Turība University

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SUMMARY OF DOCTORAL THESIS

HISTORICAL EVOLUTION OF THE INSTITUTION OF PECUNIARY RELATIONSHIP OF SPOUSES – DOWRY – AND PLACE IN THE FAMILY OF MODERN CONTINENTAL LAW

Study Programme "Law"

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Presentation (defence) of the doctoral thesis will take place at an open session of the Doctoral Council of Legal Science of the Turība University on 13 February 2019, at 12 noon, at the Faculty of Law of the Turība University in Riga, Graudu iela 68, auditory C108.

The doctoral thesis and its summary are available for review in the library of the Turība University in Riga, Graudu iela 68.

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ABSTRACT

The doctoral thesis researches the course of historical evolution of an archaic institution of pecuniary relationships between spouses – dowry – exploring it in the context of its presence in the currently effective Family Law Section of the Civil Act of the Republic of Latvia and issues arising therefrom from the perspective of the fundamental principle of the modern constitutional law – necessity to ensure gender equality established in the Constitution (*Satversme*) of the Republic of Latvia and international agreements binding for Latvia.

In the course of research preconditions for emergence of the dowry institution and historical development have been explored. Causes, reasons and circumstances surrounding development of the institution have been researched along with governing law and evolution thereof, issues related to the archaic legal institution – dowry – has been outlined in order to find answers upon evaluating the background that would allow to draw conclusions with regard to existence of such institution and feasibility of its retention in the Family Law Section of the Civil Act of the Republic of Latvia focusing on the human rights aspect of this problem either.

In order to gain as extensive view and comprehensive understanding of the subject as possible, analysis of the dowry institution has been performed from the perspective of the history of law, exploring the periods when such social phenomenon emerged, thrived, declined and vanished, and aspects in different regions of the world and at different times worldwide – from the antiquity to contemporaneity. The dowry institution has been considered in a much broader historical and geographical context than it has been done in the Latvian law before.

Findings of the research allowed the author to come to a conclusion that transformation of the perception of the society in general has occurred; it is estimated that the society will not object to modifications of the legal framework, if the dowry institution established in Articles 111-113 of the Civil Act is excluded from the Family Law Section of the Civil Act of 1937 of the Republic of Latvia, as it has been done in other countries belonging to the family of European continental law.

DESCRIPTION OF THE DOCTORAL THESIS

Subject of the Research, Substantiation of the Topicality of the Paper and Scientific Novelty, Theoretical and Practical Implications of the Research

The subject of the research is the dowry institute in the family of modern continental law that the contemporary legal system of Latvia belongs to as well. Since antiquity the issue of legal framework governing pecuniary relationships between spouses has been one of the most complicated and crucial issues in the civil law, because it has a critical impact on a significant element of the social organisation of the society – a family – and considerably defines its capacities, stability, sustainability, and risks.

The doctoral thesis focuses on research and analysis of theoretical aspects of the law related to presence an institute of the pecuniary relationships between spouses – dowry – in the Family Law Section of the Civil Act of the Republic of Latvia, and problems with existence of such regulation in the light of upholding the principle of gender equality. The in-depth exploration forms grounds for conclusions drawn and proposals made in the paper and highlights the author's position on the key issues, reflects

analytical and critical contemplation of both the legal framework contained in the law and opinions expressed in the legal literature.

The outline of the research is primarily based on ideas formed in the course of examination of the sources of law and scientific literature, reviewing legal, historical and other kind of literature and sources, including customs, folklore, and fictional literature, because the dowry institution is closely related to the rhythm of mundane life of people, and, therefore, through the ages has been widely reflected in the folklore and literature of many nations worldwide, which provided an excellent basis for analysis of the research and a broader perspective, which are neither inherent nor common occurrence in research of legal provisions.

Overview of the historical background of the dowry institution allowed to "see confirmation of the right to exist and inspiring testimony for future generations"[1], helping in exploration and understanding of the processes of the dowry institution in their evolution, explaining its emergency and processes facilitating and affecting it, as well as causes for disappearance of the said legal institution.

[1] Pleps, J. (2011). Vēstures jautājumi un politika. Jurista Vārds, 25.01.2011., Nr.4 (651).

Upon researching and exploring the facts through the prism of history it is crucial to bear in mind the viewpoint of historians, before drawing any conclusions, that every generation has a right to interpret the history at its own discretion; moreover, not only right but an obligation as well, to some extent, in order to satisfy its needs[2].

Other authors protest though being of an opinion that discussions about history are, in fact, discussions about today, and they have to strictly adhere facts by conferring meaning, unbiased significance to them, without omitting crucial facts, and their chronology,[3] because an error in chronology, for example, may lead to misinterpreting contents of one event or another, actual substance of a statement, creating delusions etc.; like imagine how we would react to a request for bride price or bridewealth for a bride here, in Latvia from the present perspective. In any case, without understanding of the past, today's processes are not easy to comprehend[4], whereas,

[2]Bliks, M. (2011). Vēstures apoloģija jeb Vēsturnieka amats. Rīga: Zvaigzne ABC, 68.-84. lpp.

[3]Levits, E. (2012). Par nacionālo identitāti un demokrātisku atmiņu politiku. Jurista Vārds, 03.2012., Nr.1 (700).

[4]Švarcs, F. (2011). Latvijas 1937. gada 28. janvāra civillikums un tā rašanās vēsture. Rīga: Tiesu Namu Aģentūra; Levits, E. (2011). Uzruna Cicerona balvas pasniegšanas ceremonijā Latvijas Zinātņu akadēmijā 2011. gada 28. novembrī. Retrieved 25.11.2012. no http://www.cicerons.lv/index.php?option=com_content&view=article&i

without clear understanding of today we cannot be sure about our future.[5] The same applies to exploration of the institution of dowry, because the research of historical evolution specifically, showing preconditions for the dowry institution to originate, substantiation thereof, allowed to draw conclusions of its position and significance in the legal framework governing the pecuniary relationships of a family and consider the necessity of its preservation and feasibility in the Family Law Section of the Civil Act of the Republic of Latvia with more deliberation and consideration.

The thesis contains elaborate explanations, examples rooted in historical facts, different opinions expressed in practice and existent at various times, references to definition of dowry found the legal literature, legal dictionaries and encyclopaedia, and its origin and application, explanation of related concepts; the commonly used legal terminology in Latin has also been incorporated. The extensive outline of facts makes the research both more comprehensible and more interesting.

d=51:egils-levits-cicerona-balvas-laurets-2011&catid=5:runas-2011&Itemid=22

[5]Levits, E. (2012). Par nacionālo identitāti un demokrātisku atmiņu politiku. Jurista Vārds, 03.2012., Nr.1 (700).

Topicality of the research arises out of the necessity to ensure upholding of the principle of gender equality in all walks of our life, including the legal relationship in a family, in a state where the rule of law is inherent. Incorporation of a gender specific aspect in a legal provision may form grounds for an infringed person to approach courts of not only national but also European level to protect their fundamental rights, which may cause unnecessary problems in case a breach of equality is established. The conclusions drawn in the paper will help to avoid such.

Novelty of the research shall be noted in several aspects of the research.

First of all, previously little attention has been paid in modern research of civil law in Latvia (comments on the grounds governing the dowry institution are omitted even in comments of the Family Law Section of the Civil Act of the Republic of Latvia[6]), and the present research is the first of such kind filling this gap in the legal science.

Another aspect is related the wide scope of research of historical evolution of the dowry institution in terms of time and geographical area, examining the dowry institution in

[6] Vēbers, J. (2000). *Latvijas Republikas Civillikuma komentāri, Ģimenes tiesības.* Rīga: Mans Īpašums.

different legal systems, civilizations, legal cultures, thus contributing to the history of law as well.

The third aspect is research of the conformity of the dowry institution to the principle of gender equality, which has not been in the focus of the legal science in Latvia before, even though Latvia has undertaken an obligation both in the Constitution (*Satversme*) of the Republic of Latvia and international treaties binding on it to ensure eradication of differential treatment of individuals procuring that every member of the society would have equal opportunities to access benefits satisfying the individual's needs and, which is just as important – facilitation of the legitimate expectations so that the legal provisions and legal framework would have equal treatment of any member of the society consolidated.

The principle of gender equality is defined in several international agreements binding on the Republic of Latvia, including the UN Universal Declaration of Human Rights (UDHR, 1948) where Article 7 stipulates that "all are equal before the law and are entitled without any discrimination to equal protection of the law"[7], the International Covenant on

[7] Universal Declaration of Human Rights, adopted by the UN General Assembly 10.12.1948. Promulgated 10.12.1948. Not officially published

Civil and Political Rights of 16 December 1966[8], the Convention on the Political Rights of Women of 20 December 1952[9]. Latvia has also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, where Article 14 prescribes securing of the enjoyment any rights and freedoms set forth in the Convention without any discrimination[10]. Conversely, Article 23 of the Charter of Fundamental Rights of the European Union, which on 1 December 2009, upon the Treaty of Lisbon[11] coming into

in Latvian. Latvia acceded by the Declaration of the Supreme Council of the Republic of Latvia of 04.05.1990 "Re Accession of the Republic of Latvia to the Documents of International Law on Human Rights Issues". Unofficial translation of the text of the human rights declaration in the Latvian language on the website of the Ombudsman of the Republic of Latvia: http://www.tiesibsargs.lv/tiesibu–akti/ano–dokumenti/ano–vispareja–cilvektiesibu–deklaracija. Retrieved 08.11.2010.

[8] International Covenant on Civil and Political Rights. Adopted by the United Nations (UN) 16.12.1966, in New York. Came into effect: 14.07.1992. Latvia has acceded 14.04.1992 Published: "Latvijas Vēstnesis", 61 (2826), 23.04.2003.

[9] Convention on the Political Rights of Women. Adopted by the United Nations (UN) 20.12.1952., New York. Came into effect: 13.07.1992. Latvia acceded 14.04.1992. Published: "Latvijas Vēstnesis", 60 (2825), 17.04.2003.

[10] Convention for Protection of Human Rights and Fundamental Freedoms. Adopted 04.11.1950. Came into effect: 27.06.1997. Signed: 10.02.1995. Latvia acceded 27.06.1997. Published: "Latvijas Vēstnesis", 143/144 (858/859), 13.06.1997.

[11] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Came into effect: 01.12.2009. "Latvijas

effect, obtained a binding effect in all EU Member States, the principle of gender equality has been considerably specified: "Equality between men and women must be ensured in all areas, including employment, work and pay".[12] The legislator thereby has specifically noted and emphasized that the principle of gender equality applies not only to provisions of public law but also to the sphere of the private law, taking into account the subject matter of the present research.

The principle of gender equality is not specifically singled out in the Constitution of the Republic of Latvia; nevertheless, Article 91 states, along general lines, that all people in Latvia are equal before law and court, and human rights are implemented without any discrimination.[13] The aspect of gender equality is not discussed in a separate

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Vēstnesis", 28.05.2008., Nr. 82 (3866). Retrieved 01.12.2015. no https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1642

[12] Charter of Fundamental Rights of the European Union. (07.12.2000.). Published: Official Journal, C 326, 26.10.2012., pp. 391-407; European Union Charter of Fundamental Rights. 2012/C 326/02. Retrieved 01.12.2015. no http://eur-lex.europa.eu/legal content/LV/TXT/HTML/?uri=CELEX:12012P/TXT&from=LV

[13] Latvijas Republikas Satversme. Adopted 15.02.1922. Atjaunota ar 21.08.1991. likumu Par Latvijas Republikas valstisko statusu (pieņemts 21.08.1991. Published: Ziņotājs, 24.10.1991., nr. 42.) un 04.05.1990. deklarāciju Par Latvijas Republikas neatkarības atjaunošanu. (Adopted 04.05.1990. Published: Ziņotājs, 17.05.1990., nr. 20.). Published: Latvijas Vēstnesis, 01.07.1993., Nr. 43. Pēdējie grozījumi 19.06.2014.

chapter in this thesis, and is reflected alongside evaluation of the historical/factual background, thus, in the author's opinion, facilitating understanding of the issue making it more obvious and comprehensible.

