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Partnership Institute – Issues and Improvement of Legal Framework in the Republic of Latvia

Summary of the Doctoral Thesis for obtaining a doctoral degree "Doctor of Science (*Ph.D.*)"

Sector – Law
Sub-Sector – Civil Law

Riga, 2022

RĪGA STRADIŅŠ UNIVERSITY

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Abbreviations used in the Thesis

ECHR	European Court of Human Rights
RSFSR	Russian Soviet Federative Socialist Republic
LGB	lesbian, gay, bisexual persons
LSSR	Latvian Soviet Socialist Republic
CM Regulations	Cabinet of Ministers Regulations

Introduction

Ambiguous views on the form of family existed and were expressed in society across countries and over time. The sociologist Auguste Comte, who began to study this issue in the 19th century, believed that family is a fundamental unit of society. The family is a natural state of human sociality, and the relationships prevailing in it can be considered the basis of all relationships existing in society. The society develops from family through the general law which establishes that increasingly complex and harmonious systems emerge in the course of the development.[1] The society has already historically had an opinion that marriage is the basis of family formation, and every family must be taken care of and protected by the state. The legal institution of marriage has developed over several centuries, and thus a stable legal framework for marriage and divorce has been established, while families established outside marriage are not legally protected in a number of countries worldwide, including in the Republic of Latvia. Therefore, in reality, the existence of marriage or cohabitation is not a prerequisite for establishing a family. Failure to register a marriage poses risks in everyday life and results in regulatory issues affecting the quality of life of citizens.

The legal framework for marriage has constantly changed over time according to public interests. Despite the fact that the Latvian government wishes to preserve marriage as a central element of the family, a growing part of the society holds the view that another element – partnership should be introduced.[2]

Also, in Latvia, for various considerations and reasons, a large part of the society forms partnerships, creating families that are not based on the institution

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1 Wallerstein, I. 1990. Social development, or development of the world-system? / Albrow, Martin and Elizabeth King (eds) // *Globalisation, Knowledge and Society.* London, 157–172.

2 Autoru kolektīvs. 2015. *Pētījuma ziņojums "Reģistrētas un nereģistrētas kopdzīves faktoru salīdzinoša analīze".* Rīga: Latvijas Universitāte, Publiskās antropoloģijas centrs, 4.

of marriage. Marriage between a man and a woman, as already mentioned, is the only legally recognized form of cohabitation in the Republic of Latvia. However, many have formed families but have not legally registered these relationships as required by the Family Law as part of the Civil Law. Such a union of persons is therefore considered to be a controversial union vis-à-vis a legally established family institution. This means that the legally unconsolidated partnerships prevail in an increasing part of society, creating disorder in a number of fields of law, such as inheritance rights, patients' rights and their protection, social rights of individuals, right to information, and procedural law, and so on. An important aspect is the situations where these officially unrecognized actual family ties are broken, there is a dispute over the division of joint property, the fulfilment of the assumed obligations, as well as the further care of their common children.

In the introductory part of the Constitution of the Republic of Latvia, the word "family" is mentioned as one of the values of the society. "[..] Loyalty to Latvia, the Latvian language as the only official language, freedom, equality, solidarity, justice, honesty, work ethic and family are the foundations of a cohesive society." These values are necessary for the functioning of a democratic state governed by the rule of law, and the rights associated with it, as any right is always based on axiomatic fundamental values. These fundamental values are also reflected in the structure of the state.

Summarizing the position of the Constitutional Court of the Republic of Latvia in the context of the group of *specially protected persons*,[3] it can be concluded that the Constitution of the Republic of Latvia does not specify the scope and manner of how exactly the state protection is implemented. Therefore,

[3] Satversmes tiesas 2004. gada 11. oktobra spriedums lietā Nr. 2004-02-0106 „Par Civillikuma 155. panta sestās daļas atbilstību Latvijas Republikas Satversmes 110. panta pirmajam teikumam un Eiropas Konvencijas par to bērnu tiesisko statusu, kuri nav dzimuši laulībā, 4. pantam. Retrieved from: http://likumi.lv/doc.php?id=94831 [viewed 26.09.2013].

it is reasonable to consider that the partnership established between a man and a woman falls within the scope of Article 110 of the Constitution of the Republic of Latvia, which currently is of particular significance for the implementation of the legal regulation of this institution.

Although the Constitution of the Republic of Latvia contains only the institution of marriage in its traditional sense, in Latvia such a union is the most desirable family model, however, the need for a legal framework for partnerships is supported not only by the existing partnership models in society but also by case-law, as increasingly more disputes are brought before the courts related to the resolution of the legal consequences of partnerships, i.e., the resolution of personal non-material and material issues of persons. For instance, the first thesis of the Judgment of the Department of Civil Cases of the Senate of the Supreme Court of the Republic of Latvia of February 1, 2012 stipulates that in the absence of legal framework of partnership, the Court is not competent to establish the actual cohabitation of two persons as equal to marriage and to determine the rights of a cohabiting partner to be equal to the rights of a spouse by further development of rights. This decision of the Court follows from the principle of separation of powers, which separates the legislator from the judiciary and legitimizes the court to make law only in cases when it is not related to interference with the powers of the legislator.[4] In the Judgment of the Constitutional Court of November 12, 2020 in the case No 2019-33-01 "On the compliance of Section 155 paragraph one of the Labour Law with the first sentence of Article 110 of the Constitution of the Republic of Latvia" it is stated that the first sentence of Article 110 of the Constitution of the Republic of Latvia includes the obligation of the state to protect and support every family,

[4] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 1. februāra spriedums lietā Nr. SKC-4/2012, 1. tēze.

including the family of same-sex partners.[5] However, the Constitutional Court has recognized that the legislator has a certain power of discretion in determining the form and content of the regulatory framework of family relations and in choosing the methods, mechanisms and measures with which the social and economic protection and support will be ensured for the family. This power of discretion is not limited. The legislator is entitled to establish a regulatory framework for the protection and support of the family that is based on objective and justified criteria, taking into account the specifics of this relationship, including the differences of the participants and situations, which require an appropriate regulatory framework and measures for social and economic protection and support.[6] While in paragraph 10.2 of the Judgement of the Constitutional Court of April 21, 2021 in the case No 2020-34-03 "On the compliance of Section 13 of the Cabinet of Ministers Regulation No 1250 of October 27, 2009 "Regulation Regarding State Fee for Registering Ownership Rights and Pledge Rights in the Land Register" with Articles 91, 105 and 110 of the Constitution of the Republic of Latvia"", the Constitutional Court concludes that human dignity must be respected not only formally but also in substance, and therefore, in accordance with the principle of human dignity, the regulatory framework for the protection and support of every family must be meaningful. A regulatory framework that provides only for the formal recognition of the same-sex family, but does not provide protection and support, would, actually, mean recognizing the same-sex family as an unimportant form of family and, thus, infringing on human dignity. Therefore, the legislator must ensure that the legal framework provides not only formal legal recognition for same-sex families, but also legal protection and social and economic protection and

[5] Judgement of the Constitutional Court of November 12, 2020 in case No 2019-33-01, paragraph 12.

[6] Judgement of the Constitutional Court of November 12, 2020 in case No 2019-33-01, paragraph 12.3.

support.[7] Thus, the content of marriage set out in Article 110 of the Constitution of the Republic of Latvia follows from the provisions of the Civil Law,[8] i.e., partnerships do not have any legal consequences,[9] consequently, a decision of the legislator "on the matter of whether the partnership is legally recognized" [10] is required. Whereas so far Latvia had no specific position on partnerships, considering the practice of the European Union Member States, the conditions for the recognition of partnerships, the regulatory framework of partnership and the possibility of introducing partnership registration in the Republic of Latvia will be studied within the framework of the Doctoral Thesis.

The author of the Thesis considers that it is necessary to establish and define the institute of partnership in the regulatory enactments, determining the criteria and consequences that occur if a person chooses to register a marriage or a partnership, as well as to determine the consequences in case a person lives in an unregistered / registered partnership. This type of union can be equivalent to the traditional institute of family, with a set of several aspects, for instance, the partners, at the beginning of their cohabitation, establish the period of commencement of cohabitation, agree on the composition of each partner's separate property, agree on the property acquired during the partnership cohabitation, and other essential aspects. With the introduction of the legal regulation of partnership, as well as in case a part of the regulation of the institute of marriage in the future may be attributed to the regulation of partnership, it will be necessary to make several amendments to the regulatory enactments to achieve fair regulation of these legal relations. Considering the ambiguous public

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7 Judgement of the Constitutional Court of April 8, 2021 in case No 2020-34-03, paragraph 10.2.

8 Autoru kolektīvs prof. R. Baloža zinātniskajā vadībā. *Latvijas Republikas Satversmes komentāri.* VIII nodaļa. Cilvēka pamattiesības. 586–58.

9 Strelerts, T. 1939. Bezlaulības kopdzīve no procesuālo likumu viedokļa. *Tieslietu ministrijas Vēstnesis*. 3, 711–713.

10 Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 1. februāra spriedums lietā Nr. SKC-4/2012, 10–12.2. punkts.

opinion on the need to introduce the regulation of partnership, on May 24, 2011 the Ombudsman, in accordance with Section 14 of the Ombudsman Law[11], decided to establish an advisory council on the regulatory framework of partnership (hereinafter – the Advisory Council) with the aim to evaluate the proposals on the regulatory framework of partnership, as well as to assess the necessity of amendments to the regulatory enactments with the involvement of professional lawyers and representatives of non-governmental organizations.[12] The implementation and development of the regulatory framework of partnerships is affected by the traditions, history, religion of the country's population and other factors. In every country there are couples living together and there are no barriers to entering into marriage, but they do not register their marriage. The state has to decide, whether or not it wants to recognize and regulate such relationships.

Aim of the Thesis

The **aim** of the Doctoral Thesis – as a result of the analysis of doctrine of the institute of partnership and foreign legal regulation, to determine the issues of the substantive scope of family in the context of partnerships and put forward the proposals for the improvement of the regulatory framework of partnership in the Latvian legal system.

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[11] Tiesībsarga likums, Latvijas Republikas likums, 14. pants. *Latvijas Vēstnesis*. 25.04.2006, 65 (3433); *Ziņotājs*, 11.05.2006, 9. Retrieved from: http://likumi.lv/doc.php?id=133535. [viewed 08.01.2015].

