https://doi.org/10.53231/LZAV.22.1.1
Iesniegts/Submitted: 01.03.2021

THE LATVIAN MARRIAGE LAW 1918–1940 — CONTINUITY OR DISCONTINUITY?

Philipp Schwartz
philschw@aol.com

Keywords: *marriage law, matrimonial property regime, legal continuity and discontinuity*

The article looks at the Latvian marriage law and the development it took after Latvia had declared its independence on 18 November 1918: from the declaration of independence in 1918 via the Marriage Act of 1921 to the Latvian Civil Code of 1937.

For various reasons, the Latvian marriage law and the efforts by the then independent Latvian lawmaker in creating an own marriage law are a very good illustration of a somewhat ambiguous legal development. Ambiguous as it combines both continuity and discontinuity — something, which becomes especially visible in a period in which a new independent state is building its own legal system, where the turning away from the past into an independent own future quite naturally makes continuity meeting discontinuity.

Introduction[1]

The development of the Latvian marriage law in the years 1918 to 1940 is a very suitable illustration of legal history as a constant coming together of continuity and discontinuity. In the years and decades following the declaration of independence on 18 November 1918, Latvia created and established its own legal system. One of the legal cornerstones was the Civil Code adopted in 1937. However, to truly understand a specific law, here the marriage law, it is not sufficient to just look at the Civil Code of 1937 in its final shape entering into force on 1 January 1938. The marriage law must be seen in the historical context it was created and, evenly important, in the historical context it was applied.

Because a law entering into force is both an answer to the past and a starting point for the future. On the one hand, the lawmaker needs to look (back) at the past and at the present legal system analysing its suitability for the changed circumstances. If still (partly) suitable, the existing laws or certain elements can be retained. If not, then they need to be replaced with something new and different. On the other hand, with a new law the lawmaker takes a decision for the future. This is even more obvious for a coun-

try which has just declared its independence and is now shaping its own legal system. The laws and legal system created in Latvia after 1918, among which the marriage law, are both an answer to the past as well as the foundation for Latvia's independent future. But not many years later this just created future became already past again when Latvia was occupied by the Soviet Union in June 1940.

The independence in 1918 as the starting point for 20 years of legal development

Naturally, when a state declares its independence, it cannot conjure a ready-made legal system out of nothing. The first decades of the young Republic of Latvia were characterised by an active codification work in the different legal fields. If looking at all the different elements of a legal system, one could say that during the 20 years between 1918 and 1938 Latvia was putting together its legal system like a jigsaw puzzle — the most important jigsaw puzzle pieces the declaration of independence in 1918, the Latvian Constitution in 1922, the Criminal Code in 1933, and finally, the Latvian Civil Code in 1937.[2] Hence declaring its independence on 18 November 1918 was just the first step in a rather lengthy process, especially for the Civil Law.

According to the law of 5 December 1919 on the continued application of the former Russian laws[3], those laws remained in force for the time being which had been in force on the territory of Latvia until the beginning of the October Revolution of 1917 and the takeover by the Bolsheviks as long as they were not in contradiction to the Latvian state order. However, soon enough it became evident that the present legal provisions, due to their local and social particularism, their casuistry, and as being in the need of modernisation, were no longer suitable for the new circumstances in now independent Latvia.[4] The number of matrimonial property schemes applicable to the different parts of Latvia and the different groups of people being an impressive example of this local and social particularism.[5]

While on a general level it was therefore decided to create a new and specific own Latvian Civil Code,[6] the Marriage Act was already earlier elaborated as a separate law and adopted on 1 February 1921. This early provision of the marriage law —16 years before it was integrated into the Latvian Civil Code of 1937 — shows the untenability of the present legal provisions and the urgency for the young Republic of Latvia to create its own marriage law. The aftermath of the First World War and the hereby caused political and societal developments for sure contributed to this urgency.[7]

An urgency was also highlighted by the fact that two different bodies worked in parallel on the new family law and marriage law of Latvia. On the one hand, the Constitutional Assembly, Latvia's first elected legislative body from 1 May 1920 until 7 November 1922, worked on the new family law and the Marriage Act. And, on the other hand, the first codification committee for the new Latvian Civil Code under the leadership of Vladimir Bukovsky (1867–1937), concentrated its work on the marriage law on those areas not discussed by the Constitutional Assembly and hence not covered by the Marriage Act under development, namely, the engagement, the matrimonial property scheme, and the personal rights of spouses.

