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Ombudsman of the Republic of Latvia

OMBUDSMAN OF THE REPUBLIC OF LATVIA

OPINION
Regarding case No. 2018- 38-26G

Riga

October 29, 2018. Nr. 6-6/29

To the Saeima (parliament) of the Republic of Latvia
E-mail: saeima@saeima.lv

To the Cabinet of Ministers
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Regarding recognition of diverse family models

The Ombudsman has considered the individual's (hereinafter called "applicant") submission regarding possible discrimination based on sexual orientation (herein after called "submission"). The submission highlights that "Latvia does not have a legal framework recognising cohabitation of two individuals. Furthermore, the second part of paragraph 35 of the Civil Code directly prohibits marriage between persons of the same sex. Consequently, the only solution for same-sex partners is to conclude multiple relationship regulating contracts, such as, power of attorney, future power of attorney, or inheritance agreement. [...] As a result, an unpleasant fact with regard to the cost of the inheritance process, on the basis of an inheritance agreement, unfolds. The Cabinet of Ministers Regulation No. 1250, "Regulation Regarding the State Fee for Registering Ownership rights and Pledge Rights in the Land Register" (hereinafter called Regulation No. 1250) establishes the amount of the state fee for the consolidation of ownership and pledge rights in the Land Register, the payment procedures, as well as exemptions from the fee.

Section 13, and corresponding paragraphs, of Regulation 1250 determines the amount of the state fee payable when inheriting immovable property on the basis of an inheritance agreement. Paragraph 13.2.3 stipulates the amount of the state fee to be paid by those devisees who are not the devisor's 1st to 4th degree relative or spouse as 7.5% of the value of the inherited immovable property. In cases where the devisee inheriting immovable property on the basis of an inheritance agreement is the spouse of the devisor, paragraph 13.2.1 of Regulation 1250 is applied, which stipulates the amount of the state fee as 0.125% of the value of the of the inherited immovable property, which is 60 times less than the aforementioned amount. In practice, if inheriting a property worth 150 000 EUR, a legal spouse would pay a state fee of 187.50 EUR. Whereas in the case where the devisee was a same-sex partner inheriting

immovable property on the basis of an inheritance agreement, they had to pay a state fee of 11 250 EUR for a property of the same value."

The applicant has annexed letter No.1-24/794-O from the Ministry of Justice, dated June 12, 2018, about the specific situation.

The applicant requests the Ombudsman to initiate an verification procedure into the possible difference in treatment and violation of the principles established by Section 91 of the Constitution of the Republic of Latvia (the Satversme) in paragraph 13.2.3 of Regulation No. 1250, insofar as it applies to cohabiting same-sex partners, among whom an inheritance agreement has been concluded.

The Ombudsman, pursuant to Section 11, paragraph two of the Ombudsman Law, promotes adherence to the principle of equality and the prevention of any form of discrimination.

Taking into account the fact that the Ministry of Justice's opinion on the given situation is annexed to the submission, the Ombudsman did not address the Ministry of Justice with a request for a re-examination of the same factual circumstances, and hence this opinion uses the answer already given by the Ministry of Justice.

Opinion of the institution concerned

[1] The Ministry of Justice states that the amount of state fees for the consolidation of property rights in the Land Register affects the rights of a person to property, as it imposes an obligation on a person to pay a payment into the state budget. Consequently, the amount of the state fee specified in the Land Register is to be considered in conjunction with individual property rights set out in Section 105 of the Satversme. […] The state has the right to adopt such laws as it considers necessary to ensure the timely collection of taxes or other charges into the state budget. As a result, the state has discretion in determining the types of taxes and duties, their amounts and the corresponding goals to be achieved. From the point of view of tax theory, it is permissible for the tax to achieve several goals, including the objective of partially replacing a tax that has not been introduced in the state. Similarly, the state fee does not necessarily have to be linked to the cost of the service in question. The Land Register carries from characteristics of a tax and, among other things, fulfils a fiscal function to cover state expenses related to the state's basic functions of ensuring the country's overall economic development. According to Article 110 of the Satversme, the state has a duty to protect and support marriage - the union between a man and a woman, the family, the rights of parents and children. For marriage as a union between a man and a woman, a special status and protection are granted at the constitutional level, thus ensuring that different treatment towards different models of unions between persons is permissible, based on whether or not the union of persons conforms to the concept of marriage mentioned in the Satversme.

