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THE RIGHT TO DIVORCE – A SAFEGUARD OR A RESTRICTION ON THE SPOUSES' FREEDOM?

Key words: marriage, divorce, grounds for divorce

Summary

The article is dedicated to the analyses of the right to divorce provided by Law on Marriage of 1 February 1921 with the aim of finding the answer to the question of whether, after the dissolution of marriage, the law granted to the former spouses genuine freedom from each other. The basic principles of Law on Marriage are also identified in the article, assessment of case law and statistical materials is provided. The author concludes that divorce did not always give the former spouses genuine freedom, because the spouse who was not at fault in the divorce, in case of being needy, could claim maintenance from the spouse at fault. Such legal procedure did not have a major impact on the number of dissolved marriages. This is proven by the fact that, in the 1930s, Latvia, according to the number of divorces per 1000 marriages entered into, ranked second in Europe, immediately after the communist USSR.

Introduction

The right to dissolve marriage is one of the safeguards for human liberty. In written legal sources, the first records on the dissolution of marriage in the lands inhabited by Latvians (Balts and Livonians) are found in the land (peasants') law recorded in the 13th c. in the Archbishopric of Riga: "If the husband divorces (by running away) his wife, he shall lose his fields and all property, which shall be governed by sons and daughters."¹ It follows from this provision that the property of the party at fault in the dissolution of marriage remained in the possession of family members to ensure means of subsistence to the family. In the same 13th c.,

¹ Rīgas arhibīskapijas zemnieku tiesības [Peasants' Law of the Archbishopric of Riga], Art. 10.b, 10.c. In: Latvijas tiesību avoti. Tekstu un komentāri. Seno parāžu un Livonijas tiesību avoti 10. gs.–16. gs. [Sources of Latvian Law. Texts and Commentaries. Sources of Ancient Customary and Livonian Law 10th–16th c.] Rīga: [Publisher] LU žurnāla "Latvijas vēsture" fonds, 1998, Vol. I, p. 26.

local inhabitants accepted the Roman Catholic faith. According to the Catholic canon law, marriage is a sacrament and could be terminated only by the death of one spouse.² However, for the majority of Latvians as for persons belonging to the peasant class, marriage in church was not mandatory until the collapse of the Confederation of Livonia (1561).

At the beginning of the 16th century, estates in the Confederation of Livonia joined the Evangelic Lutheran Church. Lutherans, contrary to Catholics, were dissolving a marriage on certain conditions.³ During the Polish-Swedish governance during the 16th–18th c., the Evangelic Lutheran Church became consolidated in the Duchy of Courland and the province of Swedish Livonia, whereas the Catholic faith was restituted in the Polish Inflanty⁴ (present-day Latgale/eastern Latvia). Thus, the Catholic Latgalians lost their right to dissolve a marriage.

In the 18th c., the lands inhabited by Latvians were annexed to the Russian Empire.⁵ Similarly to the Catholics, for the Orthodox Church marriage is a sacrament. However, contrary to Catholics, it allowed the dissolution of a marriage on certain conditions⁶, e.g., adultery, complete inability to practice spousal cohabitation, as well as in other cases strictly defined in law.⁷ On 28 December 1832, the Statute of the Russian Evangelic Lutheran Church was adopted.⁸ Apart from the grounds for dissolving a marriage referred to above, the Statute envisaged several other grounds for dissolving a marriage, e.g., malicious abandonment of the other spouse, cruel treatment of the other spouse, debauchery, etc. Thus, before the Republic of Latvia was proclaimed (1918), the majority of Latvians had the formal right to divorce, in accordance with the ecclesiastical law. In reality, as can be deduced from the discussions about the draft Law on Marriage among the members of the Constitutional Assembly of the Republic of Latvia,

² Bunge Fr. G. von. *Geschichte des Liv-, Est- und Curlandischen Privatrechts* [History of Liv-, Est- and Curlandian Private Law]. St. Peterburg: [Publisher] In der Buchdruckerei der Zweiten Abtheilung Sr. Kaisel. Majestat Eigener Canzlei, 1862, p. 12.

