

**Martynas VASILIAUSKAS**

Kauno kolegija

**Violeta VASILIAUSKIENĖ**

Kauno kolegija

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# The Concept of Family in Lithuanian Legislation

**SUMMARY.** The concept of the family is of paramount importance both at the legislative level and in society. There are different definitions of family in the laws of the Republic of Lithuania. The traditional concept of the family, resulting from the historical development of different legal traditions, is based on the institution of marriage. Regardless of the religious tradition that exists in the state, marriage, as the institution that establishes the family, has historically been perceived as a union between a man and a woman. It is argued that the development of modern legal systems in this area is undergoing two important changes. First, the institution of marriage is no longer the only exclusive basis on which the recognition of the family as a legal person is based in the legal system. Second, the very concept of marriage is changing and evolving to include a union of two people of the same sex. The aim of this article will be to reveal the normative concept of the family and to investigate how it is disclosed in the legal acts of the Republic of Lithuania.

**KEYWORDS:** the concept of family, normative approach to the family, the concept of family members, change in the concept of family, protection of paternity, maternity and childhood.

## INTRODUCTION

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The concept of family is a very relevant topic these days. The rather aggressive penetration of family forms contrary to the concept of the natural family into Lithuanian public life and legislation determines the need to speak on this topic, analysing the concept of the family from various angles. Formerly self-evident, the concept of the family is now more controversial than ever. Therefore, it is important to analyse the concept of family in Lithuanian legislation.

As for the concept of family, two approaches to the family should be distinguished: 1) a societal approach (or a macro-level approach) and 2) a personal approach (or a

micro-level approach)<sup>1</sup>. This is the starting point for describing the concept of family. Thus, a normative definition (derived from the positions of the society, historically established, enshrined in legal acts and relevant documents of religious organizations) is possible, as well as a non-normative (derived from a person's positions, experience, "escaped" boundaries, subjective) concept<sup>2</sup>. The aim of this article will be to reveal the normative concept of the family and to investigate how it is disclosed in the legal acts of the Republic of Lithuania.

The traditional concept of the family described in law results from the historical development of different legal traditions and is based on the institution of marriage. Regardless of the religious tradition that exists in the state, marriage, as the institution that establishes the family, has historically been perceived as a union between a man and a woman<sup>3</sup>. Federica Giardini argues that the development of modern legal systems in this area is undergoing two important changes. First, the institution of marriage is no longer the only exclusive basis on which the recognition of the family as a legal person is based in the legal system. Second, the very concept of marriage is changing and evolving to include a union of two people of the same sex. In the European Union (EU), on the other hand, there are legal systems that firmly adhere to the tradition that the family is still based on marriage alone, and that marriage is an institution between a man and a woman<sup>4</sup>.

The Catholic Church indicates in the Catechism that the man and woman united in marriage together with their children form a family<sup>5</sup>. Pontifical Council for the Family in its document "Family, marriage, and "de facto" unions" indicates that "the family community comes from the covenant of the spouses' union. The marriage that comes from this covenant of conjugal love is not created by any public authority: it is a natural and original institution that is prior to it."<sup>6</sup> Thus the documents of the Catholic Church indicate that marriage is an institute that originates not from the legal realm, but from the nature of person as such.

## **The constitutional dimension of the concept of family in Lithuania**

Judge of the Court of Justice of the EU, Professor Egidijus Jarašiūnas, emphasizes that "in legal, political and state life, the Constitution is the only measure of the legality of adopted decisions and actions. What is unconstitutional or contrary to the

<sup>1</sup> Vida Česnaitytė, „Lietuvos šeima: sampratos ir praktikos“ (daktaro disertacija, Vilniaus universitetas, 2015).

<sup>2</sup> Ibid.

<sup>3</sup> Gediminas Sagatys, „The Concept of Family in Lithuanian Law“, *Jurisprudencija* 1 (119) (2010), 182.

<sup>4</sup> Sagatys, „The Concept of Family“; Federica Giardini, „New Families in the Legal World: a Comparative Perspective“, *Interdisciplinary Journal of Family Studies*, XVIII, 2 (2012), 86.

<sup>5</sup> *Katalikų Bažnyčios katekizmas* (Vilnius: Katalikų pasaulio leidiniai, 2015).

<sup>6</sup> Pontifical council for the family, *Family, marriage and "de facto" unions* (Vatican City, July 26, 2000).