[1.1] In Section 13 of Regulation No. 1250, the amounts of the state fees associated with the land register are determined by taking into account the type of succession, the degree of relation and type of heir. The privileged position of a spouse is also taken into account. Rates are lower if a person is married to or is a close relative of the deviser. In turn, rates are higher if the devisee is bound to the deviser by another type of relationship.

[1.2] The increased rate applies equally to all persons who have become heirs by inheritance or contractual succession, but are neither a spouse nor another specified type of heir. Even in the case of an inheritance agreement between a cohabiting man

and woman the state fee is 7,5% of the value of the inherited property. Consequently, it can be concluded that the provision outlined in Regulation No. 1250 is in conformity with the prohibition of discrimination established in Article 91 of the Satversme, because persons who have entered into marriage and thus enjoy a special status at the constitutional level, are not in a comparable situation with persons who are bound by other types of emotional or contractual relations, which are not given a special status in the Satversme.

Opinion of the Ombudsman

[2] The Ombudsman draws attention to the fact that the case in question has to be assessed in conjunction with the first sentence of Article 110 of the Satversme, which states that "the state protects and supports marriage - the union between a man and a woman, the family, the rights of parents and the child". In this case, two of the terms noted above - "marriage" and "family" - are important.

[2.1] Article 110 of the Satversme stipulates that marriage is a union between a man and a woman. The Ombudsman recalls that no international law binding on the Republic of Latvia imposes an obligation on the state to extend the institution of marriage to same-sex partners. In addition, the European Court of Human Rights (ECHR) has ruled in several cases that such a right does not derive from Article 8[1] or Article 12[2] of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention). Therefore, a state's legal obligation can only arise in relation to another legal framework for the recognition of relationships of same-sex families.

[2.2] In interpreting the concept of "family" defined in Article 110 of the Satversme, in its judgment No. 2004-02-0106 of 11 October 2004, the Constitutional Court of the Republic of Latvia, in light of ECHR case law, has come to the conclusion that the concept of „family life" within the meaning of Article 8 of the Convention does not apply exclusively to a family based on marriage. The term "family" within this norm does not only relate to marriage-based relationships, it can also include other de facto "family" ties, in cases where the parties live together without marriage (*see. ECHR judgment in "Keegan v. Ireland" 44. §*). In interpreting the term „family life", the ECHR highlights that biological and social reality takes priority over legal presumption (*see. ECHR judgment in "Kroon and Others v. The Neatherlands" 40. §).*"[3]

Same-sex partners form a "family life" within the meaning of Article 8 of the Convention - the ECHR delivered such an opinion in Schalk and Kopf v. Austria[4], judgment of 24 June 2010. The ECHR has consistently maintained this conclusion in all subsequent judgments. [5]

[2.3] In accordance with ECHR's practice, Article 8 of the Convention not only protects individuals from arbitrary State interference in their private and family life, but also imposes certain positive obligations on the part of the States in order to protect the rights provided for in Article 8. The ECHR has formulated the obligations

[1] ECHR, 24 June 2010, judgment in *Schalk and Kopf v Austria,*
[2] See ECHR judgment, 21 June 2015, *Oliari & others v Italy*, paragraph 192.
[3] Constitutional Court of the Republic of Latvia, judgment 11 October 2004, in case No. 2004-02-0106 paragraph 14.
[4] ECHR, 24 June 2010, judgment in *Schalk and Kopf v Austria*.
[5] See ECHR judgment, 21 June 2015, *Oliari & others v Italy, paragraph* 103. And February 23, 2016 judgment in *Pajič v Croatia* paragraph 64.

of the State with respect to same-sex couples by virtue of the right to family life enshrined in Article 8 of the Convention.