[12] Tiesībsargs, *Tiesībsarga konsultatīvās padomes 15.09.2011.protokols.* Retrieved from: http://www.tiesibsargs.lv/par-mums/konsultativas-padomes/par-partnerattiecibu-tiesisko-regulejumu [viewed 08.01.2015].

Objectives of the Thesis

The following objectives have been set to achieve the aim of the Doctoral Thesis:

1. To identify the substantive scope of the notion of family in law;
2. To ascertain the nature of partnership, as well as the historical development and criteria characterizing partnership.
3. To analyse the issues relating to the norms regulating partnership and to identify the most suitable solutions for the introduction of partnership regulation in the Latvian legal system.

Research object – legal relations of persons living in a partnership arising from their property rights and non-pecuniary interests.

Research subject – regulatory framework of civil rights and civil procedure, which regulates the substantive and procedural provisions of the civil rights for the persons in partnerships.

Research questions

1. What is the legal substance of the institute of partnership, its correlation with the substantive scope of the notion of family?
2. What are the characteristics of a partnership?
3. What are the main legal issues for persons living in a partnership?
4. What is the most appropriate legal solution for the recognition of partnership and its regulation in the Republic of Latvia?

Novelty of the Thesis

So far, two significant academic research papers on the issue of sex equality have been conducted in Latvian law studies: 1) In 2007, Kristīne Dupate has defended her doctoral thesis “EC Sex Equality Law in Latvia. Rights of Persons with Regard to Child-birth”, examining not only the issues of sex

equality of persons, but also the need to introduce the non-discrimination principle on the basis of a person's sex; 2) In 2014, Olga Beinaroviča in her doctoral thesis "An Exclusive Status of Outside Marriage Cohabitation in Law and its Legal Regulation in Europe" has examined exclusively the issues of the legal relations of unregistered partnerships in Europe. The thesis of O. Beinaroviča focuses on international legal enactments for resolving legal issues that arise between partners in cohabitation.

While the novelty of the author's research is justified by several factors:

1. The research is focused on the theoretical foundations for the recognition of partnership and the strengthening of the institute in the regulatory framework. Partnership is analysed in the context with the notion of "family" as well as from the right arising from Section 110 of the Constitution of the Republic of Latvia to start a family, regardless of sex.
2. The main research object is the legal relations between partners, which arise from their property relations in certain regulatory provisions of civil rights (inheritance rights, tenancy rights, patients' rights, etc.). The author has developed proposals that would ensure pecuniary and non-pecuniary rights and interests of the persons living in partnerships.
3. In addition to the institute of marriage, the author proposes to introduce new provisions that provide for the legal protection of persons living in partnerships and the introduction of two new institutes of law:
    1) registered partnership – at the time of registration of a relationship between two same-sex or two different-sex partners, an entry is made in the Public Partnership Property Register regarding a type of the division of property (separate property, separately acquired property, joint property).

2) unregistered partnership – for the protection of his or her interests, a person applies to the court for the legal establishment of a fact – the fact of existence of a partnership, in accordance with Chapter 37 of the Civil Procedure Law. For the recognition of an unregistered partnership, it is necessary to establish the criteria (duration of the relationship, absence of marriage, minimum age threshold, common children, joint household).

Since 2013, there have been 8 attempts to introduce the institute of partnership, submitting several draft law initiatives to the Saeima of the Republic of Latvia, while the draft law "Partnership Law" developed by the author is focused on resolving material and non-material issues not only based on the fact of registration in case of a registered partnership, but also in case of an unregistered partnership, from the moment the institute of partnership is introduced.

1 Substantive scope of the notion of "family" in the legislation

The aim of this chapter was to study and analyse the role of the family in legal enactments, the different development of family relationships, which would help to understand the discrepancy between the legal and the social reality today. Therefore, the author of the research wanted to examine the institute of family de facto, as well as to identify the issues arising from it.

1.1 Concept of "family"

Analysing the definitions of "family" contained in the national legislation of the Republic of Latvia, the author concludes that too different and even contradictory definitions of the notion of family prevail in the national legislation. Currently, it is not provided in the national legislation that the subjects of an unregistered partnership may form a family. Although the Constitutional Court in its 2004 judgment notes that the notion of "family" is not associated only to relationships based on marriage.[13] This may include other *de facto* "family" ties, in cases, where the parties are cohabiting outside marriage. This notion should be interpreted more broadly, emphasizing that the correspondence of a specific relationship to "family life" can be significantly affected by many factors, i.e., whether the couple is cohabiting, the duration of the relationship, whether both parties are faithful, have common children, etc. Biological and social reality take precedence over legal presumption.

The protection of the rights of persons in partnerships raises the question of the need to protect the weaker party. The argument put forward in public, that it is the responsibility of individuals to enter into marriage, or not to enter into marriage in the way it is recognized by the state, must be assessed critically.

[13] Judgement of the Constitutional Court of 11.10.2004 in the case No 2004-02-0106. Retrieved from: http://likumi.lv/doc.php?id=94831 [viewed 29.09.2013].

Today, the number of traditional patriarchal families that were typical before the modernization era is declining significantly in the world, and also in Latvia. So-called nuclear families are common nowadays. For example, unmarried couples and their children, or single parents. In view of the above, the state must specify the extent, to which such families are recognized and protected by the legislation alongside the institution of marriage.

The highest value in Latvia is given by the society to "family safety", "health" and "children and family". This follows from the study "Demography and the Marital Status in Latvia", within the framework of which the scale of non-material values of persons has been studied. It has also been concluded within the study that for those respondents, who have a larger family and / or who plan a family with several children, the significant positions are in the following order: "Children and the family", "honesty (truth)", "forgiveness (willingness to forgive)" and "faith (religion)".[14] Despite the traditions existing in the society and in the Christian world, the procedure for the registration of marriage is determined by the Law on Registration of Civil Status Documents and the Civil Law.

If at the moment it may seem that the concept of marriage has been resolved, then after the amendments it is unclear – what is a family? The author assumes that currently even more confusion in the society has resulted from the judgment of the Constitutional Court of November 12, 2020 in the case No 2019-33-01, i.e., it follows from Article 110 of the Constitution that – currently marriage is a union between a woman and a man, but from the judgment of the Constitutional Court – the family is redefined and understood in a completely different way, so that it also includes same-sex unions or any other union. There is no consistency within one article. In response to the judgment of

[14] SKDS. *Latvijas iedzīvotāju aptauja „Demogrāfija un ģimenes stāvoklis Latvijā"*. Rīga, 2008. gada jūlijs. Retrieved from: http://www.bm.gov.lv/lat/informacija_jums/petijumi/?doc=11023 [viewed 07.08.2014].

the Constitutional Court, it is proposed to amend Article 110 of the Constitution, proposing to define the notion of "family" by "narrowing" it, contrary to how it has been broadened in the judgment by the Constitutional Court. The submitted draft law proposes to express Article 110 of the Constitution in the following wording: "The State shall protect and support marriage – a union between a man and a woman, based on marriage, consanguinity or adoption, the rights of parents and rights of the child, including the right to grow up in a family consisting primarily of mother (female) and father (male). The State shall provide special support to disabled children, children left without parental care or who have suffered from violence." Will this definition solve something, or will we eventually come to an additional explanation – who is a woman or a man, what is meant by a mother and who is a father, given the rights of transgender people and the gender ideology?

The notion "family life" is interpreted by the European Court of Human Rights more broadly, emphasizing that the conformity of a particular relationship to "family life" can be significantly affected by many factors, such as whether the couple lives together, the duration of relationships, whether both parties are faithful, have common children, etc. (see the ECHR judgement in the case „X, Y and Z v. the United Kingdom"[15]; in the case „Kroon and Others v. the Netherlands", 30.§[16]). Moreover, paragraph 87–95 of the judgement of the European Court of Human Rights of June 24, 2010 in the case „Schalk and Kopf v. Austria"[17], application No 30141/04, and paragraph 70–74 of the judgement

[15] *European Court of Human Rights.* 1997. Case of X, Y and Z v. UK, No 21830/93. Judgment of the European Court of Human Rights. Retrieved from: http://www.bailii.org/eu/cases/ECHR/1997/20.html [viewed 05.08.2015].

[16] *European Court of Human Rights*. 1994. Case of Kroon and Others v. the Netherlands, No 18535/91. Judgment of the European Court of Human Rights. Retrieved from: http://www.bailii.org/eu/cases/ECHR/1994/35.html [viewed 05.08.2015].

[17] *European Court of Human Rights.* 2010. Case of Schalk and Kopf v. Austria, No 30141/04. Judgment of the European Court of Human Rights. Retrieved from: http://hudoc.echr.coe.int/eng?i=001-99605 [viewed 15.05.2021].

of the European Court of Human Rights' Grand Chamber of November 7, 2013 in the case "Vallianatos and Others v. Greece"[18], application No 29381/09 and No 32684/09, obliges the state to protect same-sex families regardless of whether the state has a mechanism for the legal recognition of same-sex relationships.

1.2 Notion of "family life" in the Constitution of the Republic of Latvia and in the Civil Law system

It can be argued that the legislator, in the implementation of gender equality and protection of the rights of the child, regulates the legal relations of family in more detail, often significantly changing the public opinion on family and family members. In Latvia, by respecting human rights, clashes between fundamental rights arise, for instance, between the guaranteeing of fundamental rights of a person to be provided by the state by interfering in the relations between persons, and a person's right to privacy.

The Constitution of 1922 is in force in the Republic of Latvia. In its initial wording, there was no section on fundamental human rights, as politicians could not agree on its content. Also, judicial control over regulatory enactments issued by the legislator was not provided. When the independence of the Republic of Latvia was restored, the fundamental human rights were respected and the intention to establish constitutional justice was declared. Guaranteeing of fundamental rights was already established by Paragraph 8 of the Declaration of May 4, 1990 "On Restoring the Independence of the Republic of Latvia", but on December 10, 1991, the constitutional law "The Rights and Obligations of a Citizen and a Person" was adopted. On June 4, 1997, the Republic of Latvia ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols 1, 2, 4, 7 and 11, but on October 15,

[18] *European Court of Human Rights.* 2013. Case of Vallianatos and Others v. Greece, no 29381/09; No 32684/09. Judgment of the European Court of Human Rights. Retrieved from: http://hudoc.echr.coe.int/eng?i=002-9224 [viewed 15.05.2021].