Constitution is outlawed. Laws and acts supplementing them shall be law only if they are not in conflict with the Constitution.”<sup>7</sup>

The Constitution of the Republic of Lithuania as the main, fundamental legal act of Lithuania mentions the family in Articles 38 and 39. Article 38 states that “The family is the foundation of society and of the state. The state protects and cares for the family, paternity, maternity and childhood. The marriage is entered into by free consent of the man and the woman. The state registers marriage, births and deaths. The state also recognizes church marriage registration. The rights of the spouses in the family are equal. It is the right and duty of parents to bring up their children as honest people and loyal citizens and to maintain them until they reach adulthood. It is the duty of children to respect their parents, to care for them in old age and to preserve their legacy.”<sup>8</sup>

Article 39 of the Constitution stipulates that “the state shall take care of families raising and bringing up children at home and provide them with support in accordance with the procedures established by law. For working mothers, the law provides for paid leave before and after childbirth, favourable working conditions and other benefits. Minors are protected by law.”<sup>9</sup>

The principle of the inviolability of the private life of the family is enshrined in Article 22 of the Constitution, which states that “The law and the court shall ensure that no one is subjected to arbitrary or unlawful interference with his or her private or family life, honour or dignity.”<sup>10</sup> Article 26 establishes the right of parents to carry out the religious and moral upbringing of children according to their own convictions. The right not to testify against family members is specified in Article 31 of the Constitution.

What conclusions can be drawn from the text of the Constitution? Vaidotas Vaičaitis, a specialist in constitutional law, points out that the Constitution does not name anything else as the “foundation of society and the state”, only the family, which shows the special significance given to it in the text of the Constitution and in our constitutional narrative in general<sup>11</sup>. According to V. Vaičaitis, “the Constitution understands the institution of the family not only in the sense of a person’s individual right to private life, but also as a general good or *sui generis* constitutional value.”<sup>12</sup> Judge G. Sagatys of the Supreme Court of Lithuania emphasizes that “The above-mentioned provisions of the Constitution form the basis of the state family policy. As the Constitution is the main national source of family law and a means of controlling the

<sup>7</sup> Egidijus Jarašiūnas, „Šeimos koncepcijos pagrindai 1992 m. Lietuvos Respublikos Konstitucijoje“, *Bernardinai.lt*, published October 4, 2011, <https://www.bernardinai.lt/2011-10-04-egidijus-jarasiunas-seimos-koncepcijos-pagrindai-1992-m-lietuvos-respublikos-konstitucijoje/>.

<sup>8</sup> Lietuvos Respublikos Konstitucija, *Lietuvos aidas*, 220 (1992).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Vaidotas A. Vaičaitis, „Šeima, partnerystė ir Civilinis Kodeksas“, *Teise.pro*, published June 9, 2021, <https://www.teise.pro/index.php/2021/06/09/v-a-vaicaitis-seima-partneryste-ir-civilinis-kodeksas/>.

<sup>12</sup> *Ibid.*

decisions of the legislature, family relations must be regulated in accordance with the Constitution. Recognition of the status of a family as a constitutional value obliges the state government to take care of and provide for the family, to ensure the constitutional rights of family members, and respect for family life.”<sup>13</sup>

Although we will not find an indication of what a family is directly in the text of the Constitution, according to Article 38 of the Constitution, paragraphs 2 and 3, two constitutional grounds may be inferred as the basis of the emergence of a family: 1) a marriage entered into by the free consent of a man and a woman and 2) maternity, paternity and childhood, i. e. relationships arising out of the birth, adoption or custody of a child, irrespective of whether the marriage took place and whether both or only one of the parents or guardians lives with the children.<sup>14</sup>

Attempts were made to enshrine the concept of the family in the State Concept of Family Policy by presenting the concepts of *family*, *harmonious family*, *large family*, *single-parent family* and others, as well as emphasizing the exceptional value of the family, discussing family policy goals, and more<sup>15</sup>. The Concept defined the family as “spouses and their children (adopted), if any” and stated that the family “may also be incomplete or extended”<sup>16</sup>. This and some other concepts according to which only married persons are recognized as a family, were declared by the Constitutional Court of the Republic of Lithuania in the decision of 28 September 2011 to be in conflict with Paragraphs 1 and 2 of Article 38 of the Constitution of the Republic of Lithuania.<sup>17</sup> One of the arguments of the Constitutional Court was that according to the State Concept of Family Policy, unmarried persons are not considered families, and the Constitution, in the opinion of the Constitutional Court, “protects and protects families other than those based on marriage, including cohabitation constant relationships of emotional attachment, mutual understanding, responsibility, respect, the upbringing of children and the like, and the voluntary determination to assume certain rights and responsibilities”<sup>18</sup>. It should be emphasized, however, that in addition to those provisions, the decision of Constitutional Court refers to a relationship relating to the “common life of a man and a woman”, which is based, inter alia, on the “common relations due the upbringing of children and the like <...> which are the foundation of constitutional institutes of motherhood, fatherhood and childhood”<sup>19</sup>. V. Vaičaitis emphasizes: “in other words, in this decision the constitutional concept of the family (besides being based on marriage) is derived from the already mentioned institutes of “fatherhood, motherhood and childhood” provided for in Paragraph 2 of Article 38 of

<sup>13</sup> Sagatys, „The Concept of Family“, 183.