[2.3.1] The ECHR has consistently found violations of Article 8 of the Convention in cases in which the legal framework of the state, without any objective reason, places same-sex families in a more disadvantaged situation with regard to exercising their rights, in comparison with different sex partners. For example, in the Pajič v. Croatia judgment of 23 February 2016, the ECHR found an infringement of Article 8 of the Convention with regard to the refusal to issue a residence permit for family reunification purposes for a foreign national, since national law granted such a right only to different sex partners.

[2.3.2] The ECHR judgment of 21 July 2015 in Oliari and Others v. Italy concluded that a positive obligation for a state to provide a legal framework for the recognition and protection of relationships of same-sex families can be derived from Article 8 of the Convention. The option to legally recognise one's relationship forms an essential part of an individual's identity and their "family life." Therefore, development of a legal framework would, in the eyes of the court, allow the families of same-sex couples to legally recognise and protect their relationship[6], since, as has already been concluded previously, the concept of "family life" outlined in Article 8 of the Convention includes also co-habiting same-sex couples.

[2.3.3] However, the legal recognition of same-sex families does not automatically mean equalising the rights of same-sex families with the institution of marriage and the rights of spouses. According to case-law, the State has wide discretion, first of all, with regard to the type of legal recognition made available to same-sex families (for example, co-habitation legislation) and, secondly, the content of the regulation as it pertains to the scope of the rights and obligations to be granted.[7] For example, a state may set different rules for adoption issues.

[2.3.4] In the aforementioned judgment in Oliari and Others v. Italy, the court also assessed the scope of national discretion and societal attitudes towards the legal recognition of same-sex families. [...] In the context of national discretion, the ECHR recognised that there was a lack of consensus among Member States and that the issue under consideration was politically and ethically sensitive. However, one can agree with the ECHR that a distinction is to be made between two different situations. [8] The state has less discretion when it comes to the legal recognition and basic protection of same-sex families, as it directly relates to considerations that are relevant to the individual's identity and existence. By contrast, the choice of the form of the recognition granted to same-sex families and the corresponding scope of rights and obligations may be the subject of broader discussion and discretion for the state.

[3] Public opinion polls in Latvia show that the majority of Latvian society does not support the legal recognition of same-sex families.[9] However, human rights, especially when it comes to determining the core of a specific right or basic protection, are not values that can be limited by the attitude of the public. For example, there was a mixed opinion about the abolition of the death penalty too [10] but sources of European

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[6] ECHR judgment, 21 June 2015, *Oliari & others v Italy*, paragraph 174.
[7] ECHR, 24 June 2010, judgment in *Schalk and Kopf v Austria,* paragraphs 108.-109.
[8] ECT 2015. gada 21. jūlija spriedums lietā *Oliari un citi pret Itāliju,* 177. punkts.
[9] Public opinion survey "Attitudes towards Sexual Minorities" conducted by the market and public opinion research center SKDS in Latvia January, 2011, p22.
[10] TNS "Latvia" in cooperation with LNT. "Survey: 57% of economically active people in Latvia do not support the abolition of death penalty in Latvia." BNS, 2011, available on: < https://www.rekurzeme.lv/vietejas-

human rights, and in the case of the prohibition of torture also in international instruments, these rights have acquired an absolute character, irrespective of a large part of the society's rejection of the absolute nature of these rights.

[4] The legislator must be able to make decisions that may not enjoy the support of the majority of society, but the adoption of which is necessary to ensure the fundamental rights of different groups within society and the fulfilment of international obligations of the state.