1998, the Constitution was supplemented with Chapter 8 “Fundamental Human Rights”. Regarding the place of constitutional justice in the state structure, the Declaration of the LSSR Supreme Council of May 4, 1990 “On Restoring the Independence of the Republic of Latvia” stipulated that “in cases of dispute, the issues of application of legislative enactments shall be decided by the Constitutional Court of the Republic of Latvia”. The Law of December 15, 1992 “On Judicial Power” provided for the entrustment of constitutional oversight functions to the Supreme Court. However, already on June 5, 1996, the Saeima adopted a law amending Article 85 of the Constitution, providing for the establishment of a Constitutional Court in the country. The Constitutional Court Law was adopted at the same time. Article 110 of the Constitution in the wording of 1998 provided that: “The State shall protect and support marriage, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence”, but on December 15, 2005 this Article was amended, expressing its first sentence in the new wording: “*The State shall protect and support marriage – a union between a man and a woman...*”

On June 19, 2014, the Constitution was supplemented with an introduction, which includes references to the history of our country, the fundamental values, the provision of which is related to the existence of the Republic of Latvia. Assessing these amendments, it can be argued, that they support the Latvian legislator’s adherence to conservative and Christian values regarding the institution of marriage and family.

Currently, the situation arises that when the legislator puts an equal sign between marriage and family, it comes down to the fact that the Constitution of the Republic of Latvia is intended only for the protection of families with spouses – a husband and a wife. The Constitutional Court has repeatedly ruled and acknowledged that the institution of family has to be assessed more broadly than just the union between spouses. The author will assess whether same-sex

families are left out of the social and economic protection system for families established by the state.

The author of the research believes that family is a social institution based on close personal ties established in social reality, founded on understanding and respect. Even in the absence of biological ties or a legally recognized relationship between a child and a parent, there may be a de facto family relationship between the child and the carer, depending on whether they live together, the duration and quality of their relationship and the role of the adult in relationship with the child. The existence of close personal ties between persons arises from the fact of their marriage or kinship, however, in social reality, close personal ties also arise in other ways, for example as a result of actual cohabitation. The first sentence of Article 110 of the Constitution of the Republic of Latvia determines the positive obligation of the state to protect and support every family, including a de facto family.[19] The first sentence of Article 110 of the Constitution of the Republic of Latvia defines the concept of marriage – a union between a man and a woman – but the notion of family used in the same provision is not specified and does not set sex as a criterion for determining persons who are recognized as a family.[20]

Analysing the explanation provided in the Constitutional Court case No 2005-19-01[21] to Article 110 of the Constitution of the Republic of Latvia, and the Judgment of October 11, 2004 of the Constitutional Court in case No 2004-02-0106 "On the Compliance of Section 155(6) of the Civil Law with the First Sentence of Article 110 of the Constitution of the Republic of Latvia and Article 4 of the European Convention on the Legal Status of Children Born

[19] Judgement of the Constitutional Court of December 5, 2019 in the case No 2019-01-01, paragraph 16. 2.2.

[20] Judgement of the Constitutional Court of November 12, 2020 in the case No 2019-33-01, paragraph 12.1.

[21] Judgement of the Constitutional Court of December 22, 2005 in the case No 2005-19-01.

out of Wedlock",[22] as well as the determination of the filiation of a child in the Civil Law, in 1993, when the Civil Law was renewed, the wording of Section 154 determined that the filiation of a child from the father is determined based upon the voluntary acknowledgement of paternity or by the court judgement. On May 15, 2003, the Saeima adopted the Law "On the European Convention on the Legal Status of Children Born out of Wedlock" and approved the European Convention on the Legal Status of Children Born out of Wedlock of October 15, 1975 It has been in force in the Republic of Latvia since October 2, 2003,[23] it can be stated that in this way the society provides confirmation to what is declared in Article 1 of the Universal Declaration of Human Rights, i.e., all human beings are born free and equal in dignity and rights. The belief that the dignity of one person may be of less value than the dignity of another is incompatible with the principle of human dignity. The principle of human dignity does not allow the state to refuse to guarantee the fundamental rights of a certain person or group of persons. Stereotypes existing in society cannot serve as a constitutionally justifiable basis for deprivation or restriction of the fundamental human rights of a certain person or a group of persons in a democratic state governed by the rule of law. The Constitution of the Republic of Latvia is a coherent whole and the legal provisions contained therein are intrinsically linked.[24] The first sentence of the Constitution of the Republic of Latvia is closely related to the person's right to inviolability of private life laid down in Article 96 of the Constitution of the Republic of Latvia. The Constitutional Court has already held that, pursuant to Article 96 of the

[22] Constitutional Court. Cases. Retrieved from: https://www.satv.tiesa.gov.lv/en/cases/ [viewed 11.03.2021].

[23] Latvijas Republikas 2003. gada 15. maija likums "Par Eiropas Konvenciju par to bērnu tiesisko statusu, kuri nav dzimuši laulībā". Retrieved from: https://likumi.lv/doc.php?id=75359 [viewed 11.03.2021].

[24] Judgement of the Constitutional Court of March 8, 2017 in the case No 2016-07-0116, paragraph 3.

Constitution of the Republic of Latvia, every person has the right to the protection of physical and mental integrity, honour and dignity, as well as the right to live according to one's own will and develop and improve one's own personality, suffering from the state or other person's interference as little as possible. This provision of the Constitution of the Republic of Latvia protects the right of every person to be different, to preserve and develop characteristics and abilities that distinguishes the person individually. Article 96 of the Constitution of the Republic of Latvia also includes the right of every person to respect for family life.[25] One of the elements of a person's privacy is its sexual behaviour. A person's freedom in sexual behaviour is protected regardless of what form it takes or what is the sexual orientation of the person. Within the framework of private life, a person is provided with the opportunity to establish relationships of various nature, including sexual relationships. Freedom of sexual behaviour ensures the expression of person as a biological being, as well as the natural development of the human personality.[26] Respectively, the first sentence of Article 110 the Constitution of the Republic of Latvia in conjunction with the principle of human dignity and the person's right to privacy imposes an obligation on the state to protect and support the same-sex families as well.[27]

The author of the research believes that any person should be protected, regardless of a person's sexual orientation. The privacy of a person is inviolable, allowing a person to have relationships of different nature, including sexual relationships.

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[25] Judgement of the Constitutional Court of April 23, 2009 in the case No 2008-42-01, paragraphs 8 and 9.

[26] Danovskis, E., Ruķers, M., Lībiņa-Egnere, I., Balodis, R. (zin. red.). 2011. *Latvijas Republikas Satversmes komentāri.* VIII nodaļa. Cilvēka pamattiesības. Rīga: *Latvijas Vēstnesis*, 255.

[27] Judgement of the Constitutional Court of November 12, 2020 in the case No 2019-33-01.

Based on the abovementioned, the author agrees only partially, as she considers that the obligation of the legislator to ensure the effective protection, observance or guarantee of fundamental human rights cannot be considered entirely fulfilled with the adoption or entry into force of the relevant regulatory framework. Even after the entry into force of the regulatory provisions, the legislator *ex officio* must monitor, as far as possible, whether these provisions actually fulfil their task effectively in the application of law in practice. Respectively, it is important to find solution for the protection of the fundamental rights of individuals. In the author's opinion, the situation, when the right to social or economic support is denied due to the status of an individual, is absurd.

When determining the regulatory framework of family relations and measures of social and economic protection and support, the legislator must take into account general legal principles and other provisions of the Constitution of the Republic of Latvia, international and European Union law, and in accordance with the second sentence of the fifth paragraph of the Introduction to the Constitution of the Republic of Latvia it must be ensured that the relevant regulatory framework is aimed at the development of a cohesive society (for comparison, see the Judgement of the Constitutional Court of December 5, 2019 in the case No.2019-01-01, paragraph 16.2.1). In accordance with the principle of legal equality contained in Section 91 of the Constitution of the Republic of Latvia, the legislator is not entitled to adopt such regulatory framework, which would, without reasonable grounds, allow different treatment of persons who are in the same and, according to certain criteria, comparable conditions, or equal treatment of persons who are in different conditions.

The legislator must also observe the principle of non-discrimination contained in the second sentence of Article 91 of the Constitution of the Republic of Latvia, the aim of which is to prevent the possibility that the fundamental rights of a person would be restricted based on an impermissible criterion in a democratic state governed by the rule of law (for comparison, see the

Judgement of the Constitutional Court of July 10, 2020 in the case No.2019-36-01, paragraph 9). Article 91 of the Constitution of the Republic of Latvia contains a general prohibition on discrimination, but does not list the criteria on the basis of which discrimination is prohibited. These criteria must be "read into" in the article, using the methods of interpretation of legal provisions, as well as on the basis of the principle characterizing the Latvian legal system that is open to international law. Consequently, attention should also be paid to the development of human rights in the world (see Judgement of the Constitutional Court of April 23, 2019 in the case No.2018-12-01, paragraph 21).[28]

The author of the research emphasizes that a person's freedom of sexual behaviour should be protected regardless of what form it takes or what is the sexual orientation of the person, however, this freedom is limited by the fact that many family-related issues are topical in Latvia, such as registration of relationships of homosexual couples in the form of a partnership.

1.3 Interrelation between marriage and family in the law

In today's world, before the decision to enter into marriage is made, a large part of the persons (couples) has been living together for some time (in an unregistered cohabitation). Although a relationship of a couple does not change after the entry into marriage (cohabitation, children, budget planning, etc.), it should be pointed out that the legal framework for unregistered cohabitation and marriage (registered cohabitation) is very different. In today's society, it is common for a couple to live together permanently, but the relationship is not officially registered. It is an unregistered cohabitation that does not have a clear and comprehensive notion. In society, it is commonly referred

[28] Judgement of the Constitutional Court of November 12, 2020 in the case No 2019-33-01.

to as cohabitation, partnership, etc. In general, any of these designations of unregistered cohabitation is considered to be correct, because there is no special regulatory framework for unregistered cohabitation in Latvia, therefore the legislator's proposal for designation of unregistered cohabitation is also unclear. Until January 1, 2016, the Cabinet of Ministers Regulation No.384 of June 2, 2008 "Regulations Regarding the Population Census Programme 2011" were in force, in which the Cabinet of Ministers called an unregistered cohabitation as a cohabitation partnership.[29]

A designation of unregistered cohabitation, which has been taken over from the Soviet era, but is wrong, is a civil marriage. Unregistered cohabitation is not specifically regulated in Latvia. The relationship between these persons is assessed without the application of family law legislation, as the right of a person to enter into marriage is an internationally recognized fundamental human right.[30] Article 110 of the Constitution of the Republic of Latvia specifies that "... the State shall protect and support marriage – a union between a man and a woman".

