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THE SCANDINAVIAN IMPACT TO ESTONIAN FAMILY LAW. LEGAL AND HISTORICAL ANALYSIS

Bachelor Thesis

Supervisor: Kristi Joamets, Ph.D.

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I hereby declare that I am the sole author of this Bachelor Thesis and it has not been presented to any other university of examination.

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“.....“..... 2017

The Bachelor Thesis meets the established requirements

Supervisor Kristi Joamets, Ph.D.

“.....“..... 2017

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Introduction

Throughout its long and dramatic history, the culture of Estonia has always been closely related to national cultures of its northern neighbours, Finland and Sweden. Ethnically, Estonians belong to the Finno-Ugric cultural group, which makes them close to Finnish people, who live to the north of Estonia. At the same time, like their relatives from Finland, Estonian people share a number of unique qualities, which made them more distant from other Finno-Ugric ethnic groups. Moreover, these qualities have also brought Estonians and Finns closer to Scandinavian or, in other words, Nordic culture.

Since the earliest era in Estonian history, ancient Estonians had already established trade and cultural relations with the region of Scandinavia. Later, during the Era of Vikings, these relations became closer and closer.[1] At the beginning of the 13th century, the territory of Estonia was conquered by the Kingdom of Denmark, one of the Nordic nations, and the Danish rule has begun. After the Livonian War and the dissolution of the Livonian Order, the Swedish rule was established over the Estonian territory.[2] During this long era, the traditional Estonian style of life as well as the mentality of Estonians has been greatly influenced by the domination of Scandinavian culture in Medieval Livonia. Consequently, this influence also played its role in formation of Estonian legal culture.

The research question of this Thesis work is "what impact on the Estonian legal culture in the context of family legislation has been exerted by coexistence with other Scandinavian countries?" This research work raises the question of the impact, which Scandinavian countries caused on the legal culture of the Republic of Estonia. The primary goal, which this research work aims to achieve, is to arrange an analysis of family legislation of Estonia and, by comparing it with family legislation of Finland, to establish the degree of similarity of these systems, which will provide an irrefragable answer to the question of the influence of the 'Scandinavian Impact' on the legal culture of the Republic of Estonia. The result of this Thesis will be achieved by using a number of different research methods: empirical research, comparative analysis, qualitative and legal interpretation methods. The reason, why the comparison will be conducted between family law systems of Estonia and Finland is the following: Finland, like Estonia, is also populated by Finno-Ugric people. At the same time, however, Finland has very strong legal and cultural connections with Sweden, which made Finland a Nordic nation nowadays. The combination of these facts make

[1] History of Estonia during the Iron Age. www.estonica.org/en/History/9000_BC-ca_1200_Prehistoric_Estonia/The_Iron_Age/ (10.05.2017)
[2] Foreign conquest and formation of a new administrative division. www.estonica.org/en/History/ca_1200-1558_Estonian_middle_ages/Foreign_conquest_and_formation_of_a_new_administrative_division/ (10.05.2017)

Finland a perfect subject for comparison of legal systems as the current degree of integration of Finnish law into the Nordic legal family may give us the important information concerning the future progress of integration of Estonia into this certain legal family.

It is also possible to notice that some of the existing legal acts of Estonia are based on German legal traditions. This statement is true since there is a noticeable trace of German influence in Estonian history. Moreover, as it will be described below, it is a common feature of Estonian legislation to import some of legal provisions from systems of other countries.[3] Since the topic of German influence on Estonian legal culture is not a subject of this research, it will not be covered.

The first chapter of this research work will set its primary focus on the history of the Scandinavian Law and will cover the distinctive features of this legal family in order to define the position of the Scandinavian Law in relation to other existing systems of legislation. The first chapter will also cover history of the family law of Finland and the main turning points in its past in order to show the connections of this system with the Nordic legal family. The second chapter will change its focus to the legal-historical analysis of legislation of the Republic of Estonia and will cover the most important points in Estonian legal history in order to determine the relation of the Estonian family law to the Scandinavian law branch. The conclusion will introduce the legal comparison between the most relevant legal provisions of family legislation of Estonia and Finland, which will establish in a practical manner the degree of similarity of these systems. This chapter will present provisions related to childcare, parental leave, maternity protection, family allowances, marriage, divorce and, at last, cohabitation and civil unions.

Of course, this kind of research must be conducted taking into account all the branches of law, not only the family legislation. However, it would be impossible to combine all this information into one Bachelor Thesis due to a number of limitations. It means that the comparative research will be conducted based on family legislation only. Nevertheless, one may argue whether the above-described provisions like childcare, parental leave or family allowances could be actually considered family law. The term ‘family law’ in itself refers to a number of various concepts. First, family law is a set of norms governing family relations. Secondly, family law is a set of regulations containing family precepts of law, i.e. the family legislation. Thirdly, one calls family law a system of knowledge of the family and legal phenomena, i.e. science, which means that family law is a legal science. Finally, family law is a legal discipline, which is studied in legal universities.[4] Generally speaking, the term ‘family law’ unites both legal and sociological sides. Therefore, since

[3] See 2.1

[4] Gongalo, B. M., Krasheninnikov, P. V., Mikheeva, L. Yu., Ruzakova, O. A. Family Law: The Study Book, Krasheninnikov, P. V. (Ed.), Statut, Moscow, 2008, pp 4–7, p 4

the borders of the ‘family law’ are not always clear, in this Thesis, the provided topics will be discussed in a wider understanding of this term.

1. History and development of Finnish family legislation in the context of the Scandinavian Law

1.1 Defining the place of the Scandinavian Law

The Scandinavian Law unites legal systems of the states of Northern Europe: Sweden, Denmark, Norway, Finland, and Iceland.[5] At the same time, some authors also include legal systems of the states of the Baltic into this family.[6]

The originality of a geographical location, similarity of tenor of life, the closest economic, cultural and political connections between the northern states of Europe promoted formation of the general legal thinking and legal culture. All this promoted close legal cooperation between them. It should be noted that legal cooperation between these states has begun earlier than in continental Europe.[7]

For a variety of reasons, which include colonial expansion, reception, ideological influence, etc., there were many national systems of law out of the European borders, which, by a number of clauses, may be considered parts of the Romano-Germanic family. They include legal systems of the Latin America, Japan and Scandinavia.[8]

In spite of the fact that countries of Northern Europe – Sweden, Norway, Denmark, Iceland and Finland are geographically closer to the countries of Romano-Germanic legal family, than, for example, countries of the Latin America or Japan, much more difficulties arise in case, if their legal systems are considered a part of the Romano-German legal tradition. Some European authors in general deny their belonging to this family, approving originality and autonomy of the Scandinavian law.[9]

Definition of the place of the Scandinavian law among the main legal families is a subject of old and very brisk discussion in comparative legal literature. Especially heated debates continue to be conducted around the questions concerning reference to the Romano-Germanic Law of the national legislation of the vast majority of the Latin American and African countries, Japan and the countries of Scandinavia.[10] Most of scientists-lawyers consider the Scandinavian law either a version of the Romano-Germanic legal family or a certain sphere of continental system of law.

[5] Behruz, H. Comparative law. Study book, Fenix/TransLit, Odessa/Moscow, 2008, pp 126–127, p 126
[6] Tikhomirov Y. A. Course of comparative jurisprudence, Norma, Moscow, 1996, pp 135–138, p 138
[7] Behruz, H. Comparative law. Study book, Fenix/TransLit, Odessa/Moscow, 2008, pp 126–127, p 126
[8] Saidov, A. H. Comparative jurisprudence (main legal systems of the present), Tumanov, V.A. (Ed.), Jurist, Moscow, 2003, pp 177–179, p 177
[9] Ibid, p 177
[10] Marchenko, M. N. Comparative law. Basic part, Study book for legal higher education institutions, Zertsalo, Moscow, 2001, pp 135–144, p 137

The matter is that the legislation of countries of Northern Europe widely uses legal designs and concepts of the Romano-Germanic legal family.[11]

The Scandinavian law adheres to the principle of rule of law. The rule of law of the Scandinavian countries has more abstract nature, than standard of the Anglo-American law. These features of legal systems of the Scandinavian countries are also used as decisive arguments in favour of reference of the law of countries of Northern Europe to the Romano-Germanic family.[12]

The Roman law has exerted the mediated impact through the Romano-Germanic law on formation of the Scandinavian legal family. The Scandinavian law reminds designs and the basic principles of formation and functioning of the Romano-Germanic law. At the same time, codification process in these states has an originality, which consists in an integrated approach to regulation of branches of the law. It means that codes of the Scandinavian law regulate not separate branches, and are directed to regulation of the institutes entering into different branches of the law. The Scandinavian law differs from the Romano-Germanic law, first of all, in the special place and a role which is played by a judicial precedent in system of sources of the law. Thanks to it, this legal family has linked relation with the family of Common Law. It gives the grounds to call this legal family mixed.[13] However, not all legal scholars agree with this statement. Some of them do not refer the Scandinavian branch of law to any kind of mixed legal systems.[14]

It should be also noted that in the 19th century, Scandinavian scholars developed a completely new legal philosophy, which is called Scandinavian Legal Realism. This legal philosophy rejects the theory of the natural law together with analytical positivism and develops its own concepts.[15]

The Nordic legal family has a number of distinctive features, which make it different from the Romano-Germanic system of law. The originality and autonomy of the Scandinavian law is approved by some European authors. At the same time, definition of the place of the Scandinavian law is a subject for big discussions, which continue to take place even nowadays. It means that the exact position of the Scandinavian legal family on the global map of existing legal families remains unclear.

