. To solve disputes arising out of co-ownership relationships, it would be useful to choose mediation as the primary solution. The author suggests supplementing Article 1075 of the Civil Law with Paragraph two as follows: "Co-owners shall solve their disputes by means of mediation before taking legal action" and supplementing Article 8 of the Mediation Law with Paragraph three as follows: "In the event of disputes related to co-ownership relationships, co-owners may take legal action only after:
    1) either party has rejected the other party's suggestion for the solution of their controversies by means of mediation;

2) mediation has resulted in no agreement reached and the mediator has submitted a confirmation of the mediation outcome."

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