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The Concept of Marriage Through the Prism of Imperative Requirements Theory

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Definition of Marriage and Its Impact on the Institution of Parenthood in Latvian Law (expert report)

Author of the study:

PhD Aleksandra Kuczyńska-Zonik¹

¹ Catholic University of Lublin, Institute of Central Europe, ORCID: <https://orcid.org/0000-0002-5672-9613>.



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Definition of marriage

The first civil law of the Republic of Latvia containing references to the category of marriage was adopted in 1937, and after the break-up of the Soviet Union, when Soviet regulations were in effect, the previous version was restored in 1993, the text of the law being adapted to modern requirements and legal order. At present, the civil law clarifies the laws on marriage in Latvia and determines who has the right to marry (according to age and sex) and the reason for marriage (prohibition of marriages of convenience (sham marriages) for the purpose of obtaining a residence permit). The law states that a person may marry if he or she is at least 18 years old. In addition, Article 110 of the Constitution of the Republic of Latvia states that marriage as a union between a man and a woman is protected by the state. In accordance with the same article, the state is also the guardian of children, regardless of the formalization of the relationship between their parents or guardians.

Child marriage is almost absent in Latvia, with some specific exceptions to the general prohibition. According to Articles 32 and 33 of the Civil Code of the Republic of Latvia, marriage before the age of 18 is prohibited, except in cases where a person who has reached the age of 16 marries with the consent of his or her parents or guardians, if he or she marries an adult². If the parents or legal guardians refuse to give their consent without good reason, such consent may be given by the court having jurisdiction over the place of residence of the parents or legal guardians. In addition, a marriage shall be considered invalid if it was contracted before the spouses or one of them reached the age stipulated in Articles 32 or 33 of the Civil Code. However, such a marriage is not declared invalid if the woman becomes pregnant after the marriage or if both spouses reach a certain age as determined by a court decision. In addition, the Criminal Code of the Republic of Latvia stipulates that any sexual activity with a person under the age of 16 is prohibited and subject to criminal sanctions. Engaging in sexual activity with a person under 14 is considered to be raping or forcible sexual assault. Marriage is also prohibited if at least one of the parties has a mental illness, and if the marriage is between an adopted person and an adopted person (in which case the marriage is annulled).

Marriages of convenience (sham) are rare. Individuals may enter into marriages of convenience with third-country nationals voluntarily (in most cases) or involuntarily (this is considered human trafficking under Article 154 of the Criminal Code). Cases of forced marriage in the context of trafficking are rare in Latvia: two criminal cases were opened in 2009, one in 2010, and none in 2011 and 2012. All forms of trafficking in human beings are prohibited in Latvia. Forced marriage is a category covered by the 2002

² Civil Law of the Republic of Latvia. <https://likumi.lv/ta/id/90223> [accessed: 18.06.2023].



Criminal Law on the Prohibition of Human Trafficking. Awareness-raising campaigns on these issues are conducted regularly. For example, in 2011 there was an information campaign on sham marriages “Fake marriages are a trap!” to highlight the dangers of entering into sham marriages outside Latvia with third-country nationals.

Since January 1, 2013, Latvian law allows foreigners (citizens of the European Union and other countries) with a temporary residence permit to get married in Latvia. Previously, such marriages were not possible.

Same-sex relationships

The differences between formal unions (marriages) and partnerships concern three main issues: 1. the right to inherit in the event of the death of one of the partners, 2. the right to obtain medical information and make decisions on behalf of the partner in the event of health problems, and 3. the regulation of property relations when the union ceases to exist. Although partnerships are not formally recognized or protected by law, in some cases de facto rights are recognized. For example, Article 12 of the Criminal Code, which defines the right of an individual to request information in criminal cases, also covers a person with whom one shares a household. In addition, the Civil Code contains provisions on protection against violence for those living in a joint household.

The discussion about the need to recognize civil unions as formal has been going on in Latvia for at least 15 years. At least two events have influenced the intensification of the debate. First, Edgars Rinkēvičs, the long-time minister of foreign affairs (and, as of mid-July 2023, the president of Latvia), publicly acknowledged his sexual orientation. On November 6, 2014, he announced on Twitter that he was gay and acknowledged that the state needed a civil union law. Second, when 54 people, including a firefighter, were killed in a supermarket collapse in November 2013, his longtime partner could not receive compensation because only family members – immediate relatives and spouses – were eligible.