The fact that the Marriage Act of 1921 was later more or less completely integrated into the Latvian Civil Code of 1937 proves that this parallel codification work was not wasted time. Rather, that the work of the Constitutional Assembly and the codification committee under Bukovsky was obviously well coordinated.[8] And it also proves that the Constitutional Assembly

designed already at that time a marriage law that would later fit into the overall new Latvian civil law system and the civil code to be created over the coming more than 15 years.

Leave the past behind — the developments initiated by the Marriage Act of 1921

While with the Marriage Act of 1921 important decisions on the future Latvian marriage law were taken quite early (e.g., introducing the facultative civil marriage) other aspects needed much more time to find consensus with views and opinions changing over time (e.g., the matrimonial property regime finally regulated only in the Civil Code of 1937). This makes it rather interesting and relevant to look at the Latvian marriage law as a comprehensive development from 1918 to 1937 with the Marriage Act of 1921 initiating relevant changes in the marriage law.[9]

The Marriage Act was adopted by the Constitutional Assembly on 1 February 1921.[10] Its 89 articles were divided into nine parts: impediments to marriage, banns, marriage, voidness of the marriage, divorce, separation of the spouses, consequences of the voidness of the marriage, of the divorce, and of the separation of the spouses, rules of procedure in marital matters, and transitional provisions. As mentioned earlier, the Marriage Act of 1921 was the first big step towards an all-encompassing provision of the marriage law in the Civil Code of 1937. Wherefore it is no wonder that the different parts of the Marriage Act of 1921 were integrated into the 1937 Civil Code keeping more or less the same arrangement of parts (complemented with the parts still missing in the Marriage Act).[11] But despite the final provision of the marriage law in the Civil Code of 1937, already the Marriage Act of 1921 set the course both when it comes to the contraction as well as to the dissolution of marriage. The Marriage Act of 1921 set a new course freeing the (future) husband and wife from so far existing limitations. Instead, it let the husband and wife decide for themselves *how* to get married as well as, if they wish so, to end their marriage — through introducing the facultative civil marriage and through simplifying the divorce by introducing the divorce by agreement and the principle of irretrievable breakdown as a sufficient ground for divorce.[12]

A closer look at the introduction of the facultative civil marriage and the accompanying discussions is a good illustration of the coincidence of continuity and discontinuity in law-making and legal development. After 1918, as still the old law was applied, the marriage was further on regulated by a confessional marriage law and the specific rules to be applied depended on the religious affiliation of the future spouses (Arts. 1–4, Baltic Provincial Law Code[13]). The only possibility to get legally effectively married was in church. The Marriage Act of 1921 now left it to the decision of the future spouses if they wanted to get married in church or in a civil ceremony at the civil registry office (civil marriage according to Art. 24 of the Marriage Act of 1921). And the new marriage law in 1921 went even a step further away from the confessional marriage law. Firstly, it assigned the exclusive jurisdiction to secular courts as decisions by confessional courts concerning a prohibition to get married lost their legal force (Art. 10, Marriage Act of 1921). Secondly, the Law on Registration of Civil Status Documents of 1921 originally attributed legal force only to a registration of the marriage at the civil registry office (and not anymore the church).

"It was apparent that the young state of Latvia, which revolting against former conditions proclaimed independence of its inhabitants from this or that religious affiliation, had to create change herein. This happened

in the year 1921 through the mentioned law in a fairly radical manner."[14]

In such a situation, in the years immediately after Latvia had declared its independence, in a time when drafting and developing its own legal system is about laying the fundament and building the legal cornerstones for now independent Latvia, it is more than natural that different views came into conflict. Especially regarding such sensitive legal areas as family and marriage law which are a lot about personal values and value systems, mindsets, and beliefs. Therefore, it does not come as a surprise that some suggested even more radical steps, like having the civil marriage not as an option alongside the confessional marriage, but as the only way to get married. Supported by the Social Democrats, obligatory civil marriage was actually foreseen in the first preliminary draft Marriage Act elaborated by the Latvian Ministry of Justice.[15] This suggestion finally did not make it into the Marriage Act of 1921. But the development from one extreme to the other, from the obligatory confessional marriage (Baltic Provincial Law Code) via the coexistence of the confessional and civil marriage (Marriage Act of 1921 and later on the Civil Code of 1937) to the obligatory civil marriage found its end during the Soviet occupation of Latvia. Based on the constitutional principle of the separation of church and state, the family law in Soviet-occupied Latvia allowed only a civil marriage at the civil registry office.[16]