Theoretical and practical significance of the research arises from the analysis of the dowry institution made in the thesis in conjunction with existing institutes of the family law that existed along with the dowry institution and were used in practice, such as bride price, widow's share, bridewealth (*līdzdeva* in old Latvian), and donation. A comparison has been made of the common and distinctive elements found in international, national and private sources, of their impact on the legal system of Latvia, legal reasoning, impact and connection of the subject matter of the research on the life of modern society has also been assessed.

The conclusions drawn in the paper serve as benchmarks for development of modern understanding of the law convincing of the necessity to delete the discriminatory legal provisions from the Family Law Section of the Civil Act of the Republic of Latvia, thus preventing a possibility, albeit theoretical currently, for the Republic of Latvia to face charges in an international court in case of dispute concerning gender equality.

Objective of the Thesis, Tasks, Hypothesis and Scientific Foundation of the Research, and Research Period

The objective of the doctoral thesis is to make in-depth research and evaluation of the necessity to preserve pecuniary relationship between spouses – dowry institution – in the civil law of Latvia by evaluating it not only from the perspective of the human rights binding on Latvia but also from the aspect of its demand in the social relationships in Latvia nowadays.

So, on the one hand, the objective of the thesis is an in-depth exploration of the necessity for the archaic legal institution as well as evaluation of the issues concerning thereof; on the other hand, it is awareness of the deficiencies of the legal framework governing gender equality stemming from the dowry institution; seeking proposals for resolution of the problem either in theory or in practice, for the purpose to ensure equal treatment and prevent discrimination.

In order to achieve the set objective, it is crucial to explore and understand what the historical situation and reasons were that premeditated emergence of the dowry institution, necessity for its existence and social significance.

The institution also has to be evaluated in conjunction with the current understanding of the principles of gender equality and human rights binding on Latvia; therefore, the following **tasks of the research work** have been set:

1) Establish the meaning of the dowry institution in terms of content;
2) Review sources of law governing the institution of dowry, including indirect historical sources (works of historians, researchers of the civil law, folklore, and literature);
3) Examine the dowry institution in conjunction with the historically changing nature of the law and development thereof; analyse legal provisions that have governed evolution of the dowry institution in the countries of continental Europe, from the antiquity to contemporaneity, applying the comparative approach;
4) Establish reasons, causes and consequences of the decline of the dowry institution in the area of the European law in order to discuss necessity of amendments with regard to preservation or deletion of this institution from the Civil Act of the Republic of Latvia;

5) Evaluate what legal or other consequences the deletion of the now critically viewed dowry institution from the civil law of Latvia might have, taking into account the necessity to uphold human rights; and offer a legal solution keeping in mind national interests of Latvia as a state upholding the rule of law.

The following **hypothesis of the research** is put forward for the defence: "The legal framework of the dowry institution in the Civil Act of the Republic of Latvia contradicts the principle of gender equality of higher legal effect, as the latter is defined in the international laws binding on the Republic of Latvia and the Latvian law governing the human rights."

The conclusions drawn in the thesis shall serve as a benchmark for facilitation of understanding, urging to delete the discriminatory legal provisions from the Family Law Section of the Civil Act of the Republic of Latvia.

The research period of the doctoral thesis, with the view of the historical context of the paper, covers the period of time from the antiquity, when the first testimonies of the historical evolution and genesis of the dowry institution can be found, until the present, when rapid disappearance of the

dowry institution occurs in the countries where the model of patriarchal family (Latin – *pater familias* – father of the family, host, parents, ancestors)[14] is replaced by relationships in a family rooted in the equality of genders.

Methods of Scientific Research in the Thesis and Description Thereof

The following approaches of scientific research have been used in the research for the purpose to achieve the objectives set forth in the thesis: historical, analytical (inductive and deductive), comparative, system analysis, as well as the descriptive method.

Taking into account the objective and tasks set in the thesis, **the historical method** has been of a higher importance in drafting of this paper, because the approach of historical interpretation, upon analysing specific historical conditions, was best suited for exploration of what the purpose of introduction of the researched institution has been in the specific period of historical evolution, understanding content of the norms and providing of the description of the legal framework, by comparing the

[14] Latīniski – latviska vārdnīca. (1940). (2.izd.). Bištēviņš, E., Švarcbahs, R., Rīga: Valsts apgādniecība, 327. lpp.

analysed legal provisions at various stages of development of the civilization, helping to understand aspects of the early stages of development of the legal framework, and allowing to draw conclusions whether it is necessary to preserve it as a legal framework outlined by the law of the contemporary Latvia.

The historical method has also been applied to the research in order to compare evolution of various pecuniary relationships of spouses at various stages on a larger scale, namely, international arena, looking through the centuries – from antique natural law (Latin – *ius naturale*)[15] to modern human and civil rights.

Alongside the primary – historical – method, **the analytical method** is of no less importance and just as widely used, being a significant research method in all spheres of science, while being irreplaceable for a broader cross-section of epochs, because it allows to have deeper and more accurate understanding and subsequent evaluation of the content of concepts, principles and legal provisions, modifications thereof; to understand practical and theoretical arguments for application thereof, analysing

[15] *Latīniski – latviska vārdnīca*. (1940). (2.izd.). Bištēviņš, E., Švarcbahs, R., Rīga: Valsts apgādniecība, 255., 295.lpp.

court rulings through the time, as well as ancient and contemporary laws, along with the historical sources, in order to create a tangible idea of the dowry institution on the grounds of logical reasoning, to draw conclusions and to make recommendations, which is crucial for accomplishment of the objective set in this doctoral thesis.

The comparative method is used upon reviewing existence of the dowry institution and its legal framework in the course of time in the civil law of various countries, seeking for the common and distinctive features, exploring common and distinctive trends and patterns in development of the international law and national law. The method was used not only to compare the legal framework governing the pecuniary relationship of the spouses – dowry institution – contained in Articles 111-113 of the Civil Act of the Republic of Latvia with the legal framework existent in other countries, but also to compare the opinions expressed in the legal literature and practice, in order to provide an opportunity to view deficiencies of the Family Law Section of the Civil Act of the Republic of Latvia in this regard as accurately as possible substantiating the proposals made and conclusions drawn in the thesis, revealing contradictions of

the national law and nonconformity thereof with the international commitments of Latvia.

Approbation of Findings of the Thesis

Approbation of the findings of the doctoral thesis has been effected in both scientific publications and presentations given by the author at international scientific conferences regarding the topic of the research. Altogether six presentations have been given about the topic of the research between 2009 and 2014 in Latvian, English, and Russian. Four scientific articles have been published in peer-reviewed (refereed) international journals in the Latvian and English languages, as well as three articles in collections of abstracts from scientific conferences in the Latvian, English and Russian languages. Specifically, the accomplishments of the author's scientific work in research of the dowry institution are as follows:

Presentations at scientific conferences

1) 4-5 December 2009. "Vecums ir sasniegums!" (*Age is an achievement*). A multi-disciplinary conference of applied science "Vecums ir sasniegums. Tā potenciāls un sociālā aktivitāte" (*Age is*

an achievement: Its potential and social activity). Faculty of Social Sciences of the University of Latvia and the Association of Professional Psychologists of Latvia, Riga.

2) 3-5 November 2011. "Laulāto mantisko attiecību institūts – pūrs, Eiropas Savienības ģimenes tiesību un Latvijas Republikas Civillikuma kontekstā" (*Institution of the Pecuniary Relationships of Spouses – Dowry – in the Context of the Family Law of the European Union and the Civil Act of the Republic of Latvia*). International Scientific Conference "Eiropas integrācijas sociālā un ekonomiskā dimensija: problēmas, risinājumi, perspektīvas" (*Social an Economic Dimension of the European Integration: Problems, Solutions, Prospects*). Daugavpils University, Daugavpils.

3) 24-25 November 2011. "Nacionālā identitāte: saliedētība un dažādība mūsdienu Eiropā, pārrobežu emigrācijas un imigrācijas apstākļos mūsdienu Eiropā, vai mīts?" (*National Identity: Integrity and Diversity in Contemporary Europe in the Situation of Cross Border Emigration and Immigration in Contemporary Europe or a Myth?*) International

scientific conference "Nacionālā identitāte: Saliedētība un dažādība mūsdienu Eiropā" (*National identity: integrity and diversity in the contemporary Europe*). Institute of Philosophy and Sociology of the University of Latvia, Riga.

4) 25-26 November 2011. "Laulāto savstarpējo attiecību problēmas pārrobežu situācijās emigrācijas un imigrācijas apstākļos un to iespējamie risināšanas ceļi" (*Issues of Mutual Relations between Spouses in Cross Border Situations in the Context of Emigration and Immigration and Possible Venues for Solution Thereof*). International conference of applied science "Laulāto savstarpējas attiecības. Vecāku loma. Psiholoģiskais darbs ar mūsdienu ģimenes problēmām" (*Mutual Relationship between Spouses. Role of Parents. Psychological Work on Issues of a Modern Family*). Riga Higher Educational Institution of Pedagogy and Education Management, Association of Professional Psychologists of Latvia, Riga.

5) 29 May 2014. "Laulāto mantisko attiecību institūts „pūrs" mūsdienu Eiropā: sasniegums vai problēma?" (*Institution of Pecuniary Relationship of Spouses – Dowry – in Contemporary Europe:*

Accomplishment or Problem?) XV International scientific conference "10 gadi Eiropas Savienībā – sasniegumi, problēmas un nākotnes ieceres" (*10 Years in the European Union: Achievements, Issues, and Future Prospects*), *Turiba* University, Riga.

6) 24-27 June 2014. "Practice and the Legal Dimension of Dowry on the Stage of History". Annual international scientific conference "Актуальные проблемы юридической психологии. Потерпевшие и свидетели: от научных исследований к эффективной практике". Санкт-Петербургский государственный университет, Международная конференция Европейской Ассоциации психологии и права, Россия.

List of scientific publications:

International peer-reviewed (refereed) journals:

1) "Pūra institūts vēsturiskās attīstības gaitā" 1. daļa (*Dowry Institution in the Course of Historical Evolution: Part 1*), Latvijas Vēsture. Jaunie un Jaunākie Laiki, 2011. 3 (83).

2) "Pūra institūts vēsturiskās attīstības gaitā" 2. daļa (*Dowry Institution in the Course of Historical*

Evolution: Part 1), Latvijas Vēsture. Jaunie un Jaunākie Laiki, 2011. 4 (84).

3) "Institution of Matrimonial Property – Dowry on the Stage of Modern Europe". European Scientific Journal (ESJ). GLOBAL Multidisciplinary Academic Meeting "Science does NOT know borders" GAM 2014, 27-30 March 2014, Cape Verde.

4) "Practice and the Legal Dimension of Dowry in Historical Evolution". Mykolas Romeris University Scientific Journal: SOCIETAL STUDIES, ISSN print 2029-2236 pending publication since 2014, identification No 1640, 1641, 1659.

