Historical Development of the Legal Regulation on Divided Use of Co-Owned Real Estate in Latvia

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Abstract:
Under the general principle, each co-owner has the right, together with all other co-owners, to possess and use the co-owned property in its entirety, although such a principled solution does not really provide for the needs of practical life. Hence, one of the current practical issues related to the rights *in rem* is determining the divided use of the co-owned real estate either through agreement or by turning to court, as well as the binding force of the established procedure of use for the co-owners themselves and their successors in rights. The article examines the historical development of the legal regulation on the divided use of co-owned real estate in the Latvian civil law, from the second half of the 19th century until the present, focusing, in particular, on the original source of the legal regulation that is currently in effect, as well as the period of the Soviet law and the impact of the Soviet civil law on the currently prevailing view on the corroboration of the procedure of divided use, established by co-owners, in the Land Register and its legal effects.

Keywords: co-ownership; apartment property; co-ownership share; divided use; right of exclusive use; corroboration in the Land Register

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Introduction

Determination of divided use of co-owned real estate is one of the relevant legal issues encountered in practice since, under the general principle, each co-owner has the right, together with all other co-owners, to possess and use the entire co-owned property, although such a principled solution does not really provide for the needs of practical life.

Not in vain, also first part of Article 1070 of the Latvian Civil Law[1] comprises a special norm that regulates the possibility to establish "divided use" among the co-owners of the co-owned property, making such use proportionate to the size of the co-ownership shares.

Currently, with respect to multi-apartment residential buildings and office buildings, this matter, to a large extent, has been resolved by the institution of "apartment property", which was introduced into the Latvian legal system in 1995. At present, the said legal institution is regulated by Law on Apartment Property of 2011.[2] However, not all real estate of the kind has been divided into apartment properties. Moreover, even in the case where real estate has been divided into apartment properties, the so-called "jointly owned part" still remains in the co-ownership of all apartment owners, including the common basement premises of the building, the attic, the exterior walls and the roof, as well as the entire area of the common land plot. I.e., with respect to the "jointly owned part" of all apartment owners, the matter of determining the divided use remains relevant in order to divide between the apartment owners the use, e.g., of the parking lot located on the common land plot or the storage facilities built in the basement.

The objective of this article is to trace the historical development of the legal regulation on the divided use of co-owned real estate in the Latvian civil law from the second half of the 19th century until the present, focusing, in particular, on the sources of the current legal regulation, as well as the impact left by the period of the Soviet law and the Soviet civil law upon the currently prevailing view on corroboration in the Land Register the divided use, determined among the co-owners, and legal consequences of such corroboration.

1. Period from the mid-19th century until the end of the 1930s

1.1 Code of Civil Laws of 1864 and its Article 935

The civil law that was in effect in the Baltic or Ostsee Provinces (*Ostzeyskiye gubernii, Ostseegouvernements*), i.e., in the territory of the Provinces of Livonia, Estonia and Courland was codified by drafting III Part of the Code of Local Laws of the Ostsee Provinces[3] or the Code of Civil Laws of the Ostsee Provinces[4] (hereafter – CCL), which was approved by Emperor of the Russian Empire Alexander II on 12 November 1864 and which, following its official publication on 12 November 1864 (simultaneously in Russian and German), entered into effect on 1 July 1865. On 16 November 1870, in turn, the Emperor approved the decision by the Council of the State, which determined that in the case of contradictions the Russian language text of CCL should prevail.[5]

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1 Text of the Latvian Civil Law in English. [online]. [seen 2025-04-23]. Available: https://likumi.lv/ta/en/en/id/225418.

2 Text of the Latvian Law on Apartment [Residential] Property in English. [online]. [seen 2025-04-23]. Available: https://likumi.lv/ta/en/en/id/221382.

3 The title of the Code of Local Laws of the Ostsee Provinces in Russian was "*Svod mestnykh uzakoneniy guberniy Ostzeyskikh*", its title in German – "*Provinzialrecht der Ostseegouvernements*".

4 The title of the Code of Civil Laws of the Ostsee Provinces in Russian was "*Svod grazhdanskikh uzakoneniy guberniy Ostzeyskikh*", its title in German – "*Liv–, Est– und Curländisches Privatrecht*".