<sup>14</sup> Vaičaitis, „Šeima, partnerystė ir Civilinis Kodeksas“.

<sup>15</sup> Valstybinė šeimos politikos koncepcija. *Valstybės žinios* 69-2624 (2008).

<sup>16</sup> *Ibid.*, 1.6.9.

<sup>17</sup> „Dėl Valstybinės šeimos politikos koncepcijos“. Lietuvos Respublikos Konstitucinis teismas, 2011, 21/2008.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

the Constitution. The Constitution does not provide for other grounds for the emergence of family relations, therefore the concept of “neutrality” used in the Constitutional Court ruling <...> could also be understood within the framework of the above-mentioned institute of family concept provided for in Paragraph 2 of Article 38.”<sup>20</sup>

### **The concept of family in the laws of the Republic of Lithuania**

The definition of the term “family” is not often found in the laws of the Republic of Lithuania; for the purposes of applying the law, the concept of family members is usually defined.

The preamble to the Law on the Strengthening of the Family states that the family is based on “the free choice of a man and a woman to take on family-specific moral and legal responsibilities, as well as kinship relation between close relatives” and recognizes that “the rights and responsibilities of family members are inherent”<sup>21</sup>. Thus, the provisions of the Constitution, in which the family relationship is derived from marriage and blood relationship, are reflected here.

The concept of family is explicitly mentioned in the Housing Assistance Act<sup>22</sup>. Here, the family is defined as follows:

Family – spouses, persons who have entered into a registered partnership agreement and, if any, their child(ren) under 18 years of age and / or child(ren) under 18 years of age who have been placed in permanent custody (care), including married the person(s) under the age of 18 and / or the child(ren) under the age of 18 who has been placed in permanent custody (care) or one of the parents. The family also includes unmarried adult children under the age of 24 and / or adult children under the age of 24 who have been cared for before adulthood in general education schools, vocational training establishments, higher education institutions, general education schools or adult children who have completed vocational training and / or children who have been placed in care before the age of maturity, from the date of graduation from general education or vocational training until 1 September of the same year, disabled people living with their parents and guardians ( caregivers) with cohabiting custodians (custodians) for whom custody (custody) has been established, cohabiting spouses, persons who have entered into a registered partnership agreement, or the parents of the person, if all of these persons are specified in the application for housing purchase or rent.

<sup>20</sup> Vaičaitis, „Šeima, partnerystė ir Civilinis Kodeksas“.

<sup>21</sup> Lietuvos Respublikos šeimos stiprinimo įstatymas, TAR 17495 (2017), preambulė.

<sup>22</sup> Lietuvos Respublikos paramos būstui įsigyti ar išsinuomoti įstatymas, TAR 15180 (2014).

In this law, family relationships are defined through the relationship between kinship (paternity and childhood) and permanent care, where the family is defined for the purpose of acquiring and supporting housing, it is one of the widest definitions of family.

The Law on Land Tax also explains what a family is: “a family is considered to be the spouses, persons raising children alone (adopted children) and their children living with them (adopted children, stepchildren) until they reach the age of 18”<sup>23</sup> (by the way, this provision is established not within the concepts of the law but with the provisions establishing tax benefits).

The concept of family can also be found in several laws not anymore in force:

1) The law on heating costs of an apartment (detached house) and the compensation of cold and hot water for low-income residents defines family as “spouses or unmarried persons living together in a joint household, or a single parent, their children and adopted children under 18 years of age, as well as older non-working full-time pupils and students in educational institutions up to the age of 24”<sup>24</sup>;

2) In the Law on Guarantees of Income of Residents the family is defined as “spouses, cohabitants, widows, regardless of whether they have children (dependents) or not, guardians with wards and single persons”<sup>25</sup>.

Some laws (such as the Law on Child Benefits or the Law on Monetary Social Assistance to the Deprived<sup>26</sup>) abandon the concept of family, that is, the concept was established in those laws in previous versions of the law but do not exist in the current versions.

