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## **From Social Invisibility to Legal Recognition: Same-Sex Partnership in Latvia**

**Abstract:** The authors offer a deep insight into the recent development of same-sex partnership regulation in Latvia. The judgments of the Constitutional Court of 12 November 2020 and 8 April 2021 required the guarantee of legal, social and economic protection for same-sex families and respect for their human dignity. In response to these judgments, the Saeima adopted same-sex partnership legislation on 9 November 2023. The authors analyse the content of these regulations and the previous legislative discussions that led to the adoption of this law. The implementation of the Constitutional Court judgments was ensured by the administrative courts in specific cases even before the Saeima adopted the relevant laws. According to the judgment of the Supreme Court of 10 December 2021, the administrative courts began to recognize same-sex families legally. Relevant case law is also analysed in this article.

**Keywords:** case law, civil partnership, human dignity, Latvia, popular veto, same-sex couples

## Introduction

On 1 July 2024, the same-sex partnership regulation adopted by the Saeima (the Parliament of the Republic of Latvia) on 9 November 2023 came into force in Latvia. This is a good reason to start a new chapter for the Latvian legal system and for Latvian society in understanding the requirements of the principle of human dignity and equal protection for everyone before the law. As the former president of the Constitutional Court (CC) Sanita Osipova stated, ‘Latvia finally loves all its children.’<sup>1</sup>

The path to this turning point was neither easy nor quick. The first drafts concerning the recognition of same-sex families were discussed in the Saeima in the early 2000s and were rejected. The late judge of the Supreme Court (SC) Dace Mita, who served at that time as a legal adviser at the Legal Service of the Saeima, always remembered those discussions; for her, it was important to provide necessary legal protection for same-sex couples and recognition of their human dignity. Unfortunately, at that time the majority opinion was that such couples were invisible and that society was still not ready for such a step forward in understanding human rights (Višņakova, 2024). In 2021, Judge Mita had a historic opportunity to sit on the panel of the SC which decided on the direct application of the judgment of the CC and began the legal recognition of same-sex couples by the state, without any law having been adopted by the Saeima but solely based on the Satversme (the Constitution of the Republic of Latvia) of 15 February 1922 and on fundamental human rights. As Mita stated, the basis of western culture, its fundamental value, is the acceptance of differences and respect for them; only this attitude can serve as a foundation for a happy and successful society (Mita, 2024). This case study of the recognition of same-sex couples in Latvia illustrates this statement.

This article aims to analyse the main legal factors contributing to the adoption of legislation providing legal recognition to same-sex couples in Latvia. To fulfil this goal, the authors consider the socio-legal background of the issue through a historical lens, provide insight into the European and national standards for the legal recognition of same-sex couples in Latvia, and analyse the judicial and legislative efforts made to comply with these standards. The primary hypothesis of the article is that the discourse about civil partnership in Latvia represents a critical intersection of legal, political and ideological tensions, wherein family law has transformed into a polarizing arena of confrontations about social value, with the people’s veto procedure (Article 72 of the Satversme, which provides citizens with the right to reject a law already adopted by the Saeima in a referendum) serving as a

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1 The President of the CC, Sanita Osipova, used this statement as an argument during the hard talk interview “One to One” on Latvian Television on December 1, 2020. See: Viens pret vienu (2020). This quotation became a slogan for those who fight to recognize same-sex partnerships; see Diversity Shop (n.d.).

pivotal mechanism for public engagement in normative legal debates. Beyond this, additional sub-hypotheses can be formulated: first, the Latvian discussion about civil partnership exemplifies how contemporary family law has become increasingly politicized, reflecting broader societal conflicts over fundamental social values. Second, the implementation of the people's veto procedure in Latvia demonstrates an emerging model of direct democratic participation in complex legal-normative processes, particularly in sensitive areas of family and gender legislation.

This research provides the first comprehensive, detailed analysis of the Latvian civil partnership case, offering unique insights into the intricate dynamics of legal-political transformation in Central and Eastern European contexts. It is also worth noting that, similar to recent high-profile judicial debates in the United States such as the Supreme Court's overturning of *Roe v. Wade*, the Latvian discourse about civil partnership highlights the increasingly contentious nature of legal frameworks governing personal and social rights. The hypothesis emphasizes an innovative research approach while situating the Latvian case within broader contemporary legal-political discourse on family law and social rights.

## **1. Legislative efforts to recognize same-sex unions in Latvia**

The first legislative efforts to recognize same-sex unions in Latvia began as early as 1999, when the National Human Rights Office (which was transformed into an ombudsman in 2007) introduced a bill on registered civil unions to the Saeima; however, the Saeima rejected it shortly after (Lipša, 2017, pp. 88, 106). This was one of the events that inspired efforts by NGOs to bring about the legalization of same-sex unions in Latvia in the subsequent years.

One such effort was the first Pride in Latvia, which took place in Riga in July 2005. Seventy people participated in the march while thousands watched, swearing and throwing eggs and tomatoes at the participants (Lipša, 2017, p. 106). Furthermore, the march was seemingly followed by legislative retaliation, as in December 2005, the Saeima voted 65–6 (9 abstentions) in favour of an amendment to the Satversme defining marriage as a union between a man and a woman, hence banning same-sex marriage and confirming its intention to uphold the status quo of the time (Saeima of Latvia, 2005). In the explanatory report to these amendments, the Legal Affairs Committee of the Saeima, which drafted the law, claimed that it was necessary to define marriage on a constitutional level because, in their view, the 'traditional' notion of marriage was under constant threat (Legal Affairs Committee, 2005).