[5] It should be added that, in accordance with the case law of the Constitutional Court, the Latvian state, when ratifying the Convention, voluntarily undertook a broader commitment by declaring not only the binding nature of the Convention but also the case law of the ECHR in its interpretation of the Convention. As recognised by the Constitutional Court: "The case law of the ECHR, which, in accordance with the obligations assumed by Latvia (the Law "On the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols 1, 2, 4, 7 and 11," Article 4) is mandatory for the interpretation of the provisions of the Convention, and this case law shall also be used for the interpretation of the relevant provisions of the Satversme."'[11]

Even a study of the Supreme Court of the Republic of Latvia has acknowledged that "The binding nature of the ECHR case law in Latvia is generally accepted on the basis of the very wide and substantially correct conclusion of the Constitutional Court [...] i.e. the Constitutional Court bases the binding nature of ECHR case law (in rulings against any state) on Article 4 of the ratification law [of the Convention] [...]."[12]

If the State has voluntarily assumed wider international obligations when ratifying the Convention, it must ensure implementation of the positive obligations which, according to the case-law of the European Court of Human Rights, arise from Article 8 of the Convention for same-sex families.

[6] Consequently, the state has a positive obligation to provide a legal framework for the recognition and protection of same-sex families. The state has the right to decide on the form of such recognition and the extent of the rights and obligations it imposes on same-sex families.

[7] In the context of this case, it is also necessary to weigh Article 91 of the Satversme, which states: "All people in Latvia are equal before the law and the courts. Human rights are exercised without discrimination. "

Article 91 of the Satversme contains two interrelated principles: the principle of equality - in the first sentence of the article - and the principle of non-discrimination - in the second sentence. [13] In its interpretation of Article 91 of the Satversme, the Constitutional Court has recognised that the principle of equality precludes state institutions from issuing norms which, without reasonable grounds, allow different treatment of persons who are in equal and comparable, in accordance with specific criteria.

The principle of equality allows and even requires a difference in treatment between persons in different circumstances and allows different treatment of persons

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[11] Constitutional Court of the Republic of Latvia, 30 August 2000 judgment in case No. 2000 – 03 – 01, paragraph 5.

[12] M. Mits Study of the Supreme Court of the Republic of Latvia Judgments of the European Court of Human Rights in the decisions of the Supreme Court of the Republic of Latvia, 2012, page 21.

[13] Constitutional Court of the Republic of Latvia, 14 September 2005 judgment in case No.2005-02-0106 9.m paragraph 3.

who are in equal conditions if they have an objective and reasonable basis. [14] A difference in treatment is not objective and reasonable if it does not have a legitimate aim or if there is a disproportionate relationship between the chosen means and the goals set.[15]

The principle of equality is aimed at ensuring legal equality and, in the alternative, ensuring real equality. Legal equality applied to individuals can lead to inequalities, while equalisation of actual inequalities may affect legal equality. [16]

The purpose of the principle of non-discrimination contained in the second sentence of Article 91 of the Satversme is to eliminate the difference in treatment based on an inadmissible grounds.[17] These grounds are varied and, given both the specificity of the relevant criterion and the actual circumstances of the particular case, the eligibility of their use may vary.[18]

Consequently, it must first be determined whether sexual orientation is an admissible ground within the scope of this article.

[7.1] According to Article 89 of the Satversme, the state recognizes and protects fundamental human rights in accordance with the Satversme, and with laws and international treaties binding upon Latvia. International human rights law and the practice of applying it at the constitutional level serve as a means of interpretation in order to determine the content and scope of fundamental rights and other general principles of law, insofar as it does not lead to the reduction or limitation of fundamental rights contained in the Satversme.[19]

On the basis of Article 68 of the Satversme, European Union law, has become an integral part of the Latvian legal system with the accession of Latvia to the European Union[20], and Latvia must fulfil the obligations arising from membership in the European Union[21]. Similarly, as already indicated in paragraph 5 of this letter, ECHR case law and the Convention are both binding on Latvia.

Article 21 of the European Charter of Fundamental Rights prohibits discrimination on the grounds of sexual orientation[22]. Similarly the ECHR in its judgments has pointed to the positive obligation of the State to protect same-sex couples in accordance with Article 14 of the Convention (prohibition of discrimination on grounds of sexual orientation). Consequently, the prohibition of discrimination on the grounds of sexual orientation is also binding on Latvia.