[11] Saidov, A. H. Comparative jurisprudence (main legal systems of the present), Tumanov, V.A. (Ed.), Jurist, Moscow, 2003, pp 177–179, p 178
[12] Ibid, p 178
[13] Behruz, H. Comparative law. Study book, Fenix/TransLit, Odessa/Moscow, 2008, pp 126–127, p 127
[14] Palmer, V. V. Two Rival Theories of Mixed Legal Systems, 12.1, Electronic Journal of Comparative Law, 2008
[15] Sinha, S. P. Jurisprudence. Legal philosophy in a nutshell, Ashmarin, V.M. (Ed.), Akademia, Moscow, 1996, p 218

1.2 Legal-historical overview of the Nordic legal family

According to legends, the ancient Scandinavian law was found as a result of self-sacrifice and moral clarification of Odin, the Supreme god of the Scandinavian pantheon.[16] The formation of the law in the Scandinavian countries was done in the original way, substantially irrespective of the factors operating in continental Europe. The elements, characteristic of historical development of the northern countries, are relative backwardness of administrative hierarchy, presence of free peasants, democratic forms of the accounting of interests of various segments of the population within church parish that conducted to compromise cures of the arising social conflicts and the constant adaptation of economic development to conditions of patriarchal society. Therefore, in Scandinavia, the centralized state and the unified legislation in country scales appeared early.[17]

Consolidation of the legislation is carried out in Sweden since the 13th century. In the middle of the 14th century two laws were issued, one of which governed the relations in the rural zone, and another – in the cities. These acts worked in Sweden for 400 years. During this time, they have repeatedly been changed and supplemented. An important role in the course of adaptation of the described laws to new conditions of public life was played by courts.[18]

In the 17th century, the Swedish court practice apprehended many designs and the principles of Roman Law, acquired in the European countries owing to what these Roman elements became an integral part of the Swedish law and the Swedish legal culture.[19]

However, it is worth to remember that reception of Roman Law affected the Scandinavian countries slightly. Moreover, establishment of more close ties with jurisprudence of continental Europe, than with English became its main consequence.[20]

Close interrelations of northern legal systems are explained by the fact that historically there always were strong political, economic and cultural ties between the Scandinavian countries. However, full association of three kingdoms – Denmark, Norway and Sweden – was temporary only. It was formed as the Kalmar union and existed from 1397 to 1523. However, relations between Sweden, Finland, Denmark, Norway and Iceland were much stronger and remained for centuries.[21]

[16] Lafitski, V. I. Comparative jurisprudence in the images of law, 1, Statut, Moscow, 2010, pp 375-401, p 375
[17] Saidov, A. H. Comparative jurisprudence (main legal systems of the present), Tumanov, V.A. (Ed.), Jurist, Moscow, 2003, pp 177–179, p 179
[18] Ibid, p 179
[19] Ibid, p 179
[20] Ibid, p 180
[21] Ibid, p 180

The countries of Scandinavia together share common culture and heritage, which are based on common social and democratic values. Nowadays, these states also share the same economic model, the welfare state, which was first introduced as one of the ways of recovery from the crisis of the 1930s.[22] It is important to state that the Danish, Norwegian and Swedish languages are related to each other so closely that they are largely understood in the other Nordic countries. For example, Swedish is official language in Finland and it is normally understood and many times practised within the legal community of Finland. At the same time, which is obvious, Finnish is far more dominating language in Finland. In the same way, Danish is also understood in Iceland. This condition is an important prerequisite for the successful cooperation on legal matters between Scandinavian countries.[23] If earlier this legislative cooperation concerned only private law, nowadays it covers also the branch of public law.[24]

At the end of the 19th century Denmark, Norway and Sweden began systematic searches of rapprochement of their legislation. They achieved it at the beginning of 1881. Concerning bills, checks, etc., and then and concerning maritime law. This movement developed, and subsequently Finland and Iceland joined the Scandinavian countries. After that, they dealt with contract law, issues of representation and, which is very remarkable, family law.[25]

Today, in countries of the Nordic Council, on the basis of agreements the financial, civil, family, procedural law, laws on taxes, pensions, school and diplomas are unified. The special court for interpretation of the uniform Scandinavian right has been established. Extracts of decisions of the Supreme Courts of the Scandinavian countries are regularly published.[26] Despite the fact, that Scandinavian legal family is considered a separate system, which is not connected with Romano-Germanic branch, the interpretation of law in Nordic countries is carried out in the same way as in the other European Union member states.[27]

In the XII-XIII centuries, Finland has been conquered by Swedes and since then became an integral part of the Kingdom of Sweden. Nevertheless, in 1809, Sweden was forced to concede Finland to the Imperial Russia, after losing a war with it. Therefore, for 109 years, Finland was a part of the Russian Empire as the Grand duchy with wide autonomy with which legal system the imperial authorities almost did not interfere. However, in 1918, after the October Revolution, Finland has

[22] Grafsky, V. G. International history of Law and State. Study book, 2, Norma, Moscow, 2007, pp 603–607, p 604
[23] Bernitz, U. What is Scandinavian Law? Concept, Characteristics, Future. Stockholm Institute for Scandinavian Law, Stockholm, 2010, pp 14–28, p 16
[24] Babaev, V. K. Theory of State and Law, Jurist, Moscow, 2003, pp 550–553, p 552
[25] Saidov, A. H. Comparative jurisprudence (main legal systems of the present), Tumanov, V.A. (Ed.), Jurist, Moscow, 2003, p 111
[26] Cherdantsev, A. F. Theory of State and Law. Study book for for legal higher education institutions, Yurait-M, Moscow, 2002, pp 414–416, p 415
[27] David, R. Main legal systems of the present, Tumanov, V.A. (Ed.), Progress, Moscow, 1988, p 53

separated from Russia and has proclaimed its independence. At the same time, its legal unity with Sweden has remained in many respects.[28]

1.3 Social background of the Finnish family law

The family policies, which are currently in effect in Finland, are result of a series of compromises, which took place over time between many different interest groups. The universal family policy system of Finland dates back to 1947, when a system of family wage was introduced. During the following year, the family wage was replaced by a universal system of child allowance. During this period, a shift in the family policy realm towards the social rights paradigm and away from an emphasis on poverty relief can be observed well.[29]

During the 1950s and the 1960s, participation of females in the labour market expanded. In 1964, an earnings-related maternity allowance system was introduced; however, its economic significance was minor. In these decades, a relatively small number of family policy innovations was made.[30] Instead, the emphasis in public policy was on development of sickness insurance and state pensions.[31]

In the 1970s, there was a fundamental change in the situation. The Child Day Care Act[32] was passed after a heated discussion and the emergence of a broad social movement supporting women's employment in 1973. This Act led to a significant increase in public funding for day care, since it granted the right to day care for all children who needed it. This reform could be seen as a defeat for the Centre Party and the Conservatives, the supporters of home care.[33]

However, it was found too expensive to provide day care places to all of the children who needed care. Many municipalities started to pay supplementary allowances to parents who have not used their right to enrol their children in public day care centres. A national child home care allowance system was established in 1985 and took full effect in 1990, reflecting the strong influence of the Centre Party. Since then, families have the freedom of choice between enrolling their children in day care and caring for them at home, since the government supports both options.[34]

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[28] Saidov, A. H. Comparative jurisprudence (main legal systems of the present), Tumanov, V.A. (Ed.), Jurist, Moscow, 2003, pp 177–179, p 179
[29] Forssén, K. Children, families and the welfare state: studies on the outcomes of the Finnish family policy, Stakes Research Report, Helsinki, 1998, pp 23–25
[30] Ibid, p 26
[31] Hiilamo, H. The rise and fall of Nordic family policy? Historical development and changes during the 1990s in Sweden and Finland, Stakes Research Report, Helsinki, 2002, pp 73–79
[32] Child Day Care Act, 36/1973, Finland
[33] Ibid, p 79–121
[34] Ibid, p 129–131

The primary aim of and justification for the described family policies was to give each family the flexibility to arrange childcare in order to suit their individual needs. The home care allowance has led to a reduction in female labour force participation, rather than to an increase in part-time employment among women, mainly because women and mothers in Finland usually work full-time.[35] Therefore, the primary goals of parental leave policies were the promotion of the sharing of childcare responsibilities within the family, support of fatherhood and minimisation of the damage that long periods of absence from the workforce may do to a woman's career. At the same time, however, it is more likely that mothers will be taking care for children under age three at home during the parental leave period.[36] Recently, there have been calls for a more equal distribution of family leave costs since the current parental leave system appears to place higher cost burdens on female-dominated sectors. Finally, in 2013, the government has made the decision to divide the child home care allowance period between parents. It means that, starting from that moment, each parent could use no more than half of the total allowance of 832 days.[37]

1.3.1 Childcare provisions

Childcare in Finland is mainly regulated by combination of the Child Home Care Act[38] and the Private Day Care Act[39].