³ Baznicu likums un kartiba [Church law and order], Art. XVI §§ I.–XII. In: *Latvijas tiesību avoti. Teksti un komentāri. Polu un zviedru laika tiesību avoti (1561–1795)* [Sources of Latvian Law. Texts and Commentaries. Sources of Law of the Polish and Swedish Times (1561–1795)]. Riga: [Publisher] Juridiska koledža, 2006, Vol. 2, pp. 356–359; Bunge Fr. G. von 1862, p. 176.

⁴ Kalnins V. *Latvijas PSR valsts un tiesību vēsture. I. Feodalisma un toposā kapitalisma laikmets XI – XIX gs.* [History of the State and Law of the Latvian SSR. Age of Feudalism and Emerging Capitalism XI – XIX c.]. Riga: [Publisher] Zvaigzne, 1972, pp. 116–118.

⁵ Dunsdorfs E. *Latvijas vēsture* [History of Latvia], 1710–1800. Sundbyberg: [Publisher] Daugava, 1973, pp. 13–35.

⁶ Ducmanis K. *Iz Baltijas provinci tiesībām* [From the Baltic Provincial Rights]. Riga: [Publisher] P. Verdiņa gramatu pardotavas apgads, 1913, pp. 222–225.

⁷ *Svod” Zakonov” Grazhdanskikh* [Code of Civil Laws] (consolidated texts), Art. 45. In: *Polny svod” zakonov” Rossiyskoy imperii. Kniga 2. Tomy IX–XVI.* S.-Peterburg: [Publisher] izdaniye Yuridicheskago knizhnago magazina, 1911.

⁸ *Ustav Yevangelicheski-Lyuteranskoy Tserkvi v Rossii* [Statutes of the Evangelical Lutheran Church in Russia] (28.12.1832). *Polnoe sobranie zakonov” Rossijskoj imperii* [hereafter – PSZ], Vol. 7, Art. 113–135. Available: https://nlr.ru/e-res/law_r/descript.html [viewed 05.11.2023.].

churches dissolved marriages rarely or did not dissolve them at all.⁹ Therefore, a law that would transfer the right to dissolve a marriage to a state institution was needed. Law on Marriage¹⁰ was adopted on 1 February 1921.

The law changed the previous understanding of marriage law; however, until now Law on Marriage has not been analysed in the literature of legal science. However, all legal aspects related to Law on Marriage cannot be examined within the framework of a single article. Therefore, the author will limit the scope of the article to analysing the right to divorce with the aim of finding an answer to the question of whether Law on Marriage gave to the former spouses, in the case of a divorce, genuine freedom from each other. To achieve fully the aim of the article, the author will identify also the basic principles of the law, examine the most noteworthy clashes of opinions in the course of discussing the draft Law on Marriage at the Constitutional Assembly of the Republic of Latvia (hereafter – the Constitutional Assembly), and will also review case law and statistical materials.

1. Basic principles of Law on Marriage

At the Constitutional Assembly, Alberts Kviesis¹¹ from the Farmers' Union party, who later became the President of the Republic of Latvia, reported on Law on Marriage. According to A. Kviesis' statements, two principles had to be recognised as "the corner-stones" of the law:

- 1) transition from church marriage to civil or secular marriage;
- 2) to the greatest extent possible, make the dissolution of marriage easier.

To make the dissolution of marriage as easy as possible, churches lost the right to dissolve marriage¹². Henceforth, marriage was dissolved by a court as a state institution:

*All inhabitants of Latvia, irrespective of their faith, shall be subject to this law. [...] a court may recognise marriage as having been dissolved only in cases provided for in this law.*¹³

A court's right to dissolve a marriage was the greatest innovation of this law. At the Constitutional Assembly, Latvian poetess, playwright, prose-writer,

⁹ Latvijas Satversmes Sapulces stenogrammas, 13. burtnica, II. sesijas 7. sede, 1920. gada 10. decembrī [Transcripts of the Latvian Constitutional Assembly, 13th Notebook, 7th sitting of II session on 10 December 1920] (hereafter – LCA, 13th Notebook), p. 1560.

¹⁰ Likums par laulību [Law on Marriage] (01.02.1921). Likumu un valdības rīkojumu krājums [Collection of laws and government orders], 1921, 6. burtnica [6th Notebook], Art. 1, 41.

¹¹ A. Kviesis was the President of the Republic of Latvia from 1930 until 1936.

¹² Namely: the courts of religious organisation.