In fact, conflicts and discussions were less of a political nature than of a broader general societal controversy between, on the one hand, in favour of a confessional marriage law, the church supported by confessionally-oriented societal groups and political parties, mainly from the Catholic South-Eastern region of Latgale; and on the other hand, those societal groups and political parties supporting a more secular society and marriage law. In the years immediately following the declaration of independence in 1918, which was in a time full of instability, it was important to take everyone along in view of the overall objective to shape and stabilise the young Republic of Latvia. Hence, one might also speak about compromises which had to be made. Like the coexistence of and choice between the confessional and civil marriage (and not the step further to the obligatory civil marriage) or the 1928 amendment to the Law on Registration of Civil Status Documents of 1921 now also entitling priests to register the marriage.[17]

The Civil Code of 1937 as endpoint of a long-lasting discussion on the matrimonial property regime

The matrimonial property regime that was one of the issues not covered by the Marriage Act of 1921 became subject to extensive and lengthy discussions and was finally regulated only in the Civil Code of 1937. Consequently, before the Civil Code of 1937 entered into force on 1 January 1938, the matrimonial property regime was regulated by the old law from pre-independence times.[18]

When starting back in 1920, the already mentioned codification committee led by Bukovsky had set two key objectives for its work on the future matrimonial property regime. Firstly, each spouse should keep the ownership of both the property he/she possessed before the marriage as well as of the property he/she will acquire him/herself during the marriage. Secondly, that all property which the spouses will acquire jointly during the marriage or that one of the spouses acquires using joint resources or with the help of work by the other spouse would become joint property.[19] And these key objectives were met by the "administration and usufruct" becoming the new statutory matrimonial property scheme in the Civil Code of

1937. Although called "administration and usufruct", it was a combination of both separation of property and community property.[20] The premarital property remained separate property (§89 Paragraph 1), however, the husband had the right to administer and usufruct also on this separate property of the wife (according to §90 with exception of her specific property listed in §91)[21], while the property jointly acquired during the marriage became community property of both spouses (§89 Paragraph 2). And not only were the two key objectives set by the codification committee in 1920 met. Obviously, the administration and usufruct as statutory matrimonial property scheme was also well perceived by those getting married as only few contractually agreed between October 1937 and December 1939 on another than this matrimonial property scheme (mainly on separation of property).[22]

However, the final decision in favour of "administration and usufruct" as statutory matrimonial property scheme was not an easy one. It was rather the result of a long-lasting discussion with constantly changing views.[23] A discussion which is nicely illustrated by the three draft laws (each foreseeing a different statutory matrimonial property scheme) presented in 1921 (separation of property), 1929/30 (separation of property with the option to devolve the management of the own property to the other spouse), and 1932 (part-owners community of property acquired during marriage).[24] At the end, none of these at some point suggested matrimonial property schemes was chosen as statutory one in the Civil Code of 1937. The final decision in favour of "administration and usufruct" was based on two main arguments. On the one hand, the Latvian population was familiar with the "administration and usufruct" as it was in force in different variations in the whole of Latvia (except of Latgale region, Riga — the capital of Latvia, and other Livonian cities).[25] On the other hand, the "administration and usufruct" met the purpose and aims of the marriage much more than separation of property which was in force in Latgale.[26] "What kind of marriage would that be (…) if husband and wife sat at the same table, but each would care only about his own purse."[27] It was the division of tasks and work between husband and wife, which mattered for the life of workers, craftsmen, lower public officials, peasant economies, and the middle class, but not the separation of their property.[28] Also, in Latgale, the husband was so far administrating the assets of his wife based on a formal authority, an oral assignment, or tacit permission.[29] It was further noted that the inhabitants of Latgale for the most part were poor people for whom the question of the matrimonial property scheme was of no important meaning.[30]

By deciding in favour of one single statutory matrimonial property scheme for all inhabitants of Latvia, the Latvian Civil Code of 1937 overcame and discontinued the particularism in the form of six different statutory matrimonial property schemes for different parts of Latvia and for different groups of the population. Interestingly enough, once again the difference between Latgale, on the one hand, and other regions influenced the discussion, highlighting the challenges of harmonisation and the role of the new Civil Code to act as integration tool for the different parts of the Latvian territory and population now united in one country. At the same time, the Latvian Civil Code kept continuity as it preserved the already previously well-known three matrimonial property schemes allowing the spouses to agree by contract on either separation of property or general community of property as contractual matrimonial property scheme instead of the statutory one.