5 KALNIŅŠ, V. *Latvijas PSR valsts un tiesību vēsture. I daļa* [History of the State and Law of the Latvian SSR. Part I]. Rīga: Zvaigzne, 1972, pp. 298–303; ŠVARCS, F. *Latvijas 1937. gada 28. janvāra Civillikums un tā rašanās vēsture* [The Latvian Civil Law of 1937 and the History of its Origins]. Rīga: Tiesu namu aģentūra, 2011, pp. 14–20.

Following the first unsuccessful attempts to codify the local civil laws, in the second half of 1850s, the drafting of CCL was finally entrusted to legal scholar of the Baltic Provinces *Friedrich Georg von Bunge* (1802–1897). His task was not elaboration of a new civil code but collecting and systematising the entire civil law effective in the territory of the Baltic Provinces in one compilation of laws, i.e., to present this law in a new form without changing its content. Therefore, pursuant to the method for codifying laws, accepted within the Russian Empire, in accordance with which each article of codification consisted of the textual part and references to sources, the sources, on which the legal provision set out in the respective provision was based, was indicated under each article of CCL. These references to sources indicate that the majority of CCL articles (2882 of 4600) are directly or indirectly taken over from the Roman law. This can be explained by the reception of the Roman law, which in the lands of the Holy Roman Empire of the German Nation (*Heiliges Römisches Reich Deutscher Nation*) and also in Livonia (*Livonia, Livland*), expanded since the establishment of the Imperial Chamber Court (*Reichskammergericht*) in 1495 since this Court was adjudicating in accordance with the so-called "common law" (*Gemeines Recht*), which, in turn, was based on the Code of Justinian (*Corpus Iuris Civilis*).[6]

The institute of co-ownership (*obshchaya sobstvennost'*, *Miteigentum*) is regulated in Articles 927–941 and "co-ownership" itself is defined as the ownership right with respect to one and the same undivided property belonging to several persons (co-owners) not in definite, actual but only in co-ownership shares in a way that only the content of the right has been divided (see CCL Article 927). According to the general principle, which was enshrined in CCL Article 929, the object of co-ownership, in general and in separate parts thereof, can be handled with only upon the consent of all co-owners; however, if anyone of them is acting separately then such actions not only are to be deemed invalid but also impose the obligation upon the latter to compensate to all other co-owners for the damages thus inflicted upon them.

The basic wording of CCL Article 935,[7] in turn, provided: "Joint use of the co-owned property is admissible only if the property can be divided, e.g., a forest, a sand pit, a cemetery, etc., but in such a case the use should be proportionate to the size of the separate shares."

The reference to the following sources is placed under CCL Article 935: "Comp. § 9 I. *de rerum divis*. (II, 1) and L. 19 D. *de usu et habitatione* (VII, 8)." Pursuant to the method

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6 KALNIŅŠ, V. *Romiešu civiltiesību pamati* [Fundamentals of Roman Civil Law]. Rīga: Zvaigzne, 1977, pp. 208–210; KALNIŅŠ, V. *Latvijas PSR valsts un tiesību vēsture. I daļa* [History of the State and Law of the Latvian SSR. Part I]. Rīga: Zvaigzne, 1972, pp. 87–88, 143–144, 147–149, 180–181, 303–304; OSIPOVA, S. *Familienrecht in der Republik Lettland im XX–XXI Jahrhundert*. In: Kieler Ostrechts-Notizen, 1–2/2012, 15. Jahrgang, p. 49.

7 *Svod grazhdanskikh uzakoneniy guberniy Ostzeyskikh, poveleniyem Gosudarya Imperatora Aleksandra Nikolayevicha sostavlennyy. Svod mestnykh uzakoneniy guberniy Ostzeyskikh. Chast' tretiya. Zakony grazhdanskie*. Sanktpeterburg: V Tipografii Vtorago Otdelyeniya Sobstvennoy Yego Imperatorskago Velichestva Kantselarii, 1864, p. 151; *Liv-, Est- und Curländisches Privatrecht. Zusammengestellt auf Befehl des Herrn und Kaisers Alexander II. Provinzialrecht der Ostseegouvernements. Dritter Theil. Privatrecht*. St. Petersburg: In der Buchdrukerei der Zweiten Abtheilung Seiner Kaiserlichen Majestät Eigen Kanzlei, 1864, p. 162.

of citing *Corpus Iuris Civilis*, accepted today,[8] this should be understood as a reference to 1) Para 9 of the 1st Title of the 2nd Book of the Institutes of Justinian (*Institutiones*) ("on dividing property"), pertaining to the use of a land plot, *inter alia*, a co-owned land plot, for the needs of a cemetery, and to 2) the 19th Fragment of the 8th Title of the 7th Book of the Digests (*Digesta*) (D. 7, 8, 19), pursuant to which it is legally impossible to bequeath part of the right to use in the form of a legacy (although it is possible to obtain fruits in a certain part).