Further attempts to act in this field took place in the 2010s. In 2011, the local LGBTQ+ NGO Mozaika drafted a package of laws to recognize same-sex unions; however, the public debate on the draft legislation revolved around the threats posed to the 'traditional' notion of marriage and did not indicate any support for

the draft legislation, hence legislative proceedings were not even initiated (Lipša, 2017, p. 89). A year later, after the 2012 Baltic Pride event, the Ministry of Welfare, headed by Ilze Viņķele, urged the Ministry of Justice to consider the recognition of same-sex partnerships. Nevertheless, the Ministry, headed by Gaidis Berziņš, a member of a conservative nationalist party, declined, saying that this topic was not on its agenda (Delfi, 2012).

Matters gained momentum in November 2014, when Prime Minister Laimdota Straujuma spoke on the matter after Foreign Minister Edgars Rinkēvičs came out and called for the recognition of same-sex unions in Latvia. While the prime minister reiterated her position in favour of a constitutional ban on same-sex marriage, she also acknowledged that Latvian legislation has not yet adequately addressed the issue of civil partnerships. She also noted that the failure to recognize non-marital unions touches many people in Latvia, regardless of their sexual preference, and stressed the need for a public and parliamentary discussion on the protection of such families (BNS, 2014). Shortly thereafter, the next legislative attempt was made in this field: on 30 January 2015, a proposal to amend the Civil Code to legally recognize same-sex partnerships was submitted to the Legal Affairs Committee of the Saeima by MP Veiko Spolitis (2015). The proposed law was intended to allow 'any two people' to be able to have their partnership registered and benefit from nearly all the privileges and responsibilities of marriage. However, after a heated debate, reasonable discussions about the legal quality of the proposal and several mentions of the amended Article 110 of the Satversme, Christian values and the 'traditional' notion of marriage, the Legal Affairs Committee of the Saeima rejected the proposal on 24 February 2015 (Legal Affairs Committee, 2015).

A bottom-up attempt at legislative normalization of the issue should also be noted. Shortly after the Legal Affairs Committee's decision, activists started a citizens' initiative to introduce legislation on cohabitation ([manabalss.lv](http://manabalss.lv), 2015). It took almost three years to collect the necessary number of citizens' signatures to move forward with the initiative; in January 2018, it was submitted to the Saeima (Saeima of Latvia, 2018a). The debates in the Mandates, Ethics and Submissions Committee, which reviews citizens' initiatives, once again involved references to Christian values and the 'traditional' notion of marriage (Mandates, Ethics and Submissions Committee, 2018). Unfortunately, in March that year, the Committee, in a very tight vote (5–4), recommended that the Saeima reject the initiative (LSM, 2018); the Saeima upheld this view (Saeima of Latvia, 2018b). Despite this, in October 2018, the Ombudsman urged lawmakers to comply with its positive obligation and establish a legal framework for the protection of different forms of families by passing a law which would legally recognize the *de facto* cohabitation of two persons regardless of their sex (Tiesībsargs, 2018a). Furthermore, the Ombudsman referred to statistics indicating that about half of Latvia's children were not born within a marriage, and said that these families also deserve legal protection (Tiesībsargs, 2018b).

The next attempt at adoption of a civil union law took place in June 2019, when ten MPs submitted the draft 'Partners' Law' to the Saeima; however, just a few days later, the majority of MPs voted against referring the bill to parliamentary committees for further discussion. In the vote, 23 deputies were in favour, 60 against and one abstained (Saeima of Latvia, 2019). Shortly thereafter, in October 2020, the Saeima again spoke negatively about a bill on the issue. This time, it rejected a citizens' initiative entitled 'Registration of same-sex partners' by a vote of 55–30. The proposal, which was signed by 10,392 citizens, called for the enactment of a law on civil partnerships (Saeima of Latvia, 2020). In both cases, reference was made to the amended Article 110 of the Satversme, 'traditional' families, and 'traditional' and Christian values.

The above facts show that the issue of civil unions has been a subject of keen interest in Latvia, especially over the past ten years. However, it was not until the CC's ruling of 20 November 2020 that it became a real landmark.

## **2. The notions of family and civil partnership in the case law of the European Court of Human Rights and the Constitutional Court of Latvia**

In this section, we will refer to a key ruling of the Latvian CC concerning same-sex relationships. However, an analysis of the case law of the Latvian CC on this issue first requires recalling the cornerstone judgments of the European Court of Human Rights (ECtHR). One of the landmark rulings by the ECtHR regarding civil unions is *Schalk and Kopf v. Austria* in 2010 (Judgment of the ECtHR, 2010). In this case, the Court rejected the applicant's argument that Austria was obliged to legally recognize their same-sex relationship, through either marriage or some other legal form, but since the Court made some relevant considerations regarding the character of states' obligations in this field, the case represents a milestone in its jurisprudence (Hodson, 2011). The Court held that the European Convention on Human Rights does not require states to provide for same-sex marriage, but it does require that same-sex couples have access to some form of legal recognition and protection for their relationships. This ruling emphasized the importance of non-discrimination and respect for private and family life in the context of civil partnerships (Cerna, 2010; Pustorino, 2014).