Collections of articles and abstracts from international scientific conferences:

1) "Nacionālā identitāte: saliedētība un dažādība mūsdienu Eiropā, pārrobežu emigrācijas un imigrācijas apstākļos mūsdienu Eiropā, vai mīts?" (*National Identity: Integrity and Diversity in Contemporary Europe in the Situation of Cross Border Emigration and Immigration in Contemporary Europe or a Myth),* edition of the Institute of Philosophy and Sociology of the University of Latvia, National identity: integrity and

diversity in the contemporary Europe. Nacionālā identitāte: Saliedētība un dažādība mūsdienu Eiropā, Institute of Philosophy and Sociology of the University of Latvia, ERAF project 2010/0195/2DP/2.1.2.0/APIA/VIAA/008, "Development of the Capacity of LU FSI and Facilitation of International Collaboration", editor Jāne A.; SIBN 978-9984-624-91-4; 2011.

2) "Laulāto mantisko attiecību institūts – pūrs, Eiropas Savienības ģimenes tiesību un Latvijas Civillikuma kontekstā" (*Institution of the Pecuniary Relationships of Spouses – Dowry – in the Context of the Family Law of the European Union and the Civil Act of the Republic of Latvia*). Academic Publishing House of the Daugavpils University "Saule". ISBN 978-9984-14-543-3; 2011.

3) "Laulāto mantisko attiecību institūts „pūrs" mūsdienu Eiropā: sasniegums vai problēma?" (*Institution of Pecuniary Relationship of Spouses – Dowry – in Contemporary Europe: Accomplishment or Problem?*) XV International scientific conference "10 gadi Eiropas Savienībā – sasniegumi, problēmas un nākotnes ieceres" (*10 Years in the European Union:*

Achievements, Issues, and Future Prospects), Collection of Articles of Conferences by *Turiba* University. ISSN; 2014. gads.

4) 24-27 June 2014. "Practice and the Legal Dimension of Dowry on the Stage of History". Annual international scientific conference "Актуальные проблемы юридической психологии. Потерпевшие и свидетели: от научных исследований к эффективной практике". Санкт-Петербургский государственный университет, Международная конференция Европейской Ассоциации психологии и права, Россия, Санкт-Петербург.

Other publications:

Orlovskis B., Nikolājeva I. Mana valsts *(My Country)*. Riga, Latvian Adult Education Association, 1999.

Nikolājeva Iveta. Kā sākt? Nevalstisko organizāciju rokasgrāmata. (*How to begin? Manual for Nongovernmental Organisations*). Riga, Latvian Adult Education Association, 1999.

Nikolājeva I. "Likuma analoģija tiesu nolēmumos" (*Analogy of Law in Court Rulings*). *Jurista Vārds*, 25.01.2011, pp. 12.–19.

Synopsis of the Doctoral Thesis Chapter by Chapter

Structure of the thesis is developed in such a way as to reveal its objectives and tasks as comprehensively, systematically, sequentially and explicitly as possible. The thesis consists of abstracts of the thesis in Latvian, English and Russian, an introduction, six chapters of research, and the section of conclusions. The thesis has annexes comprising materials from the National Archives of Latvia, case law and the Turaida Museum Reserve. The final section of the thesis is a list of the legal literature used, laws and regulations and archive documents used in the research. The introduction establishes the objective of research, main tasks, as well as substantiates its novelty and significance.

The description of the stages of historical development of the dowry institution shows that payments associated with entering into matrimony, including dowry as the allotment of property by the bride's family to her groom or bride herself (depending on the specific legal framework),

have existed in virtually all ages and societies and have been given to mitigate costs associated with the married life.

As a result of acknowledgement of the principle of gender equality and consistent implementation thereof, role of the dowry institution has declined in the Western law and altogether disappeared from the civil codes of the countries of this family of laws, not to mention the bride price, whereas the dowry and bride price for the bride has remained in the patriarchal societies of Asia and Africa as an inherent part of the traditional culture; and presently these institutes "flood" into Europe on the shoulders of the bearers of the respective cultures[16] as nonlegalized, nevertheless, practically existing institution of relationships governed by the civil law.

Therefore, even though the dowry and bride price are memories preserved only in the historic experience of our

[16] Finding Islamic Family Law. Laws, Codes & Commentaries. Harvard Law School Library. Muslim Family Law: Sources, Codes, & Commentaries. Retrieved 11.12.2015. no http://guides.library.harvard.edu/c.php?g=309976&p=2070456 Retrieved 10.03.2015. from Eller, J.D. (2009). Cultural Anthropology: Global Forces. Local Lives. New York, p. 189, 190. The dominance consolidated in the patriarchal law was continuously preserved in Egypt where only from 29 January 2000 women are allowed to file for dissolution of marriage, while waiving of the right to the dowry, similarly as in Jordan (by the Family Law Reform Act of 18 March 2001).

common past not characteristic for the contemporary way of life, there is no reason to argue that these institutions would have completely vanished in Europe.

The first chapter gives an overview of the definition of a dowry formulated by scientists of various countries in the legal literature and encyclopaedias; describes historical preconditions for emerging of the institution, origin and significance thereof in the historical era against the backdrop where it emerged. The definition of dowry by the prominent researcher of the civil law Konstantīns Čakste has been included here to, among other, stating that "the property allotted to a woman for the event of marriage by parents or other persons for the purpose to mitigate the costs associated with the married life".[17] Similarly ("property given to a woman by parents or relatives upon her entering into marriage"), the dowry is defined in the Soviet Encyclopaedia of Latvia as well.[18]

[17] Latviešu konversācijas vārdnīca. XVII sēj. (1938). Švābes A., Būmaņa A., Dišlera K. red. Rīga: A.Gulbis, 34503. sl.

[18] Latvijas padomju enciklopēdija (*Soviet Encyclopaedia of Latvia*). Vol. 8. (1986). p. 204. It should be noted that the dowry institution disappeared from the laws governing matrimony in the Soviet Union, because the communist regime of the Union of Soviet Socialist Republics denied the dowry as an element of bourgeois and private proprietorship striving to create a viewpoint that matrimony should be based solely on the feelings of love, eradicating any aspect of pecuniary nature or calculation.

The second chapter deals with the dowry institution in the antiquity – Ancient Greece and Rome.

It can be established that the share of the cultures where the dowry institution was practiced was rather small. The fact is pointed out by American researchers S. Harrell[19] and S. Dickey,[20] who write that out of 536 global cultures listed in Murdock's *Atlas of World Cultures*,[21] only 24 cultures have known the dowry institution, whereas 226 cultures practiced bridewealth, and in 63 cultures contribution by work has been requested in exchange of a bride. The authors specifically emphasize that there was a high degree of social stratification in 16 societies out of 24 who were familiar with the dowry institution.[22] And even though the dowry should not be perceived as a universal institution of the family law, because it existed in a comparatively small number of

[19] Harrell, S. University of Washington. (2016). Retrieved 12.06.2016 from https://anthropology.washington.edu/people/stevan–harrell

[20] Dickey, S. Professor of Anthropology Faculty Liaison for Advising, Anthropology from the University of California–San Diego. (2016). Retrieved 12.06.2016. no https://www.bowdoin.edu/faculty/s/sdickey

[21] Murdock, G.P. (1981). *Atlas of World Cultures.* Pittsburgh: Pittsburgh University Press.

[22] Harrell, S., Dickey S. (1985). Dowry Systems in Complex Society, *Ethnology*, Vol. 24, No. 2 (Apr., 1985). University of Pittsburgh – Of the Commonwealth System of Higher Education pp. 105–12, Retrieved 10.11.2014. no http://www.jstor.org/stable/3773553

cultures inhabiting Europe and Asia, it, however, has been used by 70% of the people worldwide.[23]

Contribution of the antique civilizations to the development of the world has been invaluable, and the ideas of antiquity have survived and are still striving in the modern world. Work of the legislators of the respective epochs in history systematizing and compiling of the fundamental principles of law shows that norms of behaviour most characteristic for the era and most congruent with the moral standards, key models of legal awareness, and guidelines of the sources of law have all been taken into account. It is obvious that the style of development of these legislative acts, by transposing the ideas of the Roman law, as well as the best practices finetuned in the Germanic customary law generation after generation, reflect the distinctive nature of the epoch and have an inherent strive for clarity of thought and simplicity of expression, forming basis of the origins of the nations and national statehood, as well as subsequent formation of the Germanic family of legal systems of the continental Europe becoming a valuable asset of the whole

[23] Anderson S. (2007). The Economics of Dowry and Brideprice. p.152. *Journal of Economic Perspectives*. Volume 21, Number 4, 2007. Pp. 151–174

Europe that presently unites all diversified legal systems of contemporary Europe.

In the ancient world a woman had limited possibilities to take an active part in the economic life; therefore, the dowry held an important role determining comfort of her living conditions. The dowry provided a sense of security for a woman, a possibility consolidated in the law to rely that her sustenance would be secured in cases when the marriage was dissolved for some reason or other. In the Ancient Greece and Ancient Rome, a woman had to obtain a guardian's (tutor's) approval to enter into marriage, even though neither a registry of marriages nor a special wedding ceremony of any kind existed initially. Any of the spouses could file for a divorce.[24]

In more developed cities of Ancient Greece women of ruling classes were under strict control since early childhood already, they were held in virtual captivity. Most information about legal aspects of women's life that has survived until present is about Athens and Sparta. Only women of Ancient Sparta retained relative independence of

[24] Thompson, J.C. (2010). Woman in the Ancient World. Thestatus, role and daily life of women in the ancient civilizations of Egypt, Rome, Athens, Israel and Babylonia. Retrieved 18.06.2011. from http://www.womenintheancientworld.com/index.htm

the male guardians, which can be explained by the special traditions in raising children and division of roles in Ancient Sparta.[25]

Beginning as of the 8th to 4th century BC the bridewealth for the bride disappears in the city-states ("polis") of Greece being replaced by the dowry.[26] Sources of Ancient Greece are silent about explanation as to the reason why this change of tradition has occurred. According to one opinion, the Greco-Roman culture has not known the bridewealth or bride price at all, only gifts to a bride from a groom have existed alongside the dowry.[27]

In Ancient Athens a woman could own such property as clothing, jewellery, slaves; however, she did not have a right to buy a land for herself or enter into contracts. A guardian (tutor) controlled all aspects of the everyday life of a woman; women were also excluded from the political life. Citizenship of Athens allowed a woman to marry citizens of Athens, whereas she was not allowed to enter into marriage

[25] Jarus, O. (2013). History of Ancient Sparta. Retrieved 15.12.2013. from http://www.livescience.com/32035–sparta.html
[26] Botticini, M., Siow, A. (2002). Why Dowries? Retrieved 16.02.2011 from http://homes.chass.utoronto.ca/~siow/papers/dowry.pdf 6.lpp.
[27] Hughes, D.O. (1985). *From brideprice to dowry in Mediterranean Europe.* The Marriage Bargain: Women and Dowries in European History. NewYork: Havorth Press, p. 13

with the so-called metics (metoikoi)[28]– citizens of other city-states (polis) who lived in Athens on permanent basis, unless a marriage contract was concluded between Athens in that particular city-state.[29] Management of the property had to be entrusted to a male; and usually such management of affairs was proposed to the closest male relative of the deceased father, insofar he was ready to marry the daughter of the deceased. If the woman was already married, then such relative of the husband had a right of his own to declare this woman to be his wife, unless a child had already been born to such woman. It was not a frequent occurrence though; however, sometimes this option was used, because it allowed to improve the financial status upon taking over of the dowry.[30] Having analysed 19 marriage contracts concluded in Ancient Athens (6th to 4th century BC), it is obvious that on average, in 89.5% of cases, the dowry

[28] Translation from the Greek language is "migrants". Retrieved 18.06.2016. from http://vesture.eu/index.php/Metoiki.

[29] Schrader, H.P. Woman in the Ancient World. Retrieved 18.06.20112. no http://elysiumgates.com/~helena/Marriage.html, see also: Thompson, J.C. (2010). Woman in the Ancient World. Thestatus, role and daily life of women in the ancient civilizations of Egypt, Rome, Athens, Israel and Babylonia.