¹³ Law on Marriage, Art. 1, 41.

translator, active on the cultural and social-political scene, (hereafter – poetess) Aspazija¹⁴ commented passionately on the importance of this right:

*Let us remind ourselves of the holy of holies that the church marriage has been until now. It forged the fates of two persons together for life, no matter, even if they through this sinned against the very law of life; it was not important, the only important thing was that two persons were branded by the church for their entire lives.*¹⁵

The largest Christian denominations, except Catholics, as described above, permitted divorce on certain conditions also before Law on Marriage entered into force.¹⁶ During the debates of the members of the Constitutional Assembly, it was admitted also by poetess Aspazija. However, not all churches were dissolving marriages, and those religious organisations, which were dissolving marriage, did it rarely or reluctantly. Thus, granting to courts the right to dissolve marriage, in accordance with grounds defined in the law, was significant progress in human rights to freedom.

2. Grounds for divorce

Presenting the right to divorce to the Members of the Constitutional Assembly, A. Kviesis explained that all existing grounds for divorce had been retained. This means that the drafting of the section on divorce in this law was based on canon law. It needs to be added, however, that the grounds for divorce, taken from canon law, had been amended in accordance with the spirit of the times, and also new grounds for divorce were introduced. For example, “[s]pecial novelty is that marriage can be dissolved also without any reason at all if both spouses wish so”.¹⁷ A. Kviesis, however, did not refer to the canon law of any particular church. Comparing the legal regulation of “Marriage Law” with the right to dissolve the marriage, included in the statutes of major religious organisations, the author concludes that the legislator, in drafting the law, had used the canon law of the Evangelic Lutheran Church as the basis. Such actions by the working group that drafted the law can be easily explained. The majority of inhabitants in interwar Latvia belonged to the Evangelic Lutheran Church¹⁸, likewise, the most extensive enumeration of grounds for divorce could be found in the Lutheran law.

¹⁴ Aspazija – real name Elza Rozenberga, born Johanna Emilija Lizete Rozenberga (following marriage to Janis Plieksans – Elza Plieksane). See Aspazija. Nacionāla enciklopēdija [National Encyclopaedia]. Available: <https://enciklopedija.lv/skirklis/31832> [viewed 09.11.2023.].

¹⁵ LCA, 13th Notebook, p. 1560.

¹⁶ Ducmanis K. 1913, pp. 222–228.

¹⁷ LCA, 13th Notebook, p. 1555; Law on Marriage, Art. 51.

¹⁸ Silde A. Pirma republika. Esejas par Latvijas valsti [First Republic. Essays on the State of Latvia]. Rīga: [Publisher] Elpa, 1993, p. 271.

Adultery¹⁹, physical inability to consummate marriage²⁰ and disgust for the other spouse²¹, for example, were retained as the traditional grounds for divorce. The right of underage spouses to demand divorce without the mediation of guardians also must be noted as a novelty, “since they have concluded a marriage they can also turn to a court with an independent claim”²², moreover “[f]or married wives summoning an assistant [is no longer] mandatory”²³. The legislator’s aim to introduce the principle of gender equality in marriage law can be discerned here. The provision that, after divorce, not only the wife who was not at fault, as it was previously²⁴, but also the husband, in case of poverty, could demand maintenance from the former wife, upon the condition if “the wife has sufficient means”²⁵, also was subordinated to the gender equality principle.

Understandably, with such legal regulation, the number of cases of cohabitation without marriage increased. It is evident from discussions in the press, pointing to advantages of cohabitation without marriage, e.g.: “cohabitation without marriage is not subject to the consequences of a marriage agreement [but] the world of emotions is absolutely the same both in marriage and cohabitation without marriage. Sometimes it is even said that emotions are stronger in cohabitation without marriage, which can be explained by the fear that the other party might discontinue this cohabitation without any problems”.²⁶

The Latvian Senate has explained the duty to provide maintenance in accordance with the equality principle in several of its judgements. Thus, it is noted in the judgement of 26 May 1937 that “the court must take into account the social status and property of the spouses [...] concerning the divorced wife who is not at fault, first of all, the matter whether she is poor must be resolved, and who of the spouses has a better status in terms of property, and if the wife has a better status as regards property than the husband then the latter’s duty to

¹⁹ Code of Civil Laws, Art. 45, Statutes of the Evangelical Lutheran Church in Russia, Art. 369 (1), Law on Marriage, Art. 42.