Another significant ruling by the ECtHR regarding civil unions is the case of *Oliari and Others v. Italy* in 2015 (Judgment of the ECtHR, 2015), in which the ECtHR took another look at the legal representation of same-sex partnerships. Six Italian same-sex citizens complained that Italian legislation did not allow them to marry or enter into any other type of civil union, and therefore they had no legal option to protect their relationship. Furthermore, they were discriminated against based on their sexual

orientation. Central to the case, therefore, became the claim that until the filing of the complaint, Italy had not fulfilled its positive obligation to ensure respect for the private and family life of the complainants, in particular by failing to provide a legal environment allowing them to recognize and protect their relationship under national law (Giles, 2016). In this case, the Court found that the lack of legal recognition and protection for same-sex couples in Italy violated the European Convention on Human Rights. The Court emphasized that states must ensure that all individuals, regardless of sexual orientation, have access to legal protections for their relationships. The ruling further emphasized the principles of non-discrimination and respect for private and family life in the context of civil partnerships. The *Oliari* ruling is certainly an important step in affirming the obligations of ECtHR contracting states to provide legal recognition of same-sex partnerships. However, as Vito John Marzano notes, in practice, the implementation of the Court's ruling is likely to bring little additional movement in the more conservative states, 'as the factors utilized to establish a violation on the part of Italy remain highly unique to the Italian experience, making any perception of victory merely psychological' (Marzano, 2017, p. 250).

As of now, the latest rulings by the ECtHR on civil unions involve cases that continue to address the rights of same-sex couples in various European countries. The Court consistently emphasizes the principles of non-discrimination, respect for private and family life, and the importance of legal recognition and protection for same-sex relationships (Mos, 2020). It is important to stay updated on the Court's decisions and rulings as they continue to shape the legal landscape regarding civil unions and LGBTQ+ rights in Europe. One example of such a ruling is the case of *Fedotova and Others v. Russia* (Judgment of the ECtHR, 2023). This case involved six Russian citizens who complained to the ECtHR about the Russian government's refusal to recognize their same-sex relationships. They argued that the lack of any form of legal recognition of their unions violated their rights to respect for private and family life, as protected by Article 8 of the European Convention on Human Rights. In July 2021, the ECtHR ruled that Russia had violated the applicants' rights by denying them any form of legal recognition of their relationships and said that the state must provide a legal framework for the recognition of such unions, regardless of public opinion (Polgári, 2022). In January 2023, the Grand Chamber of the ECtHR upheld this ruling (Gill-Pedro, 2023; Palazzo, 2023; Vikarská, 2023).

Undoubtedly, the Latvian CC's 20 November 2020 ruling is crucial to the issue of legislative changes regarding the recognition of civil unions of same-sex couples; however, it should be borne in mind that the CC already addressed the issue of the definitions of family and marriage in earlier rulings (Plepa, 2024, pp. 167–168). In particular, it is important to recall here the ruling in case no. 2004-02-0106 of 11 October 2004, in which the CC referred to Article 110 of the Satversme for the first time in its jurisprudence. Citing the ruling of the ECtHR in the case of *Keegan v. Ireland*, the CC noted that the concept of 'family life' in the understanding of

Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not refer solely to marriage-based relationships and may encompass other de facto 'family' ties where the parties are living together outside of marriage. The CC further stressed that the ECtHR interprets the concept of 'family life' more extensively, stressing that several factors may be relevant, including whether the couple lives together, the length of their relationship, whether the parties are faithful to one another, whether they have children together, etc. When interpreting the concept of 'family life', the ECtHR points out that biological and social reality prevail over legal presumption. While agreeing with the ECtHR's position that Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms makes no distinction between a 'legitimate' and an 'illegitimate' family, the Latvian CC stated clearly that it follows that the state shall protect every family.

The thesis of the obligation to protect each family has been repeated by the CC on several occasions, such as in its rulings of 27 June 2016, in case no. 2015-22-01, and of 5 December 2019, in case no. 2019-01-01 (Engizers & Meļņika, 2021). In the latter, the CC clearly emphasized that a family may also exist between persons whose relations are not established by biological or legally recognized ties, and that it follows from international human rights instruments, as well as from Articles 96 and 110 of the Satversme, that the concepts of 'family' and 'family life' are to be interpreted more broadly and apply not only to a family based on marriage but also to de facto families. According to the CC, family does not mean only a legally contracted marriage or a relationship of persons established by biological or legally recognized ties; it may be based on ties of kinship, but the couple's cohabitation, joint farming, aspiration to a common future, upbringing of children and other family relationships also allow persons living in unregistered partnerships to be covered by the concept of 'family'. Furthermore, the CC stated that one of the rights included in Article 110 of the Satversme is the right of the family to special state support and protection, as it had previously pointed out in its 4 November 2005 ruling in case no. 2005-09-01. Significantly for the issue of legal recognition of same-sex couples' partnerships, the CC noted that Article 110 contains the state's obligation to ensure the legal protection of the family, including by establishing a legal framework for family relations. Given these rulings, one could have expected the CC's 20 November 2020 ruling, especially since, in a slightly earlier ruling of 25 June 2020 in case no. 2019-24-0, it had already reiterated that human dignity as a fundamental right is unconditionally vested in each person, and the state's obligation to ensure a just social order, levelling out the most significant social differences in society, fostering social inclusion and ensuring to each group of inhabitants the possibility to lead a life that is worthy of human dignity, follows from the principle of a socially responsible state based on human dignity (Plepa, 2024, p. 171).

