

NATIONAL REPORT: ESTONIA

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A. General

1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.

The legal regulation of marriage is implied in the Estonian Family Law Act (entered into force 01.07.2010).¹ As compared to the former Family Law, adopted in 1995 and being mainly based on the Marriage and Family Code of the Estonian SSR, the legal regulation of entering into a marriage and divorcing in the new Estonian Family Law Act did not bring along any principal changes. As for legal norms, the new law included provisions with regard to the general legal consequences of marriage and also marital property rights were drastically changed.² The procedure for entering into a marriage and divorcing is regulated in the Estonian Vital Statistics Registration Act.³ The Estonian Family Law Act § 1 specifies the prerequisites for contracting a marriage. According to §1(1) of the Estonian Family Law Act, a marriage is contracted between a man and a woman. Only adults may marry. A court may extend the active legal capacity of a person who has attained at least 15 years of age pursuant to the provisions concerning an extension of the active legal capacity of minors for the performance of acts required for entering into a marriage and for the exercise of the rights and performance of the obligations related to a marriage (§ 1 Estonian Family Law Act (2,3)). A marriage has to be contracted in the presence of a vital statistics official. Vital statistics officials include notaries and ministers of religion who are entitled to perform vital statistics procedures pursuant to the Estonian Vital Statistics Registration Act. A marriage is void if it has been contracted between persons of the same sex (§ 10(1) Estonian Family Law Act). A court may annul a marriage if the spouses are of the same sex due to sex reassignment during the marriage (§ 9 (1) item 7). The regulation of transactions in the General Part of the Estonian Civil Code Act⁴ shall not be applied to the contracting of marriages.⁵

¹ Perekonnaseadus (adopted on 18 November 2009). - RT I 2009, 60, 395; RT I, 29.06.2014, 104 available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/522082014005/consolide.

² See K. KULLERKUPP, 'Statutory Marital Property Law *de lege lata* and *de lege ferenda*', *Juridica International*, 2001, pp. 78-88.

³ Perekonnaseisutoimingute seadus (adopted on 20 May 2009, entered into force on 1 July 2010). - RT I 2009, 30, 177; RT I, 29.06.2014, 6, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/509072014015/consolide.

⁴ Tsiviilseadustiku üldosa seadus (adopted on 27 March 2002, entered into force on 1 July 2002). - RT I 2002, 35, 216; RT I, 13.03.2014, 103, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/528032014002/consolide.

⁵ T. GÖTTIG and T. UUSEN-NACKE, 'Perekonnaõiguse seosed teiste tsiviilõiguse valdkondadega', *Juridica*, 2010, No. 2, pp. 86-101.

On 9 October 2014 the Estonian Parliament adopted the Estonian Registered Partnership Act (in English also called the Cohabitation Bill).⁶ The Estonian Registered Partnership Act regulation is gender-neutral, covering legal relations between persons who have entered into a registered partnership agreement and legal relations with third persons.⁷ According to § 26 of the Estonian Registered Partnership Act, January 1, 2016 has been established as the date when the Estonian Registered Partnership Act and its implementing legislation will enter into force. The Estonian Registered Partnership Act provides regulations on proprietary relationships, maintenance obligations and other mutual rights and obligations for all cohabiting couples, including the rights and obligations that concern the children from such unions. According to § 1(1) of the Estonian Registered Partnership Act, a registered partnership agreement may be entered into between two natural persons of whom at least one has his or her residence in Estonia. Only adults with active legal capacity may enter into a registered partnership agreement and - different from contracting a marriage - minors cannot enter into a registered partnership agreement even if a court has extended their active legal capacity.⁸ An adult with restricted active legal capacity may only enter into a registered partnership agreement if he or she sufficiently understands the legal consequences of a registered partnership agreement. If a guardian has been appointed to look after a person's interests, it is presumed that the person in question is unable to understand the legal consequences of a registered partnership agreement unless otherwise provided in the ruling concerning the appointment of a guardian (§ 1(3) Estonian Registered Partnership Act). A registered partnership agreement cannot be entered into between persons of whom at least one is married or has already entered into a valid registered partnership agreement at the time of the proposed registered partnership contract. A registered partnership agreement must be notarially authenticated (§ 3(1) Estonian Registered Partnership Act). A notary shall examine the prerequisites for entering into a registered partnership agreement. A notary shall not authenticate the act if there is a reason to presume that grounds for the annulment or nullity of the registered partnership agreement exist. The details of a registered partnership agreement shall be entered in the population register pursuant to the procedure provided for in the Estonian Vital Statistics Registration Act and the selection of the proprietary relationship of the parties shall be entered in the proprietary relationship register pursuant to the procedure provided for in the Estonian Proprietary Relationship Register Act (§ 3(4) Estonian Registered Partnership Act). At this point in time the implementing regulations for the Estonian Registered Partnership Act are still being drafted, so it is impossible to analyse the amendments to other legal acts as a result of adopting the Estonian Registered Partnership Act, and the situation is also further complicated by the fact that a proprietary relationship register does not currently exist, only a marital property register. According to § 1(1) of the Estonian

⁶ Kooseluseadus. - RT I, 16.10.2014, 1 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/527112014001/consolide.

⁷ www.riigikogu.ee/?op=ems&page=eelnou&eid=ea84e71c-291a-4c91-88b0-bd64af650d21&.

⁸ According to § 9(1) General Part of the Estonian Civil Code Act a court may extend the restricted active legal capacity of a minor of at least 15 years of age if this is in the interest of the minor and the minor's level of development permits this.

Marital Property Register Act,⁹ the marital property register is a state register for the registration of proprietary rights provided for in spouses' marital property contracts and, in the cases provided by law, other proprietary rights.

2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?

There is no special law in Estonian legislation that would regulate informal relationships. Up until the adoption of the Estonian Registered Partnership Act in 2014, Estonian laws lacked alternative opportunities to acknowledge family relationships other than a marriage. An exceptional legislative reference to an informal relationship was made in Decree no. 82 of the Government of the Republic in 1999, now already repealed, clause 39.15 of which read 'Approval of the roll-call questionnaire, forms of roll-call sheets and the roll-call rules for the roll-call of people and their dwellings in the year 2000',¹⁰ according to which a person who was not in a legal marriage, but rather in a self-determined marital relationship with his/her cohabitant and had a common place of residence with his/her cohabitant was considered as being in cohabitation.

In its decision on 3 December 2014, the Supreme Court of the Republic of Estonia emphasized that extramarital relationships do not entail similar obligations as those resulting from a marriage, including the fact that the parties are not subject to mutual support and arrangements concerning the common household, in contrast to the situation of spouses according to Estonian Family Law Act § 15.¹¹

If we first look at the Constitution of the Republic of Estonia,¹² the family as a fundamental aspect in the preservation and growth of the nation, and being the foundation of society, enjoys the protection of the government. The protection referred to in subsection 1 § 27 of the Estonian Constitution extends to the citizens of Estonia and to the citizens of a foreign state who are currently residing in Estonia, as well as to stateless persons (Estonian Constitution § 9).¹³ Neither the Estonian Constitution nor any other legal acts of Estonia have defined the term 'family'. The family as referred to in the Estonian Constitution undoubtedly comprises the relations between a man and a woman in an official marriage. The Administrative

⁹ Abieluvararegistri seadus (adopted on 9 November 1995, entered into force on 1 September 1996). - RT I 1995, 87, 1540; RT I, 21.06.2014, 14 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/520012014005/consolide.

¹⁰ RT I 1999, 32, 431 (in Estonian), repealed by RT I 2006, 38, 289.

¹¹ Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 14.

¹² Eesti Vabariigi Põhiseadus (adopted on 28 June 1992, entered into force on 3 July 1992). - RT 1992, 26, 349; RT I, 27.04.2011, 2 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/530102013003/consolide.

¹³ Decision of the Supreme Court 3-4-1-9-04, at para. 13.

Law Chamber of the Supreme Court stated in its decision of June 19, 2000,¹⁴ that subsection 1 of § 27 of the Estonian Constitution also protects a family cohabitation between a man and a woman, which is not that which is prescribed under the law, from groundless interventions by the state. The Estonian Constitution's § 27(5) obliges the family to provide for those family members who are in need. In its decision of January 21, 2004, the Supreme Court¹⁵ stated that the Estonian Social Welfare Act¹⁶ extends the meaning of a family member to persons jointly spending one or more sources of revenue or sharing a common household, but the Court did not deal more closely with the effect of this act for maintenance obligations.

In clauses 40-41 of its decision of May 5, 2014,¹⁷ the Constitutional Review Chamber of the Supreme Court found that the second sentence of section 2 of § 22 of the Estonian Social Welfare Act provides a definition of the family for the purpose of granting subsistence benefits. According to this definition, persons who are married or living in the same household in a conjugal relationship, their children and their parents who are in need of assistance or other persons jointly using one or more sources of income or with a shared household are deemed to be family members. Two conditions must be met for determining that the income is considered to be family income pursuant to the second sentence of the Estonian Social Welfare Act § 22(2). Firstly, persons must live in the same dwelling and, secondly, they must use the source of income jointly or they must have a shared household. Thus, the right to receive a subsistence benefit pursuant to sections 1 and 2 of § 22 of the Estonian Social Welfare Act very much depends on the actual facts. If disputes over these facts arise that would exclude the right to receive a subsistence benefit, the burden of proof must in general rest with the administrative authority. Thus, no legal prerequisite can be derived from § 22(2) of the Estonian Social Welfare Act that people who live together automatically provide maintenance to each other, and the Estonian Social Welfare Act certainly does not oblige them to do so.

At the same time, this provision only regulates subsistence benefits and cannot be extended to other cases. It was stressed in the analysis concerning the obligations of the family with regard to family members in need of assistance, compiled by the Ministry of Justice and the Ministry of Social Affairs, that although the Estonian Constitution allows for the establishment of an obligation to assist family members who find it difficult to cope, this does not mean that a family member has, pursuant to this provision, a legal commitment to assist family members who are in need of assistance. For a legal commitment to arise, the legislature must establish this commitment in another law.¹⁸ This analysis refers to the fact that a legal commitment

¹⁴ Decision of the Administrative Law Chamber of the Supreme Court 3-3-1-16-00, at para. 1.

¹⁵ Decision of the Supreme Court 3-4-1-7-03, at para. 18.

¹⁶ Sotsiaalhoolekande seadus (adopted on 8 February 1995, entered into force on 1 April 1995). - RT I 1995, 21, 323; RT I, 13.12.2014, 44 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/509072014019/consolide.

¹⁷ Decision of the Supreme Court 3-4-1-67-13.

¹⁸ A. HENBERG, K. MULLER and A. ALEKAND, 'Perekonna kohustused abi vajavate pereliikmete ees', Justiitsministeerium /Sotsiaalministeerium, 2012, available at: digar.nlib.ee/digar/show/?id=120309.

to pay for social services lies only with those family members who have the obligation to assist the member of the family who is in need of assistance under the Estonian Family Law Act. This means that only spouses and direct blood relatives can be required to pay for social services. The pertinent legal acts have not imposed such an obligation on the cohabitant of the person needing assistance and so the cohabitant is not legally obliged to pay for the necessary social services of his or her partner.

However, direct references to informal relationships can nevertheless be found in different legal acts. These are mainly legal acts of a public law nature, primarily norms of procedural law. The norms which apply to the partners in the named informal relationship do not directly regulate the non-marital cohabitation as such, but are mainly intended to avoid a conflict of interests: the partners in an informal relationship are considered to be persons who are close to the person performing certain acts.¹⁹ Not much attention has been paid to informal relationships in the legal literature²⁰ and a more profound research, before the analysis of the Ministry of Justice in 2009,²¹ dates back to the year 2002.²² Back then the authors were of the opinion that there was no direct need for the possible supplementary regulation of informal relationships or the inclusion of an informal relationship as an independent status in the pertinent legislation. The authors reached the conclusion that in 2002 cohabitation was not an entirely extrajudicial or unregulated phenomenon in Estonian civil law, but in reaching this conclusion they still took account of the possibilities of the cohabiting couple to regulate mutual relations in transactions. In the opinion of the authors, considering the different types of informal relationships which existed, a large degree of flexibility should possibly be maintained in the case of a separate regulation concerning different forms of cohabitation. This could be attained by the application of the general provisions of civil law, under which it is always possible to assess the nature of a specific relationship. The Estonian Family Law Act does not prescribe a special regulation in the case of an informal relationship, and also after the adoption of the Estonian Registered Partnership Act the legal relations between couples living in an informal relationship, who do not want to confirm their partnership by concluding a registered partnership agreement and entering it in the register, have not changed. The legal literature and judicial practice are in agreement that the principles of marital proprietary rights cannot be directly extended to informal relationships, and according to the valid legal regulation there can be no analogous extension of the proprietary rights emanating from a marriage to an informal relationship.

¹⁹ A. OLM, 'Mitteabieluline kooselu ja selle õiguslik regulatsioon', Justiitsministeerium, Õiguspoliitika osakond, Eraõiguse talitus, Tallinn, 2009, at para. 3.4. It can be understood from the position of A. Olm that the Estonian legislator also still refers to an informal relationship, but a direct reference in the legislation is lacking.

²⁰ A. OLM, 'Non-married Cohabiting Couples and Their Constitutional', *Juridica International*, 2013, No. 1, pp. 104-111.

²¹ A. OLM, 'Mitteabieluline kooselu ja selle õiguslik regulatsioon', Justiitsministeerium, Õiguspoliitika osakond, Eraõiguse talitus, Tallinn, 2009, at para. 3.4.

²² K. KAMA and K. KULLERKUP, 'Vabaabielu versus abielu: varalised suhted muutuvate kooseluvormide kontekstis', *Juridica*, 2002, No. 6, pp. 359-368.

Also, the Ministry of Social Affairs published the results of a research project in 2008 which concerned couples living in an informal relationship,²³ but this was mostly a socio-political analysis.

