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Civil Unions (Non – Registered Partnerships) and Patients' Rights: Problematics and the Future Perspective

Abstract: Unlike the institution of matrimonial law, which has developed over several hundred years and thus has a solid legal basis, the legal framework for non-registered partnerships is a relatively recent legal phenomenon, which therefore also means that the legal framework in those countries where it is applied is not uniform and there are significant differences between different legal systems. The legal framework of non-registered partnerships is influenced by the traditions, history, culture, religion, and other factors of the country and its population. With the development of non-registered partnerships, new challenges are emerging in various fields, including healthcare in terms of ensuring patients' rights. This results in a situation where there is a lack of regulation in society to protect all families, regardless of whether the family is based on a registered or non-registered partnership. The purpose of the article is to clarify the role, and importance, as well as crucial problematics of non-registered partnerships from the patients' point of view. The methodological basis of the research includes general theoretical principles of scientific knowledge. This knowledge provides various aspects in the study of non-registered partnerships and the patients' rights in healthcare. The scientific novelty is to identify the essence and importance of the fundamental rights of each person and to clarify the legal problematics of the non-registered partnership institution that influence patients' rights in the decision-making process.
Keywords: decision making, healthcare, non-registered partnerships, patients' rights

Introduction

In life situations, when the state of health of one of the spouses is rapidly deteriorating and medical action must be decided upon, the decision is made by their spouse or first-degree relative – parents, children, sister, or brother. However, there are often cases where a non-registered partner, who is in fact the closest person to the patient, is formally denied any right to information about the patient's state of health, including the right to be involved in decisions regarding further treatment. The presence of family and the sense of security it provides are important to people, as it is one of the most important preconditions for a successful outcome. When studying the issue examined in the article, it can be concluded that the concept of family is used in a narrow sense. The legal nature and form of the relationship play a more important role than the institution of family. Non-registered partnerships are one of the cases when patients' rights and partner's rights are restricted and contrasted with the legal status of spouses.

Non-registered partnerships also create new challenges in the healthcare process directly related to human rights issues. In order to identify the issues affecting the non-registered partners problems in the context of healthcare, the article will study both the essence of partnerships and their historical development in Latvia, and Europe. In addition, other forms of partnership will be explored, which will make it possible to compare the role of these forms of cohabitation in the context of ensuring health care and patients' rights.

The methodological basis of the research includes general theoretical principles of scientific knowledge. This knowledge covers various aspects in the study of non-registered partnerships and the patients' rights in health care. It is a scientific novelty to identify the essence and importance of the fundamental rights of each person and to clarify the legal problems of the non-registered partnership institution that influence patients' rights in the decision-making process.

It is necessary to justify the idea and historical aspects of non-registered relationships in order to understand the restrictions connected to the realisation of particular patients' rights. To solve these problems, a systematic approach has been used, which represents the non-registered partnerships institution as a complex family system. The structural and functional analysis allowed the importance of correct understanding of non-registered partnerships and its connection with the patients' rights in the health care decision-making process to be determined.

The method of analysis and synthesis as justification of an integrated approach to the modernisation of a particular institution was used. The method of analogy and structural analysis for the development of proposals has been used. The logical analysis method for systematisation of the steps and procedures of the decision-making process has been used. The method of logical generalisation and systematisation has been used in the formation of conclusions and recommendations.

In the course of research, the national and international legal regulation binding on Latvia was analysed. The regulatory enactments to be described cover almost the entire legal system of Latvia, as they apply to the regulation of both substantive and procedural law; moreover, the regulatory norms can be found in all sub-sectors of law: constitutional, international, public, and private law. Consequently, the analysis covered a lot of normative acts regulating various issues of life in various sub-sectors of law: the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on Human Rights and Biomedicine, Civil Law, Medical Treatment Law, Law On the Rights of Patients, etc.

1. Historical Development of the Nature of Partnerships in Latvia

Historically, in Latvia, after the victory of the Great October Socialist Revolution, inequality in family relations for spouses, children born in wedlock and children born out of wedlock was eliminated, along with the influence of the church in regulating marriage and family relations. There were active discussions and meetings on the possibilities of secession from Russia. The Republic of Latvia was founded on 18 November 1918, and lawyers developed regulations on the transfer of rights from the occupying power in several discussions. On 6 December 1918, the Provisional Government approved the Provisional Regulations on the Courts and Proceedings of Latvia, which provided that the courts and related institutions should apply the Russian laws previously in force. Latvia needed temporary laws and procedures during the period of transition.