On 12 November 2020, the CC ruled that the Labour Law violates Article 110 of the Satversme because it does not provide parental leave to a non-biological parent

in a same-sex union. The complainant – a woman in a same-sex union – challenged the paternity leave legislation, claiming that the state had failed in its duty to protect the family and had discriminated based on sexual orientation because the law did not grant her, as a second parent, the right to parental leave of ten calendar days after the birth of her partner's child as if the second family member were a man (the father). Although, as already mentioned, Article 110 has identified marriage as 'the union of a man and a woman' since 2006, the concept of 'family' is not clearly defined; the CC, as in the judgments cited above, has stated that the family is a social institution based on strong personal bonds of mutual respect and understanding, the existence of which can be confirmed by social reality. Furthermore, the CC has stressed that it would be contradictory to the principle of human dignity to consider that the dignity of one person could be less valuable than that of another. The principle of human dignity prevents the state from giving up its obligation to guarantee the protection of the human rights of a particular person or group of persons. The CC also drew attention to the principle of equality contained in Article 91 of the Satversme, from which it follows that the legislature is not entitled to adopt legal regulation which, without any reasonable grounds, allows for differential treatment of persons under circumstances that are equal and comparable concerning certain criteria, or unequal treatment of persons under different circumstances. The legislature must observe the non-discrimination principle contained in the second sentence of Article 91 of the Satversme, which is aimed at preventing the possibility that in a democratic state governed by the rule of law, the fundamental rights of a person could be restricted based on certain impermissible criteria. The CC has already recognized that, following international human rights norms binding on Latvia, gender is one of the criteria contained in Article 91 of the Satversme (see Judgment of the CC, 2018).

The CC stated that under the first sentence of Article 110 of the Satversme, the legislature must also, *inter alia*, ensure legal protection for families of same-sex partners and envisage measures of social and economic protection and support considering the particular needs of these families, in accordance with the general principles of law and other provisions of the Satversme. It should also be noted that in making its ruling, the CC repeatedly referred to the ECtHR standards mentioned earlier. The CC acknowledged that although the legislature enjoys certain discretion in determining the form and content of the legal regulation of the family relationships of same-sex partners and the measures for the social and economic protection of the family, it does not have the discretion to choose whether legal protection as well as economic and social protection and support should be ensured to these families at all. Therefore the first sentence of Article 110 requires the legislature to ensure legal protection and measures of social and economic protection and support to all families, including families of same-sex partners. Since the legislature has not established legal protection in this regard, this means that it has not fulfilled its positive obligation arising out of the first sentence of Article 110 to also ensure legal,



social and economic protection for families of same-sex partners. The CC therefore declared the challenged Article 155 of the Labour Law incompatible with the first sentence of Article 110 and invalid as of 1 June 2022, thus leaving the Saeima time to enact new legislation.

Shortly thereafter, on 8 April 2021, the CC passed another judgment, on case no. 2020-34-03, based on an application filed by the Ombudsman, who claimed that the challenged provision is incompatible with Articles 91, 105 and 110 of the Satversme, as it does not provide protection and support for families consisting of same-sex partners, because the amount of state fee for the surviving same-sex partner of a testator who lived with the deceased as family is the same as for a person who did not have a family relationship with them. In deciding the case, the CC referred to the findings of its judgment of 12 November 2020, in case no. 2019-33-01, reiterating that the first sentence of Article 110 of the Satversme provides for the state's obligation to protect every family, including the families of same-sex couples. Also reiterating the findings on the importance in this regard of the principles of dignity and equality, the CC recalled that the legal regulation of family relations of same-sex partners and the legal regulation of social and economic protection and support adopted by the legislature cannot be discriminatory, and without any objective and reasonable justification put such families in a less favourable position in comparison with the families of opposite-sex couples. The CC further noted that the first sentence of Article 110 contains the duty of the legislature to provide the family with legal protection first and foremost, that is, to establish a regulatory framework for family relations.

It is worth noting, however, that while the CC restated that the legislature, in establishing the legal framework for family relations, can choose different solutions, it made it clear that this is possible as long as an appropriate regulation ensures, first, that individuals can legally register family relations and be recognized as a family by the state, and second, that the family and its members are protected in personal and property relations. The legislature has broader freedom to set the regulatory framework for the economic and social protection and support of the family, where it is free to choose what measures to provide for the family in certain situations, but the appropriate regulation must be based on objective and reasonable criteria, taking into account the peculiarities of family relations, including the differences between situations and between participants in these relations.

The CC recalled that it had already stated in case no. 2019-33-01 that the legislature had not created a legal framework for family relations of same-sex partners, giving the legislature a reasonable time to adopt, within the limits of its discretion, the most appropriate regulation of these family relations and to provide for adequate socio-economic protection and support measures for the families of same-sex couples. The CC stated that as of the date of the recognition of the present case, the legislature had not yet adopted a legal framework for the family relations of same-sex partners, that is, it had not determined the form and content of this

framework, which means that according to the legal framework in effect at the time of the ruling, the state did not 'see', in a legal sense, the actual families of same-sex couples, since they were not allowed to legally register their family relationships. Thus, according to the CC, same-sex partners were not legally recognized as a family and could only organize legal relations between themselves as individuals between whom there are no family ties. Thus the CC's conclusion was that as long as there is no legal regulation of family relations between same-sex partners, which would allow the legal registration of their family relationship, it is also not possible to identify such a family to provide it with social and economic protection and support, and thus the state's system of family protection and support does not protect the families of same-sex couples either legally, economically or socially.