3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases

In relations governed by private law, the main circle of legal relations is formed by the mutual proprietary relations of the partners in an informal relationship.²⁴ The provisions of the Estonian Law of Obligations Act²⁵ can be applied when the parties have not otherwise regulated their mutual proprietary relations, primarily the provisions of the Estonian Law of Obligations Act which regulate the a partnership contract. Before the Estonian Law of Obligations Act entered into force on July 1, 2002, the provisions on the joint operation contract, § 438 et seq. of the Civil Code of the Estonian SSR,²⁶ could be applied to the proprietary relations in an informal relationship. In the judgement of the Supreme Court of December 20, 2005, in the civil case 3-2-1-142-05, the Supreme Court found that, in the opinion of the chamber, the partners in an informal relationship can purchase property with common ownership on the basis of a joint operation contract.²⁷

In a partnership contract under the Estonian Law of Obligations Act (§ 580 et seq. Estonian Law of Obligations Act), two or more persons (partners) undertake to act in order to achieve a mutual objective and to help the objective to be achieved in the manner established by the contract, above all by making contributions. The contribution made by a partner may be any form of promoting a mutual objective, including the transfer of assets to the partnership, grant the use of assets to the partnership or the provision of services to the partnership (§ 581(1) Estonian Law of Obligations Act).

According to section 1 of § 77 of the General Part of the Estonian Civil Code Act and section 1 of § 11 of the Estonian Law of Obligations Act, a partnership contract can also be concluded orally. According to the first sentence of section 1 of § 230 of the

²³ L. JÄRVISTE, K. KASEARU and A. REINOMÄGI, 'Abielu ja vaba kooselu: trendid, regulatsioonid, hoiakud, Poliitikauuringute Keskus Praxis', Sotsiaalministeerium, Tallinn, 2008, available (in Estonian) at: digar.nlib.ee/digar/show/?id=31418.

²⁴ A. OLM, 'Mitteabieluline kooselu ja selle õiguslik regulatsioon', Justiitsministeerium, Õiguspoliitika osakond, Eraõiguse talitus, Tallinn, 2009, at para. 4.1.

²⁵ Võlaõigusseadus (adopted on 26 September 2001, entered into force on 1 July 2002). – RT I 2001, 81, 487; RT I, 29.06.2014, 109 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516092014001/consolide.

²⁶ Eesti NSV tsiviilkoodeks (Civil Code of the Estonian SSR). – ENSV Ülemnõukogu Teataja 1964, 25 (234) lisa (in Estonian).

²⁷ Decision of the Civil Chamber of the Supreme Court 3-2-1-142-05, at para. 13.

Estonian Code of Civil Procedure, the party who bases his or her actions on a partnership contract must provide evidence of this partnership contract.

The legal information department of the Supreme Court has undertaken a profound analysis of the application of partnership contracts²⁸ and one part of this analysis deals with the application of the provisions of partnership contracts to the different forms of informal partnerships. According to this analysis, the courts have considered, for example, the renovation of a shared residence and jointly raising children to amount to a joint objective. Thus, the Court has stated that shared family life is the objective of the partnership: the contributions of one party in a shared family life were monetary transfers and the contribution of the other party was the organisation of the subsistence of the family.²⁹

The courts have considered it possible to apply the provisions of a partnership contract to the relations between the parties when one of the parties has worked to increase the property belonging to the other party without receiving extra compensation. According to the courts, the prerequisite in applying the partnership regulation to the proprietary relations of the partners in an informal partnership does not have to be the partnership contract, concluded with direct declarations of intent, but it is sufficient if the factual behaviour of the parties refers to the conclusion of the contract. The partnership can be assumed if the partners have a common household and a common objective can be discerned from their behaviour, which may amount to making common efforts to enable the use of a shared place of residence.

This broad interpretation by the courts, which does not really fit within the objective of the regulation of the partnership contract under the Estonian Law of Obligations Act, in regulating the proprietary relations in an informal relationship after the end of cohabitation must presumably change in the future.

Namely, the Civil Chamber of the Supreme Court found in its decision of December 3, 2014, that the informal partnership (a free marriage) between a man and a woman with a shared permanent household cannot be automatically regarded as a partnership and thus the provisions of the Estonian Law of Obligations Act³⁰ cannot be applied. In the opinion of the chamber, an informal partnership between persons does not meet the criteria of a partnership. The provisions on the partnership contract should be applied to the proprietary relations of cohabiting parties if one of the parties has worked to preserve or increase the value of the property belonging to the other party, without receiving extra compensation for this, e.g. building or constructing a shared place of residence. At the same time the partnership contract presumes the conclusion of a contract via a direct or indirect declaration of intent: thus, if the parties have not concluded a partnership contract, their behaviour should be interpreted in order to discover whether a partnership contract in fact exists.

²⁸ Seltsinguleping, Kohtupraktika analüüs. Riigikohtu õigusteabe osakond, 2014, available at: www.riigikohus.ee/vfs/1673/Seltsinguleping_Piho_Moller.pdf (in Estonian).

²⁹ Decision 2-11-33881 of the Tartu County Court of 15 December 2011.

³⁰ Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 13.

Identifying a common objective on the basis of the behaviour of cohabiting parties generally presumes the existence of a shared household; however, the references in the legal literature clearly state that cohabitation in isolation is insufficient to apply the provisions of the partnership contract to the informal partnership relationship.³¹ In the decision of December 20, 2005, the Supreme Court found³² that the contract of joint operation for purchasing an apartment with common ownership must be authenticated by a notary. Therefore, if such a contract has not been concluded by the partners in an informal partnership, it is impossible to proceed from the fact that the common objective of the parties was the purchase of an apartment with common ownership. In addition, the Supreme Court noted that the contract of joint operation could have been concluded also for other objectives than for purchasing a shared object. If the parties did not regulate their proprietary relations with a contract in acquiring, improving or managing an apartment, the party who has incurred expenses in this respect may file a claim for unjustified enrichment against the other party. The liquidation provisions of the partnership can be applied to the distribution of specific items of higher value (e.g. immovable property) acquired during the informal partnership with a shared household if: both parties have made noticeable and comparable financial contributions (evaluated on a monetary basis) to acquire or improve the item and when acquiring or improving the item the parties had at least a common intention with regard to the lasting establishment of an economically common material value (joint property).³³

According to the General Part of the Estonian Civil Code Act § 5, civil rights and obligations arise from transactions, events provided by law, other acts which create civil rights and obligations as prescribed by law, and from unlawful acts.

So, as referred to in this provision, the civil rights and liabilities of the partners in an informal partnership are incurred in relation to third parties as well as towards each other on the basis of transactions or the law. Thus, legal relations between the partners in an informal partnership may be incurred on the basis of negotiorum gestio, a gratuitous contract or unjustified enrichment.

The regulation of a lease contract under the Estonian Law of Obligations Act regulation deserves attention. According to § 289 of the Estonian Law of Obligations Act, the lessee of a dwelling has the right to house in that dwelling his or her spouse, minor children and parents who are incapacitated for work without the consent of the lessor unless it is agreed in the lease contract that the lessee may do so only with the consent of the lessor. The partner in an informal partnership is not included in this list. At the same time, § 289 has been entitled 'Accommodation of the family members of the lessee of a dwelling' and the partner in an informal partnership should be included in the term 'family member'. The legal literature is rather unclear as to whether the housing of unlisted persons in such a dwelling is a breach of

³¹ P. VARUL, I. KULL, V. KÕVE and M. KÄERDI, *Võlaõigusseadus II. Kommenteeritud väljaanne* (Law of Obligations II. Commented Edition), Juura, Tallinn, 2007, at p. 641 (in Estonian).

³² Decision of the Civil Chamber of the Supreme Court 3-2-1-142-05, at para. 14.

³³ Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 19.

contract – the right of the lessee to house other persons may be derived from the wording of the lease contract.³⁴ According to § 391(1) of the Estonian Law of Obligations Act, upon the death of a lessee of a dwelling, the spouse who lived in the dwelling together with the lessee has the right to take the place of the lessee in the lease contract. If the lessee did not have a spouse who has this right or who does not wish to take the place of the lessee in the lease contract, other family members who lived in the dwelling together with the lessee have the right to take the place of the lessee in the lease contract pursuant to an agreement between them.

§ 129 of the Estonian Law of Obligations Act regulates the compensation for patrimonial damage upon death. According to § 129(6) of the Estonian Law of Obligations Act, if a person who has died has maintained, on a continuous basis up to his or her death, another person with whom the deceased lived together as a family or whom the deceased person maintained on the basis of a moral obligation, the person who has caused the death and who is therefore obliged to compensate for the damage shall pay compensation to that person if: the person needs maintenance, and he or she cannot receive maintenance in any other manner, and the person who has died would presumably have continued to maintain the person in the future. The legal literature has also acknowledged that a cohabiting partner should be considered as a person with whom the deceased person lived ‘together as in a family’ and that he or she therefore has a right to rely on section 6, § 129 of the Estonian Law of Obligations Act, which considers the factual maintenance relationship between the deceased and the surviving person in question.³⁵ Third-party liability towards the partner in an informal partnership is also a possibility.

According to the Estonian Law of Obligations Act § 767(1), if a healthcare service is provided to an unconscious or incapable patient, the immediate family of the patient must be informed of his or her state of health. The immediate family here means the spouse, parents, children, and siblings of the patient. Other persons who are close to the patient may also be deemed to be immediate family members if this can be concluded from the patient’s way of life (§ 767(2) of the Estonian Law of Obligations Act).

An informal partnership in itself does not change aspects of ownership . Each person shall remain the owner of his/her possessions. Things purchased during the relationship are acquired according to the general rules of property law, i.e. either subject to the sole ownership of one party or common ownership.³⁶ According to §

³⁴ P. VARUL, I. KULL, V. KÕVE and M. KÄERDI, *Võlaõigusseadus II. Kommenteeritud väljaanne* (Law of Obligations II. Commented Edition), Juura, Tallinn, 2007, at p. 187 (in Estonian); at the same time there is an opinion that § 289 of the Estonian Law of Obligations Act exhaustively list persons who have the right to use the thing together with the lessee (A. OLM, ‘Mitteabieluline kooselu ja selle õiguslik regulatsioon’, Justiitsministeerium, Õiguspoliitika osakond, Eraõiguse talitus, Tallinn, 2009, at para. 4.4).

³⁵ K. KAMA and K. KULLERKUPP, ‘Vabaabieliu versus abielu: varalised suhted muutuvad kooseluvormide kontekstis’, *Juridica*, 2002, No. 6, pp. 359-368.

³⁶ Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 17.

90(1) of the Estonian Law of Property Act,³⁷ a possessor of movable property and any earlier possessor shall be deemed the owner of the thing during the possessor's possession until the contrary is proved. The presumption of ownership concerning the possessor of the movable property, under § 90, generally involves also the presumption of the co-possessor's common ownership, which provides certain protection to the (non-owner) spouse as well as to other cohabiting partners. In the case of immovable property, this presumption is not valid, as it concerns primarily the household and the consumer goods used in daily life.³⁸

Persons in an informal partnership have been referred to by the Estonian legislation in several different legal areas. As for social security law, the Estonian Social Welfare Act³⁹ should be noted, § 22(2) of which stipulates that the granting of a subsistence benefit is based on the income of the benefit applicant and his or her family members. Upon the granting of a subsistence benefit, persons who are married or living in the same dwelling in a conjugal relationship, their children and parents in need of assistance or other persons using one or more sources of income jointly or with a shared household are deemed to be family members.

§ 117 of the Estonian Bankruptcy Act⁴⁰ stipulates that the persons in question are deemed to be connected with a debtor who is a natural person. According to § 117(1) of the Estonian Bankruptcy Act, the spouse of the debtor is deemed to be connected with a debtor even if the marriage was contracted after the conclusion of the transaction which is subject to recovery, and the former spouse of the debtor if the marriage was terminated within one year before the conclusion of the transaction and persons who live in a shared household with the debtor or who lived in a shared household with the debtor during the year preceding the conclusion of the transaction which is subject to recovery. In its decision of May 21, 2012,⁴¹ the Supreme Court found that the following indicated that the person in question is connected to the debtor: a common child of the debtor and the defendant as well as when, during the legal proceedings, the debtor has recognised cohabitation with the defendant. The specification of the persons connected to the debtor on the basis of the Estonian Bankruptcy Act is important in enforcement proceedings. According to the Estonian Code of Enforcement Procedure⁴² § 188, a court shall declare invalid a

³⁷ Asjaõigusseadus (adopted on 9 June 1993, entered into force on 1 December 1993). - RT I 1993, 39, 590; RT I, 08.07.2014, 7 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/510072014007/consolide.

³⁸ K. KAMA and K. KULLERKUPP, 'Vabaabieliu versus abielu: varalised suhted muutuvate kooseluvormide kontekstis', *Juridica*, 2002, No. 6, pp. 359-368.

³⁹ Sotsiaalhoolekande seadus (adopted on 8 February 1995, entered into force on 1 April 1995). - RT I 1995, 21, 323; RT I, 13.12.2014, 44 available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/509072014019/consolide.

⁴⁰ Pankrotiseadus (adopted on 22 January 2003, entered into force on 1 January 2004). - RT I 2003, 17, 95; RT I, 21.06.2014, 20, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/511072014018/consolide.

⁴¹ Decision of the Civil Chamber of the Supreme Court 3-2-1-62-12, at para. 9.

⁴² Täitemenetluse seadustik (adopted on 20 April 2005, entered into force on 1 January 2006). - RT I 2005, 27, 198; RT I, 31.12.2014, 14, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/521012015001/consolide.

transaction which has been entered into by a debtor within three years before an action by a claimant for a declaration of invalidity relating to the transaction has been filed in order to knowingly damage the interests of the claimant if the counterparty knew or should have known thereof at the time of entering into the transaction. It is presumed that a counterparty knew or should have known that a transaction damages the interests of another party if the counterparty is a person connected with a debtor or the transaction was entered into six months before the commencement of enforcement proceedings or the seizure of the assets of the debtor. Persons connected with a debtor shall be determined according to § 117 of the Estonian Bankruptcy Act.