The most significant achievement in the field of unification of civil law in this period is considered to be the Law on Marriage adopted by the LSS on 1 February 1921, in the development of which, Swiss law was used as a part of the 1907 Civil Code. The law consisted of 9 chapters and 89 articles. It set the minimum age of marriage at 18 for men and 16 for women. Minors – persons under the age of 21 – were not allowed to enter into marriage without the permission of their parents or guardians. [1]After the end of a woman's previous marriage, she was not allowed to remarry until 300 days had elapsed. This norm was related to the need to correctly determine the paternity of children born during this period and, consequently, their inheritance rights. Judgments of former ecclesiastical courts regarding the prohibition of marriage became invalid, as a result of which freedom of marriage was established in Latvia. A marriage could be conducted by the state registry office or by a clergyman of any church. In general, the law can be assessed as progressive and reflecting the spirit of the era, which removed the confessional restrictions on marriage, determined the freedom of divorce in state courts, providing for mutual

1 Latvijas Republikas likums: Civillikums. "ValdībasVēstnesis", 41, 20.02.1937, https://likumi.lv/ta/en/en/id/225418 (2.01.2021).

obligations of former spouses even after marriage[2]. In civil law, the previous legal regulation, which was formed in separate parts of the Latvian state, was maintained.[3]

This was due, among other things, to the complexity of the provisions of family and inheritance law, the close interrelationship of these areas of law, as well as the great differences in the regulation of family and inheritance relations reliant on the territorial dependency or belonging to a certain social group. Six systems of matrimonial property relations were in force in Latvia at the same time, in different regions of Latvia. Such fragmentation of legal norms created dissatisfaction in society, thus, constant work was carried out on amendments of, and supplements to, the legal norms to meet the needs of society. The year 1934 finally became a turning point, when the intention to revise the existing civil law norms in accordance with the public needs was abandoned, and it was decided to develop a permanent Latvian civil law, which was adopted in its final version on 28 January 1937, and entered into force on 1 January 1938 (Civil Law, 1937). Shortly after, with the decision of 21 July 1940, the "admission" of the Latvian Socialist Soviet Republic to the USSR took place, and the political system, and legal system, were quickly changed – the codes of the Russian Soviet Federative Socialist Republic had to be applied in Latvia. The regulation of the Presidium of the Supreme Soviet of the Soviet Union of 8 July 1944, determined that only a registered marriage creates the rights and obligations of the spouses; thus, the legal institution of common-law marriage was abolished. A rather complicated divorce procedure was introduced. Despite the existing regulations, there were couples who did not want to register their relationship.

It should be noted that historically in the Union of Soviet Socialist Republics (hereinafter referred to as the USSR) in the 1920s, cohabitation of people who have children together was equated with marriage. This is evidenced by the note to Article 1 of the General Provisions of Chapter 1: Marriage of the Law on Marriage, Family and Custody of the Russian Soviet Federative Socialist Republic (hereinafter referred to as the RSFSR): *"Persons who were in common-law marital relations before the issuance of the Decree of the Presidium of the Supreme Soviet of the USSR of 8 July 1944 On the Increase of State Aid To Pregnant Women, Mothers of Many and Single Mothers, Strengthening the Protection of Mother and Child, Establishment of the Honorary Title [...] may formulate their relations by registering marriage and indicating the time of actual cohabitation. [...]*[4]

2 D.A. Lēbers, Latvijas tiesību vēsture (1914–2000), (in:) D.A. Lēbera (ed.), Mācību grāmata juridiskajāma ugstskolām un fakultātēm, Rīga 2000, pp. 200–202.

3 F. Švarcs, Latvijas 1937. gada 28. janvāra Civillikums un tārašanāsvēsture, Rīga 2011, p. 28.

4 KPFSR Laulības, ģimenes un aizbildnībaslikumukodekss. Rīga: Latvijasvalstsizdevniecība, 1949, 1926.g. 19.novembra izdevums (Kr.lik.kr. 192. g., 82. Nr. 612 arvēlākiemgrozījumiem), 7.lpp., http://www.periodika.lv/periodika2-viewer/view/index-dev.html#issue:/g_001_0309065303|issueType:undefined (15.01.2021).