### **3. Implementation of the Constitutional Court judgment in legal reality**

The judgment of the CC shifted the discussion about introducing a legal framework for the families of same-sex partners from being a matter of legislative discretion and political will to a constitutional obligation to fulfil the CC's judgments (Monciunskaitė, 2022, pp. 136–139). According to Article 32 of the Constitutional Court Law, a CC judgment and the interpretation of the relevant legal norm provided therein shall be obligatory for all state and local government authorities (including courts) and officials, as well as natural and legal persons. This means that the judgments of the CC and the interpretation of legal norms given by it are final, with generally binding force (*erga omnes*) and directly applicable (Rodiņa & Spale, 2012, pp. 61–63). The interpretations given by the CC in its judgments in the Latvian legal system is recognized as an independent source of law that is compulsory and has binding force and that can be applied as a legal norm for deciding individual cases (Rezevska, 2024, pp. 63–64). Once the CC has provided a legally binding interpretation of a legal norm in a judgment, the relevant legal norm should be applied according to that judgment. When judging specific cases, courts should follow the interpretation given by the CC and implement its judgments in legal reality. Even if the CC judgments provoke discussion or critique in society, or if politicians refuse to fulfil them, courts have a constitutional obligation to enforce those judgments. It is impossible to judge a specific case while ignoring the interpretation of a legal norm given by the CC or its conclusion that a legal norm or a lack of legal regulation is unconstitutional. Courts should apply legal norms according to the interpretation given by the CC and exclude any possibility of deciding specific cases on unconstitutional grounds after a CC judgment.

In the Latvian legal system, after the judgment of the CC in case no. 2019-33-01, the necessary minimal grounds for the legal protection of families of same-sex partners were created and implemented by the administrative courts.

While politicians discussed possible CC activism and invasion of the legislature's competence, the administrative courts protected the families of same-sex partners in specific cases and established the necessary regulation for this purpose in their case law. The turning point for the direct implementation of the CC's judgment was the SC (Senate) decision in case no. SKA-[B1]/2021. In this case, two same-sex partners requested legal recognition of their relationship by the state through an administrative procedure. Acting as a court of cassation, the SC overturned the judgment of the Court of Appeal on the grounds that the courts have a constitutional obligation to provide for the effective enforcement of the Satversme and of fundamental human rights. The SC also stated that the first sentence of Article 110 of the Satversme, in connection with the principle of human dignity, imposes a legal duty on the state to provide for the legal recognition of family unions of same-sex couples, which was also ruled on by the CC.

Until the Saeima adopts legislation for legal protection of families created by same-sex couples, same-sex partners can apply to the administrative court to have their relationships recognized as families protected by Article 110 of the Satversme. As the SC stated, an administrative court judgment recognizing the existence of a family relationship in a same-sex couple could substitute for the registration of such a relationship with competent state institutions and serve as binding legal recognition of such families. This court judgment could be used in situations where it is necessary to justify that these same-sex couples are afforded certain rights intended for families.

After the judgment of the SC, 26 same-sex couples applied to the administrative court for legal recognition (The Baltic Times, 2022). On 31 May 2022, the administrative court of first instance issued the first judgment recognizing a family relationship between two same-sex partners who had applied to the court (Eng. LSM.lv, 2022); by October 2023, the administrative courts had recognized almost 50 same-sex families (Zālītis, 2023).<sup>2</sup> Judge Līga Biksiniece-Martinova commented that through their judgments, the administrative courts provided provisional protection for same-sex couples until the Saeima adopted same-sex partnership regulations. The administrative courts had to step forward ahead of the Saeima to protect same-sex couples and fulfil the judgments of the CC and the SC (Eniņa, 2023).

It should be noted that the strong and consistent position of the administrative courts in ensuring the legal recognition of same-sex couples made it easier for the parliamentary majority to agree on the adoption of the partnership regulation. As this was well established through case law in legal reality, it became reasonable to finally regulate these issues in law, thereby taking back the initiative from the courts. The administrative courts proved the correctness of Lech Garlicki's thesis

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2 The Association of LGBT and their friends Mozaika even prepared necessary information concerning an application to the administrative court and provided pro bono legal assistance; see Mozaika (2021).

that constitutional courts need assistance from ordinary courts, especially supreme courts, to ensure the implementation of their judgments in legal reality (Garlicki, 2007, pp. 67–68).

#### **4. The bricks of legislation in the road to rehumanization**

A few months after the CC adopted its judgment, two committees of the Saeima established working groups for its implementation. One of these groups worked on amendments to the Labour Law so that same-sex parents of a newborn child would have the same rights to parental leave as different-sex parents, while the other aimed to draft framework legislation for legal recognition of same-sex couples' relationships (Legal Affairs Committee, 2021). Nevertheless, these processes were disrupted by false claims about arbitrariness on the CC's part and demands for its abolition (Engīzers & Meļņika, 2021). As a result, the political debate during the meetings of these working groups was so heated and polarizing that none of them managed to accomplish their respective goals.

A year later, in early 2022, the Cabinet of Ministers took matters into its own hands and submitted the draft Amendments to the Labour Law to the Saeima (Prime Minister of Latvia, 2022). Meanwhile, the Ministry of Justice ensured that the draft framework legislation – the draft Civil Union Law, which was supposed to regulate couples' personal and property relations – was also submitted to the Saeima by its Legal Affairs Committee (LSM, 2022). The Amendments to the Labour Law were adopted in June 2022 and established that the right to parental leave after childbirth can also be exercised by 'a person who is not the mother of the child' if the mother has requested this person to participate in child care (Republic of Latvia, 2001). The story of the draft Civil Union Law, however, went differently.