The provisions regarding the impartiality of a judge under Estonian civil procedural law state that if the partners in an informal partnership are participants in the proceedings, this is a fact which may give rise to doubts as to the impartiality of the judge. According to § 23 item 2 of the Estonian Code of Civil Procedure,⁴³ a judge shall not adjudicate a civil matter and shall remove himself or herself in a matter involving his or her spouse or cohabitee. The Estonian Code of Administrative Court Procedure⁴⁴ refers to the regulation of the Estonian Code of Civil Procedure with regard to the removal of a judge.

According to § 49(1) item 4 of the Estonian Code of Criminal Procedure,⁴⁵ a judge is required to remove himself or herself from a criminal proceeding if he or she is or has been a person who is/was close to the accused, victim or civil defendant. The circle of close persons shall be determined on the basis of § 71(1) Estonian Code of Criminal Procedure and it includes the spouse, the person in a permanent cohabitation and his/her parent, including after the end of a marriage or permanent cohabitation (§ 71(1) item 5).

The Estonian Code of Misdemeanour Procedure⁴⁶ does not directly refer to the partner in an informal partnership, but according to § 25(1) item 3, an official of a body conducting extrajudicial proceedings or a judge is required to remove himself or herself if he or she cannot remain impartial.

According to § 9(1) item 5 Estonian Code of Enforcement Procedure, a bailiff shall not conduct enforcement proceedings and shall remove himself or herself by a decision if he or she is a spouse of a debtor or a claimant, or a person permanently living together with a debtor or a claimant, even if the marriage or permanent

⁴³ Tsiviilkohtumenetluse seadustik (adopted on 20 April 2005, entered into force on 1 January 2006). - RT I 2005, 26, 197; RT I, 31.12.2014, 5 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/504092014001/consolide.

⁴⁴ Halduskohtumenetluse seadustik (adopted on 27 January 2011, entered into force on 1 January 2012). - RT I, 23.02.2011, 3; RT I, 31.12.2014, 9 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/508072014005/consolide.

⁴⁵ Kriminaalmenetluse seadustik (adopted on 12 February 2003, entered into force on 1 July 2004). - RT I 2003, 27, 166; RT I, 30.12.2014, 9 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/520012015017/consolide.

⁴⁶ Väärteomenetluse seadustik (adopted on 22 May 2002, entered into force on 1 September 2002). - RT I 2002, 50, 313; RT I, 12.07.2014, 12 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/521082014006/consolide.

cohabitation has ended. There are numerous examples of recognising unregistered cohabitation in Estonian laws with regard to avoiding corruption. For example, according to § 120 (1 and 2) of the Estonian Public Procurement Act,⁴⁷ a member of the Review Committee will not review a request and will remove him/herself from reviewing the request in the event of the occurrence of a fact that gives reason to cast doubts as to his or her impartiality. The occurrence of this fact will be presumed if a member of the Review Committee reviewing a request is the spouse, cohabitee, or also the sibling or any other direct blood relative of the spouse or cohabitee, including after the termination of the marriage or permanent cohabitation with a party to the proceedings or to the legal representative of the party to the proceedings.

The Estonian Taxation Act⁴⁸ also includes procedural public law provisions, according to § 49(1) item 2 of which an official of a tax authority shall not conduct proceedings in a matter if he or she is a relative (parent, child, adoptive parent, adopted child, brother, sister, grandparent or grandchild), a relative by marriage (the spouse's parent, child, adoptive parent, adopted child, brother, sister, grandparent or grandchild) or a family member of a participant in the proceedings or of a representative of a participant in the proceedings. The partner in an informal partnership should be treated as a family member. According to § 6(2) item 3 of the Estonian Victim Support Act,⁴⁹ a victim support volunteer cannot be a person who is a grandparent, parent, brother, sister, child or grandchild, spouse or cohabitee of an official of the Social Insurance Board who provides victim support services and supervises him or her, or a parent, brother, sister or child of the spouse or cohabitee.

§ 84(2) of the Estonian Credit Institutions Act⁵⁰ lists persons with equivalent economic interests to the persons related to a credit institution. These persons include the spouse or cohabitee, children, parents, sisters and brothers of a manager of a credit institution, of the head of an internal audit unit or of the chairman of an audit committee.

Several laws restrict official relationships of subordination and they also directly refer to partners in an informal partnership. The Estonian Military Service Act⁵¹ § 92(3) item 4 allows a serviceman/woman to be appointed to a civilian post, as long as that person is not a spouse of an immediate superior or a person in a relationship with an immediate superior which is similar to a marriage (hereinafter an unmarried partner) or a grandparent of an active serviceman, a parent or descendant of a parent

⁴⁷ Riigihangete seadus (adopted on 24 January 2007, entered into force on 1 May 2007). - RT I 2007, 15, 76; RT I, 12.07.2014, 123 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/509072014009/consolide.

⁴⁸ Maksukorralduse seadus (adopted on 20 February 2002). - RT I 2002, 26, 150; RT I, 23.12.2014, 20 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/523012015008/consolide.

⁴⁹ Ohvriabi seadus (adopted on 17 December 2003). - RT I 2004, 2, 3; RT I, 15.03.2014, 24 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/517062014014/consolide.

⁵⁰ Krediitiasutuste seadus (adopted on 9 February 1999). - RT I 1999, 23, 349; RT I, 23.12.2014, 28 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/517062014001/consolide.

⁵¹ Kaitseväeteenistuse seadus (adopted on 13 June 2012, entered into force on 1 April 2013). - RT I, 10.07.2012, 1; RT I, 22.12.2014, 3 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/519092014003/consolide.

of the immediate commander or his or her spouse or his or her unmarried partner, including a child or grandchild. According to the Estonian Civil Service Act⁵² § 15(4), a person may not be employed in a government post if he or she is a spouse or a partner in a marriage-like relationship (an unmarried partner) or a grandparent or parent of an official who has direct control over the corresponding post, or a parent or a descendant of the parent, including a child and grandchild, of a spouse or an unmarried partner. According to § 15(2) 4 of the Estonian Prosecutor's Office Act,⁵³ a person shall not be appointed as a prosecutor if he or she is a spouse, cohabitant or grandparent of the person who exercises direct control over the position of a prosecutor, or who is a parent or a relative in the descending line of the person exercising direct control over the position of a prosecutor or their spouse or cohabitant, including a child and grandchild.

Several laws recognise the right of the partner in an informal partnership not to testify, in order to avoid being in a situation of conflict in judicial proceedings. According to § 257(1) item 5 of the Estonian Code of Civil Procedure, the spouse of or a person permanently living together with the plaintiff or defendant has the right to refuse to testify as a witnesses, even if the marriage or permanent cohabitation has come to an end. According to § 71(1) item 5 of the Estonian Code of Criminal Procedure, the spouse of or a person permanently living together with the suspect or accused, and the parents of the spouse or person, even if the marriage or permanent cohabitation has come to an end, have the right to refuse to testify as witnesses. The presentation, taking and examination of evidence in administrative matters is subject to the provisions of the Estonian Code of Civil Procedure, thus, also the right of witnesses to refuse to testify during an administrative court procedure. The Estonian Taxation Act does not prescribe the right to refuse to give evidence to the partner in an informal partnership.

4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?

Estonian legislation uses several definitions to define an informal relationship. The current author uses the English translations that are available on the official page of Riigi Teataja ('State Gazette'; www.riigiteataja.ee/en/). The references to 'marriage' and 'cohabitation' mainly exist side by side in the laws. For example, the Estonian Social Welfare Act § 22(2) item 1 states as follows: 'persons who are married or in a relationship similar to marriage'. The Estonian Code of Civil Procedure 'in a matter of his or her spouse or cohabitee' (§ 23 item 2) or 'the spouse of or a person permanently living together' (§ 257(1) item 5). The same definition is used in § 71(1) item 5 of the Estonian Code of Criminal Procedure and § 9(1) item 5 of the Estonian Code of Enforcement Procedure. § 117(1) item 2 of the Estonian Bankruptcy Act

⁵² Avaliku teenistuse seadus (adopted on 13 June 2012). - RT I, 06.07.2012, 1; RT I, 18.02.2014, 4 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/509072014003/consolide.

⁵³ Prokuratuuriseadus (adopted on 22 April 1998). - RT I 1998, 41, 625; RT I, 21.12.2012, 16 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/513112013015/consolide.

refers to 'persons who live in a shared household with the debtor'. § 6(2) item 3 of the Estonian Victim Support Act uses the word 'cohabitee', as does § 84(2) of the Estonian Credit Institutions Act. The Estonian Military Service Act⁵⁴ § 92(3) item 4 defines a cohabiting partner as 'a person in a relationship similar to marriage (hereinafter unmarried partner)'. The Estonian Civil Service Act⁵⁵ § 15 item 4 uses the definition: 'a partner in the marriage-like relationship (unmarried partner)'. Before adopting the Estonian Registered Partnership Act, a proposal was made in the legal literature to use 'cohabitation' as a general term, covering all possible forms of cohabitation, including marriage and an informal relationship.⁵⁶

In § 129(6) of the Estonian Law of Obligations Act regulating a claim for the compensation of damage we can find the following: 'the person with whom the deceased lived together as a family or whom the deceased person maintained on the basis of a moral obligation'.

5. Where informal relationships between a couple have legal effect:

a. When does the relevant relationship begin?

In the case of an informal relationship there is no formal regulation on when such a relationship commences; in disputes regarding property rights the parties will often define when they consider their informal relationship to have commenced.⁵⁷ One opportunity to evidence this in judicial proceedings is with the entry of the place of residence in the population register. The beginning of cohabitation is certainly of decisive importance when the provisions of a partnership contract are applied to mutual proprietary relations.

b. When does the relevant relationship end?

As regulations on the commencement of an informal relationship are lacking, in disputes relating to proprietary relations the parties themselves generally rely on when the cohabitation came to an end and if the provisions of a partnership contract are applied to the proprietary relations, the regulation of the end of the partnership as in the Estonian Law of Obligations Act shall be valid.⁵⁸

6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?

⁵⁴ Kaitseväeteenistuse seadus (adopted on 13 June 2012, entered into force on 1 April 2013). - RT I, 10.07.2012, 1; RT I, 29.06.2014, 101 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/519092014003/consolide.

⁵⁵ Avaliku teenistuse seadus (adopted on 13 June 2012). - RT I, 06.07.2012, 1; RT I, 18.02.2014, 4 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/509072014003/consolide.

⁵⁶ A. OLM, 'Non-married Cohabiting Couples and Their Constitutional', *Juridica International*, 2013, pp. 104-111.

⁵⁷ See the Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 12.

⁵⁸ See the Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para 20.

According to § 27(1) of the Estonian Constitution, the family is fundamental to the preservation and growth of the nation and constitutes the foundation of society and it therefore enjoys the protection of the government. As for personal protection, § 27 clause 1 of the Estonian Constitution ensures the right of all and everybody. This protection under § 27 clause 1 of the Estonian Constitution extends to citizens of Estonia as well as to citizens of foreign states and stateless persons who reside in Estonia (Estonian Constitution § 9).⁵⁹ Neither the Estonian Constitution nor any other Estonian laws provide a definition of the 'family'. The constitutional definition of family life definitely includes relations between officially married men and women. Taking into account the diversity of relations between people in contemporary society, it is not justified, according to the legal literature, to relate the constitutional definition of a family only with an official marriage.⁶⁰ This opinion voiced in the legal literature is also supported by the Supreme Court. On June 19, 2000, the Administrative Law Chamber of the Supreme Court found that subsection 1 of § 27 of the Estonian Constitution also protects an unregistered cohabitation between a man and a woman from unfounded intervention by the state as prescribed by law. The Supreme Court found that within the protection granted by § 27(3) of the Estonian Constitution parents have a right to raise their children. There must therefore be very sound reasons to restrict the right to live as a family and to raise children.⁶¹

§ 27(5) of the Estonian Constitution obligates the family to provide for those family members who are in need. In its decision of January 21, 2004,⁶² the Supreme Court found that in deciding on social aid to be provided by the state and its scope, the provision of § 27 of the Estonian Constitution must be taken into account. In the same decision the Supreme Court also found that it thus follows from the Estonian Constitution that the right of a person in need to claim against the state on the basis of clause 2 of § 28 of the Estonian Constitution shall completely or partially lapse if the needy person in question has family members who are able to care for him or her. The scope of the social aid provided by the state for 'needy persons', as stipulated in the first sentence of clause 2 of § 28 of the Estonian Constitution, should thus depend on the definition of a 'family', as referred to in clause 5, § 27 of the Estonian Constitution. In the same decision the Supreme Court found that maintenance relations between members of the family are regulated by several laws. Although the Supreme Court admitted that the Estonian Social Welfare Act⁶³ extends the definition of 'a family member' to persons who use one or more sources of income jointly, it did not take the opportunity to examine the effect of this law on maintenance obligations more closely.

⁵⁹ Decision of the Supreme Court 3-4-1-9-04, at para. 13.

⁶⁰ Eesti Vabariigi Põhiseadus. Kommenteeritud väljaanne, 2012; available at: www.pohiseadus.ee/ptk-2/pg-27/ (in Estonian)

⁶¹ Decision of the Administrative Law Chamber of the Supreme Court 3-3-1-16-00, at para. 1.

⁶² Decision of the Supreme Court 3-4-1-7-03, at para. 18.

⁶³ Sotsiaalhoolekande seadus (adopted on 8 February 1995, entered into force on 1 April 1995). - RT I 1995, 21, 323; RT I, 29.06.2014, 71 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/509072014019/consolide.