Looking across the new border — Estonia's marriage law 1918–1940

Before both Latvia and Estonia declared their independence in 1918, their territories belonged to the Baltic Governorates of Estonia, Livonia, and Courland. Hence, these two now independent states have a common past also in legal terms. In fact, Estonia and Latvia had more in common than the four now in one country united regions Vidzeme, Kurzeme, and Zemgale, on the one hand, and Latgale, on the other.[31] It is therefore not without interest to have a brief look at neighbouring Estonia and the development its marriage law took after Estonia had declared its independence on 24 February 1918.[32]

Overall, the development of the marriage law in Estonia and Latvia in 1918–1940 is very similar. Both the Estonian and Latvian marriage laws were characterised by a development towards a modern and liberal marriage law. In some elements these developments were even radical from the point of view of their time compared to the developments in other countries. Both the countries, after declaring their independence in 1918, decided to continue applying for the time being those laws which had been in force on the now Latvian and Estonian territory. And in both countries, it was clear that this could not be the solution forever, but that there was a need to establish an own legal system. Regarding their civil laws, both Estonia and Latvia worked in the coming 20 years on an own civil code, with the difference that the Latvian lawmakers succeeded in getting it approved before the Soviet occupation in June 1940, while the Estonian lawmakers did not succeed before Estonia was occupied by the Soviet Union. Hence while looking at a law in force for Latvia, for Estonia it means looking at the four drafts of the Estonian Civil Code of 1926, 1935, 1936, and 1939/40. Similar again for both countries is that despite the late finalisation of the drafting of the new civil code, significant legislation in the field of marriage law had been passed in both countries in the years before. The Latvian Marriage Act of 1921 finds its counterpart in the Estonian Marriage Act of 1922. In addition, for Estonia, the Civil Status Act of 1920 (which never entered into force due to a missing Introductory Act) and the second Civil Status Act of 1925 need to be mentioned.

While the Latvian Marriage Act of 1921 introduced the facultative civil marriage, Estonia went a step further and with the second Civil Status Act of 1925 introduced the obligatory civil marriage.[33] Also regarding the legal status of women, the discussion and development in Latvia and Estonia have been very similar — towards liberating the wife from the guardianship of her husband.[34] But while in Latvia the wife was liberated from the guardianship of her husband by the Latvian Civil Code of 1937, in Estonia the strengthening of equal rights of men and women got bogged down in the mentioned Civil Code drafts — and the wife remained under the guardianship of her husband. Though even in Latvia, one cannot talk about full-fledged equal rights of men and women. It was still the husband who had the deciding vote in case husband and wife could not agree (§85 Paragraph 1 Sentence 2 Latvian Civil Code of 1937). Finally, Estonia (like Latvia) succeeded in liberalising its divorce laws by introducing in its Marriage Act of 1922 the principle of irretrievable breakdown and the divorce by agreement.[35]

Back to the future — the Latvian marriage law as a never-ending development process

When the Latvian Civil Code was adopted on 28 January 1937, nearly 20 years of codification work on a unified own Latvian civil law had come to an end. One could

even go that far and say that *only then*, only nearly 20 years after the declaration of independence in 1918, the work on shaping and setting up the legal system of Latvia was eventually complete(d). That then the time had come for the eventually completed Latvian legal system and especially the brand-new Civil Code and its marriage law to proof its suitability for daily use. However, with Latvia being occupied by the Soviet Union in June 1940, the Latvian Civil Code of 1937 with its marriage law was in force for only a bit more than two years.[36] After Latvia had regained its independence in 1990/1991, it built its future legal system on the basis of its own legal past by — based on the doctrine of state continuity — reinstating pre-war laws like the Constitution of 1922 and the Civil Code of 1937. However, especially the family law including the marriage law (and the heritage law) needed to be adjusted to the new reality. To be adjusted in the meaning of a "a quick adaptation of the Civil Code of 1937 to the minimum requirements of a modern, Western-oriented legal system".[37]

Hence, with being in force only a bit more than two years, it is difficult to say if the Civil Code of 1937 and its marriage law was really "fit for purpose" when it entered into force on 1 January 1938. Whether it really met the reality of the meanwhile not anymore that young Republic of Latvia. What is worth remembering is that drafting the Latvian Civil Code and its marriage law was a process with some issues decided upfront (facultative civil marriage, divorce law) and others finally decided only after lengthy discussions (matrimonial property regime). As the issues decided upfront quite early in the codification process brought the most innovative changes, one could say that the lawmakers early wanted to set the direction for the Latvian Civil and marriage law. To go new ways and hereby to create a civil law responding to changed realities — responding to a post-war world with all its changes, a post-war world in which Latvia had used its opportunities to declare its independence and was now about to shape and anchor its independence with and in its own legal system. And it is this discontinuity in the marriage law worth being highlighted, as in general, there was a lot of continuity between the old and the new laws, between the Baltic Provincial Law Code of 1864 and the Latvian Civil Code of 1937.[38]