[30] Thompson, J.C. (2010). Woman in the Ancient World. The status, role and daily life of women in the ancient civilizations of Egypt, Rome, Athens, Israel and Babylonia. Retrieved 18.06.2012. no http://www.womenintheancientworld.com/index.htm

payments were made in cash, whereas in 10.5% cases – as a right of lease of housing;[31] however, the real estate has never been part of a dowry.

Taking into account the military organisation of Sparta, life of women in Sparta was different from the order established in Athens, because they had more freedom than women of Athens, in no small part owing to the fact that their husbands, fathers and brothers spent most of their days far from home, even raising of boys was taken over by the state from the age of seven;[32] therefore, the women were to a large extent released from household chores and raising children, being relatively free to engage in their personal development.[33]

The marriage was entered into upon an agreement between the groom and bride's parents thereupon. Even though the daughter did have a right to object to the choice

[31] Botticini M., Siouw A. (2003). Why Dowries? *The American Economic Review.* Vol. 93, No 4, p. 1391.

[32] Schrader, H.P. Woman in the Ancient World. Retrieved 18.06.2011 from http://elysiumgates.com/~helena/Marriage.html

[33] Zemītis, G. (2003). *Ārvalstu valsts un tiesību vēsture.* Otrais, papildinātais izdevums. Turība Biznesa augstskola, Retrieved 19.02.2017 from https://juristustudijaslatvijasuniversitate.files.wordpress.com/2015/10/zemitis_arvalstu_valsts_tiesibu_vesture.pdf

of the husband-to-be made by her parents, the daughter herself was not able to choose the groom.[34] Unlike women of Athens, women of Sparta were not deprived of the right of inheritance. Daughters inherited half of the share inherited by sons; moreover, upon marriage they could receive the share of dowry as well. There were no laws that would prevent them from acquiring property, and, in fact, they owned more than 2/5 of the lands of Sparta.[35] In Sparta, thanks to the authority of the legendary legislator Lycurgus[36] (Greek – Λυκούργος) and his initiatives in the capacity of the legislator, the dowry was prohibited.[37]

In the Roman law the dowry (Latin – *dos, dotis* – bride's dowry, gifts,[38] spiritual gift, talent,[39] *res uxoria, uxor* –

[34] Schrader, H.P. Woman in the Ancient World. Retrieved 18.06.2011 from http://elysiumgates.com/~helena/Marriage.html
[35] Sarah B. Pomeroy, (2002). *Spartan Women.* Oxford University Press, USA. p. 82.
[36] Forrest, W.G. (1963). *A History of Sparta 950–192 B.C.* New York: Norton. 1963. p. 50
[37] Kaplan, M.A., (1985). *The Marriage bargain: women and dowries in European history*. New York: Harrington Park Press, p. 17.
[38] *Latīniski – latviska vārdnīca*. (2. izd.). (1940). Bištēviņš. E., Švarcbahs, R. Rīga: Valsts apgādniecība, p. 146.
[39] *Latīņu – latviešu vārdnīca.* (1994). Gavrilovs, A. (sast.). Rīga: Zvaigzne, p. 56.

lawful wife, spouse,[40] *res* – item, property, power,[41] asset, benefit, action, political system[42]) dates back to immemorial times. Translation of the meaning of the word "dowry" as well as its grammatical presentation, in fact, expresses and largely coincides with the legal meaning of the word, and reflect the role of dowry in the ancient society, which shall be perceived only as asset, item, property for a gain. Different researchers of that period of time have varied opinions of that; however, they all have reached a consensus that the dowry has existed in the Roman law, and it has comprised every item that a woman's father, herself or another person delivered to a husband or father-in-law as a token of the woman entering into marriage (bride token).

In the Roman law, significance of the dowry institution can be inferred not only from the fact that the dowry is a component of virtually every marriage subject to certain

[40] *Latīniski – latviska vārdnīca*. (2. izd.). (1940). Bištēviņš. E., Švarcbahs. R., Rīga: Valsts apgādniecība, p. 492.
[41] Ibidem, pp. 406–407.
[42] *Latīņu – latviešu vārdnīca*. (1994). Gavrilovs, A. (sast.). Rīga: Zvaigzne, p. 150;
Encyclopedic dictionary of Roman law. (2004). Berger, A. (ed.) New Jersey: The lawbook exchange., Ltd, Clark p. 776;
Smith, W. (1875). *A Dictionary of Greek and Roman Antiquities.* London: John Murray. p. 1294. Retrieved 12.06.2012 from http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA*/Dos.html

regulation established in the law, but also its significance should be noted with regard to the procedure for dissolution of marriage either, because it gave a leverage for a woman whose dowry was of sufficient size (Latin – *dotata uxor dotātus* – richly endowed[43]) to influence the husband, because the authority to manage the property bestowed on the husband expired in case of the divorce. There were occasions, when, upon expiry of powers to manage wife's property, the husband changed his mind about the divorce.[44] Consequently, the institution of dowry had another function inherent – protection of marriage, and in individual cases it prevented from treatment of marriage in a light-minded manner,[45] thus facilitating stability of marriage, because financial considerations rather effectively put a stop to desires ruled by emotions.

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[43] *Latīniski – latviska vārdnīca.* (1940). (2. izd.). Bištēviņš, E., Švarcbahs, R. Rīga: Valsts apgādniecība, p. 146.

[44] Smith, W. (1875). A Dictionary of Greek and Roman Antiquities. London: John Murray. Retrieved 12.06.2012. no http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA*/Dos.html

[45]Šneidere, A., Institutions of Dowry at the Age of Gender Equality, Latvian Academy of Sciences. The Fifth Year as European Union Member States: Topical Problems in Management of Economics and Law, May 8 – 9, 2009, Riga, p. 254.

The principle of the rule of father was embedded in the patriarchal family: a husband bore a full responsibility for upkeep of a wife and children, and the latter had a right to request alimentation of her (Latin – *ālimentum* – foodstuff, nourishment, aliment[46]).[47] In accordance with the norms of law of Ancient Rome[48] various forms of marriage existed: *cum manu* (Latin – *cum* – when, after, whenever, at the time,[49] *manu* – "by application of hand", when the wife came under control of the husband,[50] *manus* – hand, power, force,[51] *maritus* – spouse, husband[52]), or *sine manu*,

[46] Ibidem. p. 23.
[47] Kalniņš, V. (1977). Romiešu civiltiesību pamati. Rīga: Zvaigzne, pp. 81.–84.
[48] Powell, R. Roman law. Encyclopædia Britannica. Retrieved 18.06.2012. no http://www.britannica.com/EBchecked/topic/507759/Roman–law/41331/Additional–Reading (Ancient Rome from the time of foundation of the city in 753 BC until the fall of the Western Empire, Roman Empire, 5th century AD.)
[49] Latīniski – latviska vārdnīca. (1940). (2. izd.). Bištēviņš, E., Švarcbahs, R. (red.). Rīga: Valsts apgādniecība, pp. 112.
[50] Burdick, W. L. (2004). The Principles of Roman Law and Their Relation to Modern Law. Clark. New Jersey, p. 234. Retrieved 2014.12.11 from https://books.google.lv/books?id=IRkMm73NCEUC&pg=PA230&lpg=PA230&dq=dowry+in+german+civil+law&source=bl&ots=CjnHWpKaLR&sig=LvB6PutNJd4uSXeoQzXmG1xeLVM&hl=en&sa=X&ved=0ahUKEwj6rbrTieXTAhVDFCwKHTwaDTIQ6AEIJjAB#v=onepage&q=dowry%20in%20german%20civil%20law&f=false
[51] Ibidem, p. 277.
[52] Ibidem, p. 278.

"without application of hand", when the wife did not come under control of the husband; however, the wife had to spend three nights at her father's house every year in order to prevent from becoming under control of the husband on the grounds of the statute of limitations, which was one year for Romans.[53]

With regard to the period of Ancient Rome *Iulia lex*, or Julian laws, which are also referred to as *Lex Iulia et Papia Poppaea* or Augustus' Marriage Laws, also referred to as Emperor Augustus' laws on marriage, morals and children,[54]

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[53] Перетерский, И.О., Краснокутский В.А., Новицкий И.Б., Розенталь И.С., Флейшиц Е.А., (2000). Отношение супругов при браке sine manu. Римское частное право. Москва. Юриспруденция. Retrieved 08.06.2012 from http://www.bibliotekar.ru/rimskoe–pravo–2/145.htm; Kalniņš, V. (1977). Romiešu civiltiesību pamati, p. 80.
Lazdiņš, J. (2002). Laulības tiesību ģenēze un evolūcija Latvijā. Latvijas Vēsture, p. 32.

[54] Frank, R.I. (1975). Augustus' Legislation on Marriage and Children. University of California Press. California Studies in Classical Antiquity. Vol. 8, pp. 41–52. Retrieved 19.06.2012 from http://www.jstor.org/discover/10.2307/25010681?uid=3738496&uid=2&uid=4&sid=56263953273
See also: Augustus Named at first Caius Octavius (23 September 63 BC – 19 August AD 14). Retrieved 19.06.2012. no http://encyclopedia.thefreedictionary.com/Augustus;
Ancient Roman laws. Roman Marital law – "ius connubii". Retrieved 08.06.2012. no http://www.mariamilani.com/ancient_rome/Ancient_Roman_laws.htm;
Thompson, J.C. (2010). Woman in the Ancient World. Thestatus, role and daily life of women in the ancient civilizations of Egypt, Rome, Athens, Israel and Babylonia. Retrieved 18.06.2011. no http://www.womenintheancientworld.com/index.htm;

deserve a special nod as more significant from the legal and historical perspective incorporating the norms of the Roman law originated from the 18th to 17th centuries BC,[55] which consolidated the institution of family, regulated marriage, established operation of the institution of dowry, and defined rights of the husband to dispose of the dowry.[56] The husband was given a discretional power of to dispose of the dowry only if it comprised movable property.

The Julian law prescribes that it is prohibited to create a marriage and undertake commitments with women who are in charge of any enterprise or a shop.[57] Possibly, such prohibition was established because of the treatment of women in the society, since it was believed (just as in

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Van Hove, A. (1910). Lex. In The Catholic Encyclopedia. New York: Robert Appleton Company. Retrieved 12.06.2012 from http://www.newadvent.org/cathen/09207b.htm

[55] Julian marriage laws. Retrieved 30.06.2012 from http://www.unrv.com/government/julianmarriage.php;
Lex Julia. Retrieved 30.06.2012. no http://www.unrv.com/government/julianmarriage.php;
http://encyclopedia.thefreedictionary.com/Lex+Julia. (or in Latin Lex Iulia, plural: Leges Juliae/Leges Iuliae, plural in English – Julian laws), are laws of ancient Romans introduced by the family of Julian and operating in 18th to 17th century BC that governed matters of marriage, parents and children, as well as virtue.

[56] Fife, S. (2012). Augustus' Political, Social, and Moral Reforms. Retrieved 08.07.2012. no http://www.ancient.eu/article/116

[57] Ibidem.

Ancient Greece either) that because of their emotional nature women may be reckless and imprudent; and that means that the woman can pose a threat not only to herself, but also to the wellbeing of her husband-to-be, the latter's property; it is difficult to see any other explanation of such prohibition. Contemporary views are quite the opposite – a businesswoman is a guarantee of prosperity not only for herself, but her whole family, and a man can hope for this wellbeing even if he does not own anything himself. Nevertheless, it should be taken into consideration that the shopkeeper could go bankrupt, whereas the husband had to bear liability for the debts of the wife; meanwhile, the wife was not liable for debts of a husband; that also could be the underlying reason for the established order.