A civil status document is a fact or an event in the life of a person, which creates, changes or terminates family and other property and non-financial rights and duties related to the kinship of the person (Law on Registration of Civil Status Documents, Section 2).[31]

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29 Ministru kabineta 2008. gada 2. jūnija noteikumi Nr. 384 "Noteikumi par 2011. gada tautas skaitīšanas programmu", Retrieved from: https://likumi.lv/ta/id/176331-noteikumi-par-2011gada-tautas-skaitisanas-programmu [viewed 12.03.2021].

30 *ANO Vispārējo cilvēktiesību deklarācija*. Retrieved from: https://www.tiesibsargs.lv/lv/pages/tiesibu-akti/ano-dokumenti/ano-vispareja-cilvektiesibu-deklaracija [viewed 12.03.2021].

31 *Civilstāvokļa aktu reģistrācijas likums.* Retrieved from: https://likumi.lv/ta/id/253442-civilstavokla-aktu-registracijas-likums [viewed 12.03.2021].

Marriage has a special place in the Latvian legal system, first of all – marriage is specially regulated in the first part of the Civil Law "Family Law". A number of other laws also give a spouse a special status[32] compared to a partner.

The legislator has envisaged possible issues of registered cohabitation (marriage) and has already regulated them in the regulatory enactments in order to protect the rights of both spouses. Therefore, although unmarried cohabitation and marriage do not differ domestically, they differ legally significantly – the rights and obligations of spouses are regulated by the legislator, while the rights and obligations of partners are not specifically regulated, or – a marriage is specially protected, while unregistered cohabitation is not.

In Latvian national legislation, the legislator in some laws has indicated the characteristics of a family or its members, and the practice is established in the family law that the state protects a circle of certain persons. For this very reason it is necessary to examine the notion of "family" and the notion of "partnership" in more detail, which will be discussed in the next subchapter

Based on the principle of equality – a family can be established by both marriage and partnership. The lack of understanding of the common notion of "family" among specialists in different fields makes it difficult to apply uniform regulatory enactments that are subject to different interpretations. The findings included in the "State Guidelines for the Family Policy 2011-2017"[33] are not directly applicable. It is concluded that in the Latvian legal system the notion of "family", its applicability, explanations and interpretation depend on the field of law within which this concept is applied. For instance, the Civil Law is a regulatory act that regulates legal relationships in the field of private law and

[32] See, for instance, the law "On Residential Tenancy", Criminal Law, Regulation of the Cabinet of Ministers No 1250 of October 27, 2009 "Regulation Regarding State Fee for Registering Ownership rights and Pledge Rights in the Land Register", etc.

[33] Ministru kabinets. "*Ģimenes valsts politikas pamatnostādnes 2011.–2017. gadam*". Retrieved from: http://polsis.mk.gov.lv/view.do?id=3583 [viewed 30.10.2013].

does not apply to legal relationships in the field of public law and in particular to the provision of social assistance and social services. Section 214 of the Civil Law establishes that the spouses and their children belong to the family in the narrower sense while they are living in an undivided household. However, this definition does not apply to the field of public law, as this field is regulated by a special regulatory enactment – the Law on Social Services and Social Assistance. It is the provisions contained in it that must be applied when assessing whether a person individually or as a family, as defined by this Law for social purposes, is entitled to receive certain types of assistance or services.

The legal terminological explanatory dictionary explains that "family" in the broadest sense of the word means a group of relatives living together."[34] However, in interpreting, neither the spouses nor the partners are identifiable as relatives. It follows from the Civil Law that kinship is relationship between two or more persons created by birth. Currently, the concept of "family" is too narrow – spouses and their children, but in reality, cohabiting persons (of the same or opposite sex) are not included. Couples who have a stable cohabitation, property, children, etc., i.e., having all the same characteristics as the "family" formed by the spouses, are not included in the concept of family just only because there is no marriage (formal basis).

In the author's opinion, such a notion of family is not legally sound and needs to be specified. The author points to one of the possible solutions, i.e., to identify several characteristics that need to be present in order to establish the existence of a family, such as the duration and stability of the relationship. In turn, the definition of family in the Civil Law is regarded as too narrow.

[34] *Juridiski terminoloģiskā skaidrojošā vārdnīca.* 1999. Sast. V.Jakubaņecs. Rīga: P&K, 65.

2 Essence of a partnership

The interpretation of the notions of "family" and "partnership" applies to all countries, whether or not there is a regulatory framework for extra-marital union, namely, partnership. In order to fully understand the essence of the concept of partnership, the author wished to examine individually not only the social factors that contribute to the formation of cohabitation, but also the historical development of the notion of partnership.

2.1 The notion of partnership and historical development

For many centuries Latvia was interlinked with Russia in various areas of life. Therefore, it is only logical that everything that happened in Russia after the victory of the Great October Socialist Revolution also affected Latvia, in particular, had significant effect on inequality in family relations between spouses, children born in marriage and out of wedlock, and the influence of the church on marriage and family relations was eliminated. The aim of the reforms in Russia was to repeal the pre-revolutionary family laws and create new provisions of family law.

The World War I (1914-1918) had a significant impact on the economic and political life of both Russia and Latvia as a part of the Russian Empire. The failure of the Russian Empire to show sufficient resistance to the German army and to reduce the consequences of the war on the local population increased discontent with the Russian state system as a whole and the aspirations of small nations for greater independence.[35] Active discussions and meetings were held on the possibility of separation from Russia. The Republic of Latvia was founded on November 18, 1918, and lawyers over several discussions had developed

[35] Švarcs, F. 2011. *Latvijas 1937. gada 28. janvāra Civillikums un tā rašanās vēsture.* Rīga: TNA, 28.

regulations on the transfer of rights from the occupying power. On December 6, 1918, the Provisional Government approved the "Provisional Regulation on Courts and Judicial Proceedings in Latvia",[36] which provided that the courts and the related institutions should apply the Russian law that was previously in force. Latvia needed provisional laws and procedures during the transition period.

On March 7, 1919, the "Code of Laws on Civil Status Documents, Marriage, Family and Custody Rights" was published. This codification of rights was translated and the Code of the RSFSR was revised adapting it to Latvian conditions, where the Code consisted of 246 articles divided in four parts: I- Civil Status Documents; II- Marriage Law; III- Family Law; IV- Custody Rights. It was established that in Latvia civil statuses are registered only by the civil registry offices, but church marriages were recognized as legal, if they were concluded before January 1, 1919 in accordance with the code of local civil laws. Later, church marriages had no legal effect if they were not registered with the civil registry offices. Freedom of marriage was established, with an age for marriage of 16 for women and 18 for men. Freedom of divorce was also established. The shared property of the wife and husband, respectively, the separate ownership of property, was determined in marriage.[37] The most significant achievement in the unification of civil law in this period was the Law of the Republic of Latvia "On Marriage" adopted on February 1, 1921, in the development of which the Swiss Law of 1907 was used as a part of the Civil Code. The Law consisted of 9 parts and 89 sections. It set the age of marriage at 18 for men and 16 for women. Minors under the age of 21were not allowed to

[36] *Latvijas Tautas Padomes stenogrammu satura rādītājs.* 1925. Rīga: Latvijas Republikas Saeimas izdevums, 104. Retrieved from: http://periodika.lv/periodika2-viewer/view/indexdev.html#panel:pp|issue:/p_001_sast1920n1|article:DIVL5|page:106|query:likumiem pagaidu rīkojumus valdības rīkojumu|issueType:P [viewed 21.02.2017].

[37] Grigore-Bāra, E. 2008. *Latvijas valsts un tiesību vēsture II.* SIA "Biznesa vadības koledža", 51.

enter into marriage without the permission of their parents or guardians. After the dissolution of the previous marriage, the woman was not allowed to enter into a new marriage until 300 days had elapsed. This provision was related to the need to correctly determine the paternity of children born at that time and, consequently, their inheritance rights. Judgments of courts regarding the prohibition on the conclusion of marriage in church became invalid, as a result of which freedom of marriage was established in Latvia. The marriage could be concluded by the state civil registry office or by a clergyman of any denomination. Overall, the law is assessed as progressive and suiting the spirit of the age, which eliminated the restriction of confessional nature regarding marriage, determined the freedom of divorce in the State court institutions, providing for mutual obligations of ex-spouses even after divorce.[38]

1) The previous legal framework, which was formed in separate parts of the Latvian state – Vidzeme, Kurzeme and Zemgale – was preserved in Civil Law.

The Law on Marriage of February 1, 1921 initially provided for the compulsory conclusion of marriage in a state institution, and restrictions on the conclusion of marriages of a confessional nature were abolished, i.e., marriages could also be concluded in churches of various denominations. The conditions for divorce were also amended, i.e., it was no longer necessary to prove guilt in the dissolution of marriage, it could also be dissolute in case of no fault, in a non-contentious procedure.[39] The newly established regulatory framework of the state in civil law was fragmented and difficult to apply to the conditions of the new democratic Latvia, which prompted the idea of implementing reforms in civil law. It took two years from the founding of the state for other countries to

[38] Lēbers, D. A. 2000. *Latvijas tiesību vēsture (1914- 2000).* Mācību grāmata juridiskajām augstskolām un fakultātēm. Prof. Dr. iur. Dītriha Andreja Lēbera redakcijā. Fonds Latvijas Vēsture, Rīga, 200–202.

[39] Ibidem, 83–84.

recognize Latvia de *jure*, and on November 7, 1922, the Constitution entered into force (Constitution of the Republic of Latvia[40]). As the primary objective was to create economically and socially favourable conditions for the existence of the State, discussions took place, resulting in amendments and codification in the field of civil law over several years.

The author would like to mention the legal protection of the institute of family, as well as the currently widely resounded issue regarding the basics of family science, which would promote a constructive approach to educational content that would ensure stability in foundation of the institute of family itself, i.e., communication culture and also family values would be taught. In the author's opinion, the organization of family life also includes the choice of family model, without disrupting the value of the family in its traditional sense.

A conservative approach is expressed in the State Guidelines for the Family Policy 2011-2017, i.e., promoting support for the value of a marriage-based family, where the key tool is the training of young, unregistered partners to increase the number of marriages and reduce the number of children born out of wedlock.[41]

The Guidelines for Children, Youth and Family 2021-2027 emphasize that the overarching objective of the Guidelines is to reduce the risk of poverty and social exclusion for families with children. The sub-objectives of the overarching objective are focused on the development of society that is friendly to families with children, promotes the well-being, healthy development and equal opportunities for children and youth, and ensures that public policy is balanced,

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[40] Latvijas Republikas likums: Latvijas Republikas Satversme. *Latvijas Vēstnesis*, 01.07.1993., 43; *Ziņotājs*, 31.03.1994., 6. *Valdības Vēstnesis*, 30.06.1922., 141; *Diena*, 29.04.1993., 81. Retrieved from: https://likumi.lv/doc.php?id=57980 [viewed 21.02.2017].