Once the Labour Law had been amended, some public figures, including members of the Saeima, claimed that the judgment of the CC had been fully implemented. These claims found their way into the Legal Affairs Committee, and discussions arose about whether a framework legislation for legal recognition of same-sex couples' relationships was necessary at all. Furthermore, in the third and final reading of the draft Civil Union Law in the plenary sitting of the Saeima, several of its members did not participate in the voting, hence rendering the vote invalid due to a lack of quorum (Saeima of Latvia, 2022a). As a result, the Civil Union Law was not adopted. Although after the parliamentary elections in October 2022 some members of the Saeima initiated the legislative proceedings again, the parliamentary majority at the time did not support it, and once again the law was not adopted (Saeima of Latvia, 2022b). Nevertheless, all was not lost, as the political debate revealed that some members of the Saeima might be willing to support amendments to particular laws providing rights to same-sex couples, rather than adopting a single framework law.

The government formed after the 2022 parliamentary election had declared that it would 'ensure the protection of rights and interests of people living in a joint household regardless of their sex and age' (Cabinet of Ministers, 2022). This goal did not turn into reality, as less than a year later, in September 2023, a new, less conservative government was formed. The new government declared that it would 'stand for a modern legal framework for human rights issues and adopt laws on eradication of violence and hate crime and on cohabitation of couples' (Cabinet of Ministers, 2023). Just a month later, the Minister of Justice, Inese Libiņa-Egnere, sent a letter to the Legal Affairs Committee of the Saeima asking them to initiate legal proceedings regarding a package of laws drafted by the Ministry of Justice. The package aimed to establish legislation on registered partnership – a new legal institute in the Latvian legal system. The Ministry of Justice characterized it as 'a new kind of legal recognition, as well as social and economic protection for the relationship between two adults' (Tieslietu ministrija, 2023). The package of laws establishing the legal institute of partnership consisted of eight draft laws; this package was adopted by the Saeima in early November 2023 over the course of two weeks and came into force in July 2024. The relatively small amount of time the Saeima spent on these laws suggests that some of the discussions might have happened away from the public eye. Be that as it may, the content of the partnership package requires elaboration in slightly more detail.

First, the Amendments to the Notariate Law envisage the procedure for the creation and dissolution of registered partnerships, as well as the very idea of them. According to the amendments, a partnership may be formed by two adults who declare that they have a close personal relationship, a joint household and the will to take care of it, as well as that they take care of and support each other. Second, the Amendments to the Register of Natural Persons Law establish that information on registered partnerships must be recorded in this register, thus ensuring the 'legal visibility' of the relationships of same-sex couples. These amendments also provide that a same-sex couple whose family relationship has been recognized by the administrative courts may request the judgment of the administrative court to be used as the legal basis for updating their record in the Register of Natural Persons with information on their partnership. Lastly, the other six laws envisage social and economic benefits (e.g. some tax exemptions in transactions between partners, and the right to make medical decisions in case one of the partners cannot make it themselves due to a health condition) as well as creating some legal obligations for partners regarding prevention of conflicts of interests (Saeima of Latvia, 2023).

The partnership package came into force on 1 July 2024; in the very first minutes of that day, the first same-sex couple officially registered their partnership (LSM, 2024b). In the first month, 95 couples (among them 47 same-sex couples) concluded a civil partnership (LSM, 2024c), and within four months, 277 civil partnerships were registered (among them 120 same-sex couples) (Delfi, 2024). It is now safe to

say that the partnership package is the first significant legislative step to implement the judgment of the CC and to provide legal, social and economic protection to the families of same-sex couples, therefore filling the legal lacunae previously existing in Latvia. Nevertheless, legislation regulating the personal and property relations of registered partners is still necessary for the judgment to be implemented in full. But one thing is clear: the implementation of this judgment fostered one of the most intense political debates in Latvian political history, as some members of the Saeima even attempted to exercise the people's veto – a tool used rather rarely.

## **5. Appeal to the sovereignty of the people**

In the course of the legislative procedure for the adoption of the amendments introducing the civil partnership regime, a group of deputies initiated a referendum procedure to block their entry into force. According to the Satversme, a referendum, which can take place after the enactment of the law by the Saeima but before it is signed by the president of the Republic, has the character of a people's veto over that law. It can only be ordered as a result of the exercise of a referendum at the initiative of citizens in a situation where the promulgation of a law is suspended by the president. According to Article 72 of the Satversme, the president has the right to suspend the proclamation of a law for a period of two months within ten days of its adoption by the Saeima. Such a decision may be taken by the head of state on his / her own initiative; however, in the event of a request by at least one-third of MPs, the president's suspension of the law is obligatory. Suspension of the promulgation of a law allows citizens to call for a referendum, which must be supported by at least 10% of the electorate; if no such request is made within two months, the law shall be proclaimed. It should be noted that this is the only case in Latvian law where citizens have the right to initiate a referendum. Moreover, it is an exclusive initiative, as neither the Saeima, the government nor the president can decide to submit a bill to a referendum by themselves.