In Latvia, especially right-populist parties, whose ideology is based on claims that:

- society is made up of two homogeneous and antagonistic groups – the “pure people and the corrupt elite”,
- politics should be an expression of the popular will of the people³

have called on their coalition partners and allies to pass legislation that opposes the European vision of

³ C. Mudde, *Populist Radical Right Parties in Europe*, Cambridge 2007, p. 22.



a liberal approach to the institution of marriage. Such characteristics are usually used in Latvia to describe the National Alliance Party (Latvian: *Nacionālā apvienība*, NA), which is a national-conservative, right-wing or even far-right party. It was formed before the 2010 Latvian parliamentary elections⁴. Most parties on the Latvian political scene advocated a traditional view of the institution of marriage, but the NA was particularly prominent. Disputes over the traditional view of marriage and the institutionalization of LGBT rights became a source of numerous public debates, as well as discussions about the country's national identity.

In 2015, parliamentarian Veiko Spoilītis submitted a proposal to the Legal Committee of the Latvian Saeima to legalize certain aspects of family law regarding informal unions, including same-sex couples. After the proposal was rejected, a collection of signatures for a proposal to legalize civil unions was launched on Manabalss.lv (MyGos.lv). Although more than 10,000 people signed the proposal, the parliamentary majority rejected it. Similarly, in 2019, an initiative by members of the liberal party Attīstībai / Par! (Development/For!) and the center-right Jaunās Vienotības (New Unity) was rejected. The 2020 draft, on the other hand, was not even submitted to Parliament.

The discussion was once again triggered by a decision of the Constitutional Court in 2020, which ruled that the lack of the right of a female partner (the mother of the child) to take paternity leave was incompatible with Article 110 of the Constitution. The complaint was filed by the mother of the child, whose partner was prevented from taking the 10-day leave after the birth of the child, which – according to the Labor Code – is available only to the father of the child. The applicant stated that this was contrary to the child's best interests, as it did not allow her to provide physical and emotional support to the child. According to the complainant, Article 110 of the Constitution, which stipulates that the legislature has the duty to provide protection for all families, has been violated. The Constitution stipulates that marriage is between a man and a woman, but does not specify that a family consists of two persons of different sexes who have chosen to get married. However, the Latvian Saeima ruled that the complaint was not justified and that the existing Civil Code provision complied with the Constitution. After re-examining the case, on November 1, 2020. The Constitutional Court ruled that the provision of the Labor Code does not provide for protecting and supporting the mother's partner related to the birth of a child. The Court emphasized that in the case of legal relations involving a child, the interests and rights of the child are paramount. As far as

⁴ P.F. Timofejevs, *The Environment and Populist Radical Right in Eastern Europe: The Case of National Alliance 2010-2018 "Sustainability"* 2020, vol. 12, No. 8092. <https://doi.org/10.3390/su12198092> [accessed: 18.06.2023].



possible, the state should ensure that the child grows up in a family environment. In addition, legislation must ensure that the rules are on the side of the child. At the same time, the Court instructed Parliament to prepare regulations by June 1, 2022, to introduce protection for people in same-sex partnerships. The regulations would provide a legal framework for private and property relations between family members. The obligation to provide family protection to same-sex couples stems from the principle of human dignity, which requires recognition of the value of all human beings. According to the Court, one element of this obligation is for the state to provide the right to register the partnerships of same-sex couples in a single national registry. According to the definition in Section 2 of the Civil Registry Act (*Civilstāvokļa aktu reģistrācijas likums*), this is a registrable act. However, the legislator did not fulfill this obligation, as it did not provide for the registration of a same-sex couple in the civil registry. In light of the above, it was concluded that Sections 3(1) and 3(3) of the Law on the Registration of Civil Status Acts, which do not provide for the possibility of registering the marital relations of a same-sex couple, are inconsistent with Article 1 (Principle of Human Dignity) and Article 110 (Legal Protection of the Family) of the Constitution of the Republic of Latvia. In response, the National Alliance, which is part of the coalition government, submitted a bill that would have clarified Article 110 of the Constitution to the effect that a family is the union of a man and a woman, thus discriminating against same-sex unions as well as incomplete families⁵. However, the bill did not gain the support of the other political parties.