The freedom of choice has always been the underlying principle of the development of the childcare system in Finland. During the 1960s, in Finland, a variety of interest groups started to demand the creation of equal opportunities for women for participation in the labour market. Consequently, in 1973, the government of Finland has decided to adopt the Child Day Care Act[40]. However, instead of settling competing demands for different kinds of support, this Act provided a synthesis of these preferences, which could be considered internationally unique. During the period of 1990s, Finnish families were given the ability to make a choice between enrolling their children in public day care centre or, until each child becomes three years old, sitting with their

[35] Ibid, p 85–86
[36] Haataja, A. Pohjoismaiset vanhempainvapaat kahden lasta hoitavan vanhemman tukena, 12(1), Janus, Helsinki, 2004, pp 25–48
[37] Korhonen , K., Family Policies: Finland (2014), The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/finland (10.05.2017)
[38] Child Home Care Act, 13.4.2007/417, Finland
[39] Private Day Care Act, 19.1.1973/36, Finland
[40] Child Day Care Act, 36/1973, Finland

children at home.[41] Since the cost of private day care is also compensated, there exists a public support for almost all the childcare arrangements.[42]

In Finland, parents are entitled to enrol the child in public day care centre after the parental leave period (when the child becomes 9-10 months old) and until the moment when the child becomes seven years old and starts school. The childcare may be provided in different ways: in a public day care centre, a family day care setting or a group family day care setting. The government bases the family fees on the size of the family and income of that family. The other condition, as it is provided by the Ministry of Education and Culture of Finland, is the number of hours of needed day care.[43]

In 2014, the government of Finland made the decision to restrict the universal right to day care on the following conditions: in case a parent is at home on parental leave, on absence leave or on a child home care leave, the child will be entitled to day care on a part-time basis only. All the changes are the part of the 2014 Government Proposal draft.[44]

In accordance with the Child Home Care[45] and Private Day Care Act[46], parents have the right to take home care leave until the child becomes three years old. At the same time, there exists a special precondition for receiving home care allowance payments: the child must not be enrolled in a public day care centre. The allowance consists of two parts: the first is a fixed care allowance amount and the other one is a means-tested care supplement.[47]

If parents do not use their right to enrol their child in public day care, Finnish municipalities also pay a so-called municipal supplement to such parents. The amount of the provided supplement depends on the municipality, which pays it to parents. 49% of parents having nine- to 24-month-old children were receiving home care allowance payments, while a municipal supplement was provided for 35% of them. At the same time, since only 6% of parents receiving the allowance are men, the uptake of the child home care allowance is highly gendered.[48]

[41] See 1.3
[42] Hiilamo, H. The rise and fall of Nordic family policy? Historical development and changes during the 1990s in Sweden and Finland, Stakes Research Report, Helsinki, 2002, p 135
[43] Ministry of Education and Culture, minedu.fi/en/early-childhood-education-and-care (10.05.2017)
[44] Government Proposal draft (2014), www.archive-fi-2014.com/fi/l/2014-09-29_4647148_32/Lapsiasiavaltuutettu-Lapsiasiavaltuutetun-lausunto-luonnokseen-hallituksen-esitykseksi-eduskunnalle-laiksi-ulkomaalaislain-muuttamisesta/ (10.05.2017)
[45] Child Home Care Act, 13.4.2007/417, Finland
[46] Private Day Care Act, 19.1.1973/36, Finland
[47] Kela.fi: The Social Insurance Institution of Finland, http://www.kela.fi/web/en/child-home-care-allowance (10.05.2017)
[48] Kela.fi: The Social Insurance Institution of Finland, www.kela.fi/web/en/child-home-care-allowance (10.05.2017)

If the childcare is arranged by a private service producer, parish or a non-governmental organization, a private care allowance can be claimed. The provider of these services sets charges in private day care.[49]

1.3.2 Parental leave and maternity protection

The primary legal act, which regulates parental leave and maternity protection in Finland is the Contracts of Employment Act[50].

Finland has adopted the maternity allowance system in 1964 and was the last Nordic country to do this. At the same time, maternity leave had already been introduced in 1922 and was connected with the Contracts of Employment Act. At the same time, however, mothers had not been entitled to any compensation for the loss of income while on leave.[51]

The parental leave system of Finland was not developed until 1980s, however, in the 1970s, a discussion of the injurious effects of maternity leave on the labour market position of women had already started. In 1978, the government of Finland introduced a paternity leave of two weeks. This kind of leave was conditional on the mother's consent, since her maternity leave period at the same time was shortened.[52] In 2003, a new paternity leave, the so-called "daddy month", which did not involve a shortening of the parental period was finally introduced. After 2013, the "daddy month" fully replaced the paternity leave of nine weeks.[53]

In today's Finland, parental leave is divided into three different periods: maternity leave, paternity leave, and parental leave. The first category, the maternity leave, has the length of 105 working days, covering five weeks before and 13 weeks after childbirth. During this period, the mother has the right to receive maternity allowance payments. If an expectant mother, due to health hazards, has to stop working before the actual maternity allowance period, she is entitled to a special maternity allowance.[54]

The paternity leave, for comparison, lasts a maximum of nine weeks. It may be taken and used in shorter periods until the child becomes two years old, but the father can take only up to three weeks

[49] Korhonen , K., Family Policies: Finland (2014), The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/finland (10.05.2017)
[50] Contracts of Employment Act, 26.1.2001/55, Finland
[51] Hiilamo, H. The rise and fall of Nordic family policy? Historical development and changes during the 1990s in Sweden and Finland, Stakes Research Report, Helsinki, 2002, p 110
[52] Haataja, A. Pohjoismainen ansaitsija-hoivaajamalli. Ruotsin ja Suomen perhevapaajärjestelmän vertailu, Sosiaali- ja terveysministeriö, Helsinki, 2006, pp 17–18
[53] Kela.fi: The Social Insurance Institution of Finland, www.kela.fi/web/en/paternity-allowance (10.05.2017)
[54] Korhonen , K., Family Policies: Finland (2014), The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/finland (10.05.2017)

of paternity leave while the mother has the right to receive maternity or parental allowance payments. The parental leave may be divided between the parents and lasts 158 working days, which equals approximately 26 weeks. If both parents work part-time and share the parental leave, they are simultaneously entitled to partial parental allowance.[55]

The average level of parental allowance payments in 2012 was 75% of previous income. A minimum per diem allowance is paid in case the parent was not employed before the birth. The 96% of female employees working in the private sector are covered by collective agreements and have the right to a paid maternity leave. At the same time, paid paternity leave entitlement is less common, however, it is becoming more frequent today. In Finland the allowance is paid to the employer in the case of paid parental leave.[56]

In Finland, parental allowances are considered taxable income. They are financed from health insurance that consists of the employee's health insurance payment and the employer's sickness insurance contribution. The Finnish state finances the minimum per diem allowance and 0.1% of the earnings-related parental allowance.[57]

In most of Finnish families, mother takes all the bulk of the parental leave. In accordance with 2013 data, only 9% of parental allowance payments were paid to fathers. The average amount of parental leave taken by fathers was 24 days. At the same time, however, the share of parental allowance paid to fathers has been growing in recent years. Comparing 1995 and 2013 data, one may conclude that the share of parental leave days taken by fathers has increased by 140%.[58]

1.3.3 Family allowances

In general, Finnish family allowances are regulated by the Child Allowance Act[59].

The Finnish family allowance system can be grouped by four main components. They are tax deductions, maternity benefits, child allowance, and housing allowance. After 1948, all families, who have children, have received the right to maternity benefits, which may be claimed either as a "maternity package", consisting of items used for childcare, or as a non-recurring cash grant. In 1949, the Child Allowance Act of Finland went into effect for the first time. From the beginning,

[55] Kela.fi: The Social Insurance Institution of Finland, www.kela.fi/web/en/paternity-allowance (10.05.2017)
[56] Korhonen , K., Family Policies: Finland (2014), The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/finland (10.05.2017)
[57] Ibid
[58] Kelan lapsiperhe-etuustilasto, Kela, www.kela.fi/documents/10180/1630858/Kelan_lapsiperhe-etuustilasto_2013.pdf, p 46 (10.05.2017)
[59] Child Allowance Act, 21.8.1992/796, Finland

the allowance was universal, however, in 1962 the amount of the allowance was changed. After that, subsequent children received a higher allowance. This particular rule can be seen as a pro-natal initiative, since a higher child allowance stimulates a concrete incentive to have multiple children. Later, in 1994, the family policy tax deduction system was practically abolished and, along with it, the level of child allowance experienced a significant rise. With this reform, the government reached the goal to place even greater emphasis on the child allowance system.[60]

At the same time, the housing allowance system has also evolved. During the period from the late 1940s to the 1960s, the government granted the allowance to low-income families having large numbers of children. After 1987, the housing allowance has been a universal means-tested benefit, which was intended for all households with low-income.[61]