The modernisation of the regulation of cohabitation was found in Lithuania, Estonia, as well as in Latvia. A new stage in Soviet marriage and family law was marked by the foundations of marriage and family law of the USSR and the united republics were approved by the USSR on 27 July 1968. The document formulated the main tasks and principles, as well as scope of relations regulated by marriage and family law.[5]

It must be acknowledged that despite the legal framework, there was a widespread public perception that non-registered relationships were reprehensible, so couples living in partnerships felt great public pressure and registered their marriages. With the change of the ruling regime, the public attitude towards the legalisation of relations altered.

Today, the public attitude has changed, and couples are not in a hurry to legally register their relationship status, despite the fact that there is no legal framework to protect the interests of cohabitating couples. Such relationship between a couple is given a different name in society, such as cohabitation, partnership, or consensual union. All these terms have one thing in common – formation of a family.

At present, the concept of consensual union is not considered a legal term in Latvian law and reflects the essence of a partnership, which currently has no legal basis in Latvia. In the Russian language, on the other hand, there is an explanation for consensual union – consensual union is a close relationship between a man and a woman that is not registered in the registry office.

Legislation of the European Union includes the term 'consensual union'. The text of Commission Regulation (EC) No. 1201/2009 defines 'consensual union' as follows: two persons are considered to be partners in a 'consensual union' when they belong to the same household, and have a marriage-like relationship with each other, and are not married to or in a registered partnership with each other. Interpreting the concept of 'consensual union', it is concluded that the legitimate aim of the concept is equivalent to the institution of marriage, namely, the set of features that must exist for individuals to be considered as partners in 'consensual union' are the individuals belong to the same household, or individuals who have a marriage-like relationship with each other, or they are not married to, or in a registered partnership with, each other[6].

5 D.A. Lēbers, Latvijas tiesību vēsture..., *op. cit.,* pp. 200–202.

6 Commission Regulation (EC) No 1201/2009 of 30 November 2009 implementing Regulation (EC) No 763/2008 of the European Parliament and of the Council on population and housing censuses as regards the technical specifications of the topics and of their breakdowns (Text with EEA relevance) – Publications Office of the EU (europa.eu), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R1201 (5.01.2021).

From a legal point of view, the concept of consensual union creates too many contradictions and clichés of interpretation, which do not contribute to the legitimate aim of the legal institution of partnership.

It must be noted that at a national level, according to Latvian legislation, the country recognises marriage between heterosexuals. There are no laws regulating registered or non-registered partnerships. Therefore, the question on rights of particular relations involved persons in common, and from the perspective of patients' rights it is complicated and non-regulated.

2. An Overview of Civil Unions (Non-Registered partnerships) From a European Union Perspective

From the above-mentioned, it is clear that the definition and the idea of civil unions in Latvia are complicated and connected with a difficult historical situation. Therefore, the terminology and content of a particular idea can be different from the European Union member states' comprehension.

It must be noted that the application of the institution of partnership or the institution of consensual union varies from one Member State to another. The rights of the subjects of these partnerships also differ. There are several European Union countries, where the person can make his or her partnership official without getting married, with a civil union or registered partnership**.** Civil unions form the European union perspective to allow two people who live together as a couple to register their relationship with the relevant public authority in their country of residence. The same situation exists in Latvia nowadays. But there are several differences between European union countries. The differences include some key aspects that show the criteria of a particular non-similar situation around the Union. The first issue is whether a person can enter into a civil union in a specific country. The second issue is to understand what a civil union in a particular country entitles you to. And the third, is whether a specific country recognises a civil union at the national level and abroad. Usually, the rights coming from a registered partnership in one country may be substantially different in another. And this influence involves a person's rights in different fields, as well as in health care. There can be important consequences for a person's rights as well as obligations as registered partners, such as whether the relations between persons is the be considered a long-term relationship. From a practical and legal point of view, Civil unions (non-registered partnerships) usually provide the couple with some specific rights. These rights are different from those that married couples receive. The difference can be viewed in cases of adopting a child, or in the case of the decision-making process in health care.