[41] *Ģimenes valsts politikas pamatnostādnes 2011.–2017. gadam*. 2012. Retrieved from: http://www.lm.gov.lv/upload/aktualitates/gvp_pamat.pdf [viewed 03.03.2014].

consistent and comprehensive for the well-being of children and families, youth, in the field of health and protection of rights.[42]

So far, the security of a partnership has been considered dually, that is, the primary aspect prevails over the subjective reliance on the partner and the support of the partner, where the fact of marriage registration does not play a significant role. The secondary aspect prevails over the form of protection provided by the state, namely, automatic establishment of paternity, custody rights and maintenance obligations, inheritance rights, resolution of property conflicts, etc.

2.2 Criteria characterizing a partnership

The legislation in several countries (e.g., the Netherlands, Hungary, etc.) does not provide a definition of a partnership, but sets out a number of criteria for determining whether a partnership exists, and, upon existence of a set of criteria, such a union is recognized as a partnership: partners are of a different sex, which indicates that the prevalent is such a type of partnership, which does not exist between individuals of the same sex.

1) the relationship has lasted for a certain (long) period of time, it is of a permanent nature. "A long period of time is one which has lasted so long that allows to see similarities with the relationship between the spouses." According to the author of the Thesis, the minimum duration of the partnership is not expressly interpreted;
2) the partners have a common child;
3) none of the partners is married;

[42] *Bērnu, jaunatnes un ģimenes pamatnostādnes 2021.–2027. gadam.* Retrieved from: https://likumi.lv/ta/id/313037-par-nozaru-politiku-pamatnostadnem-2021-2027-gada-planosanas-periodam [viewed 8.04.2021].

4) the partners have reached the minimum age required for entry into marriage;
5) there are no other barriers that prevent the partners from marrying eventually.

The author of the Thesis considers that the primary reason for the introduction of the regulatory framework of a *de facto* cohabitation is based on the desire of persons for stability. The stability of the relationship is based on the permanence of the relationship.

The criterion of the duration of a partnership is one of the most common criteria for establishing and recognizing a partnership. Most countries have a certain minimum duration for such relationships, which usually ranges from one to five years. For example, the Norwegian legislature has determined that the regulatory framework for unregistered partnerships applies to persons who have lived together for at least two years.

Slovenian national law stipulate that the union must "exist for a longer period" outside the marriage, thus leaving it in the competence of the court to assess freely each case individually, without being limited to the specific duration of the relationship. On the other hand, French national law lays down that only a *de facto* relationship of a union which is of a stable and lasting nature is to be recognized as an unregistered partnership, without specifying the specific duration of the partnership.

The study "Latvia's Families in Generations 2018" indicates that the duration of unregistered cohabitation in Latvia varies from a few months to several decades, but most often it remains within one year (65%). Another fifth of the respondents changed the formal status of their relationship in a period of 2–3 years, the remaining 15% of the respondents had an average of 8 years of cohabitation experience before the official registration of the relationship. The average length of cohabitation before the registration of a relationship has

increased over time, from 4 months prior to marriage before 1980 to almost four years prior to marriages registered between 2010 and 2018.

Respectively, it is for the national court to determine the status of an unregistered partnership based on the criterion of duration. When deciding on the duration of a relationship of partners, the court must also consider the similarity of the relationship to the marital relationships. In this case, the legal criteria for the marital relationship should be observed. “The case law has emphasized that the partnership must be continuous and stable.”

In the author’s opinion, it is necessary to determine the minimum period of relationships, and, moreover, it is important to establish that the relationship is of a permanent nature.

The existence of a child in a relationship is essential, as the primary problem in determining the status of a partnership is to establish the existence of a partnership. For example, “In some cases, the time necessary to determine the duration of a non-marital union may be reduced if the persons have a common child. The requirement to establish additional criteria seems self-evident, as there may be cases where a man may live with a woman without a desire to have a marriage-like relationship or if the relationships are of periodic nature.” In the opinion of the author of the Thesis, the partnership cannot be limited to a certain period of time or to only the existence of a child in order for the partnership to be recognized. A child may also be born as a result of a casual relationship. The author believes that a child can be a criterion for reducing the time to establish an unregistered partnership. For instance, in Norway, the law governs the possibility of recognizing a relationship of a man and a woman as an unregistered partnership if they have a common child or are expecting a child. The primary is the fact of the existence of a child, while the continuity and stability of the partner’s relationship is of secondary importance. People who have a common child can live apart for some time. However, a child imposes additional responsibilities not only on the parents but also on the state, providing additional

protection for the child." As already mentioned by the author of the Thesis, the criterion of the status of "freedom" for persons in an unregistered partnership is also significant. "There is a broad consensus in practice that, outside the marriage, the union must be subject to an exclusivity clause in order for the legal consequences applicable to the partnership to take effect. Specifically, only persons who are not married or in another extramarital union may be subject to regulation outside the marriage union.

In the opinion of the author of the Thesis, the application of this criterion significantly restricts the rights of individuals who are actually in a partnership. Firstly, if the institution of partnership is not comparable to marriage, it does not have equivalent consequences, i.e., rights and obligations. Secondly, the divorce process can take a relatively long time, but the individual is actually cohabiting with another person. As regards the interpretation of an unregistered partnership, this criterion is more formal in nature, as a person who is not divorced is not precluded from actually forming a partnership with all the consequences it entails. As an example, the author of the Thesis would like to mention France, where the existence of a non-marital union can also be established in cases where one or both partners are married to third persons".

According to the author, if the above conditions are existent, the duration of the partnership should be determined as a secondary criterion. For example, if persons are already expecting a child when starting a cohabitation, it would be necessary to recognize the partnership from the moment the child is born, without the minimum duration of the relationship.

The age criterion is also important in partnerships. With regard to the age criteria for establishing an unregistered partnership, the minimum age at which a person may enter into a partnership is governed by the law in which the partnership has acquired legal status. For example, "in Croatia, Norway, a person must have reached the age of 18," but "in Portugal, the minimum age is set at 16." Section 3 (2) of the Family Law Act of the Republic of Estonia of October

12, 1994 stipulates that a minor must be at least fifteen years old to enter into marriage and that a parent or a guardian must provide consent. While, if consent is not provided, the court may grant the minor a permission to marry if the marriage is in the interests of the minor. Article 13 paragraph 2 of the Family Code of the Russian Federation of December 8, 1995 states that, marriage may be permitted to persons under the age of sixteen for substantiated reasons.

The author concludes that partnerships are equivalent to the traditional ways of establishing a family, i.e., marriage, and that a union can be formed for financial or safety reasons. From a psychological aspect, partnerships are characterized as a premarital trial phase, for instance, Professor Donna Vandergrift divides unregistered partnerships into four types:

- "Dating cohabitation" – when partners spend a lot of time together and eventually decide to live together. The partners may not cohabit, but the partnership as such may exist and property relations may develop as well. It can therefore be concluded that in this case an unregistered partnership exists and may be of a permanent nature, but it cannot be recognized as cohabitation. The author also considers that this type of partnership cannot be regarded as equivalent to the rights and obligations of the spouses. This type of partnership is an informal type of cohabitation, in which the partners spend time together, thus sharing living space. These partners usually passively enter an unregistered partnership without any prior discussion.
- "Premarital cohabitation" – characterized by the fact that partners are testing the relationships before committing to marriage. The primary goal is to begin cohabitation with the intention of registering a marriage after a certain period of time. Professors of psychology Spencer A. Rathusand and Jeffrey S. Nevid describe a premarital partnership as "an agreement, to which both partners explicitly agree

and which can be regarded as either a "trial marriage" or an agreement that has other practical reasons before the couple can become officially married.

- "Trial marriage" – when the partners want to see what a marriage might be like; it is considered that such partners are less confident in their relationship than those in the premarital partnership. According to the author of the Thesis, this type of relationship develops because the partners are not able to be sure of the sustainability of their relationship.
- "Substitute marriage" – long-standing relationships between two people who have not registered a marriage. For example, the partners may be separated (living separately), but legally married to third parties. Or the individuals were divorced and did not want to get married anymore. Another reason for a substitute marriage partnership is that the marriage ceremony is irrelevant. For example, the professors of psychology Spencer A. Rathus and Jeffrey S. Nevid, argue that "a "substitute marriage is an agreement between the partners for permanent cohabitation who decide never to register the marriage". The persons divorced are best suited for this type of unregistered partnership compared to other partners.

In view of the above, the author of the Thesis concludes that the main substance of the classification of partnerships helps to determine its legitimate purpose, whether this type of relationship is comparable to a spousal relationship or not.

The author wants to distinguish separately the social factors that promote the formation of cohabitation: solving housing issues, economic rationality, emotions. It is stated in the study "Comparative Analysis of Factors Affecting Registered and Unregistered Cohabitation" that "[…] formation of a family has evolved from a condition of agreement to a condition of individual relationship

dynamics – relationship intensification, initiation of cohabitation, childbearing, where the quality of relationships plays a major role. Marriage may or may not become part of the dynamics of these relationships, but it is not considered as a factor affecting the quality of the relationship itself. It is difficult to distinguish a single set of factors that lead to the registration of relationships, but there are common nuances in the experience of the research participants that show that there are influences that can contribute to the development of a relationship in marriage."[43]

Emotions.

The decision to start a relationship and form cohabitation is related to emotional factors and a subjective assessment of the quality of the relationship. The quality of the relationship is formed by spiritual and sexual intimacy, as well as its harmony. The beginning of a relationship is often considered to be the beginning of sexual relationships. The desire for a person's daily presence, without which it is impossible to establish a close relationship. Love based on trust and a wish to give to the other.

Emotionally, marriage is an expression of the partners' love for each other, but legally it is a civil act. Partners who have decided to enter into marriage should, at least for a moment, think rationally about this decision, considering the legal obligations that will be imposed with this step and discussing it with the other partner as to whether they are prepared for it. The law students are taught in the first year of studies that "law has no emotions".[44]

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[43] LU, Publiskās antropoloģijas centrs. 2015. *Reģistrētas un nereģistrētas kopdzīves faktoru salīdzinoša analīze*. Rīga, 8. Retrieved from: http://www.antropologija.lu.lv/fileadmin/user_upload/lu_portal/projekti/antropologija/zinas/Petijums_kopdzive-2015.pdf [viewed 29.07.2015].