During 2009, almost 94% of families, which expect their first child, claimed the maternity benefit as a maternity package. The contents of suck package are children's clothes and other necessary items, such as bedding, cloth nappies, and childcare products. The 36% of all families, on the contrary, have chosen the alternative, which consists of tax-free lump sum. If multiple children are born, the maternity benefit has to be multiplied accordingly. The maternity benefit is also available for adoptive parents.[62]

Households with low-income have the opportunity to receive a general housing allowance. The amount of this allowance and the eligibility for depend on the number of persons, living in the household, and the household's income and various assets. The maximum allowance is set to 80% of reasonable housing costs, as it was defined by the law.[63]

48% of the family allowances, paid by the Social Insurance Institution of Finland in 2013, consisted of child allowance payments and 0.3% consisted of maternity benefit payments (housing allowance is not included to the list). Responding to the outcry, a tax deduction for low-income and middle-income families with children was introduced by the government for the years 2015-2017.[64]

[60] Hiilamo, H. The rise and fall of Nordic family policy? Historical development and changes during the 1990s in Sweden and Finland, Stakes Research Report, Helsinki, 2002, pp 87–114
[61] Ibid, pp 91–111
[62] Bogdanoff, P., Hämäläinen, U. Bodyt, potkarit ja perhevapaat. Äitiyspakkauskyselyn tuloksia, Kela, Helsinki, 2011, p 6
[63] Kela.fi: The Social Insurance Institution of Finland, www.kela.fi/web/en/general-housing-allowance (10.05.2017)
[64] Korhonen , K., Family Policies: Finland (2014), The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/finland (10.05.2017)

1.3.4 Marriage and divorce

In Finland, the primary law, which was governing marriage, is the Marriage Act of 1929. In 1987, however, this law was fundamentally reformed as there were shifts in views regarding the question of marriage. After the reform, the intimate details of the union were left to the spouses themselves since the marriage was considered principally an economic contract between them. For example, there was no statement on the distribution of work within the marriage in accordance with this Act.[65]

In order for the marriage to be concluded, there should be no impediments. It could be a prior marriage, a registered partnership, which is still in effect or a family relationship between the partners. The non-existence of these impediments is verified by either a public register office, a parish of the Evangelical Lutheran Church or the Greek Orthodox Church. After the reform of 1987, the minimum age for marriage was set to 18 for both men of women. Previously, however, minimum age for women was 17. This Marriage Act also abolished all the disability-related impediments to marriage.[66] [67]

In 2001, the new Act on Registered Partnership[68], under which a partnership of two individuals of the same sex could be registered, was successfully passed. This law is applicable if both partners are over age 18. The provisions in the Marriage Act govern the examination of impediments to registration. In several respects, the legal implications of registration differ from those of marriage. there is a number of legal acts, which do not apply in case of a registered partnership. They are the right to a joint adoption in the Adoption Act[69], the rules regarding the family name of a spouse in the Names Act[70], and the rules regarding the establishment of paternity on the basis of marriage in the Paternity Act[71].

In 2009, there was an amendment made to the existing legislation, which provided that a partner in a registered partnership could adopt a child of the other partner, after which both can be regarded as the legal parents of the child. At the same time, however, only married couples have the permission to adopt a child jointly.[72]

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[65] Gottberg, E. Perhesuhteet ja lainsäädäntö, Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja, Turku, 2010, p 3
[66] Government proposal HE 62/1986, Finland
[67] Marriage Act, 234/1929, Finland, including amendments up to 1226/2001, Finland
[68] Act on Registered Partnership, 950/2001, including amendments up to 1229/2001, Finland
[69] Adoption Act, 22/2012, Finland
[70] Names Act, 694/1985, Finland
[71] Paternity Act, 700/1975, Finland
[72] Gottberg, E. Perhesuhteet ja lainsäädäntö, Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja, Turku, 2010, p 255

The year 2013 was significant for Finnish society as the campaign for same-sex marriage legislation was launched. The Citizens' Initiative Act provided its support for same-sex marriages. This initiative could be treated as a bill if a minimum of 50,000 signatures supporting the initiative are collected within a six-month period. It collected nearly 167,000 signatures and, in November 2014, the Finnish parliament has approved the initiative and paved the way for the full legalisation of same-sex marriage on the territory of Finland.[73]

In Finland, with the amendment of the Marriage Act in 1987, a unilateral no-fault divorce was introduced. After this, there was no need for courts to make statements on the guilt or innocence of the spouses, the grounds for divorce, or any existing claim for damages. As it was already described above, from this moment, marriage has been described as an economic contract, which has a term of notice of six-months.[74]

Practically, it is possible for the spouses to register their divorce after a reconsideration period of six to 12 months has passed. The reconsideration period begins on the date when the court or the court registry fills the joint petition of the spouses for the dissolution of the marriage, or the petition of one spouse is served on the other spouse. After the reconsideration period passes, the spouses may be granted a divorce, which could be based on their joint request or upon the request of one of the spouses. It is possible to make the request within one year of the beginning of the reconsideration period. In case spouses have been separated for the past two years without break have the right to fill a divorce without a reconsideration period, as it is stated by the Marriage Act.[75]

If a marriage is started with the premise of separate property, each spouse has a claim to the property of the other spouse when this marriage ends. It means that consequently each spouse has the right to half of the net matrimonial property. Nevertheless, if a property has been excluded from the scope of marital property by a marriage settlement or a will, a spouse does not have the right to this certain property.[76]

It should be also stated that in case of the dissolution of a registered partnership, the provisions of the marriage act on divorce also apply.[77]

[73] Korhonen , K., Family Policies: Finland (2014), The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/finland (10.05.2017)
[74] Gottberg, E. Perhesuhteet ja lainsäädäntö, Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja, Turku, 2010, p 44
[75] Marriage Act, 234/1929, Finland, including amendments up to 1226/2001, Finland
[76] Gottberg, E. Perhesuhteet ja lainsäädäntö, Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja, Turku, 2010, pp 14–15
[77] Ibid, p 3

1.3.5 Cohabitation and civil unions

In case of cohabitation, the regulations of the marriage act do not apply. The only applicable legal act is the Act on Registered Partnership[78]. In accordance with this act, partners living apart together have no rights to each other's property, mutual maintenance liabilities or rights related to a common surname. Nevertheless, there exist several statutory implications. Cohabitation and marriage are seen as equivalent in many respects in laws, which regulate social insurance legislation and income taxation. In relation to benefit eligibility and service pricing, there is a requirement for cohabiting partners to support each other and the children in the household even if the law does not recognise maintenance liability.[79]

The year 2011 was significant as the Act on the Dissolution of the Household of Cohabiting Partners[80] was passed. This Act is applicable in case cohabiting partners have lived in a shared household for at least five years, or have had, a joint child or joint parental responsibility for this particular child. When the cohabiting partnership ends, a separation of the cohabiting partners' property will be carried out if a cohabiting partner or the heir of a deceased cohabiting partner demands so. Co-ownership must be dissolved on demand when the partners have any joint property. At the same time, however, a cohabiting partner has the right to compensation if he or she has taken part in assisting the other partner to accumulate or retain his or her property through contributions to the shared household. In other case, dissolution of the household solely on the basis of ownership would result in the unjust enrichment of one partner at the expense of the other. This law also plays its role in enhancing the protection of a partner in case of death. In accordance with its provisions, a partner may be entitled to a discretionary allowance from the estate of the deceased partner.[81]

In relation to the connection between parents and their children, cohabitation has only minor effects presented. The family and maintenance rights of a child have been made the same regardless of the type of union of the parents after the adoption of the 1976 Paternity Act. Since 1983 guardianship over the child has been made independent of the condition whether parents are married or live together with each other. However, it was possible for married couples only to have a joint custody of a child. At the same time, it depends on the type of union of the parents how the relationship between the father and the child will be established. In case the parents are married,

[78] Act on Registered Partnership, 950/2001, including amendments up to 1229/2001, Finland
[79] Gottberg, E. Perhesuhteet ja lainsäädäntö, Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja, Turku, 2010, p 2
[80] Act on the Dissolution of the Household of Cohabiting Partners, 26/2011, Finland
[81] Act on the Dissolution of the Household of Cohabiting Partners, 26/2011, Finland

the assumption of paternity on the basis of marriage is applicable. However, paternity must be established by an acknowledgement and a decision of the court if the parents are cohabiting.[82]

1.4 Conclusion of the chapter

The Nordic legal family has a number of distinctive features, which make it dissimilar with the Romano-Germanic system of law. The uniqueness and self-sufficiency of the Scandinavian law has been approved by a number of European authors. At the same time, classification of the place of the Nordic law is a subject for great debates, which continue to take place even now. It means that the exact location of the Nordic legal family on the global map of existing legal families remains undecided.

Finland has a long history, which is entirely connected with the history of other countries of the Scandinavian Peninsula. Without being a part of the Scandinavian cultural group, Finland was the first ever Finno-Ugric state to become Nordic country. One of the primary reasons is the existence of the neighboring relations with Sweden, which was the leading Scandinavian state just 450 years ago. As a result of such relations, Finland got its legal system, which was based on Nordic legal traditions. Despite the fact that Finland was a part of the Empire of Russia, it was possible for Finland to join the Scandinavian countries in the end of the 19th century.