²⁰ Code of Civil Laws, Art. 45, Statutes of the Evangelical Lutheran Church in Russia, Art. 369 (4), Law on Marriage, Art. 44.

²¹ Statutes of the Evangelical Lutheran Church in Russia, Art. 369 (4), Law on Marriage, Art. 46.

²² LCA, 13th Notebook, p. 1555; Law on Marriage, Art. 65.

²³ Law on Marriage, Art. 65.

²⁴ “If by the judgement on dissolving the marriage the husband has been found at fault he must provide proper maintenance to his wife insofar as and until she needs it. However, upon entering a new marriage, the divorced wife loses the right to such maintenance.” See Svod” mestny” uzakoneniy guberniy Ostzeyskikh” Chast’ tretiya. Zakony grazhdanskiye [Code of Local Laws of the Baltic Provinces. Part three. Civil laws]. Sanktpeterburg: [Publisher] V” Tipografii otdeleniya sobstvennoy Ye. I. V. Kantselyarii, 1864, Art. 124; Statutes of the Evangelical Lutheran Church in Russia, Art. 324.

²⁵ LCA, 13th Notebook, p. 1573; Law on Marriage, Art. 60.

²⁶ Strelerts T. Bezlaulibas kopdzive no procesualo likuma viedokla [Cohabitation without Marriage from the Perspective of Procedural Law]. Tieslietu Ministrijas Vestnesis [Bulletin of the Ministry of Justice], 1939, pp. 707–710.

support the divorced wife ceases.”²⁷ A conclusion of similar content is found also in a judgement of 27 October of the same year: if the former husband’s status as regards property is poor his duty to support the former wife ceases.²⁸ Thus, the case law of the Latvian Senate, abiding by the purpose of the law, quite validly noted that, pursuant to the equality principle, only a spouse who was needy could demand maintenance and the obligation to provide maintenance ceased for that former spouse who was needy. Gender equality not only gives rights but also imposes obligations. Before the democratic Republic of Latvia was proclaimed, the claim for maintenance, compliant with the class and social status, could be brought only by the wife (former wife).²⁹ In a democratic republic³⁰, this right, in accordance with the equality principle, was granted also to a former husband in need.

Care for the existence (growth) of the Latvian nation was included in the provision that “[s]pouse shall have the right to request a divorce if the other spouse is infertile [...]”³¹ and the husband’s right to demand “[...] divorce if the wife is unable to bear a child”³².

Incurable disease of a spouse was one of the grounds for divorce in the canon law of the Lutheran church.³³ The medical practice of the times showed that often it was difficult or even impossible to determine whether the disease was curable. Therefore the legislator introduced the concept of “a disease that is hard to cure, replacing “incurable disease”: “The spouses shall have the right to demand divorce if the other spouse is sick with prolonged, hard-to-cure feebleness of mind or contagious disease of the same kind”³⁴.

On 11 July 1936, the Latvian Senate examined a case in which a guardian demanded divorce in the interests of a mentally ill person.³⁵ Contrary to the content

²⁷ 1937. gada 26. maija Senata spriedums lieta [The Senate’s Judgement of 26 May 1937 in Case] No. 39. In: *Latvijas Senata spriedumi (1918–1940)*. 14. sejums. Senata Civila kasācijas departamenta spriedumi [Judgements of the Latvian Senate (1918–1940). Volume 14. Judgements by the Civil Cassation Department of the Senate]. Rīga: [Publisher] Faksimilizdevums, 1998, p. 5416.

²⁸ 1937. gada 27. oktobra Senata spriedums lieta [The Senate’s Judgement of 27 October 1937 in Case] No. 57. In: *Latvijas Senata spriedumi (1918–1940)*. 14. sejums. Senata Civila kasācijas spriedumi [Judgements of the Latvian Senate (1918–1940). Volume 14. Judgements by the Civil Cassation Department of the Senate]. Rīga: [Publisher] Faksimilizdevums, 1998, p. 5437.

²⁹ Kalnins V. 1972, pp. 311–312.

³⁰ “1. Latvia is an independent democratic republic.” See *The Constitution of the Republic of Latvia (15.02.1922)*. Available: <https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia> [viewed 05.11.2023.].

³¹ Law on Marriage, Art. 47 (a).