It must be admitted that such legal provision as included in CCL Article 935 does not follow from the fragments of *Corpus Iuris Civilis* referred to, likewise, the reference to the aforementioned fragments, provided under this Article, begins only with the proposal to "comp." or "compare".

After researching the method for drafting CCL, it has been established in the legal science that *von Bunge* (who himself has not left any notes about the above) has attempted to take over the wording of the articles in this collection from some authoritative sources (including more recent codifications of law from German-speaking states) and has derogated from these sources only in cases of exception. *Von Bunge* has used very extensively the legal literature on the Roma law, available at the time, in particular, text books and handbooks written by German lawyers, dedicated to the so-called "present-day Roman law" or the Pandect law, although under the respective CCL articles, which are based on the Roman law, direct references to the respective paragraphs of *Corpus Iuris Civilis*, i.e., to the Code (*Codex*), the Digests, the Institutes or the Novels (*Novellae*), are provided.[9]

At the time, following extensive research, *Alexander Nolde* (*Aleksandr Emil'yevich Nol'de*, 1873–1919) prepared a comparative index[10] for a large part of those CCL articles that had been taken over from the Roman law, providing at each of these articles precise references to the work of legal literature on the Roman (Pandect) law (providing accurate references to the author of the particular work, volume, page or paragraph, etc.) or the paragraph of the foreign civil code from which either verbatim or with editorial amendments the wording of the particular article had been taken. This index reveals that, according to *Nolde*, in drafting the wording of CCL Article 935, the work[11] of German lawyer *Andreas Christian Johannes Schmid* (1817–1893) had been used and, specifically, pages 9–10 of this work.[12]

As noted in the pages referred to, the fruits borne by the co-owned property devolve to individual co-owners, proportionately to the size of their shares, and such fruits must be divided in such a way also in the case where one of the co-owners has harvested them

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8 KALNIŅŠ, V. *Romiešu civiltiesību pamati* [Fundamentals of Roman Civil Law]. Rīga: Zvaigzne, 1977, p. 56.

9 See more: NOLDE, A. E. *Proiskhozhdenie chasti teksta deystvuyushchago Svoda grazhdanskikh uzakoneniy guberniy Pribaltiyskikh. Tablitsa zaimstvovaniy teksta statey iz literatury rimskago prava i inozemnykh kodeksov* [Origins of the Part of the Text of the Code of Civil Laws of the Ostsee Provinces. Table of Borrowings of the Text of Articles from the Literature of Roman Law and Foreign Codes]. S.-Peterburg: Senatskaya tipografiya, 1912, pp. 3–39; KALNIŅŠ, V. *Latvijas PSR valsts un tiesību vēsture. I daļa* [History of the State and Law of the Latvian SSR. Part I]. Rīga: Zvaigzne, 1972, pp. 303–304.

10 NOLDE, *op. cit*., pp. 40–80.

11 SCHMID, A. CH. J. *Handbuch des gegenwärtig geltenden gemeinen deutschen bürgerlichen Rechts. Besonderer Theil.* Erster Band. Leipzig: F. A. Brockhaus, 1847.

12 NOLDE, *op. cit*., pp. 12, 40, 46.

alone. If the use of the co-owned property can be divided (although that happens rarely and, i.e., *res, quae usu consumuntur* [property that is consumed as the result of its use], e.g., in the case of a co-owned sand pit), also such use devolves to individual co-owners, proportionately to their shares in the co-owned property.[13]

Here, the obvious similarity of the cited fragment with the provision of CCL Article 934 can be established, the latter provides that "the fruits of the co-owned property devolve to individual co-owners, proportionately to the size of their shares", whereas in the matter regarding the divided use of the co-owned property – with the provision of CCL Article 935, *inter alia*, the "sand pit", it refers to as one of the examples of property suitable for divided use.