Conclusions

The marriage law is constantly under observation and questioning by a developing society and changing moral values. This leads to the marriage law being a combination of continuity and discontinuity, a combination or alternation of preserving the past and breaking with the past. What seems "today" to be the end point of a codification work is in fact only a preliminary result. And even within the nearly 20 years from the declaration of independence in 1918 to the Civil Code adopted in 1937 one can find both continuity and discontinuity when looking at the marriage law. While some "early elements" (from the Marriage Act of 1921) have been kept in the Civil Code of 1937, others have been given up and not been included in the Civil Code of 1937. Either they did not turn out to be as useful or relevant (anymore) or the public opinion and moral values had meanwhile changed. Some other foreseen provisions changed constantly over time and again others have been included into the Civil Code of 1937, which had not yet been foreseen in the Marriage Act of 1921.[39]

To conclude, anniversaries of laws (like last year's 100th anniversary of the Marriage Act of 1921) are a good occasion to look back at the legal discussions and developments during the time of their coming into being. But this can never be a look back at only the day the law was adopted or entered into force. Laws are neither born on one

day nor are they written in stone for good. Hence, also the assessment of a law will change over time, and what is considered modern today might be considered outdated tomorrow. Therefore, also this article can only be a snapshot in time.

The article is peer-reviewed.
Raksts ir recenzēts.

References

1 All translations from Latvian and German into English are by the author of this article.

2 Schwartz P. 100 years of legal history — Latvia's Constitution and Civil Code. In: *Latvian Academy of Sciences Yearbook 2020*. Riga: Zinātne Publishers, 2020, pp. 21–24. Extensively on the Latvian Civil Code and its historical origin see: Schwartz P. *Das Lettländische Zivilgesetzbuch vom 28. Januar 1937 und seine Entstehungsgeschichte* [The Latvian Civil Code of 28 January 1937 and its historical origin]. Aachen: Shaker, 2008, 334 pp.; Švarcs F. *Latvijas 1937. gada 28. janvāra Civillikums un tā rašanās vēsture* [The Latvian Civil Code of 28 January 1937 and its historical origin]. Rīga: Tiesu namu aģentūra, 2011, 343 pp.: XXXV; Schwartz P. Das Lettländische Zivilgesetzbuch von 1937 [The Latvian Civil Code of 1937]. In: *"Nichtgeborene Kinder des Liberalismus?" Zivilgesetzgebung im Mitteleuropa der Zwischenkriegszeit.* Löhnig M.,Wagner S. (eds.). Tübingen: Mohr Siebeck, 2018, pp. 317–358.

3 Likums par agrāko Krievijas likumu spēkā atstāšanu Latvijā [Law on the former Russian laws' continued application in Latvia]. Tautas Padome. Adopted on 5 December 1919. *Likumu un Ministru kabineta noteikumu krājums*. 1919 (13) Nr. 154. This law is more or less identical with the Pagaidu nolikums par Latwijas teesam un teesaschanas kahrtibu [Provisional regulation of Latvia's courts and court procedure]. Adopted on 6 December 1918. *Latwijas Pagaidu Waldibas Likumu un Rihkojumu Krahjums.* 1919 (1) Nr. 10.

4 Extensively on these aspects see Schwartz, op. cit., 2008, pp. 235–244.

5 On the different applicable matrimonial property schemes see Bukowsky W. Zur Frage des Systems des ehelichen Güterrechts in Lettland [On the question of the matrimonial property regime]. *Rigasche Zeitschrift für Rechtswissenschaft.* 1926/27, 1 (4): 247–265 (247–249). More or less identical in content in Latvian: Bukovskis V. Pie jautājuma par vispiemērotāko sistemu laulātu mantas attiecībās [On the question of the most suitable matrimonial property regime]. *Tieslietu Ministrijas Vēstnesis*. 1926, 7 (10): 369–393 (369–370).

6 Although it was decided that a new Civil Code should be drafted, it was intensively discussed which would be the best way forward. Extensively on this discussion and the development from a revision (improvement and application of the provisions in force in Western Latvia in the whole country) to a reform (drafting of an own independent Civil Code) see Schwartz, op. cit., 2008, pp. 30–46; Schwartz, op. cit., 2018, pp. 321–333.

7 Schwartz P. Das Eherecht der jungen Republik Lettland 1918–1940 [The marriage law of the young Republic of Latvia 1918–1940]. In: *Kulturkampf um die Ehe*. Löhnig M. (ed). Tübingen: Mohr Siebeck, 2020, pp. 265–305: 268–269.