³² LCA, 13th Notebook, p. 1557; Law on Marriage, (note to) Art. 47.

³³ See, for instance, Statutes of the Evangelical Lutheran Church in Russia.

³⁴ Law on Marriage, Art. 45.

³⁵ 1936. gada 11. jūnija Senata spriedums lieta Nr. 72 [The Senate’s Judgement of 11 June 1936 in Case No. 72]. In: *Latvijas Senata spriedumi (1918–1940)*. 13. sejums. Senata Civila kasācijas departamenta spriedumi (1934–1936) [Judgements of the Latvian Senate (1918–1940). Volume 13. Judgements by the Civil Cassation Department of the Senate (1934–1936)]. Rīga: [Publisher] Faksimilizdevums, 1998, pp. 5292–5293.

of the legal provision, the divorce was not demanded by the mentally healthy spouse but, just the opposite, by the guardian of the mentally ill person in the interests of this person. The grounds for demanding the divorce was the fact that the mentally healthy spouse treated the mentally feeble spouse with unbearable contempt. Within the case law of interwar Latvia, the importance of this case lies in the fact that the reasoning of the judgement by the Court Chamber, in many ways based on the German law, clashed with the reasoning in the Senate's judgement, in many ways based on the case law of the former Ruling Senate of Russia³⁶ (hereafter – the Russian Senate).

In the Court Chamber's view, "the guardian of the mentally ill person should care for the personal wellbeing of the sick person and defend the rights, restricted by the disease, to the same extent the sick person himself would have done being in good health"³⁷. This led to the Court Chamber's conclusion that the guardian had the right to demand divorce in the interests of the mentally feeble person. The Latvian Senate disagreed.

The Latvian Senate, on the basis of the Russian Senate's case law, noted that "[...] the protection of such rights of the ward that are so closely and inseparably linked to the subject of rights himself that they cannot be exercised in the procedure of legal representation does not fall within the guardian's competence".³⁸ To explain this thesis, the Latvian Senate referred mainly to "the letter of law". For example, pursuant to Article 1523 of the Statute of Civil Procedure, "submission of a request to register a child born out of wedlock through a representative is inadmissible; [a guardian] may not draw up a will in the name of the ward [Code of Local Laws, Article 1984, Article 1988]"³⁹, etc. The Latvian Senate deduced from this that there were several legal relations, in which the guardian did not have the right to represent his ward. Moreover, it follows from the verbatim text of Law on Marriage, which, being a special law, cannot be construed broadly, that, in the aforementioned case, only one of the spouses "[...]has the right to bring the claim regarding dissolution of marriage, i.e., the one who is in good health".⁴⁰

The Republic of Latvia, though, by Law on Leaving in Force Former Laws of Russia, adopted by the People's Council on 5 December 1919, had declared that "[a]ll former laws of Latvia, which existed within the borders of Latvia until 24 October 1917, temporarily shall be considered as being valid [...]".⁴¹ Thus, also the case law of the Russian Senate could be used to substantiate the ruling. However, its use should have been reasonable and aimed at a fair resolution to

³⁶ On 1 September 1917, the Russian Empire was proclaimed a republic and, as such, existed until 24–25 October, O.S., when Bolsheviks came to power in former Russia.

³⁷ The Senate's Judgement of 11 June 1936 in Case No. 72, p. 5292.

³⁸ *Ibid.*, p. 5293.

³⁹ *Ibid.*, p. 5292.

⁴⁰ *Ibid.*, p. 5293.

⁴¹ Law on Leaving in Force Former Laws of Russia (05.12.1919). *Likumu un valdības rīkojumu krājums* [Collection of laws and government orders], 31.12.1919, No. 13, (document) No. 154.

the collision of interests, in which, in the author's opinion, the Latvian Senate did not succeed in this case.