3. Other Forms of Partnership

The essence of the concept of partnership is unclear, and the same can be said about the translation of related descriptive terms – living together, trial marriage, consensual union, cohabitation, etc., but there is no doubt that trends of modern life affect national laws. There are different approaches to the definition, and practical recognition, of partnerships in national law and in everyday speech, taking into account aspects of the historical development of the partnership, recognition and dissemination at a national level, as well as the existence and purpose of the regulatory framework. In order to understand the concept better, the authors want to single out the social factors that facilitate the formation of cohabitation: solving of housing issues, economic rationality, emotions etc.. The study Comparative Analysis of Factors Affecting Registered and Unregistered Cohabitation states that family formation has changed from an agreed condition into a condition of individual relationship dynamics – intensification of relationships, initiation of cohabitation, becoming parents, etc., where the quality of the relationship plays the key role.[7] In the author's opinion, it is practically impossible to establish a common definition of partnership in the international space for application in all countries and to establish its legal status in legislation. This can be explained by the specifics of the historical development, culture, and customs of each country.

The terms 'cohabitation' and 'family life' have a significant place in today's society in the sense of the concept of the institution of marriage, because getting married is to some extent associated with the risk of divorce, while after marriage there are already legal consequences. The main reason why partners do not want to marry is that marriage restricts freedom, as well as imposes additional material, and moral (personal), obligations on each other. However, it has been observed that unmarried couples also have disputes over matters arising from family law relations in the event of a break-up. In addition, the cause of breakdowns of partner relationships is frequently the incompatibility of character, religious beliefs, different life goals, and so on.

When analysing European law, the author found the following wording: "Subjects of non-registered partnerships are considered to be two partners of the opposite or same sex who live together in the same household and whose relationship is analogous to that of a husband and wife." [8]It follows from this definition that the subjects of a non-registered partnership are heterosexual, or homosexual, partners. According to the author, the definition legitimises the set of features of the institution

7 LU, Publiskās antropoloģijas centrs "Reģistrētas un nereģistrētas kopdzīves faktoru salīdzinoša analīze", Rīga, 2015, www.antropologija.lu.lv/fileadmin/user_upload/lu_portal/projekti/antropologija/zinas/Petijums_kopdzive-2015.pdf (19.01.2021).

8 A. Diduck, Family law, gender and the state: text, cases and materials, Oxford 2006, p. 66.

of family, because the emphasis is on the existence of cohabitation, and treatment of partners towards each other analogous as to the case of a married couple. Article 6(2) of the Treaty on the European Union requires Member States to respect fundamental rights when applying EU law, including the prohibition of discrimination on grounds of sexual orientation. Therefore, although EU law does not oblige Member States to allow, or recognise, same-sex partnerships or marriages, they do require Member States to treat same-sex couples in the same way as opposite-sex couples when applying EU law (including the law on freedom of movement, migration, and asylum).[9]

Legislation in several countries (e.g., the Netherlands, Hungary, etc.) does not provide a definition of partnership, but establishes a number of criteria for determining the existence of a partnership, and, subject to a certain set of criteria, such a union is recognised as a partnership. And the first one is that the partners are of a different sex, which confirms that a type of partnership prevails that does not exist between individuals of the same sex:

1) The second shows that the relationship has lasted for a certain (long) period of time, and it is of a permanent nature. "A long period of time is one that has lasted so long that a similarity can be seen with the relationship between spouses." It must be noted that the minimum duration of a partnership cannot be unambiguously interpreted and the deep analysis of the situation must be done.
2) Besides, one more criterion is that the partners have a child together or neither of the partners is married;
3) The criteria that show that the partners have reached the minimum age required for marriage, and there are no other obstacles that would prevent the partners from getting married should be noted.

The author of the paper considers that the primary reason for the introduction of the legal regulation of de facto cohabitation is based on the desire of persons for stability. Stability of a relationship is based on the permanence or duration of the relationship. National practices vary with regard to the registration and recognition of partnerships. There are four models. The first is non-registered cohabitation of opposite-sex couples. The second is related to registered cohabitation of opposite-sex couples. The third is based on non-registered cohabitation of same-sex couples and last model is the registered cohabitation of same-sex couples.

9 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union – Consolidated version of the Treaty on European Union – Protocols – Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 – Tables of equivalences. Official Journal C 326 , 26/10/2012 P. 0001 – 0390.

Each country regulates different types of extramarital partnerships, so two types of cohabitation partnership can be distinguished – registered partnership and non-registered partnership. The differences related to the legal status and legal consequences that shows particular status.