During period of the Roman Republic (from 753 BC – 31 BC), as well as during the period of empire, foundations were laid not only for the civil law system of Ancient Rome but contemporary systems of civil law as well, known as "*ius Civile*" (Latin for civil law, rights of order civilian life, legitimacy[58]) – a collection of the provisions of the Roman

[58] *Latīniski – latviska vārdnīca.* (1940). (2. izd.). Bištēviņš, E., Švarcbahs, R. Rīga: Valsts apgādniecība, p. 255.

law that were rooted in the customary law and applied only to the citizens of Rome.[59]

During the period of Roman Empire a custom developed where a husband, upon receiving a dowry from the wife's family, on his part gave the same amount of items of property for the needs of the new family in exchange, and that was considered to be a marriage gift named in Latin *dōnātio antē nuptiae* (*dōnātio* – gift, donation,[60] *antē* – before, beforehand,[61] *nuptiae* – nuptials, marriage[62]).

During the reign of Roman Emperor Theodosius II (*Theodosius II* in Latin) a necessity to systematize norms of law occurred for the purpose to consolidate the Roman Empire and monarchy supplementing them with contemporaneous aspects, including support and legal framework for transfer of the wealth from one generation to the next. On 26 March 429 a committee was formed[63] that

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[59] Roman law. Development of the jus civile and jus gentium. Encyclopædia Britannica. Retrieved 29.06.2012 from http://www.britannica.com/EBchecked/topic/308636/jus–civile

[60] *Latīniski – latviska vārdnīca.* (1940). (2. izd.). Bištēviņš, E., Švarcbahs, R. Rīga: Valsts apgādniecība, p. 146.

[61] Ibidem, p. 30; *Latīņu – latviešu vārdnīca.* (1994). Gavrilovs, A. (sast.). Rīga: Zvaigzne, p. 18.

[62] *Latīniski – latviska vārdnīca.* (1940). (2. izd.). Bištēviņš, E., Švarcbahs, R. Rīga: Valsts apgādniecība, p. 305.

[63] Захватаев, В. Н. (2012). *Кодекс Наполеона*. Москва– Берлин: Информатик Медия, стр. 67–69.

by the year 438 produced Codex Theodosianus (*Theodosian Code* in English),[64] whereby the dowry was introduced as a mandatory component of matrimony.

The Code of Roman Emperor Theodosius II was one of those sources of civil law, which were used in subsequent developmental stages of the systematization of the Roman law, when working on drafting of *Corpus Iuris Civilis*[65] (collection of civil law in Latin; *corpus* – collection,[66] *iuris* – law, court[67], *civilis* – civilian, that of state, political, polite,[68] sociable[69]) under auspices of Justinian I, Emperor of the Eastern Roman Empire of Byzantine Empire (Byzantium) (528 AD – 534 AD). Emperor Justinian I formed a commission of 10 people on 13 February 528,

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[64] The Theodosian Code (Book XVI). (1952). Clyde, P. (trans.) Princeton, New Jersey: The Princeton University Press. Retrieved 16.07.2012. from http://legal–dictionary.thefreedictionary.com/Theodosian+Code;
Latīņu – latviešu vārdnīca. (1994). Gavrilovs, A. (sast.). Rīga: Zvaigzne, p. 18.

[65] Law dictionary. Corpus Juris Civilis. Retrieved 20.07.2012 from http://law.academic.ru/9445/Corpus_Juris_Civilis

[66] *Latīniski – latviska vārdnīca.* (1940). (2. izd.). Bištēviņš, E., Švarcbahs, R. Rīga: Valsts apgādniecība, p. 107.

[67] *Latīņu – latviešu vārdnīca.* (1994). Gavrilovs, A. (sast.). Rīga: Zvaigzne, p. 92.

[68] *Latīniski – latviska vārdnīca.* (1940). (2.izd.). Bištēviņš, E., Švarcbahs, R. Rīga: Valsts apgādniecība, p. 73.

[69] *Latīņu – latviešu vārdnīca.* (1994). Gavrilovs, A. (sast.) Rīga: Zvaigzne, p. 32.

where one of the commissioners was Tribonian, Master of Offices (*magister officiorum*) of the Emperor, jurist and professor of Constantinople's school of law.[70]

The product of the efforts of this commission – the code – was published on 7 April 529. A couple of years later, in order to arrange the ideas and remedy contradictions established in practical application of the norms, a commission headed by Tribonian for codification and coordination was repeatedly formed, and they edited the Code of Justinian (*Codex Justinianus*) coming up with the second edition thereof – *Codex Repetitae Praelectionis* – the present Code of Justinian known to us. The commission wrapped up its proceedings by publication of the code on 16 November 534.

[70]Powell, R. Roman law. Encyclopædia Britannica. Retrieved 18.06.2012 from http://www.britannica.com/EBchecked/topic/507759/Roman–law/41331/Additional–Reading,
Burdick, W. L. (2004). *The Principles of Roman Law and Their Relation to Modern Law*. Clark. New Jersey, pp. 341-345 Retrieved 2014.12.11 from https://books.google.lv/books?id=IRkMm73NCEUC&pg=PA230&lpg=PA230&dq=dowry+in+german+civil+law&source=bl&ots=CjnHWpKaLR&sig=LvB6PutNJd4uSXeoQzXmG1xeLVM&hl=en&sa=X&ved=0ahUKEwj6rbrTieXTAhVDFCwKHTwaDTIQ6AEIJjAB#v=onepage&q=dowry%20in%20german%20civil%20law&f=false

Only this edition of the Code of Justinian has survived until the present, and it consists of 12 books, and it came into effect on 29 December 534.[71] The legal framework governing the dowry is outlined in Paragraphs 8 and 9 of Section 55 of the Code of Justinian restricting the husband's title to the dowry and imposing a duty on the husband in case of death of his wife to return the dowry to father of the deceased wife (Paragraph 5.18.4) (Latin – *dōs prō – fectio*, which literary means going off of the dowry, go away[72]).[73]

The third chapter deals with analysis of the dowry in its heyday: Middle Ages, Modern History, and Contemporary History in Europe, focusing on causes for emergence of the institution of dowry, aspects of existence, legal framework, golden age and gradual decline thereof. In

[71] Berger, A. (2004). *Encyclopedic dictionary of Roman law*. New Jersey: The lawbook exchange., Ltd, Clark. p. 392.Scott, S. P. (1932). The Code. First preface. Concerning the Establishment of a New Code. In: The Civil Law. XII. Cincinnati, Retrieved 16.07.2016 from: http://webu2.upmf–grenoble.fr/DroitRomain/Anglica/codjust_pre1_Scott.htm; The Code. Second preface. Concerning the Confirmation of the Code of Justinian. Retrieved 16.07.2016. no http://webu2.upmfgrenoble.fr/DroitRomain/Anglica/codjust_pre2_Scott.htm; Новицкий, И.Б. (2002). *Римское право.* (7–е издание). Москва: ТЕИС, pp. 34–39.

[72] *Latīniski – latviska vārdnīca.* (1940). (2.izd.). Bištēviņš, E., Švarcbahs, R. Rīga: Valsts apgādniecība, p. 372.

[73] Аннерс, Э. (1994). *История европейского права*. Москва: Наука, p. 162.

the Early Middle Ages, the society in Western Europe revives the tradition of dowry,[74] and this institution plays a significant role there. During the Middle Ages, just like as in the antiquity, the various functions of the dowry were retained. In the 13th century, besides the real estate that the rich families could afford as a bride's dowry, more often cash became part and parcel of the dowry as well.[75] The dowry was a tradition practiced by all social classes of the society – both higher privileged ones having control over the economic resources and the lower classes of the society.[76] A woman without a dowry had no hopes to get married.[77] Affinity to ethnic groups was of no critical importance – the decisive factor with regard to the dowry was *gender*. Among the affluent and influential people, the dowry served as means to consolidate affiliations with families with whom the kindred ties were

[74]Botticini, M., Siow, A. (2002). Why Dowries? Retrieved 16.02.2011 from http://homes.chass.utoronto.ca/~siow/papers/dowry.pdf p. 9.

[75] Kaplan, M.A., (1985). *The Marriage bargain: women and dowries in European history*. New York: Harrington Park Press, p.34-35, Encyclopædia Britannica. Retrieved 29.06.2012. no http://www.britannica.com/topic/dowry

[76] Anderson, S. (2003). Why Dowry Payments Declined with Modernization in Europe but Are Rising in India. *The Journal of Political Economy*. Vol. 111, No. 2, pp. 269–310. Retrieved 07.07.2012 from http://faculty.arts.ubc.ca/asiwan/documents/dowry–jpe.pdf

[77] Brown, D. E. (1999). Human Nature and History. *History and Theory*. Vol. 38, No. 4, p. 140. Retrieved 06.02.2011 from http://www.jstor.org/stable/2678062

formed,[78] which more often than not was an integral component of mapping countries and policies,[79] thus becoming an especially preferred tool for most affluent families to augment their power and riches and sometimes to prove loyalty, or else, it was a convenient tool of foreign policies to resolve territorial issues. For example, in 1661 the royal family of Portugal transferred City of Tangier in Morocco and City of Mumbai in India (former name – Bombay) to the Great Britain as a dowry of Catherine of Braganza upon her nuptials with Charles II, King of England, of Scotland and of Ireland.[80] Wilhelm Kettler[81], who became

[78]King, M.L. (1991). *Women of the Renaissance*. Chicago: The University of Chicago Press, p. 49. Retrieved 12.09.2012. no http://www.scribd.com/doc/29970365/Women-of-the-Renaissance

[79]Ibidem, p. 20.

[80] Love for Sale: Dowries and Bride Prices. The Bride Price Is A Turn About For The Groom. Retrieved 04.08.2010. no http://hubpages.com/hub/LoveForSale;

Ardeshir, D. History of Mumbai. Retrieved 08.09.2012. no http://www.mumbainet.com/template1.php?CID=15&SCID=5;

lark, D.S. (2007). *Encyclopedia of Law and Society: American and Global Perspectives.* California: SAGE Publications. Retrieved 12.06.2012. no https://books.google.lv/books?id=3v1yAwAAQBAJ&lpg=PT505&ots=ccdOmmAPFX&dq=charles_ii_of_england%201661%20marriage%20dowry&hl=ru&pg=PT505#v=onepage&q=mumbai&f=false

[81]Rusovs, B. (1926). *Livonijas Kronika*. Ed.Veispala tulkojums. Rīga: Valters un Rapa, 214.lpp. Retrieved 12.03.2011. nohttp://www.historia.lv/alfabets/R/ru/rusovs_baltasars/teksts

the Duke of Courland in 1587 upon death of his father,[82] received Grobiņa Region that had been pawned to Prussia as a dowry of his wife upon marrying Duchess Sophie of Prussia and Brandenburg (1582-1610) in 1609,[83] thus facilitating unification of territories inhabited by Latvians.[84] This example is interesting from another aspect as well; namely, the role of a dowry as an instrument of foreign politics, because the particular territory of the state was pawned to Prussia in the course of the Livonian War (1560).[85]

Irrespective of the fact that in Europe the dowry institution had an ancient history of origin spanning centuries, which factor should facilitate consolidation of this institution, the turn of the 19th and 20th centuries marks changes in the

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[82]European Kingdoms. Northern Europe. Retrieved 02.03.2011. no http://www.historyfiles.co.uk/KingListsEurope/EasternLivoniaCourland.htm

[83]Specific Prussia. Retrieved 02.03.2011. no http://www.agceep.net/eventdoc/AGCEEP_.eue.htm#evt263002; Latvijas tiesību avoti. Teksti un komentāri. 2.sējums. Poļu un zviedru laiku tiesību avoti. (1561 – 1795). Rīga: Juridiskā koledža, 2006, 190.lpp.