If the collection of signatures is successful, a referendum is ordered. A law enacted by the Saeima, the promulgation of which has been suspended by the president, is deemed to have been revoked if at least half of the voters who took part in the last parliamentary election participate in the referendum and a majority of them vote against the law. In the case of amendments to the Notariate Law including the provisions on registered same-sex partnerships (and dual-sex partnerships), if the referendum were to take place, the turnout required for a binding result would be approximately 30% (458,184 votes), as 916,368 voters had taken part in the previous Saeima elections (a turnout of approximately 60%). However, the Saeima can prevent the holding of a 'veto referendum' in two ways. First, a referendum is not held if a new vote on the suspended law is ordered and at least three-quarters of all deputies

vote for the adoption of the law. In practice, however, the Saeima has never used this option. Second, according to Article 75 of the Satversme, if the Saeima, by a majority of at least two-thirds, deems a law to be urgent, the president may not request its reconsideration, but, more importantly for the situation under analysis, it may not be submitted to a nationwide referendum. A law adopted under this procedure is promulgated no later than the third day after its receipt by the president.

A further restriction on the scope of matters that may be the subject of a referendum is of a substantive nature. According to Article 73 of the Satversme, these are the budget, loans, taxes, customs duties, railway tariffs, military service, the declaration and initiation of war, the conclusion of peace, the declaration of a state of emergency and its termination, mobilization and demobilization, and agreements with foreign states. It can therefore be concluded that this provision indirectly excludes the right of the president to postpone the promulgation of such laws, since the purpose of such a decision by the head of state is precisely to hold a referendum.

It should be noted that the question of the material scope of the admissibility of the people's veto has been debated in Latvian doctrine (Pleps et al., 2022, pp. 433–434). The CC of Latvia, in its judgment of 19 December 2012 in case no. 2012-03-01, admitted that the Satversme and the general principles of law are binding not only for the Saeima, but also for the people acting as a legislature in the referendum. The people as well as the Saeima should respect the constitution as a set of legal norms with the highest legal force (Pleps et al., 2022, pp. 47, 102). In a referendum, the people cannot adopt laws which are unconstitutional or infringe the constitutional identity of the country. And, vice versa, a referendum in which people could adopt unconstitutional decisions, rejecting some law adopted by the Saeima, also cannot be held. Fundamental human rights and human dignity is one of the constitutional values protected by the constitutional identity of Latvia; a referendum could not be held against human rights and dignity.

The law on the amendments to the Notariate Law, including provision for registered same-sex partnerships, was adopted by the Saeima on 9 November 2023 by a 53–43 vote. Exercising the right provided for in Article 72 of the Satversme, a group of 34 opposition MPs submitted a request to President Edgars Rinkēvičs to postpone the promulgation of the law until January 2024, which started the process of vetoing it. For a referendum to be called, the petition would have to be signed by at least 154,241 people (10% of the electorate). The collection of signatures took place from 7 December 2023 to 5 January 2024; signatures were collected in person at places designated by each local council on its territory. A total of 312 signature collection points were in operation, of which 277 were in Latvia and 35 were abroad (LSM, 2024a). The Central Election Commission announced that by 26 December only 16,170 signatures had been collected, and that by 5 January 2024 only 35,191. This meant, of course, that the referendum initiative had failed due to the law being supported by only 2.28% of all citizens eligible to vote. Consequently, the amendments

to the Notariate Act could not be put to a vote of the citizens. The consequence of the above was that the law was signed by the president and came into force on 1 July 2024.

The people's veto is not just a theoretical institution, as it has been successfully implemented in Latvian constitutional practice on several occasions. The first legislative referendum was held on the repeal of the Law of 22 June 1998 amending the Law on Citizenship, the promulgation of which had been postponed by the president. This amendment was intended to allow several tens of thousands of permanent residents on Latvian territory, mainly of Russian nationality, to apply for Latvian citizenship. At the request of parliamentarians, President Guntis Ulmanis suspended the promulgation of the law for two months, which allowed a successful campaign to collect signatures for a referendum to be launched. The vote on the law, held on 3 October 1998 in conjunction with the parliamentary elections, resulted in a relatively high turnout of 69.16% of those who had voted in the previous parliamentary elections, of whom 53.92% voted against the repeal of the Saeima amendment.

A year later, a referendum was called on an amendment to the Retirement Law.<sup>3</sup> The presidential suspension of the law's promulgation allowed the initiative to collect enough signatures for a referendum, but despite the high level of support – 94.63% of the electorate voted against the law – the referendum was not binding as only 25.1% of those who voted in the previous general election took part. The issue of pensions was the subject of a referendum again in 2008, when Article 72 of the Satversme was applied regarding the amendment of the State Pensions Act. Again, although 94.44% of voters supported the new law, the referendum failed due to low turnout, which was only 22.9%.

In 2007, two security laws were put to a referendum after the president refused to sign them due to the possible influence of oligarchs on Latvia's national security and after 212,000 signatures were collected, exceeding the requirement of around 150,000.<sup>4</sup> Despite the insufficient turnout of 22.59%, the results showed a massive rejection of the two government laws, with 96.49% of the votes cast against the first and 96.41% against the second. Although the referendum was not formally binding, in the face of such results the Saeima decided to abandon both laws, so the referendum had its intended effect *de facto*, demonstrating the persuasive power that even a non-binding referendum can have.

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3 On 5 August 1999, a new pension law was approved by Parliament, which provided for an increase in the retirement age to 62 (for women and men), as well as the loss of pension benefits for working pensioners if their earnings exceeded twice the retirement amount. The referendum question on abolishing the pension reform was 'Are you in favour of abolishing the changes to the Pension Act of 5 August 1999?'