Nowadays, Finland is a Scandinavian state, which has a fully developed social system, which is reflected by the Finnish legislation. A big role in legal provisions of the family law of Finland is dedicated to a number of various allowances, which are received by Finnish parents and children. It means that Finland is welfare state like other Scandinavian countries, Sweden, Denmark and Norway. One can say that family legislation of Finland is typical for any country of the Nordic Council.

[82] Gottberg, E. Perhesuhteet ja lainsäädäntö, Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja, Turku, 2010, pp 136–137

2. History and development of the family legislation in Estonia in relation to the Scandinavian law

2.1 Legal-historical overview of the legal system of Estonia

When Estonia was conquered by Russia and became a part of the Russian Empire in 1721, its private law was dispersed in various sources, dating from various periods of political subjugation, and was combined from various legal provisions of 13th–16th centuries. However, on 1st January 1865, the Private Law Codification was granted by the Russian sovereign Alexander II to the Baltic provinces, which Estonia was the part of. This Act immediately entered into force. Compared to the history of the private law of the German population of Estland, Livland and Courland, this was an extraordinary event as the private law regulations of all the three provinces had been assembled in one code for the first time.[83] Nevertheless, some of the applicable legislation on the Estonian territory was based on Russian legal traditions.

After Estonia gained its independence in 1918 like her Baltic neighbours, the private law for the Baltic Provinces of the Russian Empire remained in force in Estonia. It is characteristic for Estonia to have a family law system, where most of its provisions are imported from other legal sources. At the same time, in 1940, Estonian legal drafters had completed a Bill for a Civil Code. This document also contained new provisions regarding Estonian family law but it was never adopted as Estonia was occupied by the Soviet Union and the Second World War started.[84]

During the Second World War, the new puppet government was established in Estonia as well as in its neighbouring states, Latvia and Lithuania. The name of the new republic was Estonian Soviet Socialist Republic (also referred to as ESSR). During this historical era, Russian legislation was once again brought into force, leaving completely no chances for Estonia to develop its own family law provisions. In 1969, the Marriage and Family Code of the Estonian SSR was adopted by the ESSR government. This Code remained in force until the end of the Estonian Soviet Socialist Republic and was also used for the first four years of the re-established Republic of Estonia.[85]

At the end of the 20th century, Estonia as well as other former Baltic Soviet republics entered the new, post-socialist period of the development, during which radical economic, political and legal reforms became characteristic. Progress in a legal field, High-quality changes in the legislation, transition to democratic standards in the field of human rights, the statement in legal systems of

[83] Luts, M. Private Law of the Baltic Provinces as a Patriotic Act, Juridica International. Law Review, University of Tartu, Tartu, 2000, pp 157—167, p 157
[84] Kullerkupp, K. Family law in Estonia. The International Survey of Family Law, Bainham, A. (Ed.), Bristola, 2001, pp 95–110, p 95
[85] Ibid, p 95

the principles of the civilized law have been followed by active participation of these countries in the process of the European integration and the process of return to the Continental Law family.[86]

In 1995, the government of Estonia has started the process of reformation of Estonian family legislation by introducing new legal acts. The Family Law Act entered into force on 1st of January 1995. The need for new reforms was prevailing and, therefore, made almost impossible to carry out a proper research in order to consider each aspect of the new law in light of the legal tradition of countries of the Continental Europe. For this reason, the 1995 Family Law Act bore some of the provisions from its predecessor, the Marriage and Family Code of the Estonian SSR, namely its basic concepts and the scope of the regulations.[87]

However, there still was a need for a reconsideration of some principles and ideas contained in the Family Law Act, which could be considered vague. In 1996, the Estonian Ministry of Justice has established a working group, the final goal of which was to submit a draft for a new Family Law Act. The draft of the new Act was expected to reflect general family law structures and settings, which are known in the Continental European legal tradition that has strong cultural and historical ties with the Estonian legal system. During the preparation of the new draft, the working group was expected to analyse the existing experiences and current tendencies of family law in other countries, especially in those, which caused the biggest influence on the development of Estonian legislation. The results of these comparisons were then taken into account during the process of composing the most suitable set of regulations to form the future family legislation of the Republic of Estonia as the first decade of the re-gained independence may be considered just as a 'second round'.[88]

Nowadays, Estonia, like other Baltic States, is more and more actively involved in a sphere of influence of the Northern European legal family. There is a noticeable increase in a number of integration processes in the sphere of policy and economy. Common interstate structures are founded. Legal aid of Scandinavian countries becomes more and more visible, and it will, undoubtedly, be reflected in the legislation of the Baltic States. At the same time, however, it still remains traditional and continental.[89]

[86] Oksamytniy, V. V. General theory of State and Law, UNITY-DANA, Moscow, 2012, p 465
[87] Kullerkupp, K. Family law in Estonia. The International Survey of Family Law, Bainham, A. (Ed.), Bristola, 2001, pp 95–110, p 96
[88] Ibid, p 96
[89] Tikhomirov Y. A. Course of comparative jurisprudence, Norma, Moscow, 1996, pp 135-138, p 138

2.2 Social background of the Estonian family law

2.2.1 Childcare provisions

Pre-school childcare in Estonia is primarily regulated by the Preschool Child Care Institutions Act[90], the latest amended version of which was adopted in 2014.

For a long period of time, children have been, in one way or another, a subject of formulation of various policies. However, only in the 20th century, policies aimed at fertility have been primarily introduced. During its history, Estonia was experiencing a concurrence of policies related to children and fertility, similar to many other nations. Regarding development of child-related and fertility-related policies in Estonia, five primary stages can be determined. The first stage was representing the first years of national construction, which followed the War of Independence, when the Estonian government put the effort to secure the living standards of children. Later, during the second stage, there was the societal response to the decline of fertility below replacement. The third stage is related to the time, when Estonia was occupied by the Soviet Union, just as other Baltic States, while the fourth was characterized by arising interest with regard to fertility-related policies during the 1980s. Finally, the fifth stage relates to child- and fertility-related policies in the period of transition of economy and society.[91]

In today's Estonia, the state and local governments are responsible for children's education and pre-schools. If a child does not attend a pre-school, he or she has a chance to participate in the activities of a preparatory group, which is usually combined in either a pre-school or a school. In accordance with the law, Local governments must provide the opportunity to attend childcare for all children between the ages of eighteen months and seven years.[92]

The existing pre-schools or childcare centres may be classified by four primary types. The first one is crèche, which is created for children up to the age of three. Children that are more grown-up attend the second type, a nursery school. In a nursery school there exists a subdivision into four different age groups: The youngest group is suitable for children from three- to four-years old; a middle is for five- to six-year-olds; an older group for six- to seven-year-olds and a composite group for two- to seven-year-olds. The third of childcare centres is nursery school for children

[90] Preschool Child Care Institutions Act, RT I 1999, 27, 387
[91] Katus, K., Puur, A., Põldma, A. Population-related Policies in Estonia in the 20th Century: Stages and Turning Points. Yearbook of Population Research in Finland, 40, 2004, pp 73−104, p 79
[92] Põldma, A. Family Policies: Estonia (2014). The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/estonia (10.05.2017)

with special needs. The fourth (and the last) type is primary school, which is combined with nursery school.[93]

According to the Estonian Pre-school Childcare Institutions Act[94], the curriculum of the pre-primary institution, which education and schooling in a pre-primary institution should be based on, must comply with the national curriculum for pre-school childcare institutions that is approved by the government of the republic.[95]

Until the period of 1990s, crèches and kindergartens were universally available for children under age three and for children ages 3-7. These childcare services were also provided to parents at a very low cost. As these services had a very low quality (especially crèches) the number of day care facilities declined sharply in a number of years. In addition to this policy, parents whose children were not in childcare were provided with a maintenance allowance, which was aimed to encourage mothers to stay home with their children. At the same time, however, childcare enrolment rates started to recover after reaching a low point in 1993. By 2000, these rates had exceeded the rates achieved in the late 1980s. Already by 2012, 20% of one-year-olds (the group, which is covered by parental leave), 70% of two-year-olds, 90% of three- to four-year-olds, and more than 90% of five- to six-year-olds were attending public childcare as this gradual increase in enrolment continued during most of the 2000s.[96]

In Estonia, childcare services are financed by rural municipality, city, and/or state budgets. The share of the cost of pre-school to be covered by a parent for one child may not exceed 20% of the minimum wage, which is set by the government. The actual amount of the payment has to be determined by the municipal or town council, and, in accordance with the age of the child, the financial situation of the pre-school, or some other factors, it may vary. The board of trustees of the pre-school sets the daily amount, which the parent has to pay for the child's meals in a childcare centre.[97]

Children, who attend a private nursery school, have the right to receive discounts, which are funded by the state and local governments, on the same basis as children, who attend a municipal nursery school. The local government also covers the administration and payroll costs, while the parents cover expenses for study materials and meals.[98]

[93] Ibid
[94] Preschool Child Care Institutions Act, RT I 1999, 27, 387
[95] Põldma, A. Family Policies: Estonia (2014). The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/estonia (10.05.2017)
[96] Ibid
[97] Ibid
[98] Ibid

2.2.2 Parental leave and maternity protection

In Estonia, there exist three primary forms of leave related to childcare. They are maternity leave, paternity leave, and parental or childcare leave. Maternity leave as well as pregnancy are covered by the Health Insurance Act[99] and the Employment Contracts Act[100]. At the same time, parental leave and child care allowance are regulated by the Family Benefits Act[101] and, again, the Employment Contracts Act.