When commenting CCL Article 935 in its basic wording, the legal literature from the end of the 19th century points out, first of all, that it uses an erroneous wording "joint use" (*gemeinschaftlicher Gebrauch*, *sovokupnoye pol'zovanie*) because it clearly follows from the content and the meaning of the said provision that CCL Article 935 regulates "exclusive" or "divided use" of a co-owned property (*separater Gebrauch*, *razdel'noye pol'zovaniye*).[14] Additionally, it is underscored that, pursuant to the said provision, divided use of the co-owned property by individual co-owners would be admissible only of the property could be actually divided, i.e., a property that can be divided into separate parts, without destroying its essence, and if each part, following such division, would constitute an independent whole (see CCL Article 543).[15]

In the legal literature of the beginning of the 20th century, however, also pointing to the aforementioned legislator's error in the basic wording of CCL Article 935, it is simultaneously recognised that the divided use of co-owned real estate over the period of several years, where each co-owner has used the respective part of this real estate, does not create to any of the co-owners separate title to the part used by them, unless the co-owners have actually divided the co-owned real estate. By determining divided use, the use of the property and not the co-owned property itself is divided among the co-owners.[16]

1.2 CCL Article 935 after establishment of the Republic of Latvia

The Republic of Latvia was proclaimed on 18 November 1918 and, complying with the principle of continuity of law, Provisional Statute on Latvian Courts and the Procedure of Adjudication of 6 December 1918 provided that the courts functioned in accordance with those local and Russia's laws that had been effect on the territory of Latvia until 24 October 1917 [O.S.] Whereas Law on Leaving the Previous Law of Russia in Effect in Latvia of 5 December 1919 set out that all previous laws of Russia, which had been in effect within Latvia's borders until 24 October 1917 [O.S] should be temporarily deemed to be valid

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13 SCHMID, *op. cit*., pp. 9–10.

14 ERDMANN, C. *System des Privatrechts der Ostseeprovinzen Liv-, Est- und Curland. Zweiter Band. Sachenrecht*. Riga: N. Kymmel's Verlag, 1891, p. 25, fn. 4.

15 ERDMANN, *op. cit*., p. 25.

16 BUKOVSKIY, V. *Svod grazhdanskikh uzakoneniy guberniy Pribaltiyskikh* (*s prodolzheniem 1912–1914 g. g. i s raz'yasneniyami v 2 tomakh*). *Tom I. Vvedenie, Pravo semeystvennoye, Pravo veshchnoye i Pravo nasledovaniya* [Code of Civil Laws of the Ostsee Provinces (with continuation of 1912–1914 and with explanations in 2 volumes). Volume I. Introduction, Family Law, Property Law and Inheritance Law]. Riga: G. Gempel' i Ko, 1914, pp. 401–402.

following 18 November 1918, insofar they had not been repealed by new laws and were not contrary to the order and the basic principles of the State of Latvia.[17]

On the basis of the aforementioned regulation, CCL, including the later amendments introduced to it, remained valid in Vidzeme, Kurzeme and Zemgale until 1 January 1938 when the Civil Law of 1937 entered into effect in the entire territory of the Republic of Latvia. During this period, CCL Article 935 was also amended, i.e., by the Cabinet Regulation of 27 October 1925,[18] the legislator's previous error was rectified, substituting in CCL Article 935 the words "joint use" by the words "divided use".

When the institution of co-owned property is examined in the authoritative legal literature of the 1920s–30s, the provision of CCL Article 935 is either not mentioned at all[19] or is only cited to highlight the reference, included in the definition of co-ownership that, in the case of co-ownership, "only the content of the right is divided" (see CCL Article 927), by which, actually, division of the economic benefit, gained by the co-owned property, among the co-owners proportionately to their co-ownership shares is meant.[20]

It was recognised in the Senate's practice of the 1920s–30s that, in accordance with the general principle, each co-owner – proportionately to his co-ownership share – owns the title of co-ownership and the legal joint possession of each actual part of the co-owned property, e.g., the co-owned plot of land, *inter alia*, also with respect to that part of the co-owned land plot that was actually used by one of the co-owners (CCL Article 927).[21] The fact that one of the co-owners of the land plot who has managed the co-owned land plot alone has not used and cultivated is entire area does not grant him the possibility not to give to the other co-owner a share of the revenue brought in by the co-owned land plot, proportionate to his co-ownership share, because the fruits borne by the co-owned property devolve to the co-owners, proportionately to the co-ownership share of each of them (CCL Article 934), and only if the co-owners had agreed on divided use of the co-owned real estate, proportionate to their co-ownership shares (CCL Article 935), the fruits