[7.2] In order to assess whether the contested norm complies with Article 91 of the Satversme, it is necessary to clarify:

1) Whether and which persons (groups of persons) are in the same and, according to certain criteria, comparable circumstances;
2) Whether the contested norm provides for the same or different treatment of these persons;

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[14] Constitutional Court of the Republic of Latvia, 2 February 2010 judgment in case N0. 2009-46-1. Official gazette Latvijas Vēstnesis, 04.02.2010., No.20.

[15] Constitutional Court of the Republic of Latvia, 23 December 2002 judgment in case No. 2002-15-01. Official Gazette Latvijas Vēstnesis. 24.12.2002., No.188.

[16] Authors' collective "Comments of the Republic of Latvia Satversme. Chapter VIII fundamental human rights Latvijas Vēstnesis, Rīga, 2011: p91.

[17] Constitutional Court of the Republic of Latvia, 29 December 2008 judgment in case No.2008-37-03, paragraph 6.

[18] Constitutional Court of the Republic of Latvia, 14 September 2005 judgment in case No.2005-02-0106 9. Paragraph 2.

[19] Constitutional Court of the Republic of Latvia, 24 November 2017.judgment in case No.2017-07-01, paragraph 19., Constitutional Court of the Republic of Latvia, 29 June 2018 judgment in case No.2017-28-0306, paragraph 10.punkts.

[20] Constitutional Court of the Republic of Latvia, 6 June 201 judgment in case No.2017-21-01, paragraph 16..

[21] Constitutional Court of the Republic of Latvia, 19 October 2011, judgment in case No.2010-71-01 13, paragraph.3.

[22] European Charter of Fundamental Rights., 26.10.2012, C326/391, article 21. Available on: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A12012P%2FTXT>

3) Whether such treatment is prescribed by law an enacted in accordance with procedures outlined in normative acts;
4) Does such treatment have an objective and reasonable basis, namely does it have a legitimate aim and does is the principle of proportionality being respected (proportionality test).[23]

Furthermore, it should be noted that the term "law" must mean any provision, that is, positive law and general principles of law.[24]

[7.3] Section 13 of Regulation No. 1250 stipulates:
"13. The state fee for consolidation of property rights to heirs on the basis of a notarised certificate of inheritance, if the value of the inherited real estate exceeds 10 minimum monthly wages, is specified as the following amount:
13.1. in cases concerning consolidation of inheritance rights:
13.1.1. the spouse and first, second and third degree cohabiting relatives of the devisor - 0.25% of the value of the inherited immovable property;
13.1.2. other first and second degree heirs– 0,5 % of the value of the inherited immovable property;
13.1.3. other third degree heirs – 1,5 % of the value of the inherited immovable property;
13.1.4. fourth degree heirs – 5 % of the value of the inherited immovable property;
13.2. in cases concerning the entry into force of the last will and testament or an inheritance agreement:
13.2.1. the spouse and first, second and third degree heirs of the devisor – 0,125 % of the value of the inherited immovable property;
13.2.2. fourth degree heirs – 4 % of the value of the inherited immovable property;
13.2.3. other testamentary or contractual heirs – 7,5 % of the value of the inherited immovable property;
13.2.4. testamentary or contractual heirs if they are civil society organisations – 1,5 % of the value of the inherited immovable property."

Thus, it can be concluded that Paragraph 13 of Regulation No. 1250 identifies four groups - spouse, relatives, testamentary or contractual heirs, and testamentary or contractual heirs in the form of civil society organisations.

When evaluating this norm, one can conclude that it is grammatically neutral and does not distinguish same-sex couples. Therefore, it is first necessary to find out which of the four groups of persons may be in the same and comparable conditions with same-sex couples.

In view of the circumstances set out in the case, relatives and testamentary or contractual heirs in the form of civil society organizations are not in equal and comparable conditions with same-sex couples.