By mid-2022, the legislature was to close loopholes in the Labor Code that allowed only the father of the child to take paternity leave. The Ministry of Justice drafted a bill on civil unions to ensure the rights of all families. A “civil union” was defined as “a notarized contract between two natural persons of full age, which establishes or extinguishes the material and immaterial rights and obligations of these persons”. The bill provided the minimum legal framework for the establishment of such a union, since social and economic protection and support measures, such as tax relief, rental housing, etc., would remain unresolved. If passed, the bill would require each ministry to review its legislation and assess the need for changes to provide social and economic protection for couples entering into a civil union. In the first half of 2022, the bill was debated in the Latvian Parliament, but due to a lack of quorum, it was ultimately not adopted. In October, it was removed from the agenda, and in December 2022, the parliament rejected it again when Saeima members refused to move it from the 13th to the 14th Saeima (parliamentary elections and the

⁵ D.G. Baranova, S. Mežmale, *Same-Sex Relationships: Why do Many Latvian Politicians Resist Them?* “SSE Riga Student Research Papers”, 2021, Vol. 2, No. 234. https://www.sseriga.edu/sites/default/files/2021-05/2Paper_Baranova_Mezmale.pdf [accessed: 18.06.2023].

election of a new Saeima meant that the project was removed from discussion). Also rejected was the Manabalss.lv initiative, signed by more than 23,000 people, for legal protection for all families. According to some members of the Social Democratic Progressive Party (now in coalition), which consists of New Unity, the Union of Greens and Farmers and Progressives as of September 2023, there is a desire to work on a new law on same-sex unions. The adoption of a law on same-sex unions was one of the main tenets of the political program of the Progressives, which advocated the adoption and full application of the new norms, as well as marriage equality.

Although to date there is no law that explicitly provides legal protection for informal unions, the first ruling against same-sex couples in a relationship was issued on May 31, 2022. The Administrative Court established “the existence of a public legal relationship between these persons”, which de facto means that Article 110 of the Constitution applies to them. On this basis, other persons in informal relationships could also assert their rights.

Marriage and the institution of parenthood

Since Latvia's independence in 1991, family policy has been strongly oriented toward strengthening the traditional concept of the family, and the emphasis has been on promoting marriage (between a man and a woman) as the best type of union for raising children. While some documents may have allowed for multiple family forms, the Constitution of the Republic of Latvia defines marriage as the only officially recognized and protected family form in Latvia, and family policy documents recommend marriage as the family form in which children are raised. This approach is based on traditional values, and actual practice indicates a relatively high number of partnerships or unregistered unions.

Since the beginning of the third millennium, the Ministry responsible for family policy has initiated and implemented programs aimed at developing the family in the traditional sense (the emphasis has been on promoting traditional marriage as the best type of family for raising children), thus increasing the marriage rate and reducing the divorce rate. The goal was to increase fertility rates and social support for families. In 2013, public funding for family policy in Latvia amounted to 2% of GDP, and in 2014–2015 this percentage increased to 2.25–2.5% of GDP. One of the earliest documents on family policy in Latvia was the 2004 Concept, which defined informal unions as a social problem along with alcoholism and drug addiction, and did not see them as a social change in the family paradigm. In 2015, some adjustments were made to family policy on this issue, but programs still aimed to promote marriage. Although there is a lack



of legal solutions and support for those raising children and not in formal unions, discrimination against children based on their parents' marital status is prohibited. Thus, despite the conservative approach that dominates the documents, support for families with children does not depend on whether the parents are married. However, there are significant differences in the legal protection of children of married and informal couples. For example, if the parents are married, one parent can register the birth of a child. If the child's parents are not married, the child's birth must be registered by both parents, who must file a joint application for acknowledgement of paternity. Spouses may also jointly adopt a child, while those who are not in a formal relationship do not have this option.