[44] Maulis, J. 2016. *Laulības tiesiskie, psiholoģiskie, ētiskie un sadzīves aspekti*. Retrieved from: https://www.tm.gov.lv/lv/media/2935/download [viewed 12.03.2021].

It must be understood that no matter how much persons love each other, the law has a higher legal force than mutual feelings and wishes of persons. Any doubts or fears about a particular obligation must be discussed by the parties and, if necessary, appropriate legal steps must be taken in order for the obligations imposed by the marriage to satisfy both parties to the marriage.

2.3 Registered and unregistered partnerships

As the author already mentioned in the first chapter of the Thesis, the possibility of establishing several characteristics of a partnership is important for recognizing a partnership, therefore, the author considers it important to provide a legally correct definition of partnership, as well as to initiate criteria in the national law to facilitate recognition of the existence of unregistered partnerships in case of disputes.

In the author's opinion, a registered partnership is close to the institution of marriage, which can also be proved, for instance, by presenting a partnership registration certificate (document). The author concludes that a marriage or a civil partnership is a special relationship entered into freely and consciously to establish rights and obligations similar to a contractual relationship.

While the burden of proof lies on persons whose partnership has not been registered, i.e., in the event of a dispute or in situations relevant to the partners, the factual circumstances of the partnership must be proved. For example, the duration of the partnership, the facts of the existence of cohabitation, etc. Therefore, the author examines the legal aspects of registered and unregistered partnerships in the European case-law.

Studying the scientific literature from the aspect of formation of an institution of family, it can be concluded that marriage is the foundation for the formation of the institution of family. This has been promoted both by the traditions adopted and implemented by the majority of the society and by the

actions of the legislator, primarily in situations, where individuals have common children. However, there has been a tendency over time that the institution of marriage and cohabitation, namely, partnership, are regarded as equivalent fundamental forms of family life.[45] The development of the institution of partnership can be observed in almost all EU jurisdictions.

In the author's opinion, the type of establishing of a partnership, i.e., with or without registration, is the competence of the legislator of each country wishing to introduce or recognize the institution of partnership by determining its legal status in national legislation. According to the author, the kay task is to make the registration procedure as simple as possible and more accessible to individuals. For example, two individuals who want or have already established a partnership, including cohabitation, would be entitled to apply to the civil registry office for the acquisition of a partnership status. While the civil registry office after the expiration of a certain term, examination of the application and evaluation of the partnership criteria, registers the partnership of the individuals.

Unregistered partnership model

Analysing the nature of unregistered partnerships, the free form of establishment of these partnerships, not requiring additional formalities, is implicit. It is therefore necessary to provide for the legal recognition of such an institution in law in order to ensure the balance between the protection of the rights and interests of individuals. Legal enactments must provide for formal criteria, meeting which, the existence of a union of individuals is recognized as a legal fact which governs the consequences in the relations between persons. In this case, the difference is in the procedure, whether cohabitation is legally

[45] *The Max Planck Encyclopedia of European Private Law. Volume I.* 2012. Oxford: University Press, 230.

recognized at the very beginning, during its existence or after its end, if its content meets certain criteria.

Persons living in an unregistered partnership have a minimum level of protection. Significant consequences arise in cases when the partners in an unregistered relationship enter into civil law transactions, such as a will, an agreement on the division of property, etc. The legislator has established a procedure for resolving such disputes in cases when the persons have entered into a marriage, but this procedure cannot be applied in case of partnerships.

In the author's opinion, the institution of marriage will not lose its significance even after the introduction of the institution of partnership, as the institution of marriage includes not only legal formalities, legal consequences, but also long-standing tradition rights that have "survived through" a significant period of time. The author concludes that the primary goal of the institution of partnership is not to level out the institution of marriage, but to ensure the most equal possible protection of the rights and interests of individuals, regardless of the form of family formation and related formalities.

3 Issues and solutions of regulatory provisions regulating the rights and obligations of persons in partnership

Until now, the rights of couples in a partnership have been protected by the international legal enactments, while in Latvia the legislator has included the rights regarding the establishment of a partnership and their legal status in a few special legal enactments. In the author's opinion, observing the social family model existing in the society, it is important to implement the principle of legal certainty of a partnership in the regulatory framework in conjunction with the principle of equality and the right to private and family life. Therefore, the primary task of the legislator is to establish a regulatory framework able to provide legal protection to individuals in a partnership, but not exceeding the limits of the regulatory framework currently ensured to spouses.

3.1 Issues of a partnership in certain fields of law and case-law

The national law regulates a wide range of issues, therefore, this chapter focuses on awareness of the issues in certain fields of law, such as patients' rights, social rights and partners' rights in tenancy matters.

With regard to property relations in family, the legislator has adopted a special regulatory framework, considering the peculiarities of the institution of family – social and biological connection, the psychological condition of persons. If the cohabitation of two partners is considered as a sort of a contract in which both parties undertake to participate in the joint household with their investments, regardless of the existence of a partnership model, it would be only logical to apply the appropriate regulatory framework to such "contractual relations". However, currently the general legal provisions apply to unregistered partners who live in a *de facto* union and are therefore in relatively similar circumstances to persons in a registered marriage. Psychological, social and

biological ties are not given importance in the regulation of property relations of persons living in partnerships.

The duty of the legislator to ensure the legal protection of family requires to determine the regulatory framework of a family relationship existing in the social reality, namely, to regulate the personal and property relations of the participants of this relationship. While the obligation to ensure the social and economic protection and support for the family the legislator may fulfil by specifying in the law the rights of the family to special protection and support, namely, by providing various measures for protection and support for the family in the law. Both obligations of the legislator arising from the first sentence of Article 110 of the Constitution of the Republic of Latvia are closely related to each other. If the state does not provide legal protection of the family, i.e., does not establish the regulatory framework of family relations, then it is not possible to ensure the social and economic rights included in the first sentence of Article 110 of the Constitution of the Republic of Latvia (see Judgment of the Constitutional Court of November 12, 2020 in the case 2019-33-01, paragraph 12.3, for comparison see Judgment of the Constitutional Court of December 5, 2019 in the case No 2019-01-01, paragraph 16.2.1 and 16.2.2). The obligation of the legislator to protect every family arising from the first sentence of Article 110 of the Constitution of the Republic of Latvia means that the legislator has no power of discretion to choose whether the same-sex families should be provided with legal protection, as well as economic and social protection and support at all. However, the Constitutional Court has acknowledged that the legislator has a certain power of discretion in determining the form and content of the regulatory framework of family relations and in choosing the methods,

mechanisms and measures by which the social and economic protection and support of the family will be ensured."[46]

Considering that the persons in a partnership also purchase property and jointly invest in the development of their family, the author examined the types of property of persons.

The social rights of those living in a partnership also has a significant role. In the field of social rights, the regulatory framework for partnerships is fragmented. In the author's opinion, although the institution of partnership is not recognized and is still not regarded as equivalent to the institution of marriage, there is still some progress towards it in the Republic of Latvia. Moreover, Latvia is bound by various international laws and case-law related to the social field of those living in partnerships, which stipulates that the understanding of a family in social law is broader, which has already been discussed in the previous chapters.

The European Court of Human Rights states that the correspondence of each particular relationship to "family life" can be significantly affected by many factors, namely, whether the couple lives together, the duration of the relationship, whether both parties are faithful, have common children, and so on.

Persons, regardless of their financial situation, must provide themselves with a dwelling. Rental rights are also not entirely clear in partnership. Considering the absence of a regulatory framework of partnership, the primary national law which establishes the procedures for resolving disputes between a landlord and a tenant, as well as the procedures for concluding and terminating residential lease agreements is the Law on Residential Tenancy. The Law on

[46] Judgement of the Constitutional Court of April 8, 2021 in the case No 2020-34-03. Retrieved from:https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-34-03_spriedums.pdf#search=2020-34-03 [viewed 09.08.2021].

Residential Tenancy[47] entered into force on May 1, 2021, replacing the law "On Residential Tenancy"[48], which was adopted in 1993. Thus, the law was developed in the circumstances of the transition of the economy from a state-regulated economy to the economy based on the principles of market relations. Therefore, in order to avoid possible social tensions, the law initially included a very strong protection of the rights of tenants, at the same time significantly restricting the rights of the landlord as the owner of the leased object.[49] Neither the Law "On Residential Tenancy" nor the Law on Residential Tenancy has fully resolved the rights of persons in a partnership.

The courts, and in particular the Constitutional Court, have a special role in shaping public awareness of standards of freedoms and fundamental rights. A state that guarantees gender equality in civil and family law never immediately implements it in legal reality. For many years, the society continues to live in accordance with the traditions, beliefs and customs rooted in generations. What is the place of the court in the regulation of family law, more precisely, the place of the constitutional court, when the State tries to regulate in detail the rights, obligations and relationships of family members in general? Usually, the goal is fundamental rights of a person. In these cases, implementing the requirements of gender equality and protection of the rights of the child, the legal relations of the family are regulated further, which also significantly changes the usual relationships of family members. At the same time, human rights are respected in Latvia. Situations arise that, for instance, by guaranteeing the appropriate fundamental rights of a person, the state interferes in the mutual relations of

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47 Dzīvojamo telpu īres likums. Latvijas Republikas likums. Pieņemts 17.03.2021. Retrieved from: https://likumi.lv/ta/id/322216 [viewed 05.05.2021]

48 Likums "Par dzīvojamo telpu īri". Latvijas Republikas likums. Pieņemts 16.02.1993. ar grozījumiem, kas pieņemti līdz 26.07.2010.// *Latvijas Vēstnesis*. 18.02.1993, 19.

49 *Likumprojekta "Dzīvojamo telpu īres likums" sākotnējās ietekmes novērtējuma ziņojums (anotācija).* Retrieved from: http://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/47bb5fed6be3d7abc225835b005293f3/$FILE/144.PDF [viewed 05.05.2021].

persons, the right of a person to private life, therefore some of such cases are brought to the Constitutional Court. The author considers that over the last 5 years, the rulings of the Constitutional Court have had an impact not only on family law and inheritance law, but also on the understanding of the family by the society.