[84]European Kingdoms. Northern Europe. Retrieved 02.03.2011. no http://www.historyfiles.co.uk/KingListsEurope/EasternLivoniaCourland.htm, Prince-Bishops of Courland (Kurland) AD 1232 – 1561, Duchy of Courland & Semigallia, AD 1562 – 1795.

[85]Cahoon, B. Chronology. http://www.worldstatesmen.org/Latvia.htm; Urban, W. (1983). The Origin Of The Livonian War, 1558. *Lituanus, Lithuanian Quarterly Journal Of Arts And Sciences.* Volume 29, No.3-Fall 1983. Retrieved 08.08.2012. no http://www.lituanus.org/1983_3/83_3_02.htm

institution of dowry – improvement of the economic conditions cultivates the society's strive for changes. Industrialization and increase of wellbeing change the ways of providing for a family, and reasoning as well, resulting in the need for dowry dwindling, vanishing in some areas altogether, and it can be observed that the attitude towards this institution becomes ever more indifferent. The old basic function of the dowry – to protect the wife-to-be from possible malicious actions of her husband – diminishes. The way to secure wealth of the bride changes, because in the civilized part of the world wealth does not depend on the dowry anymore – people can accrue wealth in many other ways as well. The former model of patriarchal family is replaced by another model – that of gender equality, which also explains why the institution of dowry is not present in the civil laws of the European countries anymore.

The fourth chapter focuses on a description of the legal framework governing the institution of dowry in history: Ancient Egypt, Mesopotamia, China, India, and contemporary East. Majority of these societies has favoured payments associated with creation of marriage at some point of their historical development, although such payments have

been most varied in their nature and have come from one spouse or the other.

On the one hand, a dowry could be a contribution made by the wife or other persons (sometimes the whole extended family and community contributed) for the newlyweds to commence their cohabitation and create a family; on the other hand, it served as the wife's share in the family property that could be used by all family members.[86]

Since the institution of dowry was regulated by the Roman law, it was common in former territories of the Byzantine Empire either and mainly existed until the golden age of the Ottoman Empire and their invasions into these territories in the 15th century.

Nowadays existence of the institution of dowry in the countries of this region characterizes a socially differentiated society with a low economic value of a woman, monogamous family that extremely aggravates life of a woman and her possibilities to make a career. Parents still view a daughter as a burden in their lives; therefore, girls are discriminated in

[86] Dalmia, S., Lawrence P.G. (Spring, 2005). The Institution of Dowry in India: Why It Continues to Prevail. *The Journal of Developing Areas*, Vol. 38, No. 2, pp. 71–93 Published by: College of Business, Tennessee State University Stable. Retrieved 06.10.2010 from http://www.jstor.org/stable/41929

every conceivable aspect from an early age already; they are deprived of proper health care, food, clothing, and education.

Presumably, the improvement of the standard of living will be more rapid on the continents of Asia and Africa in future, and it will diminish the role and impact of the dowry institution, similarly as it happened in Europe not only with regard to the institution of dowry but also other institution of the family law; namely, in many countries of the continental Europe formerly widows were not considered to be next of kin, which presently, upon consolidation of the fundamental rights, has changed introducing the right of women to equal treatment in the succession law as well, as a result of which the role of the dowry has diminished or completely vanished.

Openness of Europe has facilitated influx of high numbers of immigrants, including formation of large communities of Arabs and Muslims where the institution of dowry is still strong, because it is traditional and still recognized in the countries of origin of these people.[87]

[87]Stump, D. (2011). Prenatal sex selection. Report 1. Committee on Equal Opportunities for Women and Men. Council of Europe, Parliamentary Assembly, Doc. 12715, 16.09.2011. Retrieved 11.10.2012. no http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=13158&Language=EN
See also

Therefore, the role and impact of dowry on the life of contemporary Europeans is bigger that it may seem at the first glance[88] and makes one be more careful in seeking answers and solutions in the modern world of conflicting views and challenges, because it tests the possibilities of coexistence of the values upheld by the European and Muslim communities.

The fifth chapter deals with the tradition of providing a dowry in the Baltic countries, more specifically – in Latvia.

Since the courts in Latvia have not handled the provisions of the Civil Act governing the pecuniary relationship of spouses – dowry – in their practice, there has been virtually no extensive research on this topic, even though since restoration of the effectiveness of the Family

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Zernovski, A., (2010.) Gender-related claims for asylum. Council of Europe. Parliamentary Assembly. Doc. 12350, 26.07.2010. Retrieved 08.11.2012 from http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=13158&Language=EN

Cilevičs, B. (2009.) Improving the quality and consistency of asylum decisions in the Council of Europe member states. Council of Europe. Parliamentary Assembly. Doc. 11990, 15.07.2009. Retrieved 08.11.2012 from http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=13158&Language=EN

[88]El Alami, D.S., (1991) Legal Capacity with Specific Reference to the Marriage Contract. *Arab Law Quarterly*. Vol. 6, No. 2, pp. 190-204, Retrieved 28.06.2011 from http://www.jstor.org/stable/3381835

Law Section of the Civil Act of the Republic of Latvia of 1937, i.e. since 1 September 1993,[89] the issue of understanding of the provisions of the Civil Act governing the pecuniary relationships between spouses in line with their meaning and purpose, and interpretation of these provisions have been most topical in both case law and legal science, which is quite comprehensible – the law continuously lags behind in the constantly changing life unable to keep pace with the actual needs of the fast moving life and becomes obsolete, because it is closely related and interacts for the purpose to secure social and economic needs of an individual, and must reflect changes in the specific society, demand in the culture etc. Since the legislator is striving to use linguistic expression of legal provisions with a sufficient degree of abstraction, legal provisions that are "incongruous with the time" may exist for some time in unaltered form. However, it does not apply to cases when a

[89] Likums "Par atjaunotā Latvijas Republikas 1937. gada Civillikuma ģimenes tiesību daļas spēkā stāšanās laiku un piemērošanas kārtību" (*Act on the Effective Date and Procedure of Application of the Family Law Section of the Civil Act of the Republic of Latvia of 1937*). Adopted: 25.05.1993. Came into effect: 01.09.1993. Amendment made by the act of 29.10.2015, which came into effect 03.12.2015. Latvijas Vēstnesis, 08.06.1993., Nr. 35.; Ziņotājs, 10.06.1993., Nr. 22.

demand arises amongst the society for some new legal institution or deletion of an obsolete one.

The body of provisions of the Civil Act of the Republic of Latvia applicable to the dowry has not changed since the first publication and effective date of these legal provisions on 1 January 1938, with the only exception of adjustments of linguistic nature, more contemporary styling of expression in Articles 112 and 113, where in one instance the phrase "pie kam" (*to boot* in English) is replaced by "turklāt" (*furthermore* in English) in the effective wording, and in the second instance the word "viņas" (*them* in English) is replaced by "šīs tiesības" (*these rights* in English).[90] Though it should be noted that in the course of drafting of the present thesis the institution of dowry was subject to amendments that came into effect on 1 January 2014 converting the monetary unit of the dowry from Latvian lats to euros by rounding it down.[91] For the purpose of ensuring compliance of the legal framework contained in the Civil Act of the Republic of Latvia with the principle of gender equality, the author of this thesis believes that these articles should be replaced by statutory

[90]Likumu un Ministru kabineta noteikumu krājums, 1938. gada 6. marts, 5.burtnīca.
[91]Grozījumi Civillikumā. Pieņemti: 19.09.2013. Stājušies spēkā: 01.01.2014. Latvijas Vēstnesis, 26.09.2013., Nr. 188 (4994).

provisions that would not contract the principle of gender equality while recognizing a right of newlyweds to an allotment of assets by parents or grandparents for the purpose of creating the initial household upon commencing a conjugal life. Since the institution of dowry does not ensure the equality of genders, whereas the social purposes that the society strived to accomplish in the past historic periods can be and are presently achieved by other means that do not contravene with the principle of gender equality, experience of the Austrian legislator, for instance, might serve as an example in this case, where a substation of the institution of dowry (German – *Mitgift*) was made by a new institution of the civil law – domestic equipment (German – *Ausstattung*), and definition of the entitlement of newlyweds to the initial domestic equipment (German – *Anspruch auf Ausstattung*) was provided, as it is introduced in the wording of the General Civil Code of Austria of the year 2015.

Presently it is impossible to find well-known and documented written sources about the dowry in Lithuania and Estonia anymore. The family law of neither Estonia nor Lithuania prescribes the institution of dowry as an integral part of the matrimony regulated by the law. Nevertheless, in both countries the old traditions of dowry, similarly as in Latvia, have been preserved today as merely an element of ethnographic nature, where families in remote rural areas

upholding national values allow us to experience this ancient component of the traditional wedding ritual of the past, not to forget it and preserve this tradition by passing it to future generations.

Soviet occupation deprived both Lithuania and Estonia of an opportunity to complete drafting of their civil acts. It should be noted though that by the year 1940 – forfeiture of independence – drafting of the Civil Code in Estonia had been completed; however, Estonia did not manage to promulgate it, even though the draft Civil Act was submitted to the Parliament in 1940.[92] World War II interfered with these efforts. Therefore, Estonia had a long wait till adoption of the new legal provisions in the family law – until 2 November 1994, when it was finalized and adopted as a law that came into effect on 1 January 1995.

After formation of the independent state the Lithuanian legislator faced similar problems in the civil law as Latvia, and even though a special working party for development of the Lithuanian Civil Act was established in Lithuania in 1937 prohibited from using civil law of other countries,[93]

[92] Latuņina, A. (1995). Par 1937. gada Civillikuma attīstību. *Latvijas Vēstnesis*, 15.12.1995., Nr. 195.

[93] Mikelenas, V. (2000). Unification and Harmonisation of Law at the Turn of the Millennium: the Lithuanian Experience. *Uniform Law*

Lithuanians did not manage to codify the civil law of its state in a single statutory act. The drafts went missing in the chaos of World War II and have not been found yet.[94]

Even though Estonia, just like Latvia, historically used the local law of the Baltic region as the foundation, the Estonian Family Law Act[95] regulates the pecuniary relationship of spouses in contract and in tort differently than the Civil Act of the Republic of Latvia of 1937 and follows the principles of gender equality by strictly establishing equal rights and duties of spouses in a separate paragraph, namely 15 §.[96]

The second section "Creation of Marriage" of the modern Civil Code of Lithuania[97] regulates entering into

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Review, pp. 245–246; another source: Research in family law for modernisation of the Family Law Section of the Civil Act, it is stated on page 2 that work on the new Civil Act was done in Lithuania since 1928 already.

[94] Maksimaitis, M., Vansevičius, S. (1997). Lietuvos Valstybė s Ir Teisės Istorija. Vilnius: Justitia. 77.–83., pp. 106–110,190–192; see also: Lietuvių kalbos atlantas. Leksika, Vilnius, 1977, ž. Nr. 94, Švarcs, F. (2011). *Latvijas 1937. gada 28. janvāra civillikums un tā rašanās vēsture.* Rīga: Tiesu Namu Aģentūra, p. 9.

[95] Igaunijas likums par ģimeni. (*Family Law Act of Estonia*/ Perekonnaseadus). Adopted: 18.11.2009. Effective: 01.07. 2010. RT I 2009, 60, 395.

[96] Ibidem. Part 1. Chapter 3. Division 1. § 15.

[97] Lietuvas Civilkodekss (Lithuania). (*Civil Code of the Republic of Lithuania*). Effective: 1.07.2001. Adopted: 18.07.2000., Law No. VIII–1864 (Amendments: 12.04.2011. No XI–1312). Published: Valstybės

marriage, marriage contract and establishes associated consequences. The Civil Code of Lithuania does not contain the institution of dowry anymore being transformed into a donation to spouses.