Still, it is not correct and is legally unfounded to speak of the Estonian Constitution as being the basis for a claim relating to a maintenance obligation, as the Estonian Constitution also includes other provisions which regulate private law relations. Namely, § 25 of the Estonian Constitution provides the right to compensation for intangible as well as tangible harm that a person has suffered because of unlawful actions by any person and this has also been dealt with in the legal literature as a directly applicable claim⁶⁴. But such a direct triple effect of fundamental rights is not correct and the Supreme Court already found in its decision of December 1, 1997, that civil law protective instruments are prescribed in civil law.⁶⁵

In clauses 40-41 of its decision of May 5, 2014,⁶⁶ the Constitutional Review Chamber of the Supreme Court found that the second sentence of section 2 of § 22 of the Estonian Social Welfare Act provides a definition of a family for the purpose of granting subsistence benefits. But in the same decision the Supreme Court clearly stressed that no legal prerequisite can be derived from § 22(2) of the Estonian Social Welfare Act to the effect that people who live together must provide maintenance to each other.

7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?

The explanatory memorandum to the Estonian Registered Partnership Act clearly refers to the fact that partners in an informal relationship (primarily, same-sex cohabitation) have so far not been given sufficient protection in Estonian legislation.⁶⁷ Persons in an informal relationship did not have sufficient protection as compared with the practice of the European Court of Human Rights. In the memorandum,⁶⁸ sent to the Minister of Justice in 2011, the Chancellor of Justice found that a permanent cohabitation between two persons of the same sex falls within the field of protection granted by the fundamental rights of the family, and therefore this form of cohabitation is legally unregulated, a situation which is not in conformity with the Estonian Constitution. Thus, it is in accordance with the principle of ensuring fundamental rights to establish an appropriate legal framework for the regulation of such legal relations. In particular, in the analysis by the Ministry of Justice it could be pointed out that the regulation concerning the adoption and the custody of a child may not guarantee a consideration of the child's interests. According to the Estonian

⁶⁴ Eesti Vabariigi Põhiseadus, Kommneteeritud väljaanne, available at: www.pohiseadus.ee/ptk-2/pg-25/; See Decision of the Civil Chamber of the Supreme Court 3-2-1-37-06, para. 10; Critically see K. SEIN, P. VARUL, I. KULL, V. KÖVE, M. KÄERDI, and I. VÕLAÕIGUSSEADUS, *Kommenteeritud väljanne* (Law of Obligations I. Commented Edition), Juura, Tallinn, 2006, at p. 455 (in Estonian).

⁶⁵ Decision of the Civil Chamber of the Supreme Court 3-2-1-99-97.

⁶⁶ Decision of the Supreme Court 3-4-1-67-13.

⁶⁷ Available at: www.riigikogu.ee/?op=ems&page=eelnou&eid=ea84e71c-291a-4c91-88b0-bd64af650d21& (in Estonian).

⁶⁸ Available at: oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_margukiri_samasooliste_isikute_peresuhe.pdf.

Family Law Act § 148(1), a single person can only adopt alone. According to the first sentence of the Estonian Family Law Act § 148(2), only married persons can jointly adopt the same child. Thus, partners in an informal relationship do not have the right to adopt children together and custody is only given to the partner who adopts alone.⁶⁹

After the adoption of the Estonian Registered Partnership Act the parties in an informal relationship now have the right to register their cohabitation and to be given the necessary legal recognition, but it cannot be predicted how many partners in an informal relationship will make use of this opportunity.

8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.

Already in his memorandum⁷⁰ sent to the Minister of Justice in 2011, the Chancellor of Justice remarked that a permanent cohabitation between persons of the same gender should fall within the protection granted by the fundamental rights of the family, so where such cohabitation is legally unregulated, this is not in accordance with the Estonian Constitution.

On October 9, 2014, the Estonian Parliament adopted the Estonian Registered Partnership Act,⁷¹ which was validated by the President only a few hours after its adoption. The proceedings of the draft legislation in Parliament polarized society and attracted extraordinary public attention. It was the first draft legislation which gave an opportunity to partners in an informal relationship to regulate mutual legal relations and legal relations with third parties (a cohabitation is gender-neutral and a cohabitation contract can be concluded between two persons of the same as well as of different genders). Numerous appeals were made with regard to the draft legislation by citizens' associations, religious organisations, trade unions, different societies and private persons,⁷² which were received by the leading committee before the first reading as well as between the first and the second reading. As for the different opinions and appeals, they are mostly positions expressing a certain general mentality.⁷³ The Pro Patria and Res Publica Union fractions submitted a draft

⁶⁹ Perekonnaseadus (adopted on 18 November 2009). - RT I 2009, 60, 395; RT I, 29.06.2014, 104 available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/522082014005/consolide.

⁷⁰ Available at: oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_margukiri_samasooliste_isikute_peresuhe.pdf.

⁷¹ Kooseluseadus. - RT I, 16.10.2014, 1 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/527112014001/consolide.

⁷² The procedural course of the draft legislation can be followed in Estonian. Available at: www.riigikogu.ee/?op=ems&page=eelnou&eid=ea84e71c-291a-4c91-88b0-bd64af650d21&

⁷³ Explanatory memorandum to the draft legislation of the Estonian Registered Partnership Act. Procedure in the leading committee between the first and second reading. Available at: www.riigikogu.ee/?op=ems&page=eelnou&eid=ea84e71c-291a-4c91-88b0-bd64af650d21& (in Estonian).

legislation to Parliament, according to which a referendum should have been organized with regard to the adoption of the Estonian Registered Partnership Act. This draft legislation was rejected by Parliament.

9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?

Not at present. With regard to the fact that the Estonian Registered Partnership Act with its implementing provisions must enter into force on January 1, 2016, the legislator must include the Registered Partnership with other private as well as public legal acts, the marital property register must be rearranged etc. Thus, the implementation act of the Estonian Registered Partnership Act can be expected in the very near future.

B. Statistics and estimations

10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.

Table 1. The number of concluded marriages and marriages per 1000 of the population, 2000–2013

Year	Concluded marriages	Marriages per 1000 of the population
2000	5,485	3.93
2001	5,647	4.07
2002	5,853	4.24
2003	5,699	4.16
2004	6,009	4.41
2005	6,121	4.52
2006	6,954	5.16
2007	7,022	5.24
2008	6,127	4.58
2009	5,362	4.02
2010	5,066	3.80
2011	5,499	4.14
2012	5,888	4.45
2013	5,630	4.27

Source: Statistics Estonia

Table 2. Married people according to gender and age, 2000–2013

	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60+
Men										
2000	110	1,293	1,569	898	472	382	255	191	116	199

2001	107	1,258	1,567	1,002	540	390	272	188	131	192
2002	78	1,151	1,762	1,132	590	388	292	197	114	149
2003	84	1,153	1,682	1,102	623	367	245	170	107	166
2004	90	1,102	1,720	1,255	662	408	291	178	147	156
2005	65	1,111	1,813	1,172	712	438	316	205	140	149
2006	100	1,250	1,920	1,413	873	485	361	243	155	154
2007	82	1,121	1,968	1,485	924	531	363	263	135	150
2008	60	954	1,721	1,254	799	469	350	220	149	151
2009	52	728	1,511	1,144	726	424	302	180	141	154
2010	40	678	1,382	1,144	706	426	270	185	100	135
2011	32	646	1,534	1,170	847	481	296	230	129	134
2012	21	626	1,589	1,327	918	556	333	226	144	148
2013	32	575	1,568	1,241	793	567	326	239	135	154
Women										
2000	492	1,773	1,327	672	375	264	233	155	67	127
2001	475	1,737	1,426	705	423	312	240	148	75	106
2002	414	1,751	1,604	864	414	274	237	151	65	79
2003	407	1,706	1,563	835	423	289	191	118	75	92
2004	388	1,737	1,626	925	474	305	220	172	80	82
2005	369	1,772	1,679	889	527	327	216	163	91	88
2006	417	1,929	1,879	1,110	632	348	266	190	96	87
2007	367	1,851	1,942	1,187	662	367	286	178	107	75
2008	312	1,536	1,716	1,036	608	354	252	144	84	85
2009	184	1,284	1,577	927	542	307	219	141	100	81
2010	162	1,145	1,545	916	537	293	196	134	68	70
2011	137	1,187	1,669	1,003	590	379	220	164	84	66
2012	123	1,157	1,792	1,104	738	412	223	162	101	76
2013	137	1,106	1,647	1,107	671	379	235	165	96	87

Source: Statistics Estonia

Table 3. Average age upon first marriage, 2000–2013

	Average age upon first marriage	
	Men	Women
2000	27.4	24.9
2001	27.7	25.2
2002	28.1	25.4

2003	28.1	25.6
2004	28.6	26
2005	28.6	26.2
2006	28.9	26.4
2007	29.3	26.8
2008	29.4	27.1
2009	29.9	27.5
2010	30.2	27.8
2011	30.6	28.1
2012	31	28.6
2013	30.8	28.4

Source: Statistics Estonia

**11. How many couples are living in an informal relationship in your jurisdiction?
Where possible, indicate trends.**

According to the population and dwelling census in 2000 (reference period: 31 March 2000), there were 61,223 couples in an informal relationship⁷⁴ (21.5% of all persons living with partners) (Statistics Estonia 2000).

According to the population and dwelling census in 2011 (reference period 31 December 2011), there were 85,107 couples in an informal relationship (31% of all people living with partners) (Eurostat, 2011 Census).

12. What percentage of the persons living in an informal relationship are:

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

The publicly available statistics do not enable an in-depth abstract of the required age groups to be made.

2000

Table 1. Persons in an informal relationship according to age groups, 2000

Total number of couples in an informal relationship: 61,223

Total number of persons in an informal relationship: 122,446

	Men	Women	Total	% of persons in an informal relationship
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⁷⁴ Couples – persons aged 15 years or older and whose age is unknown.

15-25	8,832	14,387	23,219	18.96%
26-40	28,079	25,007	53,086	43.355%
41-49	10,218	9,257	19,475	15.90%
50-64	10,223	9,110	19,333	15.79%
65+	3,835	3,443	7,278	5.94%
Age not known	36	19	55	0.04%
	61,223	61,223	122,446	

Source: Statistics Estonia, Population and dwelling census 2000

2011

Table 2. Persons in an informal relationship according to age groups, 2011

Total number of couples in an informal relationship: 84,893

Total number of persons in an informal relationship: 169,786

	Men	Women	Total	% of persons in an informal relationship
15-25	6,804	12,829	19,633	11.56%
26-40	40,657	40,269	80,926	47.66%
41-49	17,858	15,080	32,938	19.40%
50-64	14,336	12,426	26,762	15.76%
65+	5,238	4,289	9,527	5.61%
	6,804	12,829	19,633	

* The table does not include the informal relationships of couples of the same gender.

Source: Statistics Estonia, Population and dwelling census 2011

13. How many couples living in an informal relationship enter into a formal relationship with each other:

- a. Where there is a common child?
- b. Where there is no common child?

Table 3. Married persons having been in an informal relationship before marriage and the number of common children involved, 2000-2013

Year	No common children	Having common children	Total
2000	3,026	1,106	4,132
2001	3,112	1,079	4,191
2002	2,828	1,105	3,933
2003	2,498	1,180	3,678

2004	2,319	1,254	3,573
2005	2,336	1,321	3,657
2006	3,071	1,580	4,651
2007	3,353	1,753	5,106
2008	3,092	1,556	4,648
2009	2,706	1,472	4,178
2010	2,571	1,360	3,931
2011	2,596	1,514	4,110
2012	2,820	1,673	4,493
2013	2,601	1,540	4,141

Source: Statistics Estonia

14. How many informal relationships are terminated:

- a. Through separation of the partners?
- b. Through the death of one of the partners?

There are no official statistics available.

15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?

There are no official statistics available as to what is the average duration of informal relationships before their termination. There were no questions on this aspect in the population census in 2011.

16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.

Table 4. Number of live births outside marriage and in an informal relationship⁷⁵, 2000–2013

Year	Live births outside marriage	Percentage of live births outside marriage	Amount of live births in an informal relationship	Percentage of live births in an informal relationship of those born outside a marriage
2000	7,115	54.45%	3,675	51.65%
2001	7,101	56.21%	3,804	53.57%

⁷⁵ Child born from an informal relationship – a child whose parents are not officially married at the moment of registering the birth, but have defined their cohabitation as an informal relationship.

2002	7,318	56.29%	2,642	36.10%
2003	7,538	57.82%	2,891	38.35%
2004	8,111	57.97%	5,730	70.64%
2005	8,396	58.51%	6,103	72.69%
2006	8,665	58.24%	6,799	78.47%
2007	9,159	58.06%	7,363	80.39%
2008	9,467	59.07%	7,754	81.91%
2009	9,328	59.18%	7,717	82.73%
2010	9,359	59.14%	7,721	82.50%
2011	8,759	59.67%	7,555	86.25%
2012	8,209	58.40%	7,301	88.94%
2013	7,975	58.94%	7,161	89.79%

* The number of births in informal relationships in the years 2000–2003 has been underestimated due to the amendments to the data collection.

* Birth in an informal relationship – a child whose parents are not officially married at the moment of registering the birth, but who have defined their cohabitation as an informal relationship.

Source: Statistics Estonia

The percentage of children born outside a marriage has been increasing since the end of the 1980s, when the percentage of children born within a marriage decreased.⁷⁶ As for births outside a marriage, the percentage of births in which the parents have defined their cohabitation as an informal relationship is increasing. It is important to note here that the number of births in an informal relationship in the years 2000–2003 has been underestimated due to the amendments to the data collection, thus the share of these children in these years is remarkably smaller.

17. What is the proportion of children living within an informal relationship who are not the couple’s common children (excluding foster children)?

There are no publicly available official statistics on this.

18. How many children are adopted within an informal relationship:

- a. By one partner only?
- b. Jointly by the couple?
- c. Where one partner adopted the child of the other?

According to § 148(1) of the Estonian Family Law Act, a single person may only adopt a child alone. Married persons may adopt a child jointly. A child may also be adopted by one spouse only if: 1) he or she adopts the child of the other spouse; 2) the other spouse cannot adopt because he or she has restricted active legal capacity (§ 148(2)). Thus, the partners in an informal relationship do not have the right to adopt children together and custody is only given to the partner who adopts

⁷⁶ L. JÄRVISTE, K. KASEARU, and A. REINOMÄGI, ‘Abielu ja vaba kooselu: trendid, regulatsioonid, hoiakud’, Sotsiaalministeeriumi toimetised, 2008, at no. 4.

alone. The available statistics relate to single persons adopting a child, but they do not refer to the relationship status of the adopting person. From January 1, 2016, when the Estonian Registered Partnership Act will enter into force, a registered partner who is not a parent of the other registered partner's child will have the right of access to the other registered partner's child on the basis of subsection 143(4) of the Estonian Family Law Act.