3.2 Draft law "Partnership Law"

The issue of registration of homosexual couples in the form of partnerships is socially and politically controversial topical in Latvia. This issue concerns what has not yet been resolved in Latvia. The Ombudsman urged to resolve this issue already in 2011, when a draft law on legalization of partnerships was drafted.[50] This draft law was rejected, as some political forces insisted that this partnership law should cover not only homosexual but also heterosexual couples, while other political forces saw a threat to the traditional institution of marriage.

This political struggle is perfectly reflected in the response of the Cabinet of Ministers to the Ombudsman provided on May 3, 2012: "[…] taking into account the traditional view of marriage and family that has established in Latvia in the course of cultural and historical development, as well as the constant threats to this traditional value, it has been necessary to include a definition of marriage in the legislation of Latvia. In view of the above, it would be necessary to assess whether it is necessary to begin active work on the development of the necessary draft laws in the field of legal regulation of a partnership."[51]

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[50] Tiesībsarga konsultatīvās padomes par partnerattiecību tiesisko regulējumu sagatavošanas sanāksme. *Protokols.* 15.09.2011. Retrieved from: http://www.tiesibsargs.lv/lv/pages/par-mums/konsultativas-padomes/par-partnerattiecibu-tiesisko-regulejumu [viewed 23.03.2021].

[51] Latvijas Republikas Ministru kabineta 03.05.2012. atbilde tiesībsargam. Retrieved from: https://www.tiesibsargs.lv/lv/pages/par-mums/konsultativas-padomes/par-partnerattiecibu-tiesisko-regulejumu [viewed 23.03.2021].

On December 15, 2005, the wording of Article 110 of the Constitution of the Republic of Latvia was amended, stating that "the State shall protect and support marriage – a union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence." This wording of the law entered into force on January 17, 2006. Before the legislator has assessed whether it is necessary to take specific measures in Latvia to modify the education system, and accordingly has taken such measures, it is not possible to verify whether these measures meet the needs of Latvian society, namely, whether the educational content corresponds to the requirement on adaptability of education arising from the rights to education laid down in Article 112 of the Constitution the Republic of Latvia. Moreover, until a specific study is carried out on the need to implement the measures referred to in Article 14 of the Council of Europe Convention[52] on preventing and combating violence against women and domestic violence (Istanbul Convention) in the Latvian education system and to introduce specific improvements in educational programmes, it is not possible to assess, whether and how they affect the right of parents in bringing up their children according to their religious or philosophical beliefs. This means that Article 14 of the Istanbul Convention does not itself restrict the right to education laid down in Article 112 of the Constitution of the Republic of Latvia to any group of persons.[53]

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52 *Council of Europe Convention on preventing and combating violence against women and domestic violence. Council of Europe Treaty Series*. 11.05.2011. Istanbul, 210, Retrieved from: https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210 [viewed 06.11.2021].

53 Judgement of the Constitutional Court of June 4, 2021 in the case No 2020-39-02. Retrieved from: https://www.satv.tiesa.gov.lv/cases/?search[number]=2020-39-02 [viewed 06.10.2021].

Therefore, these persons are deprived of the opportunity to officially declare their wish to live together and to legally regulate their personal and property relations, as well as relations with third parties and the state. Improving the legal status of LGB as well as opposite-sex couples and reducing discrimination could be ensured by the Partnership Law, therefore the author has developed a draft law and provides explanations in the Thesis.

Conclusion

The aim of the Doctoral Thesis "Institution of Partnership – Issues and Improvement of the Regulatory Framework in the Republic of Latvia" has been achieved – as a result of the analysis of the regulatory framework, the issues of the substantive scope of family in the context of partnerships have been identified and the proposals for improvement of the regulatory framework of partnership in the Latvian legal system were brought forward. In order to achieve the aim, the author fulfilled the objectives, namely: identified the substantive scope of the notion of family in legislation, ascertained the nature of partnerships, as well as the historical development and criteria characterizing partnerships. Answers to the questions raised in the research have also been found during the development of the Doctoral Thesis. The Latvian national legislation fragmentarily determines the obligations and rights of couples in partnerships, but the procedure for registration of partnership is not established and partnership is not legally recognized. Whereas, in the author's opinion, the most important issues for persons in cohabitation are: absence of partnership law, division of property in cases of separation of partners, limited right of partners to take important decisions for the benefit of the patient, partner's settling in rented accommodation without the landlord's consent, etc. These issues cause negative legal consequences for people living in partnerships in a number of fields of law.

One of the most significant shortcomings of Latvia's national law is that there is no law strengthening the institution of partnership, therefore the most appropriate legal solution for the recognition of partnership and its regulation in the Republic of Latvia would be a separate law – the Partnership Law. The new law is necessary to ensure non-discrimination of people living in partnerships and legal consequences in similar factual situations equal to persons in marriage.

The issues and disordered nature of the legal relations between the partners living in partnerships create shortcomings in respecting of the rights and obligations of the parties, and resources are spent in judicial proceedings in order to ensure that the rights of the partners are respected, and most of the persons in partnerships choose to leave the country in order to enjoy the recognition of their relationship, thus the state is losing taxpayers. Moreover, the state already has established a number of obligations under the national law for couples living in partnerships, yet does not want to legally recognize partnership.

The institution of marriage and the related regulatory framework have developed over several centuries. Marriage procedures have been affected both by the country's historical traditions, and the needs and views of the society. In Latvia, the protection of marriage between a woman and a man is enshrined in the Constitution of the Republic of Latvia, and the institution of marriage is regulated in the part of the Civil Law "Family Law". It follows both from the Constitution of the Republic of Latvia and the content of the provisions of the Civil Law that the notion of "family" is closely related to the institution of marriage, namely the relationship between a woman and a man. As family law arises not only from the status of the relationship but also from the existence of a child, unions living in the same household and having common children but not married are also considered to be the "family" in the law. Such unions with or without children, are not enshrined in the Latvian national law. Although the partnership model is nothing new in the society, and the society's attitude towards children born out of wedlock is generally no longer negative, however, from a legal point of view, there are situations when, due to the lack of the regulatory framework, the rights of individuals are restricted.

Currently, in Europe there is no common approach to legal recognition of an extramarital union due to a lack of common understanding of the nature of the fundamental rights to be guaranteed. In most countries where the institution of partnership has been legalized and the regulatory framework has been

introduced, it is not fundamentally different from the regulatory framework of spousal property relations. From this aspect, the situation in Latvia is not very different, namely, the registration of partnerships has not been introduced in Latvia so far, thus, currently, the legislation does not grant special protection and certain rights to persons who have not registered their partnerships as marriage. Such are considered to be the following rights – inheritance rights, rental rights, tax rights, patients' rights, social rights, rights in criminal proceedings, etc. The most significant difference between the institution of marriage and the institution of partnership would be that the registration of a partnership also imposes a mandatory obligation to choose the type of property relations.

One of the main issues of why there are different views on the need to register partnerships, its implementation and its possible procedures, is the difficulty of establishing the existence of a partnership. In several countries, the legislation does not provide a definition of a partnership, but there are a number of criteria for determining the existence of a partnership.

The research carried within the Doctoral Thesis clearly proves that it is necessary to introduce the regulatory framework of partnership in Latvia, as well as it is necessary to make a number of amendments to the regulatory enactments. Regardless of the status of the relationship (marriage, partnership), as well as regardless of sex (opposite, same-sex), the state has an obligation to ensure equal social and economic protection for families.

Main conclusions and proposals

The **first chapter** contains conclusions and suggestions related to the analysis of the notion of "family". The following **conclusions** have been made within the framework of the Doctoral Thesis:

1.1 In Latvia, the Civil Law narrowly regulates the substantive understanding of family and the social reality not reflected by the existing legal regulation regarding the legal protection of a family.

1.2 Court decisions include different terms regarding the fact of living together in case of partnerships. The following expressions are mentioned in the court rulings: "actual cohabitation of individuals", "unregistered partnership", "civil marriage".

In order to promote a common understanding of the notion of "family", the following **proposals** are made:

1.3 The author proposes to include the definition of "family" in Chapter 3 of Part One of the Civil Law - Family Law, supplementing it with Section 214.[1].

1.3.1 To express Section 214.[1] in the following wording:

"The family, in the broadest sense, includes a union or a partnership between a man and a woman. The legal relations of a partnership are governed by a separate law."

The **second chapter** contains conclusions and proposals focused on the development of the concept of partnership. The following **conclusions** have been made within the framework of the Doctoral Thesis:

2.1 The following terms are used in laws of different countries governing family legal relations, including unregistered relationships: *de facto* union, partnership, cohabitation, civil union, civil partnership, registered partnership, unregistered partnership.

2.2 In countries where a special law has been adopted, different types of extramarital partnerships are regulated, therefore, two types of cohabitation partnerships can be distinguished:

1) registered partnership;
2) unregistered partnership.

2.3 There are unregistered and registered partnerships in the society, their primary difference is the fact of registration of the partnership and its registration in the respective register. The establishment of the legal fact of an unregistered partnership is possible by assessing the factual circumstances in court.

2.4 Examining the regulatory frameworks of different countries, the most common criteria characterizing a partnership are:

1) differently set minimum duration of the partnership;
2) the partners have a common child;
3) none of the partners is married;
4) the partners have reached the minimum age required for entry into marriage;
5) there are no other barriers that prevent the partners from marrying eventually.

2.5 The national practices regarding registration and recognition of partnerships differ. There are three models:

1) registration of opposite-sex and same-sex couples;
2) registration of opposite-sex couples only;
3) registration of same-sex couples only.

2.6 There is no established registration of partnerships in Latvia, so the legislation does not currently provide legal protection regarding inheritance rights, tenancy rights, tax rights, patient rights, social rights.

In order to strengthen the institution of partnership in the regulatory enactments, the following **proposals** are put forward:

2.7 The conditions for establishing the existence of a partnership must be clearly set out in a separate law – the Partnership Law. The inclusion of criteria for establishing a partnership must not discriminate against same-sex couples or encourage intolerance towards homosexual persons.

2.8 A separate Partnership Law is required. The aim is the legal recognition of partnerships. The draft law developed by the author, which is attached in the annex, provides that two persons of the same or opposite sex may register their partnership, as well as provides for the procedure for recognition of unregistered partnerships. The Partnership Law will regulate the mutual relations of persons, the relations of these persons with third parties and the society and the state in general.

2.9 The basis for registering a partnership is the commencement of cohabitation. The type of a partnership is chosen consciously, which is affected by social factors. One of the mechanisms allowing legal establishing of a relationship is the finding of a legal fact. The finding of a legal fact is performed in a district (city) court in accordance with the provisions of the Civil Procedure Law. Consequently, it is necessary to make additions to Section 288 paragraph 2 of the Civil Procedure Law, supplementing it with clause 7.