In conclusion it should be mentioned that disappearance of the institution of dowry in all three Baltic countries was advanced by the Soviet period when the authorities attempted to eradicate this tradition for the sake of supposed parity and not at all for the sake of gender equality striving to degrade the needs of individuals in a society in attempt to annihilate considerations of financial nature upon entering into marriage. Similarly, the traditional church wedding ceremony was also subject to the attempts of the soviet authorities, not without success, to eradicate it from the daily life of Soviet people. After restoration of the independent state of Latvia both these traditions were reinstated in the civil law of Latvia *de jure*. The church wedding ceremony revived *de facto* as well, whereas the institution of dowry did not. Conversely, even though a statutory prohibition of the institution of dowry exists in India, it is still widely practiced

žinios,2000–09–06, Nr. 74–2262. Art.3.7. Retrieved 04.04.201 from http://www.scribd.com/doc/238911/Civil–Code–of–the–Republic–of–Lithuania

de facto. In Latvia, notwithstanding the existing legal framework of the dowry institution, it does not exist *de facto*. The said allows to draw a conclusion that in spite of centuries old traditions neither the social memory nor presence of legal framework drives and determines abandoning of traditions or abiding by them and preserving thereof. The decisive factors in this regard are rather the diverse social and economic situation in India and Latvia, foreign social stratification inherent in the Eastern nations that is unfamiliar to us, their customary way of life, and level of development of democracy there. In one instance it is important and recognized by the society, maintained irrespective of the prohibition and carefully preserved, because it is often the matter of survival and prestige of the family. In the other instance, the institution of dowry is discarded as worn out and unwanted pair of boots preserving it merely as a relic of history to be displayed in the depositories of museums or by retaining it in the nation's memory to be passed to the generations to come.

The sixth chapter provides an overview of the institution of dowry in the contemporary Europe, where up until early 21st century the Civil Code of France contained a

rather intricate legal framework governing it.[98] Family laws of Austria, Malta, and Catalonia also belong to rare exceptions where this institution had been preserved in the civil law right until the end of the 20th century. A brief overview of the impact and possible risks of the tradition of dowry brought along by the migrants from Eastern regions and regions of South-Eastern Asia residing in Europe is also given.

The era of industrial revolution in Europe has consequences of its own: not only it influences the economy, culture, standard of living of people, but also brings upon industrial upheaval caused by the progress of technical innovation as a result of various improvements in machinery and technologies, inventions, industrialization. Thus, changes in the economic reasoning and understanding of

[98] Code civil. Amended by statutory act No 2006-728 of 23 June 2006- Art. 15, Official Journal of 24 June 2006, came into effect on 1 January 2007. Retrieved 27.08.2011 from https://www.legifrance.gouv.fr/affichCode.do;jsessionid=4C785ECB431C233BA18DAC2134C28991.tpdila21v_3?idSectionTA=LEGISCTA000006150546&cidTexte=LEGITEXT000006070721&dateTexte=20130701 and Code civil. Amended by statutory act No 2006-728 of 23 June 2006 - Art. 15, Official Journal of 24 June 2006, came into effect on 1 January 2007. Retrieved 27.08.2011 from https://www.legifrance.gouv.fr/affichCode.do;jsessionid=4C785ECB431C233BA18DAC2134C28991.tpdila21v_3?idSectionTA=LEGISCTA000006150546&cidTexte=LEGITEXT000006070721&dateTexte=20130701

people about fundamental values of life change and, in general, affect reforms aimed at increasing equality in the public relations, until the legal inequality, insofar it pertains to the countries of European culture, has been eradicated in the course of the twentieth century along the general lines. An individual, and not the gender (being, in fact, an accidental phenomenon), becomes the fundamental asset gradually leading to the equality between men and women. Women acquire voting rights, right to full-fledged participation in the political life of a country. The standard of living rises, and mutual relationship changes within a family. The necessity for legal equality between a husband and a wife starts to consolidate in the public awareness, which consequently takes its place in the national law of the countries of the continental Europe as well. The model of patriarchal family of the past is gradually replaced by another – a model of the gender equality, which is also the reason why the institution of dowry cannot be found in the civil law of European countries anymore.[99] The way how wealth of the bride has been secure has changed – in the civilized part of the world it does not depend on the dowry

[99] Except for Latvia.

anymore. Provision of the dowry by parents or guardians is perceived as unwarranted trust in stability of the marriage. Strive for changes can be observed – the basic function of the dowry of the past to secure sustenance of a woman upon dissolution of the marriage diminishes. Upon further evolution of the law, another institution, not formerly known, emerges – an alimony paid to a former spouse, which is an institution universally recognized in majority of the European countries, including Latvia (since 12 December 2002 Act "Amendments to the Civil Act" comes into effect on 1 January 2003).[100] The economic development allows ensuring stable and permanent income for both men and women. Women hold paid jobs, significance of intellectual labour has increased, and it allows for self-employment and women to gain their own, autonomous income. Establishment of the gender equality in the laws and implementation thereof in the public, economic and family relationships protecting individuals of both genders in case of various social risks, including consolidation of the principle of equality in the employment relationship determines equal social security in the old age in a form of

[100] Amendments to the Civil Act. Adopted: 12.12.2002. Came into effect: 01.01.2003. Latvijas Vēstnesis, 20.12.2002., 187 (2762).

allowances and pensions; consequently, the need for dowry, widow's share dwindles, and the existence of the dowry institution is deprived of its initial logical grounds. In the course of time the previously crucial support function of the dowry institution has been passed to other legal and social instruments. In the case of dowry extension of the right of succession of the surviving spouse, abovementioned pensions, alimony for the spouse or former spouse, social allowances, donations of parents to newlyweds, cohabitation, i.e. incidence of unregistered partnerships between men and women are among the factors serving as a substitution for or causing extinction of the dowry. Love forms the grounds for a relationship accepted in the Western society, and marriage is no longer perceived as a value that should be adhered or preserved in case love is gone and cohabitation is beginning to crumble, which is associated with a radical change of the principles of law and beliefs in the contemporary Europe. Therefore, the institution of dowry, which is intrinsically associated with, possible and exists only in conjunction with the institution of marriage, if preserved in the space of the continental Europe in this situation, looks more like an institutionalized discrimination,

archaic phenomenon not supported by the fundamental human rights.

Closing section of the thesis contains key conclusions drawn upon evaluating the facts obtained in the course of research aimed at substantiating the choice in favour of deletion of the institution from the Family Law Section of the Civil Act of the Republic of Latvia. Reality of the legal system in Latvia and other Europe in general is such that the institution of pecuniary relationship between spouses – dowry – is out of place and contradictory to the internationally promoted principle of gender equality, and in today's world does not provide either practical or other kind of benefit. The thesis is concluded by a list of legal literature used, laws and regulations, archive, bibliography and other documents, and appendices.

CONCLUSIONS AND PROPOSALS

As a result of the research conducted the hypothesis raised in the thesis that "the legal framework of the dowry institution in the Civil Act of the Republic of Latvia contradicts the principle of gender equality of higher legal effect, as the latter is defined in the international laws binding

on the Republic of Latvia and the Latvian law governing the human rights" was confirmed, and presently this institution does not provide either practical or any other benefit required or recognized in the society.

Research of the evolution of the dowry institution also involved an objective to explore everything that is seemingly well-known or at least partially known and familiar, because the researched institution of dowry is deeply rooted and preserved in the spiritual heritage of the Latvian nation – folklore, widely reflected in the fictional literature,[101] and experienced in comparatively recent past traditions witnessed with our own eyes, held in memories of contemporaries, historical testimonies – various sources of information about nations and historical periods.

[101] See: Skalbe, K. "Pasakas", Merķelis, G. "Latvieši", Kaudzīšu Reinis and Matīss "Mērnieku laiki", Rainis, J., "Krauklīts"i, Raiņa, J., poetry, translations and relayed poetry, Ziedonis, I. "Epifānijas I un II", Apsīšu, J. Short stories, Janševskis, J. "Mežvidus ļaudis", Zeibolts, J., novel "Caurie ziedi", Sakse A. "Pasakas par ziediem", Brigadere, A. "Sprīdītis", works of Jaunsudrabiņš, J., short stories and novels of Blaumanis, R., Homer's epos "Odyssey", Shakespeare, W. tragedy "King Lear", Shakespeare, W., comedy "Measure for Measure", Pumpurs, A. epos "Lāčplēsis" (Bearslayer), Estonian epos "Kalevipoeg", Ostrovsky, A. drama "The Poor Bride", Ilf, I., Petrov J. "The Twelve Chairs", Gogol, N. "Dead Souls", Sholokhov, M. novel "And Quiet Flows the Don", and works of other authors.

Exploration of the precondition for emerging of the institution, course of evolution thereof in a continuous historical period – from antiquity to contemporaneity – revealed causes for establishment of the institution, its meaning, factors underlying decline of its impact and disappearance thereof altogether.

Historical evolution of the institution of dowry has seen its golden age and decline, and that was predetermined not only by the legal status of a gender at any particular point in history and society, but also by economic and social conditions and dominant religion affecting objectively existing order of social stratification of the society.

It can also be concluded that at all times, and in all societies, wherever the institution of dowry has existed, it can be found only in conjunction with a marriage, formed in the primaeval society already, under influence of social order and customs of ethnic groups, and is an ancient institution of the civil law, intrinsic element of the pecuniary relationship between spouses inherent in the model of patriarchal family, i.e. such mode of spousal relationship where the husband holds a status of a guardian of the wife, and reflects a historically determined and socially recognized demand for

provision of social security for a woman upon either entering into marriage or dissolution of the marriage.

The dowry has existed in the majority of European and Asian traditional societies as an indispensable part of creating of the marriage, and integral part of everyday life up until recent past[102] and was a common occurrence alongside another payment related to entering into marriage – bride price or bridewealth.

The dowry as an allotment of property by the bride's family to her groom or the bride herself (depending on the specific legal framework) was initially intended to alleviate the troubles and burdens of financial nature associated with the married life, later evolving into an instrument for certain families to retain or increase their influence, form alliances, expand power and influence over a particular region.

[102] Finding Islamic Family Law. Laws, Codes & Commentaries. Harvard Law School Library. Muslim Family Law: Sources, Codes, & Commentaries. Retrieved 11.12.2015. no http://guides.library.harvard.edu/c.php?g=309976&p=2070456 Retrieved 10.03.2015. no Eller, J.D. (2009). Cultural Anthropology: Global Forces. Local Lives. New York, p. 189, 190. The dominance consolidated in the patriarchal law was continuously preserved in Egypt where only from 29 January 2000 women are allowed to file for dissolution of marriage, while waiving of the right to the dowry, similarly as in Jordan (by the Family Law Reform Act of 18 March 2001).

On the other hand, the archaic institute of bride price of bridewealth was mainly and is still practiced in agrarian societies of low level of development, societies where polygamy exists, where women have low value and where the society is rather homogenous.[103]

The institution of dowry did not exist in such ancient, antique societies, which had elements of gender equality inherent, such as Ancient Sparta, where it was even forbidden. In modern societies, which are rooted in the patriarchal family, for example, in Asian superpower India, the prohibition of the dowry institution established by law is unable to fight the actual common practice of this institution. Conversely, in a country based on the matriarchal family, for example, Bhutan (Asia), the traditional law is not familiar with the concept of dowry at all.

Changing economic, cultural, social and political and other factors transform the legal reasoning of particular society that is reflected in changes of the legal framework accordingly.