A secondary issue in implementing the legal framework for partnerships at the national level is the development of a legally correct definition that would reveal the nature of partnerships. It is important to define the procedure for establishing a partnership and the possible partnership models. The definition of partnership must not conflict with other definitions of partnership in the EU, as EU Member States pursue an open border policy. Mobility, and migration rates, are also growing, increasing the number of cross-border partnerships including people from different jurisdictions[10]. The disagreement over the choice of definition of partnership suggests that there are a number of reasons why a common definition of partnership cannot be established for all countries – due to differences in perceptions of partnerships, partner gender criteria influenced by religious beliefs, historical customs, and so on. Consequently, there can be no single definition of partnership for all countries. For example, a union between a man and a woman is defined as "partnership" (Luxembourg), "non-registered partnership" (Hungary), "male-female partnership" (Peru, Brazil), "opposite-sex partnership" (Spain), "non-registered opposite-sex partner union", "extramarital relationship" (Belgium), etc. It should be noted that these concepts are different, and in other branches of law may refer to different legal institutions. The authors therefore suggest their own *definition* of partnership that states that a partnership could be described as a long-lasting and stable relationship between two people of the opposite sex and, in certain situations, two same-sex cohabitants, having a common household and with a view to establishing a socially significant union between partners and their relatives without marriage.

4. Non-Registered Cohabitation of Opposite-Sex Couples

Analysing the nature and purpose of non-registered partnerships clearly shows that this partnership is established in a free form, which does not require additional formalities. Consequently, it is necessary to establish the legal recognition of such an institution in legal acts in order to strike a balance between the protection of the rights and interests of individuals. Legislation must lay down formal criteria for recognising the existence of a union of individuals as a legal fact which has consequences for interpersonal relationships. In this case, the difference is in the procedure for whether cohabitation is legally recognised at the very beginning, during its existence or after its end, if it meets certain criteria.

10 S. Morano-Foadi, Problems and challenges in researching bi-national migrant families within the European Union, "International Journal of Law, Policy and the Family" 2007, vol. 21, p. 17.

The main difference between registered and non-registered partnerships is that law enforcement institutions provide a minimum level of protection for non-registered partnerships. Significant consequences arise in cases where the partners in a non-registered relationship enter into civil transactions, such as a will, an agreement on the division of property, etc. The legislator has established a procedure for resolving such disputes in cases where persons have entered into marriage.

According to the author, the institution of marriage will not even lose its importance after the introduction of partnership, since the institution of marriage includes not only legal formalities and legal consequences, but also long-standing customary rights that have survived for a long time. The author concludes that the primary goal of the institution of partnership is not to equate with the institution of marriage, but to ensure the most equal possible protection of the rights and interests of individuals, regardless of the form of family formation and related formalities.

The legal norms for the regulation of the institution of partnership do not include a separate normative act that would be binding on all countries at the international level. "There are partners in every country who have chosen to live together permanently without getting married, even though they have no legal or factual obstacles to marriage."[11] Therefore, the responsibility for one's actions remains with the individuals themselves. In Anglo-Saxon law, "cohabitation is living together as husband and wife. Unmarried persons living together as husband and wife are not a married couple."[12] Thus, it can be concluded that the cohabitation of partners without the registration of marriage does not create the obligations that a married couple has. "Cohabitation is a mutual presumption of the partners' rights, obligations, and commitments as spouses, which usually correspond to those of a married couple, including sexual relations." [13]

The legal literature reflects the fact that cohabitation is a fact or in some case condition that confirms the cohabitation of partners as spouses with the one aim related to legitimising sexual relations. [14]Thus, one of the essential aspects of partnership cohabitation is the existence of sexual relations, which allows one to determine the fact of formation of a partnership. Of course, it is debatable how to prove the fact of sexual relations. Even more debatable is the issue of legalisation of same-sex partnerships in national law.

11 V. Jarkina, A. Bitāns, Reģistrētas partnerattiecības un laulība: nereģistrēto partnerattiecību institūts un tā iespējamā attīstība Latvijā, Tiešsaites raksts, Rīga, http://www.tm.gov.lv/lv/documents/konferenchu_materiali/Konferencu_materiali.7z (5.01.2021).

12 H. Black Campbell, Black's law dictionary: definitions of the terms and phrases of American and English jurisprudence, ancient and modern. – St. Paul 1990, p. 260, http://www.republicsg.info/Dictionaries/1990_Black's-Law-Dictionary-Edition-6.pdf (7.01.2021).