2.9.1 To express Section 288 paragraph 2 clause 7 of the Civil Procedure Law in the following wording:

(1) The court shall find facts regarding:

"7) correspondence of the status of the relationship to a partnership by assessing the criteria contained in a separate law – the Partnership Law."

The **third chapter** contains conclusions and proposals related to the issues of implementation of the rights of couples living in partnerships. The following **conclusions** have been made within the framework of the third chapter of the Doctoral Thesis:

3.1 The approach of the European Court of Human Rights to the consideration of the rights of homosexual persons has changed, i.e., despite the fact that each Member State has limits on self-determination, which is no longer interpreted as broadly as was permitted previously. The Member State must not only justify the difference in treatment of homosexual persons' relationships with a legitimate aim, but must also show that the aim cannot be achieved by other means. The division of the joint property of partners in a registered partnership must be provided for in a separate law, for example – the Partnership Law. In determining the division of joint property, both the investment of both partners at the time of the acquisition of the joint property and the investment in the joint property after its acquisition must be taken into account.

3.2 Section 17 of the Law on State Social Allowances stipulates the procedure for granting and disbursement of State social allowances, i.e., paragraph 5 of Section 17 provides that the amounts of the State social allowance calculated for disbursement that are not disbursed until the death of the recipient of the allowance may be received by the spouse of the recipient of an allowance and all first- and second-

degree relatives, if they have requested the abovementioned amounts within a year after the death of the recipient of the allowance. If the undisbursed amount of the allowance is requested by several persons, it shall be disbursed in equal parts to all the persons who have submitted a request and who have the right to it. Whereas, if the recipient of the allowance has been in a partnership, the partner has no legal basis to request the allowance.

3.3 Person in a partnership, within the meaning of the Law on Residential Tenancy, is not considered to be a spouse or a member of the tenant's family. This restricts the right to private and family life, i.e., settling of the other partner in the rented dwelling without the consent of the landlord, may be a ground for terminating the tenancy agreement.

3.4 In accordance with Section 74 paragraph one clause 4 of the Labour Law, an employer has the obligation to disburse the remuneration, if an employee does not perform work due to justifiable reasons, especially in the cases where the employee does not perform work for not more than two working days due to the death of his or her spouse, parents, child or other close family member. The author concludes that the term "close family member" also includes persons in partnerships.

The following **proposals** have been put forward to strengthen the rights of couples living in partnerships:

3.5 In order to solve property issues in the event of breakdown of a relationship, the types of property in a relationship must be provided for. In case of introduction of regulatory framework of partnership – the Partnership Law, the legal status of registered and unregistered partnerships would differ in that, in the event of

breakdown of a registered relationship, the following is taken into account:

1) the precondition of acquisition of common property at the time of acquisition;
2) investments in common property after its acquisition;
3) assistance of the partner throughout the relationship from the moment of its registration.

3.6 In the case of the introduction of a partnership, at the time of registration of a partnership, it is necessary to provide for the conclusion of a mandatory contract on the property relations of the partners, and this would become a publicly available documents in register of holders of files.

3.6.1 To amend Chapter 8.[2] Keeping of the Spousal Property Relations Register of the law "On the Enterprise Register of the Republic of Latvia", expressing it in a new wording "Keeping of the Spousal Property Relations *and Partnership Contract* Register".

3.7 In the case of the introduction of partnership, in order to calculate the benefits of each partner during the partnership as accurately and fairly as possible, in Section 4 paragraph four and Section 5 paragraph four the author offers the following solution for the division of the *joint property* of such partners – determination of the difference in the increase of property.

3.7.1 In case of introduction of a partnership in the regulatory framework – Section 4 paragraph four of the Partnership Law shall be expressed in the following wording:

"(4) Determination of the difference in the increase of property – Before entering into a partnership, the list of property belonging to each partner and their mass value shall be determined."

3.7.2 In case of introduction of a partnership in the regulatory framework – Section 5 paragraph four of the Partnership Law shall be expressed in the following wording:

"(5) At the time of the division of the property, the investments of each partner's activity in the common property shall be assessed. As a result, the initial property mass shall be deducted from the acquired final property mass, thus obtaining an increase in the property of each partner during the partnership."

3.8 Regarding property relations in the regulatory framework of partnership – in the Partnership Law, the author proposes to distinguish three types of property of persons in a partnership:

1) *separate property of each partner;*
2) *separately acquired property of each partner;*
3) *joint property of both partners.*

The division of property between partners, the termination of property relations and the legal consequences are closely related to the ownership of property.

3.9 In case of introduction of partnership in the regulatory framework – the Partnership Law, the author offers the division of the joint property of such partners in a registered partnership.

3.9.1 To *express* Section 8 of the Partnership Law in the following wording:

"In determining the division of joint property, both the investment of both partners at the time of the acquisition of the joint property and the investment in the joint property after its acquisition must be taken into account. Property that belonged to a partner before the registration of the partnership or, in case of an unregistered partnership – before the establishment of the legal fact (partnership), shall not be subject to the division of property between the partners, even if the partnership is terminated."

3.10 The author proposes to apply the provisions of the Civil Law, which are applied in cases of inheritance of spouses, only to partners who have cohabitated for more than 3 years, thus discriminating the surviving partner's right to inheritance as little as possible. The person in a registered partnership after the death of the partner has the right to inheritance as a rightful heir, inheriting by law, thus the author proposes to make amendments in Section 391 and Section 423 of the Civil Law and expand the circle of rightful heirs, including *partner of a registered partnership* when determining preferential shares.

3.11 The persons in a partnership are not entitled to receive information on the partner's state of health. Therefore, the author proposes to supplement Section 5 paragraph eight of the Law on the Rights of Patients.

3.11.1 To *express* Section 5 paragraph eight of the Law on the Rights of Patients in the following wording:

"If a patient has suspended medical treatment and left a medical treatment institution without informing the attending physician or medical treatment institution regarding his or her action, it shall be indicated in his or her medical documents. If a patient is a minor or a person who due to the state of health or age thereof is not capable to look after himself or herself, the medical treatment institution shall inform the lawful representative of the patient immediately, but if such does not exist, – the spouse, *the partner, with which a common household is shared*, or closest relative, or if such does not exist either – the Orphan's Court. [..]."

3.12 The persons living in a partnership are not entitled to make decisions regarding the partner's state of health. The author proposes to supplement Section 7 paragraph one and paragraph seven of Law on the Rights of Patients.

3.12.1 To *express* Section 7 paragraph one of the Law on the Rights of Patients in the following wording:

"If a patient is unable to take a decision himself or herself regarding medical treatment due to his or her state of health or age, the spouse, *the partner, with which a common household is shared*, of the patient has the right to take a decision on medical treatment at large or any method used in the medical treatment or refusal from medical treatment at large or any method used in the medical treatment, but if such does not exist, – an adult closest relative with capability to act in the following order: the children of the

patient, the parents of the patient, the brother or sister of the patient, the grandparents of the patient or the grandchildren of the patient."

3.12.2 To *express* Section 7 paragraph seven of the Law on the Rights of Patients in the following wording:

"If a patient has not indicated a person who is entitled to consent to medical treatment or refuse it on behalf of the patient, and the patient has no spouse, *the partner, with which a common household is shared*, closest relative or lawful representative or the patient has forbidden in writing the spouse, *the partner, with which a common household is shared*, or closest relative from taking a decision on his or her behalf, the decision on medical treatment, which would have the most favourable effect on the state of health of the patient, shall be taken by the doctors' council."

3.13 Section 17 of the Law on State Social Allowances does not guarantee the right of a person living in a partnership to receive benefits in the event of the death of the other partner. Therefore, the author proposes to supplement Section 17 paragraph five of the Law on State Social Allowances.

3.13.1 To *express* Section 17. Procedures for the Disbursement of the State Social Allowances in the following wording:

(5) The spouse, *the partner, with which a common household is shared*, of the recipient of an allowance and all first- and second-degree relatives are entitled to receive the amounts of the State social allowance calculated for disbursement that are not disbursed until the death of the recipient of the allowance, if they have requested the abovementioned amounts within a year after the death of

the recipient of the allowance. If the undisbursed amount of the allowance is requested by several persons, it shall be disbursed in equal parts to all the persons who have submitted a request and who have the right to it."

3.14 It is necessary to make amendments to the Law on Remuneration of Officials and Employees of State and Local Government Authorities in order for a person in a partnership to receive an allowance in the event of the death of the other partner.

3.14.1 To *express* Section 19. Benefit to be Disbursed in the Event of an Injury, Mutilation, or Other Damage to the Health of Officials (Employees), Except for Soldiers or in the Event of Death, in the following wording:

(4) If the office (service, work) duties of officials (employees), except for soldiers, are related to the threat (risk) to the life or health and they perished or died within a year after the accident due to damages to health acquired during it, such officials (employees) are buried from the State budget resources and a lump sum benefit in the amount of EUR 100 000 shall be disbursed to their spouses, *partners, with which a common household is shared*, *or closest relatives* and descending relatives, but, in case of absence of descending relatives, the ascending relatives of the nearest degree. The procedures for the granting and disbursement of such benefit, and also the amount of burial expenses and the procedures for covering thereof shall be determined by the Cabinet."

The issues were identified and the existing diversity of opinions in case-law were reflected in the Doctoral Thesis. During the development of the research, the author concluded that there is an urgent need to develop and adopt a regulatory framework of partnership in order to eliminate discriminatory and unequal treatment of couples living in partnerships compared to the institution of marriage.

Publications and reports on the topic of the Doctoral Thesis

Scientific articles in publications included in international databases (Web of Science, SCOPUS, ERIH PLUS):

1. Rozentāle, L. Partnerattiecības un homofobija: tiesiskās problēmas Latvijas Republikā. *Rīgas Stradiņa universitāte, Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls "Socrates".* 2021. Nr. 1 (19). 166–177. ISNN: 2256-0548. https://doi.org/10.25143/socr.19.2020.1.166-177

2. Rozentāle, L. Partnerattiecību tiesiskā regulējuma ieviešanas iespējas. Sastādītājs, atbildīgais redaktors Arturs Medveckis. *Sabiedrība un kultūra. Rakstu krājums, XXII, LiePA*. 2020. Liepāja. ISSN: 2592-8805, DOI: 10.37384/SK.2020.22.277

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