Married spouses and same-sex couples are not faced with the same conditions, since at present, according to the applicable laws and regulations, same-sex couples can not be spouses, nor can they obtain another form of legal recognition for their

[23] Constitutional Court of the Republic ofLatvia, 2 February 2010 judgment in case No. 2009-46-01. Latvijas Vēstnesis, 04.02.2010., No.20.; Constitutional Court of the Republic ofLatvia, 15 May 2018, judgment in case No.2017-15-01, paragraphs 17.and 20.
[24] Authors' collective "Comments of the Republic of Latvia Satversme. Chapter VIII fundamental human rights
" Latvijas Vēstnesis, Rīga, 2011: p90.

partnerships, as the Latvian legislation does not provide for another arrangement by which couples living together can register their cohabitation.[25]

The Ministry of Justice has indicated that Paragraph 13 of the Regulation No. 1250 applies equally to both heterosexual and same-sex couples who have not registered their relationship. The Ombudsman draws attention to the fact that the ECHR has concluded that same-sex couples who want to make their cohabitation formal, but cannot, because there is no relevant regulatory framework in the country cannot be compared to heterosexual couples who do not want to marry or otherwise register their relationship.[26] From the circumstances of the particular case, it can be concluded that the Applicant and his / her partner have made / want to take steps to make their relationship official to the extent permitted by the current legislation (power of attorney agreement, future power of attorney agreement, and inheritance agreement). Consequently, at the moment, Article 13 of Regulation No. 1250 implements the same treatment towards persons in different circumstances - same-sex couples who want to formalize their relationship, and heterosexual couples who do not want to formally recognise their relationship.

[7.4] The ECHR has concluded that a different treatment in the same situation or equal treatment in different situations is discriminatory, unless the treatment has an objective and reasonable basis, that is to say, it has a legitimate aim and the principle of proportionality has been respected.[27] Consequently, the state (responsible institution) must prove the justification for such treatment.[28]

[7.4.1] Paragraph 13.2 of Regulation No. 1250 stipulates the amount of the state fee for different groups of persons, i.e. spouses and first, second and third degree heirs have to pay 0.125% of the value of the inherited immovable property, fourth degree heirs - 4% of the value of the inherited immovable property, and testamentary or contractual heirs must pay 7.5% of the value of the inherited immovable property.

[7.4.2] Differing treatment can be determined in accordance with the law.[29] The word „law" includes not only laws adopted by the Saima, but also other generally binding (external) normative acts, as long as they have been issued in accordance with the law, published in accordance with the procedure set forth in normative acts, are clearly formulated so that the addressee can understand their rights and obligations, and in compliance with the principles of a democratic state.[30]

[7.4.2.1] Regulation No. 1250 was issued by the Cabinet of Ministers on 27 October, 2009, on the basis of the procedure specified in Section 106, Paragraph two of the Land Registry Law. Regulation No. 1250 was published in the official gazette "Latvijas Vēstnesis", on 4 November, 2009 (175 (4161)). Thus, Regulation No. 1250 has been published in accordance with the procedure specified in law.

[7.4.2.2] Article 106, Paragraph two of the Land Registry Law states: "The Cabinet of Ministers shall determine the amount and procedure for payment of the state fee payable and the waivers of payment of the state fee for the consolidation of

[25] See ECHR judgment of 30 June 2016 in case Taddeucci and McCall v.Italy, paragraph 83.
[26] See ECHR judgment of 30 June 2016 in case Taddeucci and McCall v.Italy, paragraph 84.
[27] See ECHR judgment of 30 June 2016 in case Taddeucci and McCall v.Italy, paragraph 87.
[28] See ECHR judgment of 13 November 2007.in case D.H. and Others v. the Czech Republic
[29] Constitional Court of the Republic of Latvia, 19 December 2017 judgment in case No.2007-13-03m paragraph 12.
[30] Constitional Court of the Republic of Latvia, 20 May 2002, judgment in case No.2002-01-03 concluding remarks and 2 March 2016 judgment in case No.2015-11-03, paragraph 20.

ownership rights and pledge rights in the Land Register." Consequently, the Cabinet of Ministers was delegated to determine the amount of the state fee.

Consequently, Regulation No. 1250 was adopted in accordance with the procedure prescribed by law and in accordance with the envisaged delegation. Therefore, it is necessary to assess whether there is an objective and reasonable basis for the treatment contained in Article 13 of Regulation No. 1250.