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17 ŠVARCS, *op. cit*., pp. 34–36; LĒBERS, D. A. (ed.). *Latvijas tiesību vēsture (1914–2000)* [History of Latvian Law (1914–2000)]. Rīga: Fonds Latvijas Vēsture, 2000, p. 177.

18 *Ministru kabineta 27. 10. 1925. noteikumi „Pārgrozījumi Vietējo civillikumu II grāmatā"* (*izdoti Latvijas Republikas Satversmes 81. panta kārtībā*) [Cabinet Regulation of 27. 10. 1925 "Amendments to II Book of the Code of Local Civil Laws" (issued in the procedure set out in Article 81 of the Constitution of the Republic of Latvia)]. Likumu un Ministru Kabineta Noteikumu Krājums, 12. 11. 1925, No. 30.

19 TYUTRYUMOV, I. M. *Grazhdanskoye pravo. Vtoroye izdaniye* [Civil Law. 2nd Edition]. Tartu: Tipografiya G. Laakman, 1927, pp. 172–175.

20 SINAYSKIY, V. I. *Osnovy grazhdanskogo prava* (*v svyazi s chastʹyu III Svoda uzakoneniy, deystvuyushchikh v Latvii i Estonii*). *Vypusk II. Veshchnoye pravo. Obyazatelʹstvennoye pravo. Semeynoye pravo. Nasledstvennoye pravo* [Fundamentals of Civil Law (in Connection with Part III of the Code of Local Laws in Force in Latvia and Estonia). Issue II. Property Law. Law of Obligations. Family Law. Inheritance Law]. Riga: Izdaniye akts. o-va "Valters i Rapa", 1926, c. 65; SINAISKIS, V. *Saimniecības tiesību lietiskās normas* [The Property Law Provisions of Commercial Law]. Tieslietu Ministrijas Vēstnesis, 1935, No. 4, p. 701.

21 The Senate's Judgement of 27.02.1929 No. 94. In: *Latvijas Senāta spriedumi (1918–1940). 11. sējums. Senāta Civilā kasācijas departamenta spriedumi (1928–1929). Faksimilizdevums* [Judgements of the Latvian Senate (1918–1940), Volume 11. Judgements of the Senate's Civil Cassation Department (1928–1929). Facsimile edition]. Rīga: Latvijas Republikas Augstākā tiesa, Senatora Augusta Lēbera fonds, 1998, pp. 4472–4473.

obtained by one of the co-owners might be only his property.[22] Finally, if divided use of the co-owned property has been determined among the co-owners, each co-owner has the right to lease (rent) the share of the co-owned property to a third person without the consent of the other co-owners.[23]

1.3 The first part of Article 1070 of Civil Law of 1937

The work to reform the civil law, effective in the territory of Latvia, was commenced already at the beginning of the 1920s; however, following the coup d'état of 15 May 1934, drafting of the new Civil Law intensified, maintaining internal continuity with the CCL regulation. The new Civil Law (hereafter – CL) was adopted on 28 January 1937 and entered into effect on 1 January 1938.[24]

While elaborating the new codification, the provision of CCL Article 935, omitting the example-like enumeration ("[…] like, e.g., a forest, a sand pit, a cemetery, etc. […]"), was taken over and included in the first part of CL Article 1070, which provides: "Divided use of the co-owned property is admissible only if the property can be divided, but in such a case the use should be proportionate to the size of the separate shares."

In the legal literature published until 1940, the provision of CL Article 1070 has not received much attention, emphasising that, where divided use of the co-owned property was possible it should be established proportionately to the co-owned shares and only in the case of a clearly expressed agreement of all co-owners the fruits borne by the co-owned property might only to one of the co-owners.[25]

However, already in the Latvian legal literature of the 1930s, also from the perspective of comparative law, the matter gained relevance regarding how to make, from the legal perspective, "proprietary" the right of each co-owner of a residential building to the apartment (storey of the building) transferred into his exclusive use, taking into account that an apartment as such is not an independent object of the ownership right but a part of the house.