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[103] Anderson, S., Bidner, C. (2010). Marriage Market Transfers of Resources and Property Rights, 24.05.2010. Retrieved 15.02.2014 from http://web.stanford.edu/group/SITE/archive/SITE_2010/segment_6/segment_6_papers/anderson.pdf Latviešu konversācijas vārdnīca. XVII sēj., Rīgā: A. Gulbis, 1938, 34503.–34504. sl.

Upon diminishing of the significance of the family institution in commencement of sexual cohabitation, where partners cohabit without entering into marriage ever more frequently, increasing of the number of unregistered partnerships, concubinage, same-sex partnerships in modern society, the institution of dowry, which for centuries has been associated solely with creation of marriage, finds itself redundant.

The research also showed that it is impossible to preserve one legal institution of a patriarchal family – dowry – intact in its historical outline, while eradicating other legal institutions of the patriarchal family, such as the institution of the head of the family, where husband had a status of a guardian of his wife entitled to decide on the choice of residence of spouses, raising children etc. Concurrently with dwindling of the role of the institution of the head of the family inherent for a patriarchal society, the model of patriarchal society gradually breaks down, and decline of the significance of the dowry institution can be observed.

When the institution of dowry exhausted its social functions substituting the patriarchal family model with relationships in a family based on equality of genders, small family, a political system, secure in terms of law and social

security, changes in the attitude of the general public towards the institution of dowry can also be observed resulting in a process of gradual disappearance of the institution of dowry.

Research of the social and historical background showed that increase in statutory equality between a husband and a wife allowed a woman to become financially independent diminishing the impact of the dowry institution on her life, gradually introducing changes in raising daughters as well – they were not completely dependent on the volition of their parents anymore, they did not have to acquiesce with a marriage arranged by parents to a well-to-do groom. The husband-to-be also could resist a marriage with a holder of rich dowry at his parent's choice. A freedom of matrimony establishes itself.

Upon consolidation of quality in employment, employment of women outside household, their engagement in the labour market, women obtained a possibility to gain steady and personal income becoming financially independent of either father or husband, and they could establish foundations for potential control over resources, thus becoming open to possibilities of getting involved in decision-making authorities as well.

Changes in the former religious beliefs about insolubility of marriage, the freedom of renunciation and dissolution of marriage led to unprecedented situations – a woman was now able to enter into several marriages in her lifetime that significantly influenced the practice of dowry, because one of the tasks of the dowry institution was to strengthen marriage in a situation when feelings of spouses had cooled off or were not present at all in their marriage; now this function of the dowry institution was made redundant. Besides, further evolution of the law saw emergence of another institution that was not known earlier – alimony payments to the former spouse.

Rights of succession of women have change, an effective system of social security is in place, including with the view of old age, which altogether has created and affected relationship based on equality in the family: legal equality of genders in matrimony, pecuniary relationship between spouses, facilitating disappearance of a patriarchal family and replacement thereof with a neolocal family that predetermined the obvious decline of the institution of dowry.

It should be noted though that it is difficult to systematize findings of research of the practice of the dowry institution in certain countries and regions by describing them

according to uniform principles, because historically the considerable incongruity of development of ancient civilizations existing in different regions of the world show nonuniformity of practice of the dowry institution. Differences in periods of emergence of the institution of dowry render classification of the research according to uniform principles difficult. For example, with regard to exploration of the function of dowry: France is the only country in the world where the dowry was provided for a purpose of boost numbers of residents in a colony by entering into contracts with the so-called King's Daughters or Wards (*filles du roi*), under which their travel expenses were covered by the king and 50 to 100 livres were paid to secure entering into the matrimony. As a result of this dowry programme the French population doubled in the colony (New France) during the reign of King Louis XIV. Another example is Estonia, which was transferred in lieu of the dowry of Margareta Sambiria av Pommerellen as a token of influence and significance, or else, on another occasion Estonia became a dowry of a male nobleman of royal lineage, and not as usual as a component of woman's dowry; nevertheless, the purpose was the same – retaining influence in the region.

There was quite another occasion, involving Latvia this time and the period of reign of Wilhelm Kettler[104] when he became the Duke of Courland after this father's death in 1587.[105] In 1609, upon his marriage to Duchess Sophie of Prussia and Brandenburg (1582-1610) he received Grobiņa Region as his wife's dowry since it had been previously pawned to Prussia,[106] thus facilitating uniting of territories inhabited by Latvians.[107] The above example is worth considering from another aspect as well; namely, the function of dowry as an instrument of foreign politics, because the particular territory of the country was pawned to Prussia in the course of the Livonian War (1560).[108]

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[104]Rusovs, B. (1926). *Livonijas Kronika*. Ed.Veispala tulkojums. Rīga: Valters un Rapa, 214.lpp. Retrieved 12.03.2011. nohttp://www.historia.lv/alfabets/R/ru/rusovs_baltasars/teksts

[105]European Kingdoms. Northern Europe. Retrieved 02.03.2011 from http://www.historyfiles.co.uk/KingListsEurope/EasternLivoniaCourland.htm

[106]Specific Prussia. Retrieved 02.03.2011 from http://www.agceep.net/eventdoc/AGCEEP_.eue.htm#evt263002; Latvijas tiesību avoti. Teksti un komentāri. 2.sējums. Poļu un zviedru laiku tiesību avoti. (1561 – 1795). Rīga: Juridiskā koledža, 2006, p. 190.

[107]European Kingdoms. Northern Europe. Retrieved 02.03.2011 from http://www.historyfiles.co.uk/KingListsEurope/EasternLivoniaCourland.htm, Prince-Bishops of Courland (Kurland) AD 1232 – 1561, Duchy of Courland & Semigallia, AD 1562 – 1795.

[108]Cahoon, B. Chronology. http://www.worldstatesmen.org/Latvia.htm; Urban, W. (1983). The Origin Of The Livonian War, 1558. *Lituanus, Lithuanian Quarterly Journal Of Arts And Sciences.* Volume 29, No.3-

The said cases go beyond the generally accepted practice, and they cannot be reviewed according to uniform principles, because they are unique and form a page of the cultural and historical heritage of nations of the world concurrently with the aspect of the history of law.

Furthermore, research of the dwindling significance of the dowry institution and its decline showed differences either: in one instance rescinding of the institution during the period of the Soviet law in the Baltic countries where authorities tried to eradicate this tradition in the name of alleged equality, far from thinking of the equality of genders. Similarly, the Soviet regime fought against the traditional church wedding and its role in the lives of Soviet people, not without success. After restoration of independent statehood of Latvia, both these traditions were revived in the civil law *de jure*. The church wedding regained its significance *de facto* either, whereas the institution of dowry did not. Conversely, the dowry institution is subject to a statutory prohibition in India, while it exists *de facto*. Meanwhile in Latvia, where the institution of dowry enjoys a legal framework, it is not practiced *de facto*.

Fall 1983. Retrieved 08.08.2012 from http://www.lituanus.org/1983_3/83_3_02.htm

It can be concluded that the institution of dowry has neither social nor legal or even practical grounds in contemporary Latvia; it has lost its original significance. Disappearance of the dowry institution from the public awareness has occurred: it is not used; therefore, there are no actual disputes with this regard. Consequently, there is no case law either. There are no comments on the relevant articles of the Civil Act of the Republic of Latvia, even though comments have been given on other articles of the Family Law Section of the Civil Act of the Republic of Latvia. Therefore, it can be predicted that deletion of the dowry institution from the Civil Act will not cause emotional reaction or counteraction from the general public, as it could be witnessed in India or China after adoption of the statutory acts prohibiting the dowry. The foregoing bears evidence that preservation of the legal framework governing pecuniary relationship between spouses – the institution of dowry – contained in Articles 111-113 of the Family Law Section of the Civil Act of the Republic of Latvia in the civil law of Latvia cannot be substantiated by either practice recognized and common among the general public of Latvia, demand in family relations, or by conformity thereof to constitutional or international provisions and fundamental principles

regarding human rights binding on Latvia of higher legal order. The purpose of any legislature is to arrange public relations in such a way as to uphold the public policy as comprehensively as possible, ensure stability, security, and harmonious development of the state. In order to procure such public policy in reality, for the general public to accept, acknowledge and comply with the law, the legal provision has to be congruous with the times, on arm's length basis balancing interests of social groups and the body of individuals, for the general public to be able to see it as a legal framework of fair compromise. Upon vesting rights and imposing duties, regulating relationships among members of the general public, the state may not side with one gender ignoring interests and rights of the other gender, because the law should always strive to follow the policy of justice. It should be admitted though that sometimes, for the sake of the public policy, such legal provisions are created that the society may perceive as unjust; nevertheless, they have to have some justification, a legitimate purpose. It is crucial to uphold fairness in the legal provision, because "the law is the art of the good and the equitable"[109] (Latin -

[109] Дождев Д.В., (2016) *ARS BONI ET AEQUI В ОПРЕДЕЛЕНИИ ЦЕЛЬСА: ПРАВО МЕЖДУ ИСКУССТВОМ И НАУКОЙ.* Текст

Jus est ars boni et aequi), which means that, by their very nature, the laws are an art of compromises subject to objective processes of evolution of the society, preventing it from stagnation, providing an impulse for further development of the law. Nowadays, in a situation when no justification can be found for existence of a legal institution, not even considerations of feasibility, viewing from the position of "legal awareness, lifestyle and conditions, legal system"[110] and purposes thereof, it is obvious that the institution of dowry does not fit in this context anymore, and presence of this institution in a valid statutory act – Civil Act of the Republic of Latvia – is currently legitimate merely "on the paper" or in a role of the "bare act", and contradicts the human rights as they are recognized presently. And it is of no relevance whether the legal provision is enforceable on mandatory basis or not, that is, irrespective of whether these

научной статьи по специальности «*Государство и право. Юридические науки*", Журнал Труды Института государства права Российской академии наук, *Publius Iuventius Celsus Titus Aufidius Hoenius Severianus* (AD 67– AD 130). Retrieved 25.10.2016. from https://cyberleninka.ru/article/n/ars-boni-et-aequi-v-opredelenii-tselsa-pravo-mezhdu-iskusstvom-i-naukoy

[110] A fragment of a sentence from an article by the Minister of Justice of the first independent state of Latvia: Apsītis, H. (1938.). Mūsu pienākumi un tiesības jaunajā Civillikumā. Prezidenta Ulmaņa Civīllikums. (Rakstu krājums). Rīga, pp. 88–89.

legal provisions are *ius cogens* – peremptory norms or dispositive norms, if the norms governing the institution of dowry collide with the realities of the modern law and fail to ensure actual equality of both genders, they do not comply with the primary goals of a democratic country.

For the purpose of procuring congruency of the legal framework contained in the Civil Act of the Republic of Latvia with the principle of gender equality, the author believes that these articles are to be substituted with legal norms that would not contravene the principle of gender equality, for example, recognizing the right of a newly married couple to allotment of resources by parents or grandparents for formation of a household upon commencement of cohabitation. In this case experience of the Austrian legislator could be useful, for example, as they replaced the institution of dowry by a new institution of the civil law – "domestic equipment" – defining the right of newlyweds to initial domestic equipment, as it is incorporated in the wording of the General Civil Code of Austria of 2015.

Taking into account the findings of the research carried out within the framework of the thesis, the author of the thesis infers that for the purpose of remedying the established

deficiencies it is necessary to ensure conformity of the legal framework contained in the Family Law Section of the Civil Act of the Republic of Latvia with the principle of gender equality that would be aimed at accomplishing the equality in substance, i.e. ensuring equal opportunities for both sexes; therefore, a proposal is made to delete Articles 111, 112, and 113 from the Civil Act of the Republic of Latvia, as it has been done in other countries of the family of law of continental Europe.

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