During the Soviet era, working mothers were entitled to take paid maternity leave until their child becomes one year old. The additional unpaid leave until the child becomes eighteen months old was also possible to obtain. In 1990, the paid maternity leave was prolonged until the child becomes a year and a half and, in 1989, the additional unpaid leave was extended until the child becomes three.[102]

In today's Estonia, the maternity leave is funded from health insurance contributions and lasts for 140 days. It covers 100% of earning without any ceiling. It is possible to take a maternity leave 30-70 days before the birth of a child. In case, when less than 30 days of leave are taken before the expected child's birth, they are deducted from the 140 calendar days. Mothers who did not work during the previous calendar year, but who worked prior to the birth of the child, receive the minimum wage.[103]

Fathers have the right for a 10-day paternity leave, which is funded from general taxation and covers 100% of earnings. The only ceiling is triple the amount of the average salary in Estonia. Fathers have the right to take their paternity leave during the mother's leave or during the period of two months after the birth of the child. In previous years (2002-2007), the duration of the paternity leave was 14 days, which included a flat-rate benefit. In 2008, the duration of father's leave has been reduced to 10 working days, however, at the same, the uptake of paternity leave has increased by four times. Between the years 2009-2012, the scheme of paternity leave was temporarily suspended, but in 2013 it was restored. Currently, only 5% of Estonian fathers take advantage of the paternity leave.[104]

[99] Health Insurance Act, RT I 2002, 62, 377
[100] Employment Contracts Act, RT I 2009, 5, 35
[101] Family Benefits Act, RT I, 08.07.2016, 1
[102] Narusk, A. Parenthood, Partnership and Family in Estonia. European parents in the 1990s. Björnberg, U. (Ed.), Transaction Publishers, London, 1992, pp 155-170, p 158.
[103] Põldma, A. Family Policies: Estonia (2014). The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/estonia (10.05.2017)
[104] Robila, M. Family Policies in Eastern Europe: A Focus on Parental Leave. Journal of Child and Family Studies, 2012, 21 (1), pp 32–41

Mothers or fathers are entitled to take a maternity leave (which is followed by parental leave) until their child reaches his or her third birthday. It is possible to use parental leave in a single continuous period or in several separate periods at any time until the child becomes three years old. Since 2004, parental leave in Estonia is provided for 1 year. Nevertheless, most of the creches are available for children 1.5 years and up. Consequently, it leaves a gap of half a year between parental leave and childcare facilities.[105]

In Estonia, the parental benefit is also funded from general taxation. It is paid at 100% of average earnings and based on the parent's during the previous calendar year. In case a mother does not take the maternity leave, she has the right to start receiving the parental benefit from the moment of birth her child and loses this right as soon as the child reaches the age of 18 months. Before the child reaches the age of 70 days, the father of the child is entitled to receive the parental benefit too. In case the parent's next child is born in less than two and a half years after the birth of the first child, while the benefit for one child has already been paid to a parent and, at the same time, the amount of benefit for the second child is smaller than the amount of benefit for the previous child the benefit will be determined on the basis of the previous income of parent. The parent has the right to continue working during the period of receiving the parental benefit. However, if his or her income exceeds the rate of the benefit, the amount of the benefit will be reduced. The maximum benefit reduction rate is 50%. If the income of the parent is less than the base rate of the benefit, the amount of the benefit, on the contrary, will not be changed.[106]

The childcare allowance rate is the basis for the calculation of the childcare allowance. It is paid to the child's parents from the end of the payment of the parental benefit until the moment when child becomes three years old. The childcare allowance is paid regardless of working status of parents.[107]

2.2.3 Family allowances

In Estonia, there are two primary legal acts, which regulate the order of receiving family benefits. They are the Child Benefit Act[108] and the State Family Benefits Act[109].

In the history of family law of Estonia, the brief period of 1982-1988 can be considered one of the most important of post-war decades. During this period, in the Soviet Union, including the

[105] Ibid, pp 32–41
[106] Põldma, A. Family Policies: Estonia (2014). The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/estonia (10.05.2017)
[107] Ibid
[108] Child Benefit Act, RT I 1994, 13, 232
[109] State Family Benefits Act, RT I, 22.12.2013, 72

Estonian SSR, big changes have been made in child- and fertility-related policies, which shifted the focus of policy away from large families and towards more typical families.

In 1992, the Child Benefit Act was adopted. This Act introduced universal child benefits in Estonia. Since 2002, the State Family Benefits Act regulates the types and the extent of state-provided family benefits, and the conditions under which they are granted. Family benefits are financed from the state budget and can be paid either as a lump sum, once a month, once a quarter or once a year, which depends on their type. If a person has the right to receive several types of family benefits, the government determines and starts paying these benefits simultaneously. As it was stated already, Estonian authorities calculate child benefits on the basis of the child allowance rate, while childcare allowances and allowances for families with seven or more children are based on the childcare allowance rate. Each year, both of these rates are established calculated and in accordance with the state budget. The new rate cannot be lower than the rate, which already exists. The family benefits are in fact coefficients of these rates. All of the benefits, which are paid under the State Family Benefit Act, are not covered by the income tax.[110]

2.2.4 Marriage and divorce

Currently, marriage and divorce conditions are regulated by the Estonian Family Law Act[111]. The latest version of this law was adopted in 2010.

In accordance with the Estonian family law of 1922[112], the marriageable age in Estonia was set at 18 for men and 16 for women. This law also confirmed that a marriage must be contracted between a man and a woman. Later, the new family law of 1926 finally transferred the legal recognition of marriage from the church to the state. From the viewpoint of modern legislation, the Family Law of 1926 established several traditional views, which were common for Western European legislation during that period. These norms expressed, in some aspects, the superiority of the husband. In accordance with the Act, marriage was regarded as a life-long commitment, while divorce was based largely on the culpability of spouses. A systematic distinction between the position of children born in or outside of wedlock was also created.[113]

[110] Põldma , A., Family Policies: Estonia (2014), The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/estonia (10.05.2017)
[111] Family Law Act, RT I 2009, 60, 395
[112] RT 1922, no.138
[113] Katus, K., Puur, A., Põldma, A. Population-related Policies in Estonia in the 20th Century: Stages and Turning Points. Yearbook of Population Research in Finland, 40, 2004, pp 73−104, p 74

During the era of Soviet Occupation, the applicable family law was the Family Code of the Estonian Soviet Socialist Republic[114], which was adopted in 1969. As it was stated in this legal document, a person was deemed marriageable if he or she was at least 18 years old. However, if some exceptional cases arise, the government was able to allow the local authorities to lower this age by up to two years.

After the independence of Estonia was finally regained, the new democratic government decided to change the legislation, which was applicable on the Estonian territory. Consequently, a new family law was enacted in Estonia in 1995. However, even without conducting a careful analysis, one may have noticed, that in terms of its basic concepts and the scope of its regulations, the new Family Law Act of 1995[115] was very similar to its predecessor, the Marriage and Family Code of the Estonian SSR. This legal act regulated only legally registered marriages. At the same time, the new Family Law Act prohibited marriage between individuals of the same gender.[116] The marriageable age was again set at 18, however, if certain conditions were met, it was possible to lower the age of marriage to 15 years (compared to the older one, where the minimum age, even with special conditions, was 16). The conditions for marrying while under age 18 were also liberalised. It was sufficient to have a parent's or guardian's written permission, while the permission of a government official was no longer required. The only legally binding marriage, as it was set by the Act, must be officially registered in the civil registration office, and a wedding in a church was declared non-sufficient. It was also stated in the new law, that the material relations between the spouses are regulated by the marriage contract.

It should be also noted that the 1994 version of the Estonian Family Law Act did not provide any religious form of marriage. It was made possible only ten years later, in 2004, when the amendments to the Act were made. In the 2004 edition of the Family Law Act, if a minister of religion of a church, congregation or association of congregations who has an appropriate level of training, has the right to perform the functions of a vital statistics officer related to the conclusion of marriage.[117]

During the period of 1990s, the mean age at first marriage increased by more than three years as many Estonians postponed their marriage. In 2002, the average age of the first marriage was 28.2 for males and 25.5 for females. The total rate of first marriage fell to 0.35, which is one of the lowest in the Europe, while the timing of divorce experienced less dramatic changes.