13 *Ibidem.*

14 B.A. Garner, Black's Law dictionary, St. Paul 2004, p. 277.

5. Non-Registered Partnerships From the Perspective of Patients' Rights

As previously described, the institution of non-registered partnerships is incomplete and poses some challenges, both in terms of civil law and medical law. When analysing the institution of non-registered partnerships and the right of these persons to agree to or refuse treatment for a patient, attention should be paid to both respect for patients' rights and human rights.

In practice, from the perspective of patients' rights, if the patient is in a non-registered partnership, there can be difficulties with visitation rights. The question arises as to who is able to visit patients in hospitals and what the legal basis is for this. At a national level, regulations can be provided that state who is allowed to visit a patient.

According to Section 5 of the Law On the Rights of Patients, each person has the right to receive medical treatment corresponding to the state of health. This section also states that a patient has the right to a respectful attitude and qualitative and qualified medical treatment regardless of the nature and severity of his or her disease. And with a respectful attitude, we must understand the necessity to protect patients' rights according to this article, and to hear the patient's voice. The attitude must be understood as polite and respectful regardless of the situation. For instance, gender, sexual orientation, or relationship must be considered. It means that the enforcement of the regulation shall not discriminate patients' rights to a respectful attitude according to the relationship. Therefore, if the patient is in hospital, he can choose someone who will be able visit him, even if this person is not a registered partner.[15]

But the most important part is section 5, article 3 of the Law. This article states that a patient has the right to the to be supported by her family and other persons during medical treatment.[16]

The mentioned legal norm in Latvian legislation shows that the patient's right to receive support is sometimes observed during treatment. And in this particular case, the legal status of the visitors or support providers is irrelevant. Namely, the legal norm stipulates that both family members and other persons may visit the patient. Other persons shall mean any third party whom the patient has expressed a desire to see. This also applies to non-registered partners. Thus, the medical practitioner does not have to clarify the status of the visitor if the patient has expressed a wish to

15 K. Palkova, Medical Personnel's Legal Awareness as the Key of Principal Quality of Work with Minor Patients, 12th International scientific conference "Society. Integration. Education", Proceedings of the International Scientific Conference, Rezekne Academy of Technologies 2018, pp. 190–198.

16 Law On the Rights of Patients. Latvian Law, https://likumi.lv/ta/en/en/id/203008 (7.01.2021).

see the particular person. The determining element is the patient's expressed will[17]. On the one hand, there should be no problems with the provision of support by non-registered partners. On the other hand, there are such problems. Their existence is linked to shortcomings in the status of non-registered partners in health care.

Latvian Law On the Rights of Patients states that the main aim of such provision and the protection of patients' rights is to give patients the right to receive health care in comfortable conditions. Besides, comfortable means "high degree" which is not common as far as "hospital conditions" are taken into account. [18] Practice shows that there are situations in the health care area when non-registered partners do not have any signed documents which show that the patient has really agreed to this person's support. It means that, for instance, according to Latvian Law On the Rights of Patient, Section 7, non-registered partners do not have the right to take a decision on medical treatment at large, or any method used in the medical treatment, or refusal from medical treatment at large, or any method used in the medical treatment. [19]

This can be problematic if the non-registered partner does not have a trusted family member who will arrive and make medical decisions. Besides, the role of the decision-making process is more specific and complicated than the issue on mental or physical support of the patient.

According to Latvian regulations there is a specific provision regarding another (third) person's rights to agree to medical treatment or to refuse it, however, only when certain conditions are met. This provision is also applicable to non-registered partners regarding restrictions. According to the Latvian Law on the Rights of Patient, if a patient is unable to take a decision himself or herself regarding medical treatment, due to his or her state of health or age, the spouse of the patient has the right to make a decision on medical treatment in general, any method used in the medical treatment, or refusal of medical treatment, or any method used in the medical treatment, but if such does not exist, the closest adult relative with the capability to act in the following order: the children of the patient, the parents of the patient, the brother or sister of the patient, the grandparents of the patient, or the grandchildren of the patient. Section 7 of the Law on the Rights of Patients, shows persons who are responsible for taking a decision in a particular situation.[20]

The right to make decision is given to particular group of people. According to Section 7 of the Law on the Rights of Patients, when taking a decision on medical treatment or refusal thereof, the spouse or closest relative of a patient, or a person