Some legislation does not refer to the concept of family but to what constitutes a family, such as in the Criminal Code: “The members of the offender’s family are the parents (adoptive parents), children (adopted), siblings and their spouses living with him or her, as well as the offender’s spouse or the person with whom the offender cohabits without registering the marriage (partnership), spouse’s parents”<sup>27</sup>.

Book III of the Civil Code of the Republic of Lithuania (hereinafter – the CC, the Code) does not present the concept of family separately. Article 3.7 of the Code defines what marriage is: “Marriage is a voluntary agreement between a man and a woman to establish family legal relations in accordance with the procedure established by law. A man and a woman who have registered their marriage in accordance with the procedure established by law are spouses.”<sup>28</sup> The Code further provides for the property

<sup>23</sup> Lietuvos Respublikos žemės mokesčio įstatymas, *Lietuvos aidas* 128-0 (1992).

<sup>24</sup> Lietuvos Respublikos buto (individualaus gyvenamojo namo) šildymo išlaidų, išlaidų šaltam ir karštam vandeniui kompensavimo gyventojams, turintiems mažas pajamas, įstatymas, *Valstybės žinios* 36-1062 (1999).

<sup>25</sup> Lietuvos Respublikos gyventojų pajamų garantijų įstatymas, *Lietuvos aidas* 94-0 (1990).

<sup>26</sup> Lietuvos Respublikos piniginės socialinės paramos nepasiturintiems gyventojams įstatymas, *Valstybės žinios* 73-3352 (2003).

<sup>27</sup> Lietuvos Respublikos baudžiamasis kodeksas, *Valstybės žinios* 89-2741 (2000).

<sup>28</sup> Lietuvos Respublikos civilinis kodeksas, *Valstybės žinios* 74-2262 (2000).

and non-property rights of spouses. Book III of the CC also regulates the relationship between parents and children. With regard to children, the Code states that “Children under the age of majority or emancipation are cared for by their parents. Parents have a right and a duty to bring up and care for their children fairly, to take care of their health and to maintain them, taking into account their physical and mental condition, to facilitate their full and harmonious development in order to prepare them for independent living in society.”<sup>29</sup>

We find the concept of family members in a completely different book, VI CC, which regulates the obligatory relations of persons with regard to the lease agreement. Article 6.588 of the CC states that “The members of the tenant’s family are the cohabiting spouse (cohabitant), their minor children, and the parents of the tenant and his / her spouse. Adult children, their spouses (cohabitants) and the tenant’s grandchildren are included in the family members if they have a joint household with the tenant.”<sup>30</sup> The status of family members enables these persons to have the same rights and obligations as the tenant of the dwelling, and their right of residence is specified in the lease agreement. Thus, in this case, the status of a family member is relevant precisely in the context of the rights and obligations arising from the lease.

The Law on Sickness and Maternity Social Insurance of the Republic of Lithuania defines family members as “spouse, child (adoptee), mother (father), mother-in-law (adoptive parent).”<sup>31</sup> The Law on Declaration of Property of Residents of the Republic of Lithuania refers to family members as “spouses and cohabiting children (adopted children) under the age of 18 who are required to declare property only if they are permanent residents of Lithuania”<sup>32</sup>.

The Law on the Legal Status of Aliens includes the concept of family members in order to indicate which persons may come to live with an alien in the Republic of Lithuania. The concept of third-country (non-EU citizen) family members is regulated slightly differently here. In this case, the family includes “minor children (adopted) of the spouse or the person with whom the registered partnership agreement has been concluded (hereinafter referred to as children), including the minor children of the spouse or the person with whom the registered partnership agreement has entered into, if they are unmarried and dependent on parents, as well as first-degree relatives in the ascending line [parents, grandparents] who have been supported for at least one year and are unable to benefit from the support of other family members residing abroad.”<sup>33</sup> The concept of family members of an asylum seeker is narrower: family members do not include the parents of an adult asylum seeker, and children are

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Lietuvos Respublikos ligos ir motinystės socialinio draudimo įstatymas, *Valstybės žinios* 111-3574 (2000).

<sup>32</sup> Lietuvos Respublikos gyventojų turto deklaravimo įstatymas, *Valstybės žinios* 50-1197 (1996).

<sup>33</sup> Lietuvos Respublikos įstatymas dėl užsieniečių teisinės padėties, *Valstybės žinios* 73-2539 (2004).

considered family members of an EU citizen not only until they reach the age of 21 or are dependent on their parents. Dependents and grandparents of the citizen and his or her spouse may also be included in the family.