[114] ENSV Teataja 1969, 31, 316
[115] RT I 1994, 75, 1326
[116] Salumaa, E. The Family Law Act, Juridica International. Law Review, 1, University of Tartu, 1996, pp 94—99
[117] Khazova, O. A. Family Law on Post-Soviet European Territory: A Comparative Overview of Some Recent Trends, 14.1, Electronic Journal of Comparative Law, 2010, p 7

In 2010, the Family Law Act[118] was renewed and the new version was adopted. The new act again defined marriage as a union of one man and one woman. It does not attach any explicit legal consequences to unions other than registered marriage (i.e. cohabitation). Under the new edition of Family Law Act, partners under age 18 again need to obtain the permission of a court to marry.[119]

As it was stated before, the family legislation used in Estonia of the period of 1920s and 1930s, conceptually, was in line with private law typical to the Baltic provinces of the Empire of Russia. These laws also expressed the norms, which correspond to traditional views that could be found in family law of Western Europe during that period. These norms supported the statement that the husband has a superiority in some spheres, that marriage must be regarded as a life-long commitment and that it is only possible to base the divorce largely on the fault of spouses. At the same time, it was possible to grant a divorce, which was based on mutual consent with only a three-month waiting period. It was also permissible to register a divorce on the grounds of at least two years of separation, which was caused by disagreement between the spouses.[120]

After annexation by the Soviet Union, it was more difficult for spouses to separate. The primary reason for this was the necessity of participation in a prolonged two-stage legal proceeding and payment of high fees. During the 1960s, liberalisation of family legislation took place. Already in 1965, a less complicated legal procedure was established and the previous restrictions on divorce were abolished. This action caused the big change in proceedings and lead to a significant rise in the divorce rate during the following years. The change in the divorce rate reflected the fact that many couples who had separated had not sought a legal divorce. However, at the same time, the divorce rate continued to rise over the next 15 years and finally stabilised during the 1980s. In accordance with the Marriage and Family Code of Estonian SSR, if there were under-age children in the family, or if there were disputes about property or about paying maintenance to a disabled spouse, the divorce had to be granted by a court.[121]

Under the new family law adopted in 1995, it is not required for couples, whose marriage is dissolved by a decision of the court, to register the divorce at the civil registration office. In case, if the couple has under-age children, they must register the divorce at the civil registration office even if there are no disputes between the parties. The basis of a divorce is the agreement of the spouses in a joint written petition which the spouses submit in person. According to the Family

[118] Family Law Act, RT I 2009, 60, 395
[119] Põldma, A. Family Policies: Estonia (2014). The Population Europe Resource Finder and Archive (PERFAR). www.perfar.eu/policy/family-children/estonia (10.05.2017)
[120] Ibid
[121] Ibid

Law Act, after the petition is filed, the divorce must be finalised no earlier than one month and no later than three months. If one of the spouses has been declared missing or has been divested of active legal capacity, a divorce can also be granted in a civil registration office based on the petition of one spouse. Only when there may be disputed issues the spouses cannot agree upon, divorce matters are usually brought to the court.[122]

2.2.5 Cohabitation and civil unions

For a long period of time, there was no consistent legal regulation, which could have covered any form of cohabitation or civil unions. The latest Act[123], adopted in 2014, is not fully implemented yet and it is currently unknown when it will be.

As it was noted by Estonian family law scholars more than ten years ago, there exists a large number of cohabitation relationships in society. Since then, the number of these relationships has only increased. Depending on the circumstances, in property disputes between cohabiting couples courts have been recognizing the legal consequences of factual cohabitation for some time now. Furthermore, Estonia is currently waiting for another family law reform to be fully implemented where one of its principle provisions may be the permission for cohabitating couples to register their cohabitation.[124]

The prevalence of cohabitation in Estonia has started increasing steadily since the Soviet era.[125] However, the 1970 Marriage and Family Code of the Estonian Soviet Socialist Republic provided no amendments, which may have been related to cohabitation. This meant that the biggest transformation in family life has been continued to be disregarded by the existing legislation. A joint declaration of the parents at the registration of the birth was the only legal provision, which took into account this emerging change. This joint declaration made possible for non-married parents to have the option, which was non-existent before, to register their son or daughter as a common child, without being need to undertake a procedure of adoption. As a type of family relationship, separate from a registered marriage, which was consistent with the legal practices in most other parts of the USSR, consensual unions were ignored by the Marriage and Family Code.

In 2011, comparison of data from 2000 to 2011 on population and housing censuses has been conducted. This analysis has shown that the share of people living in a consensual union increased

[122] Ibid
[123] Civil Partnership Act, RT I, 16.10.2014, 1
[124] Khazova, O. A. Family Law on Post-Soviet European Territory: A Comparative Overview of Some Recent Trends, 14.1, Electronic Journal of Comparative Law, 2010, p 10
[125] Salumaa, E. The Family Law Act, Juridica International. Law Review, University of Tartu, Tartu, 1996, p 94

significantly, while the share of people living with a legal spouse decreased over this period of time. For example, in 2011, 34.5% of the population aged 15 and older were living with a legal spouse and 15.6% were living in a consensual union. As it can be, the share of people living with a legal spouse had decreased 5.4 percentage points and the share of people living in a cohabitation had increased 4.7 percentage points compared to 2000.

The Family Law Act, adopted in 2010, does not attach any explicit legal consequences to unions other than registered marriage since it defines marriage as a union of one man and one woman. It is possible for cohabiting partners to apply private law while making appropriate legal arrangements with relation to common rights, the inheritance of property and others. Some laws regulating the economic and social domain also apply the concept of unmarried cohabitation. It is presented in the Financial Supervision Authority Act[126], in the Credit Institutions Act[127], and in the Bankruptcy Law Act[128]. The payment of income support benefits also takes into account consensual unions. From one point of view, the private law provisions allow for a degree of flexibility, however, in order to safeguard the rights of cohabiting individuals, lawmakers should consider taking steps towards greater statutory regulation of these arrangements.

During April 2014, the parliament of the Republic of Estonia reviewed the Draft Civil Partnership Act[129] (in Estonian - Kooseluseadus). On 9th of October 2014, the Civil Partnership Act was approved by the Parliament and went into effect on 1st of January 2016. Before the implementation of this Act, a number of amendments to existing laws and the enactment of additional laws has to be made. The Civil Partnership Act makes possible for unmarried couples, regardless of their sexual orientation, to have the same rights as married couples with regard to inheritance and property. The new act also allows the adoption of one partner's children by the other partner. In order to achieve these rights, it is required for unmarried couples to officially register their cohabitation.[130]

At the same time, however, there exists a considerable number of specific problems regarding the implementation of this Act. The reason is that complete implementation of the Civil Partnership Act is not passed yet and, probably, will not be passed for a certain amount of time.

[126] Financial Supervision Authority Act, RT I 2001, 48, 267
[127] Credit Institutions Act, RT I 1999, 23, 349
[128] Bankruptcy Law Act, RT I 2003, 17, 95
[129] Civil Partnership Act, RT I, 16.10.2014, 1
[130] Põldma , A., Family Policies: Estonia (2014), The Population Europe Resource Finder and Archive (PERFAR), www.perfar.eu/policy/family-children/estonia (10.05.2017)

2.3 Conclusion of the chapter

From the legal point of view, Estonia is a very interesting subject to analyse. The legal system of this country combines a number of provisions from Romano-Germanic, Nordic and Russian legislation. At the same time, Estonia has developed its own legal traditions, which put this state in the position between West, North and East. This played a major role in formation of family law on the Estonian territory.

The earliest applicable legislation in Estonia was based on Romano-Germanic legal traditions, since it was developed and used by Baltic German who lived in Estonia since 13th century. Later, when the territory of Estonia fell under the rule of Sweden and became a Swedish province, the applicable legislation was Swedish by its origins. These legal provisions were combined with the existing Baltic German legislation. As it was stated already, only in 1865 Estonia got its first codification of the private law.

The private law of the Baltic Provinces of the Russian Empire remained in force in Estonia even after gaining its independence in 1918 and was used before annexation of Estonia in 1940 by the Soviet Union. During the Soviet period, the applicable legislation, especially the Family Code of the ESSR[131], was in line with the Soviet legal thought. Despite the fact that Soviet legislation was in force in Estonia for more than 40 years, there was no impact made on the Estonian current legislation. The new legal acts, which were adopted by the Estonian government after 1995, show that Estonia decided to develop completely new family legislation[132], also taking into account some old experience of the Continental European legal tradition. Today, in Estonian law there are no traces of the old, Soviet legislation.

Of course, today a number of features related to the Continental[133] legal systems make the majority in Estonian family legislation. Nevertheless, the role of Scandinavian states in Estonia nowadays becomes more and more noticeable as the integration processes in the sphere of policy and economy increase in their numbers. As the result of this, the Estonian family law starts to reflect all the changes, which take place in Estonian policies related to Nordic countries.

In order to conclude everything, a comparative analysis of the most important family law provisions of Estonia and Finland has to be conducted. Of course, not all the legal provisions are

[131] ENSV Teataja 1969, 31, 316
[132] Varul, P. Legal Policy Decisions and Choices in the Creation of New Private Law in Estonia, Juridica. Law Review, 1, University of Tartu, 2000, pp 104—118
[133] In other words – Romano-Germanic

observed since it would take too much time to find everything, which may be similar or different. Moreover, such analysis would be beyond the typical structure of the Bachelor Thesis work.