Namely, the right of each co-owner to use the apartment transferred into his exclusive use, established by an agreement, has the nature of obligations law. However, usually the co-owners of a residential building are interested not only in the lawful possibility to use the particular apartment and gain fruits from it but also to have the effect of proprietary law

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22 The Senate's Judgement of 28.09.1933 No. 857. In: *X Izvilkumi no Latvijas Senāta Civilā kasācijas departamenta spriedumiem. Sastādījuši: senators F. Konradi un Rīgas apgabaltiesas loceklis A. Valters* [X Excerpts from the Judgements of the Civil Cassation Department of the Latvian Senate. Compiled by: Senator F. Konradi and Member of Riga Regional Court A. Valters]. Rīga: izdevniecība „Jurists"/ izdevniecība „Grāmatrūpnieks", 1933/1934, p. 7.

23 The Senate's Judgement of 21.02.1936 No. 242. In: *XII Izvilkumi no Latvijas Senāta Civilā kasācijas departamenta spriedumiem. Sastādījuši: senators F. Konradi un Rīgas apgabaltiesas loceklis A. Valters* [XII Excerpts from the Judgements of the Civil Cassation Department of the Latvian Senate. Compiled by: Senator F. Konradi and Member of Riga Regional Court A. Valters]. Rīga: izdevniecība „Grāmatrūpnieks", 1935/1936, pp. 387–388.

24 On the drafting of the Civil Law of 1937, see wider: SCHWARTZ, P. *Das Lettländische Zivilgesetzbuch vom 28. Januar 1937 und seine Entstehungsgeschichte*. Aachen: Shaker Verlag, 2008 (translated and published in Latvian: ŠVARCS, F. *Latvijas 1937. gada 28. janvāra Civillikums un tā rašanās vēsture* [The Latvian Civil Law of 28 January 1937 and the History of its Origins]. Rīga: Tiesu namu aģentūra, 2011).

25 BLAESE, H. – MENDE, S. *Das Sachenrecht. Lettlands Zivilgesetzbuch vom 28. januar 1937 in Einzeldarstellungen. Zweiter Band, 2*. Riga: Verlag der AG „Ernst Plates", 1940, pp. 118–119.

for this right (i.e., not to have this right depend on the will of other co-owners or changes in the composition of other co-owners) and that this right be inheritable and alienable. The closest to this right to exclusive use of the particular apartment is the right of dwelling (*habitatio*), which grants to the user of the servitude a legal possibility to dwell in the house of another person (CL Article 1227) because the co-owned residential building does not belong only to one co-owner. However, the problem is caused by the fact that the right of dwelling – as the right of personal servitude – must be established in favour of a particular person (the user of servitude), this right cannot be alienated and is not transferred to the heirs of the user of servitude, i.e., it terminates upon his death. Therefore, it would be necessary to create a new right to servitude, linked to co-ownership, i.e., such an exclusive right of a co-owner of a residential building to use a particular apartment (a storey of a house) and gain fruits from it that would be inheritable and alienable.[26]

It must be added that, until the occupation of Latvia in 1940, the aforementioned proposal was not implemented: neither through legislation (by creating a new right to servitude or the institution of "apartment property") nor through administration of justice (e.g., accepting the possibility to corroborate in the Land Register the co-owners' right to exclusive use).

2. The Period of Soviet Law

2.1 The period from 1940 to 1964

Following the occupation of Latvia and its incorporation into the Union of the Soviet Socialist Republics (USSR), enforcement of the Soviet law in Latvia began.

On the basis of a special decree by the Presidium of the Supreme Soviet of the SSR of 6 November 1940, from 26 November 1940, the codes of the Russian Soviet Federal Socialist Republic (RSFSR) had to be applied in the territory of the Latvian Soviet Socialist Republic (hereafter – Latvian SSR), *inter alia*, the Civil Code of 1922, which was in force until 31 May 1964.[27]

Article 61 of RSFSR Civil Code stipulated that "ownership right may be co-owned by two or several persons, each owning a certain shear (co-ownership)". Whereas, in regulating the use and handling of the co-owned property, RSFSR Civil Code set out in Article 62 that, regarding the co-owned property, "the possession and use, as well as handling of it should take place by common agreement of all participants but, in the case of dispute, according to the majority vote".[28] Therefore, as noted in legal literature, in the case of two co-owners of a property, unanimity is always required, however, if unanimity was not

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26 ČAKSTE, K. *Nama sadalīšana dzīvokļos* [Dividing a House into Apartments]. Tieslietu Ministrijas Vēstnesis, 1933, No. 9/10, pp. 193–196, 201–203; ČAKSTE, K. *Dzīvokļa iegūšana īpašumā* [Acquiring Ownership of an Apartment]. Jurists, 1939, No. 6 (100), pp. 119–220.