[7.4.3] The annotation attached to Regulation No. 1250 does not provide an explanation for why a different state tax rate for different categories of heirs is provided. In addition, it can not be concluded from the content of the annotation that Article 13 of Regulation No. 1250 has been evaluated in relation to same-sex families. The Ministry of Justice has indicated that the rates of the state fee have been determined taking into account the type of succession, the degree and type of heir. The spouses' privileged position in inheritance is also taken into account. Rates are lower if a person is married or a close relative with the devisor. On the other hand, rates are higher if the devisee is linked to the devisor by another type of relationship.

The Ombudsman recalls that the state may choose different amounts of state fees for different groups of persons, however, the state must, in any case, comply with the norms and principles established in the Satversme, including the international laws binding on Latvia. The Ombudsman draws attention to the fact that the explanation provided by the Ministry of Justice could relate to the term "marriage" of Article 110 of the Satversme but does not apply to the explanation of the term "family" contained in Article 110 of the Satversme. Furthermore, neither the annotation to Regulation No 1250 nor the Ministry of Justice have provided an explanation for a legitimate aim which leads to same-sex couples being equated with heterosexual couples who choose not to formalize their relationship.

[7.4.4] If the legislator has not assessed the impact of differences in the rates of state fees on different families, it is necessary to analyse how much the prescribed state duty rates are proportional. As an example, the submission indicated immovable property worth 150 000 EUR, which will be used in this opinion too (see the table below).

No.	**Type of heir**	**Rate**	**Amount in EUR**	**Comparison to first group**
1	Spouse, 1st-3rd degree heir	0,125%	187.50	
2	4th degree heir	4%	6000	32 x higher
3	Testamentary or contractual heirs	7,5%	11 250	60 x higher

It can be concluded that same-sex couples who do not have the opportunity to officially register their relationships incur unreasonable costs in the event an inheritance agreement because they have not been recognized as a family by the State.

[7.5] Based on the aforementioned conclusion, the treatment of same-sex couples determined by Article 13 of Regulation No. 1250 is not justified or proportionate, and thus is discriminatory in accordance with Article 91 of the Satversme.

[8] In addition to the above, the Ombudsman calls for "taking into account changes in the social and cultural patterns of family life, [...] recognizing not only the existence of a legal marriage as proof of family life, but also the de facto existence of family life, as evidenced by financial or psychological dependency, cohabitation, or common children."[31] Consequently, the term "family" should be evaluated not only in the context of same-sex relationships.

[8.1] In 2012, the Ombudsman sent a communication with recommendations regarding necessary amendments to legislation which would address the understanding of the term "family" in various areas, for example, in the field of social rights, in relation to procedural norms, such as the right not to testify etc. to the Cabinet of Ministers, the Saeima Human Rights and Public Affairs Committee and the Saeima Legal Committee. However, the proposed amendments remain unconsidered to this day.

[8.2] At present, a wider institution of "family" has been established in several normative acts, providing additional protection also for persons who live together and have a common household. For example, in the context of a criminal proceeding, an individual has the right to require that a criminal case does not include information about the person with whom they reside and with whom they have a joint household. [32] In the Criminal Code[33], aggravating circumstances are also taken into consideration in cases where a person has committed a criminal offense against a person with whom the offender has a shared household. The Latvian Code of Administrative Violations[34] invokes responsibility when the offense is directed against a person with whom the offender is or has been in an unmarried spousal relationship with or against a person with whom the offender has a shared household.

However, in practice, examination of cases has repeatedly confirmed that law enforcement agencies are too restrictive in their interpretation of the law and thus come to the wrong conclusions, which, in turn, lead to a violation of the person's human rights.

[8.2.1] On 1 February 2012, in the case No. SCC-4/2012, the Supreme Court came to the conclusion that the de facto spouse is not recognized as a tenant's family member within the meaning of the law "On Renting Residential Real Estate". In paragraph 12.2 of the Judgment, the Senate stated: "a unanimous decision of the legislator on the question of legally recognized partnership, in other words, whether de facto co-habitation of two persons has the same legal consequences as the conclusion

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[31] Donna Gomien, David Harris, leo Zwaak. Law and practice of the European Convention on Human Rights and the European Social Charter. Russian version, Moskva:1998, 305.-307., 323., 332.-333.lpp).