8 Bukowskis W. Jauna ziwilkodeksa isstrahdaschanas komisijas darbiba [The work of the commission drafting the new civil code]. *Teesleetu Ministrijas Wehstnesis*. 1920, 1 (2/3): 90–96 (91); Dāvids V. Prezidenta Ulmaņa Civīllikuma izstrādāšanas gaita [The progress of work on the President Ulmanis Civil Code]. In: *Prezidenta Ulmaņa Civīllikums (rakstu krājums)*. Rīga: Pagalms, 1938, pp. 69–72: 69.

[9] While this article focuses on the period from the declaration of independence in 1918 until the Soviet Occupation in 1940, a broader overview on the marriage law in Latvia from the 10th to the 20th century is provided by Lazdiņš J. Die Entstehung und Entwicklung des Eherechts in Lettland [The evolution and development of the marriage law in Latvia]. *Latvijas Universitātes Raksti*. 2007, 719. sējums (Juridiskā zinātne): 76–90.

[10] Likums par laulibu [Marriage Act]. Adopted on 1 February 1921. *Likumu un waldibas rihkojumu krahjums,* 1921 (5) Nr. 39.

[11] For a comparative table see Schwartz, *Das Eherecht*, op. cit., 2020, p. 270.

[12] Later, by introducing the engagement in §26 Civil Code of 1937 (not regulated in the Marriage Act of 1921), also the decision if to get married was put into the hands of the spouses (as well as the decision to withdraw from the engagement, §27 Civil Code of 1937).

[13] Provinzialrecht der Ostseegouvernements, dritter Theil, Liv-, Est- und Curländisches Privatrecht, zusammengestellt auf Befehl des Herrn und Kaisers Alexander des II [Baltic Provincial Law Code, third Part, Private law of Livonia, Estonia and Courland, compiled by the order of Emperor Alexander II.]. St. Petersburg, 1864.

[14] Mueller W. Die Ehescheidung nach lettländischem Recht [The divorce according to Latvian law]. *Zeitschrift für osteuropäisches Recht (Neue Folge)*. 1934/35, 1 (2): 66–83 (67).

[15] Osipova S. Sieviešu tiesības Latvijā 1918–1940: starp politisko pilntiesību un civiltiesisko nevienlīdzību [Women's Rights in Latvia 1918–1940: between Equality in Political Rights and Civil Inequality]. *Latvijas Universitātes Žurnāls*. 2015, 8 (Juridiskā zinātne): 111–125 (117). Stegman H. Zur Entwicklung des Lettländischen Zivilrechts. 1918–1928 [On the development of the Latvian civil law, 1918–1928]. In: *Baltische Rechtsangleichung, 10 Jahre Gesetzgebung Estlands und Lettlands, Referate der I. Baltischen Juristenkonferenz zu Dorpat (1928)*. Reval: F. Wassermann, 1929, pp. 27–44: 28. An interesting "summary" of the discussions can be found in a report in the daily newspaper *Rigasche Rundschau* (No. 26 of 2 February 1921) from the third reading of the Marriage Act in the Constitutional Assembly on 1 February 1921, provided in extracts in Schwartz, *Das Eherecht*, op. cit., 2020, pp. 273–274.

[16] Lazdiņš, op. cit., 2007, pp. 76–90: 84.

[17] Pārgrozījumi un papildinājumi likumā par civīlstāvokļa aktu reģistrāciju [Amendments and addenda to the Law on Registration of Civil Status Documents]. Saeima. Adopted on 22 March 1928. *Likumu un Ministŗu kabineta noteikumu krājums*, 1928 (5) Nr. 51. The question if the registration of the marriage should be allowed only at the civil registry office and only then had legal effect or if also priests were entitled to register a marriage was actually one of the, if not the hot-button issue of this controversy. See also Lipša I. Restriction of Freedom of Consciousness in Democracy: Catholic Protest against the Law on Registry of Civil Status in Latvia (1921–1928). *Istorija*. 2011, LXXXIV/84 (4): 75–86.

[18] On the developments of the matrimonial property regime from the 19th century to the year 1940 see Chapter 1 of Ciematniece I. Laulāto mantisko attiecību regulējums Latvijā [The regulation of property relations of spouses in Latvia]. https://juristavards.lv/doc/176064-laulato-mantisko-attiecibu-regulejums-latvija/ Viewed on 2 Feb. 2021.