19. How many partners in an informal relationship have been in a formal or an informal relationship previously?

Table 5. The official marital status of persons in an informal relationship (N= 122 446), 2000

2000	
Have never been officially married	67,537
In an official marriage	8778
Divorced	37,441
Widowed	7160

* 15 years of age and older, also persons whose age is unknown

Statistics: Statistics Estonia, Population and dwelling census 2000

In the population and dwelling census in 2000, there were 122,446 persons in an informal relationship, 67,537 of them had not been in an official marriage before, i.e. their marital status was 'single' (including also in an informal relationship and in free cohabitation). There were 37,441 persons in an informal relationship who were divorced and 7,160 were widowed. Thus, in the population census of 2000 there were 44,601 persons who had previously been in a registered relationship, i.e. in a marriage. A total of 8,778 persons who had marked their marital status as being 'in an informal relationship' in the population census in 2000 were actually still in an official marriage (this included persons who factually lived separately but had not officially divorced).

Table 6. Official marital status of persons in an informal relationship⁷⁷ (N=170,214), 2011

2011	
Have never been officially married	117,403
In an official marriage	5,556
Divorced	40,758
Widowed	5,801

* persons who are at least 15 years old

Source: Statistics Estonia, Population and dwelling census 2011

According to the population and dwelling census in 2011, there were at least 170,214 persons aged 15 years and older whose marital status was 'in an informal

⁷⁷ Status of a person in the household as a 'partner in an informal relationship'.

relationship' or whose status in the household was a 'partner in an informal relationship'. 117,403 of them had not previously been in an official marriage, i.e. their official marital status was single (including also in an informal relationship in free cohabitation). 40,758 of the persons in an informal relationship were divorced and 5,801 were widowed. Thus, in the population and dwelling census in 2011, 46,559 persons in an informal relationship were previously in an official relationship, i.e. were married. 5,556 persons who in the population and dwelling census of 2011 marked their actual marital status as being 'in an informal relationship' had an official marital status as being 'in an official marriage' (this number includes, for example, persons who factually lived separately, but had not officially divorced).

C. During the relationship

20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:

a. Where there are no children in the household?

According to Estonian law, the partners in an informal relationship do not have mutual maintenance obligations if they have no common children. The Estonian Social Welfare Act⁷⁸ § 22(2) stipulates that the granting of a subsistence benefit is based on the income of the benefit applicant and his or her family members. For the purpose of granting a subsistence benefit, persons who are married or living in the same dwelling in a conjugal relationship, their children and parents in need of assistance or other persons using one or more sources of income jointly or with a shared household are deemed to be family members. In clauses 40-41 of its decision of May 5, 2014,⁷⁹ the Constitutional Review Chamber of the Supreme Court found that the second sentence of section 2 of § 22 of the Social Welfare Act provides a definition of a family for the purpose of granting subsistence benefits. But in the same decision the Supreme Court clearly stressed that no legal prerequisite can be derived from § 22(2) of the Estonian Social Welfare Act to the effect that people who live together must provide maintenance to each other.

b. Where there are common children in the household?

The Estonian Family Law Act comprises the rules on the provision of maintenance in case of the birth of a child. The father of a child is required to provide maintenance to the mother of the child eight weeks before and twelve weeks after the birth of the child (§ 111(1) Estonian Family Law Act). If a mother is unable to maintain herself due to a health disorder caused by pregnancy or childbirth, the father is required to provide maintenance until there is an improvement in her state of health. The same applies if a mother is unable to receive an income due to having to care for a child (§ 111(2) Estonian Family Law Act). If the father cares for and raises a child and he is unable to receive an income due to having to care for the child, he has the right to file

⁷⁸ Sotsiaalhoolekande seadus (adopted on 8 February 1995, entered into force on 1 April 1995). - RT I 1995, 21, 323; RT I, 13.12.2014, 44 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/509072014019/consolide.

⁷⁹ Decision of the Supreme Court 3-4-1-67-13.

a claim against the mother (§ 111(3) Estonian Family Law Act). The obligation to provide maintenance commences no earlier than four months before the birth of a child and terminates after three years have passed since the birth of the child (§ 111(2) Estonian Family Law Act). The child's post-birth maintenance obligation does not depend on the cohabitation of the parties.

c. Where there are other children in the household?

According to Estonian law, the partners in an informal relationship do not have mutual maintenance obligations if they have other children in their household.

21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?

Estonian laws do not stipulate a family maintenance obligation for partners in an informal relationship as prescribed in the Estonian Family Law Act.

22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?

According to Estonian laws, the partner in an informal relationship has no right under the law to remain in the home after the end of the cohabitation if the partner, who is the owner of the dwelling or the person who is entitled to use it, does not consent to this.

23. Are there specific rules on a partner's rights of occupancy of the home:

a. In cases of domestic violence?

In the Estonian legislation there is no legal basis to continue to use the dwelling against the will of the owner of the dwelling or the person entitled to use it, if the parties live in an informal relationship.

b. In cases where the partner owning or renting the home is absent?

According to § 289 of Estonian Law of Obligations Act, in residential leasehold relationships the lessee of a dwelling has the right to accommodate in the leased dwelling his or her spouse, minor children and parents who are incapacitated for work without the consent of the lessor unless it is agreed in the leasehold contract that the lessee may only do so with the consent of the lessor. The partner in an informal relationship is not included in this list. At the same time, § 289 has been entitled 'Accommodation of family members of the lessee of a dwelling' and the partner in an informal relationship should be included within the term 'family member'. The legal literature has not adopted a certain stance with regard to whether the accommodation of a person who is not included in the list is an infringement of

the lease contract – the right of the lessee to accommodate other people may be inferred from the nature of the lease contract.⁸⁰

Upon the death of a lessee of a dwelling, the spouse who lived in the dwelling together with the lessee has the right to take the place of the lessee in the lease contract. If the lessee did not have a spouse who has this right or if the spouse does not wish to take the place of the lessee in the lease contract, other family members who lived in the dwelling together with the lessee have the right to take the place of the lessee in the lease contract pursuant to an agreement between them (§ 321(1) Estonian Law of Obligations Act). A spouse or other family member may take the place of the lessee in a lease contract within one month of the death of the lessee by submitting a corresponding notice to the lessor (§ 321(2) Estonian Law of Obligations Act).

The family members of a person who lived with him or her and received maintenance from him or her until his or her death have the right to continue using the objects of the shared household and to receive maintenance from the estate for one month after the death of the person in question (§ 132 Law of Succession Act). The partners in an informal relationship can be treated as members of the family.

24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:

a. Where the home is jointly owned by the partners?

There is no separate regulation in Estonian legislation on the dispossession or encumbrance of joint ownership or common ownership with regard to whether it involves the partners in an informal relationship. According to § 73(1) of the Estonian Law of Property Act, a co-owner may transfer, bequeath, pledge or in any other manner dispose of the legal share in a shared thing belonging to the co-owner. Upon the sale of a legal share in immovable property to a person who is neither a co-owner nor is privileged pursuant to the law, the other co-owners have the right of pre-emption to the legal share being sold (§ 73(1) Estonian Law of Property Act).

b. Where the home is owned by one of the partners?

There is no separate regulation in Estonian legislation on the dispossession or encumbrance of sole ownership with regard to whether it involves the partners in an informal relationship. In civil issues, the partners in an informal relationship are akin to unmarried persons. According to § 69(1) of the Estonian Law of Property Act an owner has the right to possess, use and dispose of a thing, and to demand, as far as all other persons are concerned, the prevention of any violation of these rights and the elimination of the consequences of any violation.

c. Where the home is jointly rented by the partners?

⁸⁰ P. VARUL, I. KULL, V. KÕVE and M. KÄERDI, *Võlaõigusseadus II. Kommenteeritud väljaanne* (Law of Obligations II. Commented Edition), Juura, Tallinn, 2007, at p. 187 (in Estonian).

There is no separate regulation of the sub-lease contract in Estonian legislation concerning the case when the parties are partners in an informal relationship. A lessee may, with the consent of the lessor, transfer the use of a thing fully or partially to a third party (sublease), particularly to sublet the thing (§ 288(1) Estonian Law of Obligations Act).

d. Where the home is rented by one of the partners?

Estonian legislation does not have a separate regulation on the lease contract with regard to whether they are partners in an informal relationship. According to § 289 of the Estonian Law of Obligations Act, the lessee of a dwelling has the right to accommodate in the leased dwelling his or her spouse, minor children and parents who are incapacitated for work without the consent of the lessor, unless it is agreed in the leasehold contract that the lessee may do so only with the consent of the lessor. It is a lessee's right before the lessor, not the mutual right of partners in an informal relationship.

25. Under what circumstances and to what extent can one partner act as an agent for the other?

There is no separate regulation in the Estonian legislation on representation dealing with the case when the representative is the partner in an informal relationship. The representation is regulated by chapter 8 of the General Part of the Estonian Civil Code Act. According to § 117(2), a right of representation may be granted by a transaction (authorisation) or it may arise under the law (the right of representation arising from the law). A principal grants authorisation by making a corresponding declaration of intention to the representative, to the person with whom the transaction requiring authorisation is to be entered into, or towards the public in general (§ 118(1)). According to § 767(1) of the Estonian Law of Obligations Act, if healthcare services are provided to a patient who is unconscious or is incapable of exercising his or her free will for any other reason, the immediate family of the patient must be informed about the patient's state of health. Immediate family means the spouse, parents, children and siblings of the patient. Other persons who are close to the patient may also be deemed to be immediate family if this can be concluded from the patient's way of life (§ 767(2) of the Estonian Law of Obligations Act).

26. Under what circumstances can partners in an informal relationship become joint owners of assets?

There is no separate regulation in Estonian legislation regarding the opportunity of the partners in an informal relationship to acquire assets in common or joint ownership. An informal relationship does not change ownership relations. Either person shall remain the owner of his or her assets. The assets acquired during the cohabitation shall be acquired according to the general rules of property law, i.e. either under sole ownership or joint ownership. If a partnership contract exists, contributions made by the partners and assets acquired for the partnership shall be

transferred to the joint property of the partnership according to § 589(1) of the Estonian Law of Obligations Act.⁸¹ The transfer of security is regulated in the Estonian Law of Obligations Act § 921. According to § 90(1) of the Estonian Law of Property Act,⁸² possessor of a movable and any earlier possessor shall be deemed to be the owners of the asset during the possessor's possession until the contrary is proved. The presumption of ownership by the possessor of movable property arising from § 90 includes, as a rule, also the presumption of common ownership by the co-possessor, which provides certain protection to a (non-possessor) spouse as well as to the other partner in an informal relationship. In the case of immovable property this presumption is irrelevant.⁸³

27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.

Under Estonian law there is no separate definition of what should be deemed to be household goods. § 69(1) of the Estonian Family Law Act, although it does not apply to an informal relationship, defines property which is connected with the housing of a family in the case of divorce. According to the aforementioned provision, objects of the common household of the spouses can be described as objects of standard furnishings connected with the housing of the family for use in their shared household.

According to § 90(1) of the Estonian Law of Property Act, a possessor of a movable and any earlier possessor shall be deemed to be the owners of the asset during the possessor's possession until the contrary is proved. The presumption of ownership by the possessor of movable property, arising from § 90, includes, as a rule, also the presumption of common ownership by the co-possessor, which provides certain protection to a (non-possessor) spouse as well as to the other partner in an informal relationship. The aforementioned is important particularly with regard to the household and other goods used for daily living.

28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?

According to Estonian law, it is impossible for the partner in an informal relationship to become a joint owner of possessions, if there is no respective agreement to that effect.

29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?

⁸¹ Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 17.

⁸² Asjaõigusseadus (adopted on 9 June 1993, entered into force on 1 December 1993). - RT I 1993, 39, 590; RT I, 08.07.2014, 7 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/510072014007/consolide.

⁸³ K. KAMA and K. KULLERKUPP, 'Vabaabielu versus abielu: varalised suhted muutuvate kooseluvormide kontekstis', *Juridica*, 2002, No. 6, pp. 359-368.

An informal relationship itself does not alter ownership relations. Both persons shall remain the owners of their possessions.

30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?

According to § 90(1) of the Estonian Law of Property Act a possessor of movable property and any earlier possessor shall be deemed to be the owners of the asset during the possessor's possession until the contrary is proved. The presumption of ownership by the possessor of movable property, arising from § 90, includes, as a rule, also the presumption of common ownership by the co-possessor, which provides certain protection to a (non-possessor) spouse as well as to the other partner to an informal relationship. In the case of immovable property this presumption is irrelevant as this concerns mostly the household and other goods used in daily living. This presumption is based, *inter alia*, on the rule according to which the presumption of the transfer of the ownership of movable property is the transfer of possession with regard to this. In case of doubt, it should be presumed in the transfer of the possession that the right of ownership was also transferred to the possessor. The principle of sharing the burden of proof indirectly proceeds from this, which will always be of significance when there exists a dispute over the right of ownership of a movable asset.⁸⁴

31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?

According to § 8(1) of the Estonian Law of Obligations Act, a contract is a transaction between two or more persons (parties) by which one party undertakes or the parties undertake to perform an act or omission. A contract is binding on the parties (§ 8(2) Estonian Law of Obligations Act). The fact that the parties in an informal relationship are joint obligors, collective obligors or solidary obligors, anticipates the common will of the parties to perform legally bindingly acts or omissions. Thus, both parties must have concluded a contract with the creditor under the law of obligations within the meaning of the Estonian Law of Obligations Act § 8(1).