17 V.M. Pashkov, Problem of Patient Discrimination in Sphere of Health Protection, "Socrates: Rīgas Stradiņa universitātes Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls" (Rīga Stradiņš University Faculty of Law Electronic Scientific Journal of Law) 2018, no. 1 (10), pp. 76–93, https://doi.org/10.25143/socr.10.2018.1.76–93 (7.09.2021)

18 Law On the Rights of Patients. 17.12.2009, https://likumi.lv/ta/en/en/id/203008 (7.09.2021).

19 Law On the Rights of Patients. 17.12.2009, https://likumi.lv/ta/en/en/id/203008 (7.09.2021).

20 Law On the Rights of Patients. Latvian Law, https://likumi.lv/ta/en/en/id/203008 (7.01.2021).

authorised by the patient, as well as the lawful representative of the patient, if the patient is under guardianship or trusteeship (hereinafter – person representing the patient), shall observe the wish previously expressed by the patient in relation to medical treatment [21]. This shows the strong power of those persons who are able to make decisions. Non-registered partners do not belong to this group, and are not included in the particular article in a direct way. Non-registered partners can be representatives of the patients and participate in the decision-making process as a person authorised by the patient. It means that there is no automatic way to participate in the decision-making process, as for instance, the parents of the patients have. On the one hand there is a lack of freedom to choose the representatives, because of such restrictions. On the other hand, patients are protected from different unlawful health care actions. The Convention on Human Rights and Biomedicine shall be mentioned in a particular situation. According to article 6 of the convention, a minor does not have the capacity to consent to an intervention; the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law. The next article of the convention states that if an adult does not have the capacity to consent to an intervention, it may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.[22]

The general principle in medical treatment requires the individual to give informed consent to treatment. Only in limited cases is the treatment permitted without the patient's consent. [23]The Convention provides a broader mechanism for the national level or for the states to regulate the question on non-registered partners and patients' rights. There are no strict restrictions for a particular group of people.

Besides, article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, states that each person has the right to respect for his private and family life, his home, and his correspondence. And the most important fact is that these rights must be protected by the public authorities. [24] If the non-registered partners live together and fulfil other conditions mentioned in the article mentioned above, they are a non-registered family within the particular understanding of the definition of family. And from the perspective of human rights, their family rights are protected as well. Therefore, in the case of the decision-making process and

21 Law On the Rights of Patients. Latvian Law, https://likumi.lv/ta/en/en/id/203008 (7.01.2021).

22 Convention on the Protection of Human Rights and Dignity in Biology and Medicine – Convention on Human Rights and Biomedicine. Adopted on 4 April 1997. 30.12.2009. LatvijasVēstnesis. 205, https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1410 (9.12.2020).

23 I. Kudeikina, K. Palkova, The Problems in will Expression in Civil Law Transactions and Healthcare in Case of Capacity of Individuals, "European Journal of Sustainable Development" 2020, no. 9(1), p. 173, https://ecsdev.org/ojs/index.php/ejsd/article/view/975 (7.01.2021).

24 Convention for the Protection of Human Rights and Fundamental Freedoms, https://www.echr.coe.int/documents/convention_eng.pdf (9.01.2021).

patients' rights to receive support, or to presume that a non-registered person will be able to take part in the decision-making process, can be obvious. A question of discrimination on the grounds of the legal status of a third person as a non-registered partner can arise.

Conclusions

The question of what are the rights of a patient in an unregistered partnership is very complicated. It is linked to the specific definition of non-registered partnerships and the issues related to determining the legal status of non-registered partnerships. Looking at the nature of non-registered partnerships and their role in ensuring family rights, the question of differences in this status remains open. It should be noted that non-registration of marriage and support of non-registered partnerships pose certain risks in a person's daily life, from which legal problems also arise.

The current legal solution is not in line with the trends of international law. The challenge is to adapt the legal framework for the protection of family life to the needs of society and, at the same time, to human rights' issues. The European Court of Human Rights has indicated that the state can use a wide range of specific measures to protect family, thus recognising that it is the state's competence to choose the means, their types, and content, to ensure these rights.