[19] Ozoliņš O. Civiltiesību reforma Latvijā [Civil law reform in Latvia]. In: *Darbam un tiesībām*. Ankravs J., Dzirkalis A., Auziņš A. (red.). Rīga: Latvijas kriminaltiesību biedrība, 1939, pp. 145–167: 150.

[20] Extensively on the "administration and usufruct" see Būmanis A. Ģimenes locekļu mantiskās attiecības [Property relations of family members according to the new Civil Code]. In: *Prezidenta Ulmaņa Civīllikums (rakstu krājums)*. Rīga: Pagalms, 1938, pp. 112–117; Frīdenbergs L. *Laulāto likumiskās mantiskās attiecības*. Riga: 1938, 27 pp.: 8–23.

[21] On this specific property see Hūns E. Laulāto atsevišķā manta Prezidenta Ulmaņa civillikumā [Separate property of spouses in the President Ulmanis Civil Code]. *Tieslietu Ministrijas* Vēstnesis. 1939, 20 (4): 953–960; Role E. *Laulāto atsevišķa manta*. Rīga: 1940, 46 pp.

[22] Between 4 October 1937 and 31 December 1939, only 2663/2300 marriage contracts were concluded while Latvia had approximately 378 000 inhabitants. See (with further references) Schwartz, *Das Eherecht*, op. cit., 2020, pp. 286–287.

[23] For a detailed description (with further references) see Schwartz, *Das Eherecht*, op. cit., 2020, pp. 276–285.

[24] The 1921 Likumprojekts par saderināšanos, laulāto personiskām un mantiskām attiecībām un viņu mantošanu [Draft law on the Engagement, matrimonial property regime and inheritance law of the spouses] was published in *Tieslietu Ministrijas Vēstnesis*. 1924, 5 (3): 101–116. The 1929/30 draft Likums par ģimenes tiesībām. Projekts. [Family Law. Draft] was published in *Tieslietu Ministrijas Vēstnesis*. 1932, 13 (1/2): 1–29. The 1932 draft reform of the matrimonial property regime and the personal rights of the spouses was published as part of the draft Civillikumi. Pirmā grāmata. Ģimenes tiesības. Projekts. [Civil Law. First Book. Family Law. Draft.] in *Tieslietu Ministrijas Vēstnesis*. 1934, 15 (9/10): 233–284.

[25] Blaese H. Lettlands neues Zivilgesetzbuch [Latvia's new Civil Code]. *Zeitschrift für osteuropäisches Recht (Neue Folge)*. 1938/39, 5: 487–501 (497); Strazdiņš A. Laulāto personiskās un mantiskās attiecības [Personal and property relations of spouses]. In: *Jaunā Civīllikuma apskats*. Daugavpils latviešu biedrība (ed.). Daugavpils: Daugavpils latviešu biedrība, 1937, pp. 11–20: 13.

[26] Strazdiņš, op. cit., pp. 12–13.

[27] Ozoliņš, op. cit., p. 151.

[28] von Schilling C. Die persönlichen Rechte der Ehegatten und das eheliche Güterrecht [The personal rights of the spouses and the matrimonial property regime]. In: *Lettlands Zivilgesetzbuch vom 28. Januar 1937 in Einzeldarstellungen, Erster Band: Einleitung — Familienrecht — Erbrecht*. Herderinstitut zu Riga (ed.). Riga: Ernst Plates, 1938, pp. 188–232: 194.

[29] Blaese, op. cit., p. 497; Strazdiņš, op. cit., pp. 12–13.

[30] Būmanis, op. cit., p. 112.

[31] Different from the other three regions of Latvia — Vidzeme, Kurzeme, and Zemgale — Latgale had not been part of the Baltic governorates Estonia, Livonia, and Courland and hence, in the past was not governed by the Baltic Provincial Law Code, but as inner province of the Russian Empire by the Collection (Code) of Laws, Volume X, Book 1 of the Russian Empire of 1832.

[32] Extensively on the Estonian marriage law 1918–1940 see Kiirend-Pruuli K., Luts-Sootak M., Siimets-Gross H., Bender R. *Die Mesalliance des liberalen Eherechts mit dem konservativen Familienrecht in Estlands Recht der Zwischenkriegszeit* [The mésalliance of the liberal marriage law and the conservative family law in Estonia's laws in the interwar

period]. In: Kulturkampf um die Ehe. Löhnig M. (ed). Tübingen: Mohr Siebeck, 2020, pp. 307–369.

[33] Ibid., pp. 311–317 and 337–343.

[34] Ibid., pp. 348–357.

[35] Ibid., pp. 357–367.

[36] Briefly on the development of the Latvian marriage law during the Soviet (and German) occupation(s) of Latvia see Schwartz, *Das Eherecht*, op. cit., 2020, pp. 303–304.