32. On which assets can creditors recover joint debts?

There is no special regulation with regard to partners in an informal relationship. If there is a valid relation under the law of obligations between the creditor and both parties in an informal relationship, the creditor shall have the right to demand the performance of the obligation from both parties in an informal relationship, respectively whether they are joint obligors, collective obligors or solidary obligors. Execution proceedings shall take place according to the Estonian Code of Enforcement Procedure.

⁸⁴ P. VARUL, I. KULL, V. KÕVE, M. KÄRDI and T. PURI, *Asjaõigusseadus. Kommenteeritud väljaanne*, Juura, Tallinn, 2014, at p. 415.

33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.

There is no separate regulation in Estonian legislation with regard to the administration of the assets in the shared ownership of the parties in an informal relationship. According to § 70 of the Estonian Law of Property Act, a shared ownership is a common ownership or joint ownership. Common ownership is an ownership in legal shares of a shared asset belonging to two or more persons concurrently, thus, common ownership is a common right to the whole asset. Joint ownership is ownership in undefined shares of a shared asset belonging to two or more persons concurrently. Shared ownership is common ownership unless otherwise provided by law. Provisions concerning common ownership apply to joint ownership unless otherwise provided by the law providing for joint ownership. If a right belongs to several persons (community), the provisions concerning joint ownership are applied thereto unless otherwise provided by law. Joint ownership is mostly either joint property owned by spouses, according to the Estonian Family Law Act, or partnership property.

Co-owners shall possess and use a shared asset according to an agreement (§ 72 Estonian Law of Obligations Act). Issues which remain within the limits of the ordinary possession and use of a shared asset may be decided by a decision made by the majority of votes of the co-owners. The number of votes upon making the decision depends upon the ownership share. A co-owner has the right to use a shared asset in so far as this does not hinder common use by the other co-owners. A co-owner has the right to perform acts which are necessary for the preservation of an asset without the consent of the other co-owners, but the co-owner may demand a reimbursement of the necessary expenses for the preservation of the asset from the other co-owners in proportion to their shares. A co-owner has the right to demand from the other co-owners that the possession and use of an asset in common ownership be effected according to the interests of all the co-owners. Co-owners shall act in good faith in their relations with one another and they shall refrain, in particular, from damaging the rights of other co-owners.⁸⁵

D. Separation

34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?

If the partners in an informal relationship separate, they will have no maintenance obligation with regard to each other.

The Estonian Family Law Act contains rules on the provision of maintenance in the case of the birth of a child. The aforementioned obligation does not depend on

⁸⁵ See the Decision of the Civil Chamber of the Supreme Court 3-2-1-13-14; 3-2-1-93-12; 3-2-1-45-13.

whether the parents are married to each other or not. The father of a child is required to provide maintenance to the mother of the child eight weeks before and twelve weeks after the birth of that child (§ 111(1) of the Estonian Family Law Act). If a mother is unable to maintain herself due to a health disorder caused by pregnancy or childbirth, the father is required to provide her with maintenance until her state of health improves. The same applies if a mother is unable to receive an income due to having to care for a child (§ 111(2) of the Estonian Family Law Act). If a father cares for and raises a child and he is unable to receive an income due to having to care for that child, he has the right to file a claim against the mother (§ 111(3) of the Estonian Family Law Act). The obligation to provide maintenance commences no earlier than four months before the birth of a child and terminates after three years have passed from the birth of the child (§ 111(2) of the Estonian Family Law Act).

35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:

a. The creditor's needs and the debtor's ability to pay maintenance?

The partners in an informal relationship have no mutual maintenance obligation towards one another. The only exception is a mutual provision of maintenance in the case of the birth of a child, as prescribed by § 111 of the Estonian Family Law Act.

As the scope of the maintenance obligation and the way in which maintenance should be paid, as well as other issues regarding the maintenance obligation and its fulfilment, have not been directly prescribed in the maintenance obligation stipulated in § 111 of the Estonian Family Law Act, the non-regulation of these questions does not correspond to the meaning and objective of the Estonian Family Law Act, according to the position of the Supreme Court. Thus, according to the assessment of the Civil Chamber of the Supreme Court, due to the absence of these provisions, within the meaning of a legal relation under § 4 of the General Part of the Estonian Civil Code Act, the provisions regulating maintenance for relatives can be applied to the maintenance obligation, as prescribed in § 111 of the Estonian Family Law Act, to the extent that they correspond to the meaning of the maintenance obligation stipulated in § 111 of the Estonian Family Law Act. Section 1 of § 111 of the Estonian Family Law Act must be interpreted as follows: according to the provision referred to, the mother of a child has the right to demand maintenance from the father of the child only if she is unable to maintain herself during that time. For this purpose, it must be assessed what are the reasonable expenses of the child's mother during the specified period and which costs the mother can meet from her own income, i.e. from any compensation and remuneration received. If the financial resources available to the mother of the child are sufficient to cover the usual expenses, the mother of the child does not require assistance and she has no right to receive maintenance from the father of the child on the basis of § 111(1) of the Estonian Family Law Act.⁸⁶

b. The creditor's contributions during the relationship (such as the raising of children)?

⁸⁶ Decision of the Civil Chamber of the Supreme Court 3-2-1-198-13, at para. 16, 17.

The partners in an informal relationship have no mutual maintenance obligation towards one another. The only exception is the mutual provision of maintenance, prescribed by § 111 of the Estonian Family Law Act, in the case of the birth of a child. If the partner in an informal relationship is entitled to receive maintenance in the case of the birth of a child, the scope of the maintenance shall be determined on the basis of the needs and usual lifestyle of the person entitled to receive maintenance (§ 99(1) Estonian Family Law Act).⁸⁷

c. The standard of living during the relationship?

The partners in an informal relationship have no mutual maintenance obligation towards one another. If the partner in informal relationship is entitled to receive maintenance in the case of the birth of a child, the scope of the maintenance shall be determined on the basis of the needs and usual lifestyle of the person entitled to receive maintenance (§ 99(1) Estonian Family Law Act).⁸⁸

d. Other factors/circumstances (such as giving up his/her career)?

The partners in an informal relationship have no mutual maintenance obligation towards one another. § 111 of the Estonian Family Law Act prescribes the mutual provision of maintenance in the case of the birth of a child. Presumably, § 102(1) of the Estonian Family Law Act shall still be valid, according to which a person is released from the obligation to provide maintenance in so far as he or she, considering his or her other obligations and financial situation, is unable to provide maintenance to another person without detrimentally affecting his or her own usual lifestyle.

Presumably also § 103 of the Estonian Family Law Act should be valid to the post-birth maintenance obligation when a child has been born, according to which the court may release a person from the obligation to provide maintenance, or may limit the obligation in time, or may reduce the amount of support if it would be extremely unfair to request the performance of the obligation, in particular if: 1) the need of the person entitled to receive maintenance has been caused by his or her unreasonable conduct; 2) the entitled person has severely violated his or her obligation towards the person obliged to provide maintenance; 3) the entitled person has been convicted of a criminal offence committed against the person obliged to provide maintenance or a person connected with him or her.

36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?

The partners in an informal relationship have no mutual maintenance obligation towards one another. The only exception is the provision of mutual maintenance,

⁸⁷ Decision of the Civil Chamber of the Supreme Court 3-2-1-198-13, at para. 18.

⁸⁸ Decision of the Civil Chamber of the Supreme Court 3-2-1-198-13, at para. 18.

prescribed by § 111 of the Estonian Family Law Act, in the case of the birth of child. The scope of the maintenance shall be determined on the basis of the needs and usual lifestyle of the person entitled to receive maintenance (§ 99(1) Estonian Family Law Act).⁸⁹

The post-birth maintenance obligation when a child has been born will exist irrespective of whether the parties have lived together or separately during the period referred to in § 111(1) of the Estonian Family Law Act, thus, in the case of the aforementioned obligation, the duration of as well as the end of the cohabitation is of no importance.⁹⁰

37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?

The partners in an informal relationship have no mutual maintenance obligation towards one another. § 111 of the Estonian Family Law Act prescribes the provision of mutual maintenance in the case of the birth of a child. The obligation to provide maintenance commences no earlier than four months before the birth of a child and terminates after three years have passed from the birth of the child (§ 111(2) Estonian Family Law Act).

38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?

According to the position of the Supreme Court,⁹¹ the obligation to provide maintenance in the case of the birth of a child only applies if the entitled person is unable to maintain him or herself during the specified period. Thus, if the financial situation of the person entitled to receive maintenance changes, the scope of the maintenance may change as well. The scope of the maintenance may also presumably change (although the Estonian Family Law Act does not include a direct regulation thereon) if the economic situation of the obligated person deteriorates so that, when taking his or her other obligations and financial situation into consideration, he or she is unable to provide maintenance to the other person, without detrimentally affecting his or her own usual lifestyle.

39. Is the maintenance claim extinguished upon the claimant entering:

The general rule in the maintenance obligation of the spouses is that the obligation to provide maintenance terminates upon the remarriage of the entitled person and also upon the death of the entitled as well as the obligated person. A court may release a divorced spouse from the obligation to provide maintenance, or may limit the obligation in time, or may reduce the amount of support if the payment of support would be extremely unfair considering, *inter alia*, the interests of the common child

⁸⁹ Decision of the Civil Chamber of the Supreme Court 3-2-1-198-13, at para. 18.

⁹⁰ Decision of the Civil Chamber of the Supreme Court 3-2-1-198-13, at para. 20.

⁹¹ Decision of the Civil Chamber of the Supreme Court 3-2-1-198-13, at para. 18.

left to be cared for and raised by the entitled person, if: 1) the marriage has lasted for a short period of time; 2) the entitled person has been convicted of a criminal offence committed against the person obliged to provide maintenance or a person connected with him or her; 3) the need for maintenance has been caused by the unreasonable conduct of the entitled person; 4) the entitled person has severely violated his or her obligation to contribute to the maintenance of the family for a longer period of time before the divorce; 5) there is another good reason for doing so. Therefore, in the case of spouses, the Estonian Family Law Act has not exhaustively listed the situations in which the court may exempt the divorced spouse from paying maintenance to the other spouse.

a. Into a formal relationship with another person?

In general, the partners in an informal relationship have no mutual maintenance obligation towards one another. The only maintenance obligation that the partners in an informal relationship have is the provision of maintenance in the case of the birth of child. Maintenance shall be provided by the obligated person, but this ranks below the maintenance obligation of the spouse although above that of the relatives of the person in need of assistance (§ 111(5) Estonian Family Law Act). In practical terms this means that the spouse of the person in need of assistance should provide maintenance before the father of the child. If the spouse is, considering his or her other obligations and financial situation, unable to provide maintenance to his or her spouse without detrimentally affecting his or her own usual lifestyle, maintenance shall be provided by the father of the child.

b. Into an informal relationship with another person?

In general, the partners in an informal relationship have no mutual maintenance obligation towards one another. There is no direct regulation in the Estonian Family Law Act on whether the provision of maintenance in the case of the birth of a child will terminate if the person entitled to receive maintenance enters into a new informal relationship. But as the partners in an informal relationship do not have a mutual maintenance obligation and the child's post-birth maintenance obligation does not depend on the cohabitation of the parties, the post-birth maintenance obligation of the obligated person shall will not presumably end with the beginning of a new informal relationship.

40. How does the creditor's maintenance claim rank in relation to:

Pursuant to the Estonian Family Law Act, divorced spouses have the obligation to provide maintenance in two cases. Firstly, if after the divorce a divorced spouse is unable to maintain himself or herself due to having to care for the common children of the spouses, he or she may request maintenance from the other divorced spouse until the child attains three years of age (§ 72). Secondly, if after the divorce a divorced spouse is unable to maintain himself or herself due to his or her age or state of health and the need for assistance arising from that age or state of health existed at the time of the divorce, he or she may request maintenance from the other divorced

spouse. The provision of maintenance due to age or state of health may be requested from the other divorced spouse also when the need for assistance arising from age or state of health already existed at the time when the right to receive maintenance from the other divorced spouse on another basis provided by law came to an end. This maintenance shall be provided to the person entitled to receive maintenance as long as he or she cannot be presumed to be able to obtain an income from another source.

Pursuant to the Estonian Family Law Act, the general rule is the following: if there are many persons entitled to receive maintenance and the person required to pay that maintenance is unable to provide it for all of them, a minor child shall have priority over other children, over the children of more distant descendants, descendants over ascendants and, in the case of ascendants, closer relatives over more distant relatives. In the order of entitled persons, a spouse ranks equally with a minor child and shall receive maintenance before an adult child or a married minor child and the remainder of the relatives. In the order of entitled persons, a divorced spouse caring for a child and a parent entitled to receive maintenance in the case of the birth of a child pursuant to § 111 of the Estonian Family Law Act rank below a minor child and they shall receive maintenance before an adult child and married minor child and the remainder of the relatives. In the order of entitled persons, a divorced spouse entitled to receive maintenance pursuant to § 73 of the Estonian Family Law Act ranks below an adult child and he or she shall receive maintenance before the remainder of the relatives.

a. The debtor's current spouse, registered partner, or partner in an informal relationship?

A parent entitled to receive maintenance in the case of the birth of a child pursuant to § 111 of Estonian Family Law Act ranks below a minor child, thus below the spouse (§ 98(3) Estonian Family Law Act), as in the order of entitled persons, a spouse has an equal ranking with a minor child and shall receive maintenance before an adult child or a married minor child and the remainder of the relatives (§ 98(2) Estonian Family Law Act). There is no regulation with regard to the partner in a registered cohabitation. There is no maintenance obligation with regard to the partner of new non-marital cohabitation, except the already mentioned post-birth maintenance obligation in favour of a child. In such a case the Estonian Family Law Act can be interpreted along the lines that the claims of the current partner as well as those of the former partner(s) in a cohabitation with regard to the maintenance obligation related to the birth of a child should have equal status.

b. The debtor's previous spouse, registered partner, or partner in an informal relationship?

The Estonian Family Law Act divides the order of the maintenance obligation of divorced spouses into two: the divorced spouse caring for a child and the parent (including a partner in an informal relationship) entitled to receive maintenance after the birth of a child have an equal status and in the order of entitled persons they rank after the minor child.