[32] Section 15 of the Criminal Procedure Law, entitled "Guaranteeing Human Rights", provides: "A physical person has the right to request that their criminal record does not include information on the private life, business activities and property status of the person in question, or on their interlocutor, spouse, parents, grandparents, children, grandchildren, brothers and sisters, the person with whom the physical person in question lives and with whom they have a joint household (hereinafter - relatives), if this is not necessary for the fair regulation of the criminal law relationship.

[33] Article 48 of the Criminal Law "Aggravating Circumstances" stipulates: (1) The following circumstances may be recognized as aggravating: [...] 15) a criminal offense related to violence or threatening of violence, or a criminal offense against virtue and sexual integrity has been committed against a person , whereby the perpetrator is at the first or second degree of kinship, or against the spouse or ex-spouse, or against the person with whom the offender is or has been in an unmarried spousal relationship or against a person with whom the offender has a joint household.

[34] Article 167.2 of the Latvian Administrative Violations Code. "Intentional minor bodily harm" stipulates: [...] For the violation provided for in Paragraph one of this Section, if committed repeatedly within one year after the imposition of an administrative penalty, or if committed against a person with whom the offender is in the first or second degree of relation, or against a spouse or former spouse, or against a person with whom the offender is or has been in an unmarried spousal relationship, or against a person with whom the offender has a joint household, imposes a fine of between fourhundren and thirty and seven hundred euro.

of a marriage, is necessary. Taking into account the discussions on this issue, which are periodically raised in the public sphere and at Saeima committees but which have not led to a consensus, as well as the study "On the legal regulation of male and female unregistered partnership in Europe and Latvia", commissioned by the Ministry of Justice, the Senate concludes that the amendments of the regulatory norms or the drafting of a separate law concerning this question is being considered, but has not yet been done. This in turn means that both the Senate and the courts assessing the substance of civil matters lack competence in the further development of the right to treat the de facto co-habitation of two persons as marriage, and to assign the rights a spouse would receive to a co-habitant. This stems from the principle of separation of power that distinguishes the legislator from the judiciary and gives the court the mandate interpret and develop rights, only in cases when they is not related to interference with the power of the legislator ".

[8.2.2] The above example clearly indicates that it is not possible to achieve the principle of legal equality by means of interpretation. State action in regards to its positive obligation is required; namely the development of a legal framework for the recognition and protection of the de facto co-habitation of two persons who consider themselves a family.

[8.2.3] Developing a regulation and finding a political solution to the recognition of de facto co-habitation of two persons is not aimed at denigrating the institution of marriage. On December 15, 2005, the Saeima of the Republic of Latvia adopted an amendment to Article 110 of the Satversme, which came into force on January 17, 2006, which stated that "the state protects and supports marriage - the union between a man and a woman (..)". Thus, the institution of marriage is constitutionally consolidated and protected at a national level. The same cannot be attributed to a family model in which the partners form a co-habitation without marriage.

[8.2.4] However, the option of legally recognising their relationship forms an essential element of the individual's identity and "family life". This, in turn, gives rise to a positive obligation of the state to provide a legal framework for the recognition and protection of different forms of family.

Recommendations of the Ombudsman

The Ombudsman, in accordance with Article 25, Paragraphs one and three of the Ombudsman Law, completes verification procedure No. 2018-38-26G with the following recommendations:

[1] to fulfil the positive obligation of the state to provide a legal framework for the recognition of different family models in accordance with the latest ECHR findings and Article 110 of the Satversme;

[2] review the regulatory framework, creating a common understanding of the concept and protection of the family;

[3] to amend Section 12 of Regulation 1250, providing for the recognition of various family models.

The Ombudsman requests and update on the implementation of these recommendations within six months of the date of receipt of this opinion.

Respectfully,
Ombudsman J.Jansons