[37] Balodis K. Wiederinkrafttreten und Reformen des lettischen Zivilgesetzbuches [Reentering into force and reforms of the Latvian Civil Code]. In: *Zivilrechtsreform im Baltikum*. Tübingen: Mohr Siebeck, 2006, pp. 59–81: 81. On the development of the Latvian marriage law after regaining independence in 1990/91 Schwartz, *Das Eherecht*, op. cit., 2020, pp. 304–305.

[38] The Latvian Civil Code of 1937, on the one hand, is a new law, but content wise to a large extent a continuation of the Baltic Provincial Law Code of 1864, best described as internal continuity while external discontinuity. Schwartz, op. cit., 2008, pp. 47–50; Švarcs, op. cit., pp. 56–59.

[39] On the (dis-)continuity between the Marriage Act of 1921 and the Civil Code of 1937 not only, but especially in the divorce law Schwartz, *Das Eherecht*, op. cit., 2020, pp. 296–297.

About the Author

Dr. jur. **Philipp Schwartz** did his doctorate in law in 2008 at the University of Greifswald, Germany, on the topic “Das Lettländische Zivilgesetzbuch vom 28. Januar 1937 und seine Entstehungsgeschichte” [The Latvian Civil Code of 28 January 1937 and its historical origin]. Ever since then, Schwartz researches and publishes in his spare time on Latvia’s legal history with a focus on the civil law in the years 1918 to 1940. As an occupation, Schwartz works with European Territorial Cooperation (Interreg).

Par autoru

Dr. jur. **Filips Švarcs** ieguva doktora grādu tiesību zinātnē 2008. gadā Greifsvaldes Universitātē, Vācijā, tēma “Latvijas 1937. gada 28. janvāra Civillikums un tā rašanās vēsture” (tulkojums latviešu valodā publicēts 2011. gadā). Kopš tā laika F. Švarcs veic pētījumus un savā brīvajā laikā publicē darbus par Latvijas tiesību vēsturi, īpašu uzmanību pievēršot civiltiesībām no 1918. līdz 1940. gadam. Nodarbošanās — Eiropas teritoriālā sadarbība (Interreg).

LATVIJAS LAULĪBAS TIESĪBAS 1918.–1940. GADOS — KONTINUITĀTE VAI PĀRTRAUKTĪBA?

Filips Švarcs
philschw@aol.com

Kopsavilkums

Atslēgvārdi: *laulības tiesības, laulāto mantisko attiecību režīms, tiesiskā kontinuitāte un pārtrauktība*

Rakstā apskatītas Latvijas laulības tiesības un to attīstība pēc Latvijas neatkarības pasludināšanas 1918. gada 18. novembrī: no neatkarības pasludināšanas 1918. gadā un 1921. gada likuma "Par laulību" līdz 1937. gada Latvijas Civillikumam. Dažādu iemeslu dēļ Latvijas laulību tiesības un toreizējā neatkarīgās Latvijas likumdevēja centieni valstij izstrādāt pašai savas laulību tiesības labi ataino savā ziņā neviennozīmīgu tiesību attīstību. Neviennozīmīgu tāpēc, ka tā apvieno gan kontinuitāti, gan pārtrauktību, kas redzami izpaužas laikā, kad nu jau neatkarīga valsts veido savu tiesību sistēmu un kad novēršanās no pagātnes un pievēršanās valsts neatkarīgai nākotnei gluži dabiski apvieno kontinuitāti ar pārtrauktību.

Šis kontinuitātes un pārtrauktības apvienojums uzskatāmi redzams, aplūkojot gan 1921. gada likuma "Par laulību" aizsāktās norises, gan tās laulības tiesību normas, kuras galu galā tika noteiktas tikai 1937. gada Latvijas Civillikumā. 1921. gada likums "Par laulību" jau diezgan ātri ieviesa nozīmīgas novitātes, piemēram, fakultatīvo civillaulību un liberalizētas laulības šķiršanas tiesības, bet citiem Latvijas laulību tiesību elementiem, piemēram, laulāto mantisko attiecību režīmam bija nepieciešamas daudz ilgākas diskusijas, un galīgais regulējums tika panākts tikai 1937. gada Civillikumā. Lai gūtu pilnīgāku priekšstatu, veikts salīdzinājums ar kaimiņvalsti Igauniju, kas pēc neatkarības pasludināšanas 1918. gadā, līdzīgi kā Latvija, sāka veidot savu tiesību sistēmu un līdz ar to arī laulību tiesības.