In the order of entitled persons, the divorced spouse who is entitled to receive maintenance on any other basis shall rank below an adult child and he or she receives maintenance before the remainder of relatives; thus, the claim of the parent entitled to receive maintenance with regard to the birth of a child precedes his or her claim.

c. The debtor's children?

In the order of entitled persons, the status of a divorced spouse caring for a child and a parent entitled to receive maintenance in the case of the birth of a child pursuant to § 111 of Estonian Family Law Act ranks below a minor child and they shall receive maintenance before an adult child and a married minor child (§ 98(3) Estonian Family Law Act).

d. The debtor's other relatives?

In the order of entitled persons, the status of a divorced spouse caring for a child and a parent entitled to receive maintenance in the case of the birth of a child pursuant to § 111 of this Act ranks below a minor child and they shall receive maintenance before an adult child and a married minor child as well as the remainder of the relatives (§ 98(3) Estonian Family Law Act).

41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?

An informal relationship does not itself change the ownership relations of the parties. Each party shall remain the owner of his or her belongings. Assets acquired during the relationship shall be acquired according to the general rules of the Estonian Law of Property Act, i.e. either under the sole ownership of a party or common ownership⁹². According to § 90(1) of the Estonian Law of Property Act,⁹³ a possessor of a movable and any earlier possessor shall be deemed the owners of the asset during the possessor's possession until the contrary is proved. The presumption of the possession of the possessor of a movable, proceeding from § 90, includes, as a rule, also the presumption of the common ownership of the co-owner, which provides certain protection to the (non-owner) spouse, as well as to another partner in an informal relationship. In the case of immovable property this presumption is not valid, but it concerns mostly the household goods and other items used in daily living.⁹⁴

⁹² Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 17

⁹³ Asjaõigusseadus (adopted on 9 June 1993, entered into force on 1 December 1993). - RT I 1993, 39, 590; RT I, 08.07.2014, 7 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/510072014007/consolide.

⁹⁴ K. KAMA and K. KULLERKUPP, 'Vabaabielu versus abielu: varalised suhted muutuvate kooseluvormide kontekstis', *Juridica*, 2002, No. 6, pp. 359-368.

42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?

There are no special rules in Estonian legislation on ownership relations after the end of an informal relationship. An informal relationship itself does not change the ownership relations of the parties. Each party shall remain the owner of his or her belongings. Assets acquired during an informal relationship shall be acquired according to the general rules of the Estonian Law of Property Act, i.e. either under the sole ownership of a party or common ownership.⁹⁵ A co-owner has the right to demand the termination of common ownership at any time (§ 76(1) Estonian Law of Property Act). Upon the termination of common ownership, an asset shall be divided according to the agreement of the co-owners (§ 77(1) Estonian Law of Property Act). Failing an agreement between the co-owners with respect to the means of the division of an asset in common ownership, a court shall decide, at the request of the plaintiff, whether to divide the asset among the co-owners in physical shares, to give the asset to one or several co-owners and to impose on them an obligation to pay the other co-owners for their shares in monetary terms, or to sell the asset by public auction or an auction among the co-owners and then to divide the proceeds received among the co-owners according to the size of their shares. The court shall have no right to decide upon the division of the asset in common ownership in any other way than requested by the plaintiff.⁹⁶

The Supreme Court has found⁹⁷ that partnership relations between the partners in an informal relationship are possible; at the same time it has been of the opinion that an informal relationship does not meet the requirements of a partnership. No binding obligations arise from this, i.e. an obligation within the meaning of the Estonian Law of Obligations Act⁹⁸ § 2.⁹⁹ If persons living in an informal relationship have not concluded a marriage, their common will not to apply the provisions which are valid for a marriage can be presumed, including the provisions regarding the joint ownership of property. An extension of the partnership provisions or by analogy under the Estonian Family Law Act should not result in consequences where there are situations that have not been agreed upon by the parties and which cannot be

⁹⁵ Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para 17.

⁹⁶ Decision of the Civil Chamber of the Supreme Court 3-2-1-143-04, at para 16.

⁹⁷ Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 16.

⁹⁸ *Võlaõigusseadus* (adopted on 26 September 2001, entered into force on 1 July 2002). – RT I 2001, 81, 487; RT I, 29.06.2014, 109, available in English at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516092014001/consolide.

⁹⁹ According to § 2 of the Estonian Law of Obligations Act an obligation is a legal relationship which gives rise to the obligation of one person (the obligated person or obligor) to perform an act or omission (to perform an obligation) for the benefit of another person (the entitled person or obligee), and to the right of the obligee to demand that the obligor performs that obligation. The nature of an obligation may oblige the parties involved to take the other party's rights and interests into account in a certain manner. An obligation may also be confined thereto.

presumed to represent their actual common will. On the basis of the law, the obligations which result from an informal relationship and from a marriage are dissimilar, including the fact that the parties are not obliged to provide mutual support and the arrangement of a common household as spouses have to do on the basis of § 15 of the Estonian Family Law Act. If a partnership contract exists, pursuant to section 1 of § 589 of the Estonian Law of Obligations Act all contributions made by the partners and the assets acquired for the partnership shall be transferred to the joint property of the partnership (partnership property). The partnership provisions can be applied primarily in the case of a concrete proprietary objective, such as the common purchase or improvement of a property with the aim of cohabitation with mutual contributions or involving joint expenses for the same objective.

43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?

There are no special rules with regard to an informal relationship concerning the dwelling (home) and household goods.

44. How are the joint debts of the partners settled?

There are no special rules with regard to an informal relationship and debts are dealt with according to which type of obligors confront the creditors: joint obligors, collective obligors or solitary obligors.

45. What date is decisive for the determination and the valuation of:

There are no special rules with regard to an informal relationship and in civil proceedings the partners are treated as non-married persons.

a. The assets?

If the partners in an informal relationship are the co-owners of the asset, then to guarantee a fair and prompt payment of compensation, the value of the asset should be determined as precisely as possible, at the time of losing the asset, and the co-owner must receive the resulting monetary compensation as far as possible concurrently with the loss of the asset.¹⁰⁰

b. The debts?

The payment and scope of the debt shall be determined according to the agreement between the debtor and the creditor.

¹⁰⁰ Decision of the Civil Chamber of the Supreme Court 3-2-1-168-05, at para. 9.

46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?

The Supreme Court has found¹⁰¹ that partnership relations in an informal relationship are possible; at the same time it has held that an informal relationship does not meet the requirements of a partnership. No binding obligations arise from this, i.e. an obligation within the meaning of the Estonian Law of Obligations Act § 2.¹⁰² If persons living in an informal relationship have not concluded a marriage, their common will not to apply the provisions which are valid for a marriage can be presumed, including the provisions regarding the joint ownership of property. An extension of the partnership provisions or by analogy under the Estonian Family Law Act should not result in consequences where there are situations that have not been agreed upon by the parties and which cannot be presumed to be their actual common will. On the basis of the law, the obligations which result from an informal relationship and from a marriage are dissimilar, including the fact that the parties are not obliged to provide mutual support and to arrange the common household as spouses have to do on the basis of § 15 of the Estonian Family Law Act. If a partnership contract exists, pursuant to section 1 of § 589 of the Estonian Law of Obligations Act, all contributions made by the partners and assets acquired for the partnership shall be transferred to the joint property of the partnership (partnership property). The partnership provisions can be applied primarily in case of a concrete proprietary objective, such as common purchase or improvement of a property with the aim of cohabitation with mutual contributions or involving joint expenses for the same objective. The liquidation provisions of a partnership can be applied for the distribution of specific assets with a higher value (e.g. immovable property) acquired for the common household during the informal relationship, if:

- both parties have made exceptionable and financially comparable contributions (which can be evaluated in monetary terms) for the acquisition or improvement of the asset;
- when acquiring or improving the asset, the parties had a common will at least for the durable establishment of a financially joint material value (joint property).

The application of the provisions on the liquidation of a partnership is not excluded by the fact that, under property law, the asset in favour of the partnership has been purchased under the common ownership of the parties or the sole ownership of one party. In the relations between the parties (internal relations) the asset can be considered as joint property subject to the aforelisted conditions, and it can be divided upon the termination of the relationship.

¹⁰¹ Decision of the Civil Chamber of the Supreme Court 3-2-1-109-14, at para. 15, 16.

¹⁰² According to § 2 of the Estonian Law of Obligations Act an obligation is a legal relationship which gives rise to the obligation of one person (the obligated person or obligor) to perform an act or omission (to perform an obligation) for the benefit of another person (the entitled person or obligee), and to the right of the obligee to demand that the obligor performs that obligation. The nature of an obligation may oblige the parties involved to take the other party's rights and interests into account in a certain manner. An obligation may also be confined thereto.

According to the Civil Chamber of the Supreme Court, from the liquidation provisions of a partnership, the second sentence of the Estonian Law of Obligations Act § 600 section 1 can be applied, according to which the provisions on the distribution of common ownership will presumably be applied (primarily concerning the types of division relating to an asset, as prescribed by § 77 of the Estonian Law of Property Act). Also, § 602 of the Estonian Law of Obligations Act can be applied, which prescribes that upon liquidation, the obligations of a partnership shall be the first to be performed out of the partnership property (i.e. returning a loan which was taken out to purchase joint property). According to section 1 of § 603 of the Estonian Law of Obligations Act, after the obligations have been performed, any contributions made by the partners shall be returned from the remaining partnership property. If it is impossible to return a contribution, compensation shall be paid for the value of the contribution at the time it was made, as stipulated in the first sentence of section 3 of § 603 of the Estonian Law of Obligations Act. The second sentence of section 3 of § 603 of the Estonian Law of Obligations Act states that compensation shall not be paid for a contribution which consisted of the provision of services to the partnership or the delivery of objects for the use of the partnership.

E. Death

47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?

The partners in an informal relationship have no right to intestate succession. Pursuant to the Estonian Law of Succession Act,¹⁰³ only the spouse and the relatives named in the Estonian Law of Succession Act have the right of intestate succession and in certain cases also the right of succession to a compulsory portion.

48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?

The legal literature refers to the fact that the surviving partner in an informal relationship has (different from a spouse) an opportunity to determine which of the assets acquired during the relationship actually belongs to him or her and what portion shall be transferred to the successors as the property of the deceased, i.e. after the death of one partner, it should be possible to evidence the contract of joint operation or the occurrence of shared ownership.¹⁰⁴ The family members of a person who lived with him or her and received maintenance from him or her until that

¹⁰³ Pärimisseadus (adopted on 17 January 2008, entered into force 1 January 2009). - RT I 2008, 7, 52; RT I, 29.06.2014, 10 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/510072014002/consolide.

¹⁰⁴ K. KAMA and K. KULLERKUPP, 'Vabaabieliu versus abielu: varalised suhted muutuvate kooseluvormide kontekstis', *Juridica*, 2002, No. 6, pp. 359-368.

person's death have the right to continue using the objects of the shared household and to receive maintenance from the estate for one month after his or her death (§ 132 Estonian Law of Succession Act). The partners in an informal relationship can be treated as members of a family. On June 19, 2000, the Administrative Chamber of the Supreme Court held that subsection 1 of § 27 of the Estonian Constitution provides protection from an unfounded intervention by the state also to a form of family cohabitation that has not been registered according to the terms prescribed by law.¹⁰⁵

49. Are there specific rules dealing with the home and/or household goods?

The partners in an informal relationship have no right to intestate succession. According to § 90(1) of the Estonian Law of Property Act, a possessor of a movable asset and any earlier possessor shall be deemed to be the owners of the asset during the possessor's possession until the contrary is proved. The presumption of the possessor of movable property, arising from § 90, includes, as a rule, also the presumption of common ownership by the co-possessor, which provides certain protection to a (non-possessor) spouse as well as to a partner in an informal relationship. The family members of a person who lived with him or her and received maintenance from him or her until that person's death have the right to continue using the objects of the shared household and to receive maintenance from the estate for one month after his or her death (§ 132 Estonian Law of Succession Act). The parties in an informal relationship can be treated as members of a family.

50. Can a partner dispose of property by will in favour of the surviving partner:

a. In general?

According to § 39(1) of the Law of Succession Act, a testate successor is a person to whom a testator has disposed of all of his or her property or a legal share (a fraction) thereof by means of a will. Under Estonian law, the testator has a large degree of freedom to dispose of his or her property and a will can be made for the benefit of his or her partner in an informal relationship.

b. If the testator is married to or is the registered partner of another person?

A will can be made for the benefit of the partner in an informal relationship even if the testator is married or he or she has a registered partner. If a person has, by means of a will or a contract of succession, disinherited a descendant or his or her parents or spouse who are entitled to succeed in intestacy and with respect to whom the person has a maintenance obligation arising from the Estonian Family Law Act at the time of his or her death or that person has reduced their shares of the estate as compared to their shares according to intestate succession they will have the right to claim a compulsory portion from the successors (§ 104(1) the Estonian Law of Succession Act). In such a case, the person who is appointed by the testator shall be the successor, but the spouse will have a financial claim against the estate to the value of

¹⁰⁵ Decision of the Administrative Law Chamber of the Supreme Court 3-3-1-16-00, at para. 1.

compulsory share of the intestate succession (Estonian Law of Succession Act § 105(1)).

c. If the testator has children?

A will can be made for the benefit of the partner in an informal relationship even if the testator has children. If a person has, by means of a will or a contract of succession, disinherited a descendant or his or her parents or spouse who are entitled to succeed in intestacy and with respect to whom the person has a maintenance obligation arising from the Estonian Family Law Act at the time of his or her death or that person has reduced their share of the estate as compared to their shares according to intestate succession, they will have the right to claim a compulsory portion from the successors (§ 104(1) Estonian Law of Succession Act). The children will have a financial claim against the estate to the value of half of the intestate succession (Estonian Law of Succession Act § 105(1)).

51. Can partners make a joint will disposing of property in favour of the surviving partner:

a. In general?