3. Clashes of opinions in discussing the draft law

Law on Marriage defined 18 grounds for divorce.⁴² Several deputies felt perplexed by this considerable number of grounds for dissolving marriage. For example, Francis Trasuns from Latgale Christian Farmers' Union noted that one or two grounds for divorce would suffice:

*I cannot understand why this long list of reasons when marriage can be dissolved when one and only one paragraph would suffice – disgust felt by one or the other person towards the other. I simply [go to] the civil institution or a judge and tell that my wife or my husband is disgusting. [...] Then there is one more paragraph – they both agree that they do not want to live together anymore. It is enough with these two §§.*⁴³

On the one hand, F. Trasuns' opinion that it would be sufficient to have one or two grounds for divorce could be upheld; however, dissolution of marriage in addition to civil law consequences can also bear penal consequences, as it was validly pointed out by Nikolajs Kalnins from the party of social democrats: “[j]udicial institutions are trying to establish, which party is at fault, which of the spouses has harmed the other party. In this sense, dissolution of marriage has also a criminal nature.”⁴⁴

The party at fault in the divorce lost the right to demand, in case of need, maintenance from the divorced spouse; moreover, upon the husband's request, the wife could be prohibited from being called by the former husband's surname.⁴⁵ Adultery⁴⁶, malicious abandonment of the other spouse⁴⁷, commitment of a shameful crime⁴⁸, etc. were not only the grounds for dissolving marriage but also indicated clearly the party at fault in the divorce. The extensive enumeration of the grounds for divorce made the courts' work considerably easier in determining the party at fault in a divorce case.

⁴² Apart from the described grounds for divorce, the law provided for the right to demand divorce in the case where the life or health of the other spouse had been threatened or in the case of torture (Art. 43); malicious abandonment (longer than a year) of the other spouse (Art. 44); or if the spouses had been living separately for three years without interruption (Art. 50); if the other spouse had acted criminally or led so dishonest and debauched life that continuation of cohabitation in marriage could not be demanded (Art. 46); or if the married life was so broken that its continuation could not be demanded (Art. 49).

⁴³ LCA, 13th Notebook, p. 1567.

⁴⁴ LCA, 13th Notebook, p. 1569.

⁴⁵ Law on Marriage, Art. 60–61.

⁴⁶ Law on Marriage, Art. 42.

⁴⁷ Law on Marriage, Art. 44.

⁴⁸ Law on Marriage, Art. 46.

The content of Article 51 in the draft law also caused considerable clashes of opinions among the deputies of the Constitutional Assembly:

*Marriage shall be dissolved also on the basis of a request from one of the spouses, without indicating any reasons for divorce. In such a case, as regards the consequences of the divorce, the claimant shall be equalled to the party at fault.*⁴⁹

Judging by the transcripts of the Constitutional Assembly, mainly male deputies demanded the deletion of this provision in the interests of women⁵⁰. For example, Reinharads Gustavs from the Christian National Union warned: “If we adopt this law we shall give the possibility to take a new wife every month and force out the old one.”⁵¹ Opposing the male majority, poetess Aspazija, already mentioned above, noted that women did not need male pity because a woman could find a job just like a man, and:

*A woman might not like the man who leaves his wife, walks along boulevards, goes to cafes, gets drunk, who is a lecher, and she will not keep such a man. Do you think that a husband is such a precious thing for a woman when she should lose him? (Laughter). [...] Therefore, make way for the new woman arriving and step back in time, otherwise she will walk over you! (Applause).*⁵²

At the Constitutional Assembly, not all female deputies upheld Aspazija’s view. Thus, Zelma Cesniek-Freudenfeld from the non-party group was convinced that:

*We should not view marriage only as personal pleasure but also as a certain duty to be fulfilled for the other loved persons and one’s descendants, as well as for the state [...] If the married life turns out to be unbearable then the spouses will find an exit in our new marriage law, even without Article 51, but, by adopting Article 51, we would diminish the sanctity of marriage and recognition of its seriousness.*⁵³

Although Aspazija’s address was appreciated by many deputies, the grounds for divorce, defined in Article 51, was not included in Law on Marriage by a small majority of votes. The understanding of “the new woman arriving” or the future woman, who is independent in all situations in life, had not yet become consolidated

⁴⁹ Latvijas Satversmes Sapulces stenogrammas. I. burtnica. Satversmes Sapulces izdevums. 1921. III. Sesijas 4. sēde 1. februārī 1921. gada [Transcripts of the Latvian Constitutional Assembly. Notebook I. Publication of the Constitutional Assembly. 1921. 4th sitting of III session on 1 February 1921 (hereafter – LCA, 14th Notebook], p. 58.

⁵⁰ Not all male deputies were against adoption of this provision. For example, N. Kalnins noted ironically that those deputies who wanted to delete this article feared that their wives would leave them. See LCA, 14th Notebook, p. 64.