Within the framework of the article, it was not possible to study the rights and obligations to be granted to persons living in a partnership.[25]Now, married persons are granted rights in the field of public and private law, namely, in the field of public law the relationship between the spouses is defined (rights and obligations), while in the field of private law – their mutual relations. At the international level, as well as at the national level, the understanding of the range and scope of these rights is not equal, and is differentiated. In the field of health care, such limited rights in the context of non-registered partnerships are the rights of the partners to decide on the treatment of the other partner.

In Latvia, at the national level, the issue of the spouse's right to decide on treatment is clearly defined, but with regard to the rights of non-registered partners, the regulation is unclear and instead refers to the restriction of these persons' rights, including the patient's rights.

Looking at the national and international regulation, it can be concluded that it is not possible to assess the scope of rights to be determined for non-registered partners. This issue is regulated at the national level, as it is the competence of the legislator, and therefore there are currently no specific legal criteria that could be

25 Oliari vs Italy, 2015. gada 21. oktobraspriedums, pieteikuma no. 18766/11 un 36030/11, 169 paragrāfs. Available: Europe Index 2015, http://www.ilga-europe.org/sites/default/files/Attachments/side_brainbow_eurpe_index_may_2015_no_crops.pdf (9.01.2021).

the basis for an objective assessment. This is indicated by both the case law of the European Court of Human Rights and international instruments.

At the same time, it should be noted that in order to ensure an equal approach to ensuring partners' rights in health care, including with respect to patients' rights, given the importance of the concept of 'family' in family law, along with the legal regulation of non-registered partnerships, the legislator must ensure the incorporation of said concept into national law. Members of a non-registered partnership must be granted rights that are relatively comparable to those of legal representatives, spouses, and that allow the patient's treatment to be agreed to or refused. This would prevent discrimination and strengthen families as an institution in the broadest meaning in health care. Family can be based not only on registered partnerships, but also on non-registered partnerships when it comes to the broadest understanding of the concept of family. The form of the family is not essential; it is important to ensure the patient's right to family support, safety, and well-being during the provision of health care services.

REFERENCES

Black H.C., Black's law dictionary: definitions of the terms and phrases of American and English jurisprudence, ancient and modern, St. Paul 1990, http://www.republicsg.info/Dictionaries/1990_Black's-Law-Dictionary-Edition-6.pdf.

Bryan A.G., Black's Law dictionary, St. Paul 2004.

Diduck A, Family law, gender and the state: text, cases and materials, Oxford 2006.

Eiropas Savienības Pamattiesībuaģentūra. Viendzimumapāri, ES pilsoņubrīvapārvietošanās, migrācija un patvērums, http://fra.europa.eu/fraWebsite/attachments/Factsheet-homophobia-couples-migration_LV.pdf.

General Medical Council, Consent: patients and doctors making decisions together. GMC/CMDT/0408, London 2008, https://www.gmc-uk.org/static/documents/content/Consent_-_English_0617.pdf.

Grigore- Bāra E., Latvija svalsts un tiesību vēsture II. SIA, "Biznesa vadības koledža" 2008.

Kudeikina I., Palkova K., The Problems in will Expression in Civil Law Transactions and Healthcare in Case of Capacity of Individuals, "European Journal of Sustainable Development" 2020, no. 9(1).

LU Morano-Foadi S., Problems and challenges in researching bi-national migrant families within the European Union, "International Journal of Law, Policy and the Family" 2007, vol. 21.

Oliari vs Italy, 21.09.2015. no. 18766/11 and 36030/11, Available: Europe Index 2015, http://www.ilga-europe.org/sites/default/files/Attachments/side_brainbow_eurpe_index_may_2015_no_crops.pdf.

Palkova K., Medical Personnel's Legal Awareness as the Key of Principal Quality of Work with Minor Patients, 12th International scientific conference "Society. Integration. Education," Proceedings of the International Scientific Conference, Rezekne Academy of Technologies 2018, http://journals.ru.lv/index.php/SIE/article/view/3165.

Pashkov V.M., Problem of Patient Discrimination in Sphere of Health Protection, "Socrates: Rīgas Stradiņa universitātes Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls (RīgaStradiņš University Faculty of Law Electronic Scientific Journal of Law) 2018, no. 1(10), https://doi.org/10.25143/socr.10.2018.1.76–93.

Pielmaeir A.-M., Die nichteheliche Lebensgemeinschaft im Staate New York. Eine Darstellungrechtlicher Aspekte, Dissertation zur Erlangung des Doktorgrades der JuristischenFakultät der Universität Regensburg, 1996.