Latvian policy on divorce has been more liberal than on marriage and civil unions. In 2011, divorce proceedings in court became optional in cases where spouses had reached an agreement on the division of property.

Applications

Over the past two decades, family law in Western Europe has changed to extend the definition of marriage to same-sex couples. Some Central European countries, influenced or even pressured by the European Union, have also attempted legislative changes that have at least partially brought their national legal systems into line with EU requirements. Currently, some Central European countries offer legal recognition of same-sex civil unions, while others do not recognize such a right. However, the process is complex. On the one hand, there are norms that, because of their constitutional role or moral significance, can only be changed through specific mechanisms. On the other hand, some political parties have tried to limit such changes by appealing to conservative values, the traditional notion of marriage and family. This has been particularly evident in the case of groups that, because of their political orientation, have opposed the progressive Europeanization of family law. Latvia is an example of this situation.

The Latvian legal system recognizes only civil marriage between a man and a woman, as enshrined in the Latvian Constitution. The country's legislation does not recognize same-sex marriages or any other form of partnership or same-sex cohabitation, nor does it provide for legal recognition of relationships between children and co-parents in same-sex families. Civil partnerships registered in other countries are not automatically recognized in Latvia, as the law does not provide for this either. However, in such a case, an application for recognition of such a relationship must be filed and considered by the court. According to ILGA-Europe (European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex



Association)⁶, the lack of legal recognition of alternative family arrangements, including unmarried heterosexual couples, leads to discrimination in many areas of life. Same-sex partners are not recognized as next of kin and are not entitled to benefits available to married couples. The organization therefore recommends that Latvian legislation be amended and that all necessary legislative, administrative and other measures be taken to ensure that there is no discrimination on the basis of sexual orientation.

In the case of same-sex couples seeking a legal framework for cohabitation, the court makes a decision on a case-by-case basis based on the Constitution, the Constitutional Court's interpretation of the Constitution, and Supreme Court rulings. The court made its first decision in late May 2022, and dozens of other applications are pending. In the case of a positive decision, the ruling indicates that a homosexual couple is recognized as a family, although there is no specific range of rights and obligations they may have. However, after the adoption of a specific law, such a decision will be able to be used in situations where it is necessary to justify that these people are guaranteed certain rights intended for the family. This practice is a kind of bridge or transitional period until the law appears.

The rules governing the rights of people in formal and informal unions are not clear. On the one hand, norms on marriage are the responsibility of the Member States. On the other hand, Latvia violates international obligations by refusing to recognize and register civil unions. Therefore, specific claims can be brought before the European Court of Human Rights, so sooner or later Latvia will have to make a decision. January 17, 2023. The Grand Chamber of the European Court of Human Rights announces its judgment in the case of Fedotova and others v. Russia, emphasizing that member states must provide adequate regulation and protection for same-sex couples. The ECHR ruling once again reminds Latvian lawmakers of the need to protect human dignity and fundamental rights. The legislature's inability to separate politics from legal obligations (Latvian politicians usually justify their stance with the need to protect traditional values and national identity) not only puts Latvia in a negative light in the international arena, but also lowers trust in state institutions among members of society who are denied fundamental rights⁷.

Interestingly, the adoption of a regulation on civil unions could strengthen the status of senior citizens in Latvia. Latvijas Senioru kopienu apiviēna, an organization that supports the elderly, said that

⁶ LATVIA: The Status of Lesbian, Gay, Bisexual and Transgender Rights, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session11/LV/JS1_JointSubmission1-eng.pdf [accessed: 29.09.2023].

⁷ A.P. Mālere, *ECT: valstīm ir pienākums atzīt un aizsargāt viendzimuma pāru attiecības*, 18.01.2023 <https://www.cilvektiesibas.info/raksti/ect-valstim-ir-pienakums-atzit-un-aizsargat-viendzimuma-paru-attiecibas> [accessed: 5.10.2023].



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broadening the definition of the family and thus defining the right to socio-economic protection and family support could benefit many seniors. There are many cases in Latvia where, for various reasons, elderly people live together in one household and take care of each other.



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