4 At the end of 2006, two laws on state security services were passed. The president vetoed the bills, but as they were voted down by the Saeima, the president suspended the promulgation of the two laws in accordance with Article 72 of the Satversme. The referendum question was 'Are you in favour of abolishing the amendments to the State National Security Act of 1 March 2007?'



In our discussion of the shape of the veto referendum in Latvia, there are several key issues to be highlighted. First, the current system requires a two-stage procedure: first collecting signatures from one-tenth of voters to initiate a referendum and then conducting the referendum itself introduces unnecessary complexity as well as generating much higher costs than if the referendum were ordered straight away. The costs of collecting signatures are similar to those of holding a referendum, and the requirement for voters to visit polling stations twice reduces participation, making it difficult to achieve a quorum. Nevertheless, this seems to be true only regarding those initiatives which are successful. Second, the necessity for a high quorum for a referendum to be valid is problematic. As can be seen from the above data, high quorum requirements lead to most referendums failing. The need for at least half the voters who participated in the previous parliamentary election to partake in the referendum, with a majority voting for the repeal of the law, makes it challenging for referendums to succeed (Trabucco, 2020, pp. 757–758). Addressing these issues would require constitutional amendments and legislative changes to modernize the referendum process, making it more accessible, understandable and effective in reflecting the voters' will (Balodis, 2021).

## Conclusions

The legal recognition of same-sex couples and their human dignity and equality are among the issues where it is possible to witness recent developments in the understanding of human rights standards in 21st-century Europe. In the Latvian legal system, necessary steps for the legal recognition of same-sex couples were taken by the CC and the SC. Implementing the judgment of the CC of 12 November 2020, the Saeima adopted same-sex partnership legislation on 9 November 2023. After this judgment, the administrative courts took steps to directly apply and enforce it in legal reality. The administrative courts began to legally recognize same-sex couples as families according to the SC judgment of 10 December 2021, based on the Satversme and fundamental human rights. Before the legal framework was adopted by the Saeima, more than 50 families were recognized by the administrative courts. The legal framework adopted by the Saeima at this moment is compatible with the standards of the European Convention on Human Rights as defined by the ECtHR. However, further steps are still necessary to ensure the human dignity and legal, social and economic protection of same-sex couples, as required by the Satversme and the judgments of the CC.

The recent legislative advancements relating to the legal recognition of same-sex couples in Latvia mark a transformative moment in the pursuit of human dignity and equality within the framework of contemporary European human rights standards. The journey towards institutionalizing this recognition culminated in the Saeima's

adoption of same-sex partnership legislation on 9 November 2023, which can be traced back to the pivotal rulings by the CC and the SC. These rulings asserted the necessity of recognizing same-sex relationships based on principles embedded in the Satversme and fundamental human rights. The CC's landmark judgment on 12 November 2020, which called for the acknowledgement of same-sex partnerships, triggered a series of proactive implementations by administrative courts. Prior to the formal legislative framework being established by the Saeima, these courts had already recognized over 50 same-sex families, clearly illustrating a societal shift towards recognizing diverse family structures and a commitment to protecting their rights. The legislation adopted by the Saeima aligns with the standards set forth in the European Convention on Human Rights interpreted by the ECtHR. However, the path to this recognition was marked by significant challenges, most notably the failed citizens' initiative aimed at prompting a referendum against the adoption of the same-sex partnership law.

The people's veto, as established in the Satversme, allows for the suspension of a law passed by the Saeima if a certain threshold of citizen support is reached. In this case, while a group of opposition deputies sought to utilize this mechanism to block the public's endorsement of the partnership legislation, the effort faltered as it did not garner sufficient signatures from the electorate. Specifically, only 35,191 valid signatures were collected, falling drastically short of the 154,241 required to initiate a referendum. This shortfall in public engagement can be interpreted as a significant indicator of evolving societal attitudes towards same-sex partnerships in Latvia; it reflects both the growing acceptance of LGBTQ+ rights and a decisive moment when the electorate chose not to challenge the progress made towards legal recognition. Despite the vocal opposition from certain political factions, the inability to successfully launch a referendum demonstrates a broader social tolerance and readiness to embrace legal reforms that uphold human dignity.

While the legal framework established is a crucial step forward, there remains a pressing need for further legislative actions to ensure comprehensive social and economic protections for same-sex couples. The CC has firmly established that the Satversme requires legal recognition and protection for all families, including same-sex partners, and it is incumbent upon lawmakers to fulfil this constitutional obligation fully. Moving forwards, it is essential to continue fostering dialogue around these issues and to promote understanding of the importance of equality for all citizens, regardless of their sexual orientation. The legislative successes achieved thus far in Latvia represent hope and progress, yet they also call for vigilant advocacy to ensure that the rights and dignities of same-sex couples are not only recognized on paper but also fully realized in practice.

In summary, the adoption of the same-sex partnership legislation is indicative of a significant legal and societal evolution in Latvia. The failed referendum initiative, underscored by a lack of enough public signatures, has proven to be a pivotal

moment; it signifies a collective movement towards acceptance and legal recognition that transcends the political divisions often seen in contemporary debates on human rights. Continuing on this path will require ongoing efforts to advance social acceptance, facilitate necessary legislative changes, and, ultimately, ensure that the principles of human dignity and equality are enshrined firmly within Latvian law for all families.

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