## **CONCLUSIONS**

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The following conclusions can be drawn from the analysis of the legislation:

First, under the current legislation, which deals with certain state aid (housing subsidies, land tax relief), only the spouse (with or without children) or one of the parents and his or her child(ren) are considered family. Thus, unmarried persons are not considered family members under this legislation. This shows that the state tends to provide support to those who have entered into a marriage and thus at least indirectly promote it.

Second, in the Civil Code and the Criminal Code, which can be considered higher than the regular law according to the hierarchy, the family is considered to be both spouses and cohabitants (with or without children). Thus, in this case, it is not a formal commitment (agreement) that matters, but the fact of cohabitation.

Third, there is a tendency to abandon the concept of the family enshrined in law. At one time, the concept of family was mentioned six times in different laws, but now it is mentioned only twice (and once, as mentioned, it is not even considered a direct term because it is presented elsewhere in the law than in the article defining the concepts). Thus, the question is, is there not a tendency to abandon the concept of family at all and to consider the family as persons who actually live together and run a joint household?

It is clear that the state tends to treat both married and unmarried people living together as families and, in some cases, to recognize only married persons (including single parents) as families with state aid or support.

The review of the concept of the family enshrined in law reveals two concepts of the family: the first concept defines family as including only the man and woman who are married, including, but not necessarily, children, and the second concept includes into the family both married and non-married persons, including but not necessarily children, which are linked by certain emotional, responsibility, respect, and similar connections, and determined to make a voluntary commitment. However, in both cases the family relationship is established on the grounds of relationship between a man and a woman (married or living together) or kinship (maternity, paternity, childhood), thus confirming the conclusion that Lithuanian law does not establish family status for other relationships, such as two persons of the same sex.



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## ŠEIMOS SAMPRATA LIETUVOS TEISĖKŪROJE

### S a n t r a u k a

Šeimos sąvoka yra itin svarbi tiek teisėkūros lygmeniu, tiek visuomenėje. Lietuvos Respublikos teisėje egzistuoja skirtingi šeimos apibrėžimai. Tradicinė teisinė šeimos samprata, atsiradusi dėl skirtingų teisės tradicijų istorinės raidos, remiasi santuokos institutu. Nepriklausomai nuo valstybėje egzistuojančios religinės tradicijos, santuoka, kaip šeimą steigianti institucija, istoriškai yra suvokiama kaip sąjunga tarp vyro ir moters. Teigiama, jog plėtojant šiuolaikines šios srities teisės sistemas vyksta du svarbūs pokyčiai. Pirmiausia, santuokos institutas nebėra vienintelis išimtinis pagrindas, kuriuo teisinėje sistemoje grindžiamas šeimos kaip juridinio asmens pripažinimas. Antra, pati santuokos samprata keičiasi ir vystosi taip, kad apima dviejų tos pačios lyties asmenų sąjungą. Šiuo straipsniu siekiama atskleisti norminę šeimos sampratą ir ištirti, kaip ji atskleidžiama Lietuvos Respublikos teisės aktuose.

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**RAKTAŽODŽIAI:** šeimos samprata, normatyvinis požiūris į šeimą, šeimos narių samprata, šeimos sampratų kaita, tėvystės, motinystės ir vaikystės apsauga.

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**Violeta VASILIAUSKIENĖ** – Associate Professor of Kaunas College, active public figure. Research interests – international law, European Union law, human rights issues. E-mail [violeta.vasiliauskiene@go.kauko.lt](mailto:violeta.vasiliauskiene@go.kauko.lt).

**Violeta VASILIAUSKIENĖ** – Kauno kolegijos docentė, aktyvi visuomenininkė. Mokslinių interesų sritys – tarptautinė teisė, Europos Sąjungos teisė, žmogaus teisių klausimai. El. paštas [violeta.vasiliauskiene@go.kauko.lt](mailto:violeta.vasiliauskiene@go.kauko.lt).

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**Martynas VASILIAUSKAS** – lawyer, participant in ministries of the Church, collaborator of the Catholic community “Living Stones” and the Adult Catechesis Service. E-mail [mvasil@gmail.com](mailto:mvasil@gmail.com).

**Martynas VASILIAUSKAS** – teisininkas, sielovadininkas, katalikų bendruomenės „Gyvieji Akmenys“ ir Suaugusiųjų katechezės tarnybos bendradarbis. El. paštas [mvasil@gmail.com](mailto:mvasil@gmail.com).