The right of succession explicitly prescribes that a reciprocal will can only be made jointly by spouses (a man and a woman in an official marriage) (Estonian Law of Succession Act § 89). At the same time, the Estonian Law of Succession Act does not explicitly prohibit the making of reciprocal wills by persons who are not married. As we have no judicial practice in this respect, it is impossible to say whether the courts would declare a joint will by two or more persons to be null and void or whether they would accept them as being valid wills. Pursuant to the general principles of Estonian private law, they could be declared valid as, according to § 87 of the General Part of the Estonian Civil Code Act, such transactions are only void if they are contrary to a prohibition arising from the law and, in that case, if the purpose of the prohibition is to render the transaction void due to a violation of this prohibition.

b. If either testator is married to or is the registered partner of another person?

Due to the absence of judicial practice and special regulations, it is impossible to comment on this. The spouse may have the right to a compulsory portion. If a bequeather has, by means of a will or a contract of succession, disinherited a descendant or his or her parents or spouse who are entitled to succeed in intestacy and with respect to whom the bequeather had a maintenance obligation arising from the Estonian Family Law Act at the time of his or her death or a bequeather has reduced their shares of the estate as compared to their shares according to intestate succession, they will have the right to claim a compulsory portion from the successors (§104(1) Estonian Law of Succession Act).

c. If either testator has children?

Due to the absence of judicial practice and special regulations, it is impossible to provide a comment on this. A child may have the right to a compulsory portion.

52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:

a. In general?

A partner in an informal relationship may make a legacy in favour of the other partner in his or her will. If, in a will, a testator does not bequeath all of his or her property or a legal share thereof to a person but gives a particular proprietary benefit without regarding the recipient of the benefit as his or her legal successor, the benefit shall be deemed to be a legacy and the recipient of the benefit shall be deemed to be a legatee. A disposition to bequeath a legacy entitles a legatee to demand the transfer of an object bequeathed as a legacy from the executor of the legacy. A legacy may be a thing, a sum of money, a right, a claim, an exemption from an obligation or any other transferable benefit. (§ 56 of the Estonian Law of Succession Act). The partners in an informal relationship may conclude a mutual notarial contract of succession. A contract of succession is an agreement between a bequeather and another person whereby the bequeather nominates the other party or another person as his or her successor or bequeathes to the party or person a legacy, testamentary obligation or testamentary direction, or an agreement between a bequeather and his or her intestate successor whereby the latter renounces the succession (§ 95(1) of Estonian Law of Succession Act). The Estonian Law of Succession Act does not include any restriction with regard to how big a portion of a property a person can donate as gifts in the case of death or as a legacy. Even the right to a compulsory portion will not provide protection against legacies.

b. If either partner is married to or is the registered partner of another person?

The validity of a legacy and a contract of succession does not depend on whether the partner in an informal relationship was married or whether he or she had a registered partner.

c. If either partner has children?

The validity of a legacy and a contract of succession does not depend on whether the partner in an informal relationship had children.

53. Is the surviving partner entitled to a reserved share¹⁰⁶ or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?

¹⁰⁶ See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

The partner in an informal relationship is not entitled to a reserved share. It has been found in the legal literature that the surviving partner of in a free marriage (different from a spouse) has the opportunity to determine which part of the property acquired during the relationship actually belongs to him or her and which part shall be transferred to the successors as the property of the deceased, i.e. after the death of one party it should be possible to ascertain its origin on the basis of the contract of joint operation or any other shared ownership.¹⁰⁷

The family members of a person who lived with him or her and received maintenance from him or her until that person's death have the right to continue using the objects of the shared household and to receive maintenance from the estate for one month after his or her death (§ 132 of the Estonian Law of Succession Act).

54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?

No valid data are available on this.

55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?

No valid data are available on this.

56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?

No valid data are available on this.

F. Agreements

57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?

There are no specific rules with regard to concluding contracts between the partners in an informal relationship. According to the type of transaction, either general or special provisions are applicable to the conclusion of transactions. The conclusion of transactions is generally regulated by the Estonian Law of Obligations Act.

58. Are partners in an informal relationship permitted to agree on the following issues:

a. The division of tasks as between the partners?

¹⁰⁷ K. KAMA and K. KULLERKUPP, 'Vabaabielu versus abielu: varalised suhted muutuvate kooseluvormide kontekstis', *Juridica*, 2002, No. 6, pp. 359-368.

In civil issues, the partners in an informal relationship are treated as unmarried persons; they are free to enter into agreements regarding the division of obligations.

b. The contributions to the costs and expenses of the household?

In civil issues, the partners in an informal relationship are free to enter into agreements regarding their respective contributions to the costs and expenses of the household.

c. Their property relationship?

Assets acquired during the cohabitation shall be acquired according to the general rules of property law, i.e. either under the sole ownership of each partner or common ownership. In addition, it can be noted that with regard to agreements between spouses, in its decision of September 25, 2013, the Supreme Court found that in the case of agreements between the spouses with regard to the distribution of property where the result of the distribution and the value of the property received by one spouse are made dependent on a remarriage by this spouse or him or her finding a new partner to the effect that, in such a case, the spouse would then forfeit the property either partially or fully, this substantially restricts the free self-realization of the person and the right to marry and establish a family. According to the Chamber, such agreements are contrary to good morals within the meaning of § 86(1) of the General Part of the Estonian Civil Code Act as they illicitly restrict the fundamental rights of this spouse.¹⁰⁸

d. Maintenance?

The partners in an informal relationship may conclude support contracts between themselves. Part 5 of the Estonian Law of Obligations Act deals with Support Contracts. Supporting a party to a maintenance contract or a third party by providing the necessary means of subsistence and, in the case of a maintenance contract, also via guaranteeing care is characteristic of support contracts.¹⁰⁹ A life annuity contract and a maintenance contract are both support contracts. In a life annuity contract one person undertakes to pay, on a periodic basis, a specific sum of money or to deliver other objects which are limited by specific characteristics to the other party. In a maintenance contract, the maintenance provider undertakes to maintain the other party and to take care of him/her.

e. The duration of the agreement?

In civil issues, the partners in an informal relationship are treated as unmarried persons and they are free to enter into agreements. A transaction which is contrary to

¹⁰⁸ Decision of the Civil Chamber of the Supreme Court 3-2-1-83-13, para 17; 3-2-1-149-11, at para. 18.

¹⁰⁹ P. VARUL, I. KULL, V. KÕVE and M. KÄERDI, *Võlaõigusseadus II. Kommenteeritud väljaanne* (Law of Obligations II. Commented Edition), Juura, Tallinn, 2007, at p. 615 (in Estonian).

good morals or public order is void (§ 86(1) General Part of the Estonian Civil Code Act).

59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?

In civil issues, the partners in an informal relationship are treated as unmarried persons and they are free to enter into agreements. A transaction which is contrary to good morals or public order is void (§ 86(1) General Part of the Estonian Civil Code Act). With regard to agreements between married partners, the Supreme Court has found that an agreement which would oblige the defendant to pay money to the plaintiff only as compensation (a contractual penalty) in the case of an eventual divorce would be void.¹¹⁰ According to the Supreme Court, such an agreement would substantially restrict the right to divorce and would be in conflict with good morals as set forth in § 86 of the General Part of the Estonian Civil Code Act.

The partners in an informal relationship may in principle conclude all other contracts for supporting or maintaining each other and, in general, there are no formal requirements for such contracts. According to § 109 of the Estonian Family Law Act, an agreement by which the performance of the obligation to provide future maintenance is precluded or by which the obligation to provide maintenance is unreasonably restricted is void. Thus, an agreement with a similar content, concluded between the partners in an informal relationship, is presumably void also with regard to the maintenance of a child after birth.

60. Are the agreements binding:

a. Between the partners?

In civil issues, the partners in an informal relationship are treated as unmarried persons and they are free to enter into agreements. The validity of the agreements in question (including in relation to formal requirements) stems from the general or special provisions of those transactions.

b. In relation to third parties?

Under Estonian law rights and obligations generally arise between the parties themselves. There is no register, similar to the marital property register, for the regulation of the validity of agreements between the partners in an informal relationship with regard to third persons. It is possible to establish restricted real rights (e.g. a real encumbrance or a personal right of use) which are valid with regard to third persons, according to the general rules of property law.

61. If agreements are not binding, what effect, if any, do they have?

¹¹⁰ Decision of the Civil Chamber of the Supreme Court 3-2-1-149-11, at para. 18.

There are no special rules; agreements are concluded according to the rules set forth in the respective transaction.

62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?

There are no special rules; agreements are concluded according to the rules set forth in the respective transaction.

63. When can the agreement be made (before, during, or after the relationship)?

There are no special rules; agreements are concluded according to the rules set forth in the respective transaction.

64. What formal requirements, if any, govern the validity of agreements:

a. As between the partners?

There are no special rules; agreements are concluded according to the rules set forth in the respective transaction.

b. In relation to a third party?

There are no special rules; agreements are concluded according to the rules set forth in the respective transaction.

65. Is independent legal advice required?

No.

66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?

No particular data are available.

67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?

No particular data are available.

G. Disputes

68. Which authority is competent to decide disputes between partners in an informal relationship?

Disputes between the partners in an informal relationship are settled by the county courts as courts of first instance. In Estonia the county courts hear civil, criminal and

misdeemeanour matters as courts of first instance. The county courts are courts with general jurisdiction by law or are general courts.

69. Is that the same authority as for spousal disputes?

Yes.

70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?

In civil proceedings there are no special rules on hearing legal disputes between partners in an informal relationship.

71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?

In civil issues, the partners in an informal relationship are treated as unmarried persons and they are free to conclude agreements from which legal consequences may arise. The validity of such agreements (including in relation to formal requirements) proceeds from the general or special provisions of those transactions. The Supreme Court has repeatedly noted that a court cannot resolve a case on the basis of a transaction the validity of which is imperatively not acknowledged by the law, and thus, the court can revoke the transaction, including determining that the transaction is contrary to good morals also on its own initiative.¹¹¹ In the case of an alleged cancellation, the court must first, either on its own initiative or on the basis of a claim by a party to the proceedings, verify whether the transaction is void.¹¹² Transactions may be contrary to good morals for different reasons, i.e. they can be considered immoral and reprehensible according to the conceptions prevailing in society. A transaction is contrary to good morals if, upon its conclusion, it violates the sense of justice and the value judgements of fair and true thinking people and also the general principles of the law. Being contrary to good morals may involve the purpose of the transaction being contrary to good morals or immoral behaviour by one party relating to the purpose of concluding the transaction.¹¹³ In general, the court itself will not amend the conditions of a contract. According to § 84 of the General Part of the Estonian Civil Code, a void transaction has no legal consequences from its inception. That which has been received on the basis of a void transaction must be returned pursuant to the provisions concerning unjust enrichment unless otherwise provided by law. Thus, it is impossible to file claims relating to the performance or non-performance of the transaction if that transaction is void.

¹¹¹ Decision of the Civil Chamber of the Supreme Court 3-2-1-111-08, at para. 23; 3-2-1-137-09, at para. 12.

¹¹² Decision of the Civil Chamber of the Supreme Court 3-2-1-83-13, at para. 12.

¹¹³ Decision of the Civil Chamber of the Supreme Court 3-2-1-111-08, at para. 23.

72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?

There are no special institutions to resolve extrajudicial civil disputes arising out of informal relationships. According to § 717(1) of the Estonian Code of Civil Procedure, an arbitral agreement is an agreement between the parties to have an arbitral tribunal resolve a dispute, which has already arisen or may arise between them over a determined contractual relationship or an extracontractual relationship. The object of an arbitral agreement may be a proprietary claim. An arbitral agreement concerning a non-proprietary claim is only valid if the parties are able to reach a compromise concerning the object of the dispute. But there are still many disputes in family law that are non-proprietary in nature (e.g. procedures relating to the custody of children). In these cases an arbitral agreement between the parties should be precluded.

The Estonian Conciliation Act¹¹⁴ defines conciliation proceedings as a voluntary process in the course of which an impartial third party (a conciliator) facilitates communication between the parties to conciliation proceedings with the purpose of assisting them in finding a solution to their dispute. According to the explanatory memorandum of the law, in Estonia conciliation should be used more frequently (here also including mediation) in family matters (issues relating to the custody of and communication with children, disputes relating to divorce, the distribution of assets). So far we cannot talk about the importance of the conciliation procedure in solving family law disputes (including disputes arising from informal relationships).

73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?

§ 751 of the Estonian Civil Code of Procedure prescribes cases where it is possible to appeal against the decision of an arbitral tribunal. Such an opportunity to appeal is primarily possible in case of a gross infringement of the rules of procedure. The law includes an exhaustive list of the bases of revocation. This provides that control over the merits of the decision is not prescribed. The court will annul a decision of an arbitral tribunal at the request of a party or on its own initiative if it establishes that: 1) pursuant to Estonian law, the dispute should not have been resolved by an arbitral tribunal; 2) the decision of the arbitral tribunal is contrary to Estonian public order or good morals.

A petition to validate an agreement reached as a result of conciliation proceedings specified in the Estonian Conciliation Act is filed either by all the parties to the agreement or by one party to the agreement, annexing to the petition the written consent of other parties to the agreement. The court will then declare the agreement

¹¹⁴ Lepitusseadus (adopted on 18 November 2009). - RT I 2009, 59, 385 (in Estonian), available in English at: www.riigiteataja.ee/en/eli/530102013028/consolide.

to be subject to enforcement, making a corresponding ruling thereon. The court will refuse to declare an agreement to be subject to enforcement if the agreement goes beyond the limits established in subsection 14(1) of the Estonian Conciliation Act,¹¹⁵ if it is contrary to good morals or the law, if it violates a significant public interest, or if it cannot be complied with.

74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?

No.

¹¹⁵ A settlement agreement concerning a non-property claim is declared enforceable by the county court only if the parties to conciliation proceedings are in a position to make a compromise agreement in respect of the subject matter of the dispute. The court does not validate settlement agreements which concern disputes regarding the validity of residential lease contracts, their cancellation or the vacating of residential premises.