Regarding childcare, parental leave, maternity protection and family allowances, many of these provisions are similar in their meaning, however, the number of given days or sums, which are paid, are different. In Estonia, for example, according to the law, local governments must provide the opportunity to attend childcare for all children between the ages of 18 months and seven years. At the same, in Finland, parents are entitled to enrol the child in public day care centre after the parental leave period and until the moment when the child becomes seven years old and starts school. This is a similarity.[134]

Regarding family allowances, in Finland they are paid until the child becomes 17 years old and they are not covered by any taxes. The same applies for Estonia. Family benefits are paid by the state to all children until they reach the age of 16.[135] This is also a similarity.

In Estonia, if a child has no entry concerning the father in his or her birth registration, or for whom such entry has been made on the basis of a statement of one of the parents, a single parent has the right to receive a special supplement called 'single parent's child allowance'. In Finland, it is also possible for a single parent to receive a child maintenance allowance in case, if the parent, who is liable to pay maintenance, does not do so. This is another similarity in legal provisions. Since most of these[136] provisions cover only sociological side, they will not be observed further.

As the analysis has shown, a person in Estonia can marry only if he or she has reached the age of 18 years. The same rule applies for family legislation in Finland. In both states, the age of marriage is set to 18. It means that there is a similarity between family legislation of Estonia and Finland regarding the marriageable age.[137]

At the same time, in Estonia, as it is provided by the current Family Law Act, only man and woman can conclude a marriage. In Finland, on the contrary, from 2017 it is legal for same sex couples to marry. In this case, it implies that there is a difference between family laws of these states concerning same sex marriage.

In Estonia, the official who is engaged in registration of civil status cannot testify marriage if it is possible to assume that the basis for marriage recognition is invalid or there exists some basis for negligibility of marriage. The same rule applies for Finnish authorities. If the Register Office

[134] See 1.3.1 and 2.2.1
[135] See 1.3.3 and 2.2.3
[136] Childcare, parental leave, maternity protection and family allowances
[137] See 1.3.4 and 2.2.4

assumes that there exist impediments for marriage, it has the right to cancel the conclusion of marriage. As a result, there is a similarity between Estonian and Finnish family legislation relating to analysis of marriage impediments and rights of state authorities.

At the same time, however, there exists a difference regarding the right to refusal of marriage by priests or other religious figures. According to Estonian family law, parishes, authorized to testify the conclusion of marriages, have the right to refuse the marriage if the marrying person does not correspond to marriage conditions according to the religion operating in church, parish or the union of parishes. In Finland, a parish of the Evangelical Lutheran Church or the Greek Orthodox Church also has the right to examine for the impediments to conclusion of marriage. Nevertheless, parish in Finland can only refer to the conditions presented in sections 7–9 of the Marriage Act of Finland without any specific religious patterns.

Taking into account the impediments to marriage, a number of similarities also exists. In Estonia, excluding the 'no same sex marriage' condition and the marriageable age, the officially stated impediments to conclusion of marriage are consanguinity, existence of the relations of adoption and existence of another marriage in force. In Finland, similar conditions apply in relation to conclusion of marriage. In this case, a certain degree of similarity between family legislation of Finland and Estonia has been established concerning the conclusion of marriage.

In case of divorce in Estonia, after the petition is filled by both spouses, the divorce must be finalised no earlier than one month and no later than three months. In Finland, it is possible for the spouses to register their divorce after a reconsideration period of six to 12 months has passed. The reconsideration period begins on the date when the court or the court registry fills the joint petition of the spouses for the dissolution of the marriage, or the petition of one spouse is served on the other spouse. After the reconsideration period passes, the spouses may be granted a divorce, which could be based on their joint request or upon the request of one of the spouses. As one may notice, the rules applying in both states are different and, therefore, there are no big similarities between Estonian and Finnish family law regarding divorce conditions.

Conclusion

The research showed that in Estonia, according to the law, local governments must provide the opportunity to attend childcare for all children between the ages of 18 months and seven years. At the same, in Finland, parents are entitled to enrol the child in public day care centre after the parental leave period and until the moment when the child becomes seven years old and starts school. This is a similarity.[138]

Regarding family allowances, in Finland they are paid until the child becomes 17 years old and they are not covered by any taxes. The same applies for Estonia. Family benefits are paid by the state to all children until they reach the age of 16.[139] This is also a similarity.

According to my research, in Estonia, if a child has no entry concerning the father in his or her birth registration, a single parent has the right to receive a 'single parent's child allowance'. In Finland, it is also possible for a single parent to receive a child maintenance allowance in case, if the parent, who is liable to pay maintenance, does not do so. This is another similarity in legal provisions.

As the analysis has shown, a person in Estonia can marry only if he or she has reached the age of 18 years. The same rule applies for family legislation in Finland. In both states, the age of marriage is set to 18. It means that there is a similarity between family legislation of Estonia and Finland regarding the marriageable age.[140]

At the same time, in Estonia, as it is provided by the current Family Law Act, only man and woman can conclude a marriage. In Finland, on the contrary, from 2017 it is legal for same sex couples to marry. In this case, it implies that there is a difference between family laws of these states concerning same sex marriage as I have shown in my Thesis.

As it was shown in my work, in Estonia, the official who is engaged in registration of civil status cannot testify marriage if it is possible to assume that the basis for marriage recognition is invalid or there exists some basis for negligibility of marriage. The same rule applies for Finnish authorities. As a result, there is a similarity between Estonian and Finnish family legislation relating to analysis of marriage impediments and rights of state authorities.

As is was shown by the analysis, according to Estonian family law, parishes, authorized to testify the conclusion of marriages, have the right to refuse the marriage if the marrying person does not

[138] See 1.3.1 and 2.2.1
[139] See 1.3.3 and 2.2.3
[140] See 1.3.4 and 2.2.4

correspond to marriage conditions according to the religion operating in church, parish or the union of parishes. In Finland, a parish of the Evangelical Lutheran Church or the Greek Orthodox Church also has the right to examine for the impediments to conclusion of marriage. Nevertheless, parish in Finland can only refer to the conditions presented in sections 7–9 of the Marriage Act of Finland without any specific religious patterns.

Taking into account the impediments to marriage, a number of similarities also exists. In Estonia, excluding the 'no same sex marriage' condition and the marriageable age, the officially stated impediments to conclusion of marriage are consanguinity, existence of the relations of adoption and existence of another marriage in force. In Finland, similar conditions apply in relation to conclusion of marriage.

In case of divorce in Estonia, after the petition is filled by both spouses, the divorce must be finalised no earlier than one month and no later than three months. In Finland, it is possible for the spouses to register their divorce after a reconsideration period of six to 12 months has passed.

The research question of this Thesis work is "what impact on the Estonian legal culture in the context of family legislation has been exerted by coexistence with other Scandinavian countries?" As an answer, some of the provisions of the Estonian family law have the same characteristics as the ones in the Finnish family legislation. As a result of this analysis, a number of similarities and differences has been established between family law provisions of Estonia and Finland. Is it enough to tell that Estonian family legislation could be considered a part of the Nordic legal family? Perhaps, not right now. As it was stated by a some of legal scholars[141], family legislation of Estonia still remains Continental (or Romano-Germanic), but Estonia has already shown its desire to become closer to the states of the Scandinavian Peninsula. As it was stated by Yuri Tikhomirov, nowadays, Estonia is more and more actively involved in a sphere of influence of the Northern European legal family.[142] There is a noticeable increase in a number of integration processes in the sphere of policy and economy. Common interstate structures are founded. Legal aid of Scandinavian countries becomes more and more visible, and it will, undoubtedly, be reflected in the legislation of the Baltic States.

One of the other reasons, why there are similarities between Estonian and Finnish legislation today is the big number of existing political and economic ties between Estonia and Finland. For example, there is an increasing number of Estonian-Finnish cross-border marriages, which makes

[141] See 1.1 and 2.1
[142] Tikhomirov Y. A. Course of comparative jurisprudence, Norma, Moscow, 1996, pp 135-138, p 138

both countries to start looking for the way to harmonise their family law provisions. Actually, there may be much more examples like this.

Nowadays, states become closer and closer to each other. As the globalisation actively plays its role in our society, there is a high possibility that legal systems of European Union Member States will decrease the distance between their legislation. Currently, the European Union does not have any unified law related to family as the current legislation covers only cross-border issues. In theory, any further developments in this branch of European legislation depend not only on the European Commission but also on EU member states.[143] One can say that European Union family law is still at the stage of development, while a framework for national family laws comes from the TEU, the EU Charter of Fundamental Rights and the European Convention on Human Rights.[144]

Looking at the past of family law in the whole Europe, one has the possibility to realise that all the European countries are developing in the same direction. The substance, the tendencies and the driving forces of various family law reforms are essentially the same almost everywhere. The only difference here is the timing.[145] In this sense, even if the family legislation of Estonia will not become truly Nordic or Scandinavian, all the same, it will become close to Swedish and Finnish legislation just because these states will become closer to Estonia as well. This is a very common feature in our constantly changing world.

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