⁵¹ LCA, 14th Notebook, p. 60.

⁵² Ibid., p. 59.

⁵³ Ibid., p. 62.

in the legal consciousness of the majority of deputies of the Constitutional Assembly. They still wanted to see the Latvian woman as being such that she, in fact, no longer was, as was later proven by the data on divorce.

4. Statistical data on dissolved marriages

In the first half of the 1930s, statistics on dissolved marriages and causes of divorce was collected (hereafter – the study). The study shows that, as regards the number of dissolved marriages, Latvia ranked as the second in Europe, immediately after the USSR. In Latvia, per 1000 of the marriages concluded 95.5 ended in divorce. In the USSR, these numbers were, respectively, 221.6 divorces per 1000 marriages concluded. To compare, Finland had only 49.3 divorces per 1000 marriages concluded. The Finns decided to break off the family ties almost twice as rarely, compared to the Latvians. The divorce rate of Estonians differed from that of the Finns but was similar to that of the Latvians. Estonia had 87.4 divorces per 1000 concluded marriages.⁵⁴ In the author's opinion, this can be explained by the shared history of both nations, spanning more than 700 years, and the similar legal consciousness that had evolved during these centuries.⁵⁵

The courts had recognised as the grounds for divorce “adultery, torture, beating, malicious abandonment, feeble mindedness, dishonourable life, infertility, breakdown of cohabitation, etc.”⁵⁶. The study does not single out single dominant grounds for divorce. However, the study reveals certain consistencies:

- 1) childless marriages broke down most frequently – 55–60% of all dissolved marriages;
- 2) spouses divorced most often after five to nine years of cohabitation (approximately one-third of all dissolved marriages);
- 3) women aged from 25 to 29 years and men aged from 30 to 34 years divorced most frequently.

The fee for dissolving marriage was increased to decrease the number of divorces. However, as proven by the study, increasing the fee did not decrease the number of dissolved marriages.⁵⁷ The data of the study allow concluding that one of the purposes set for Law on Marriage, i.e., to make the dissolution of marriage as easy as possible, was achieved. The freedom from an undesirable

⁵⁴ Raibarts J. Piezīmes par laulības skiršanu [Notes on Divorce]. Tieslietu Ministrijas Vestnesis [Bulletin of the Ministry of Justice], 1939, pp. 707–708.

⁵⁵ Svabe A. Zemes attiecību un zemes reformu vēsture Latvijā [History of land relations and land reforms in Latvia]. Rīga: atsevišķs novilkums no “Latvijas agrārā reforma” [a separate extract from “Agrarian reform of Latvia”], 1930, pp. 7–175; Osipova S. Establishing the University of Latvia. In: Legal Science: Functions, Significance and Future in Legal Systems II. Rīga: University of Latvia Press, 2020, pp. 86–98. Available: https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juridiskas-konferences/ISCFLUL-7-2019/Book-iscflul.7.2_.pdf [viewed 07.11.2023.].

⁵⁶ Raibarts J. 1939, p. 709.

⁵⁷ Ibid., pp. 707–710.

spouse was rated higher than the possible duty to provide life-long maintenance to a former spouse in need.

Conclusions

1. One of the purposes (basic principles) of Law on Marriage, i.e., “to make the dissolution of marriage as easy as possible”, was achieved. At the beginning of the 1930s, as to the number of divorces, Latvia ranked second in Europe, immediately after the communist USSR.
2. The drafting of divorce law was mainly based on the canon law of the Evangelic Lutheran church, which, complying with the spirit of the times, was amended and supplemented by some new grounds for divorce, respecting the gender equality principle.
3. Law on Marriage granted the right to demand maintenance from the former spouse at fault in divorce not only to the former wife, as previously, but also to the husband, in case of need. Embodiment of the gender equality principle in the marriage law was considerable progress. However, the obligation to provide maintenance to the former spouse after the divorce went against the purpose of divorce – to give former spouses freedom from each other. Thus, Law on Marriage established significant restrictions on freedom for the party at fault in divorce.
4. Pursuant to the case law of the Latvian Senate, a spouse was released from the duty to provide maintenance to the former spouse if 1) the party at fault in divorce was needy; 2) the party who was not at fault in divorce, as regards property, was in a better situation than the party at fault in divorce.

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