27 LĒBERS, *op. cit.*, pp. 314–315, 329; ŠVARCS, *op. cit*., pp. 154–156.

28 *KPFSR Civilkodekss. Oficiāls teksts ar pielikumiem un sistematizētiem materiāliem pantu kārtībā* [The Civil Code of the RSFSR. The Official Text with Annexes and Systematised Materials in the Sequence of Articles]. Rīga: Latvijas Valsts izdevniecība, 1951, p. 23.

achieved and the majority could not be ensured, then the co-owners' dispute regarding the use of the co-owned property had to be resolved by a court.[29]

2.2 The period from 1964 to 1992

On the basis of the foundations for the civil law legislation of the USSR and the united republics, which had been approved by the Supreme Soviet of the USSR on 8 December 1961, the Civil Code of the Latvian SSR was drafted, which was approved by the Supreme Soviet of the Latvian SSR on 27 December 1963 and entered into effect on 1 June 1964.[30]

Articles 116–126 of the Civil Code of the Latvian SSR (hereafter – CC) regulated the so-called "shared co-ownership", which – in difference to the so-called "undivided co--ownership" – is owned by its participants in certain co-ownership shares.

General rules on the use and handling of a co-owned property were included in the first part of CC Article 117, i.e., "the possessing, use and the handling of the shared co-ownership takes place in accordance with the agreement between all owners; however, in case of disputes, the procedure of possessing, using and handling is determined by the court upon the claim of any of the participants". In this provision, in difference to Article 62 of RSFSR Civil Code of 1922, the equality of all co-owners was enshrined since the procedure of using the co-owned property had to be determined by an agreement between all co-owners, irrespective of the size of the co-ownership share of each co-owner, whereas, in the case of disputes, by a court's judgement on the basis of a claim brought by any of the co-owners, taking into account the valid interests of all co-owners.[31]

Pursuant to the first part of CC Article 117, the part of the co-owned property transferred into the use of each co-owner, in principle, should be proportionate to the size of his co-owned share, however, in practice, it is not always the case (e.g., premises that differ in size may be transferred into the use of co-owners of a house who own equal co-owned shares). Moreover, as regards the agreement between the co-owners, the provision of the first part of CC Article 117 is dispositive since it grants to co-owners rather broad discretion, *inter alia*, to agree on such procedure for using the co-owned property that is not proportionate to the size of their co-owned shares.[32]

As the Soviet legal doctrine emphasised at the time, most often, residential buildings were co-owned by natural persons ("Soviet citizens") and, in such cases, the co-owners' right to use was the most important element in the ownership right.[33] Not in vain, CC Article 125 included special regulation on "the procedure of using a co-owned residential building". Namely, the first part of this article stipulated that "the participants of a shared co-owned residential building shall have the right, through mutual agreement, proportionately to their shares, to determine the procedure for using the separate premises

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29 AGARKOVS, M. M. – BRATUSS, S. N. – GENKINS, D. M. – SEREBROVSKIS, V. I. – ŠKUNDINS, Z. I. *Civīltiesības. I sējums* [Civil Law. Volume I]. Rīga: Latvijas Valsts izdevniecība, 1946, p. 304.

30 VĒBERS, J. *Padomju civiltiesības. Vispārīgā daļa. Īpašuma tiesības* [Soviet Civil Law. General Part. Property Law]. Rīga: Zvaigzne, 1979, pp. 21–23; LĒBERS, *op. cit.*, p. 383.

31 KRAUZE, R. *Komentārs 117. pantam* [Commentary on Article 117]. In: VĒBERS, J. (ed.). *Latvijas PSR Civilkodeksa komentāri* [Commentaries on the Civil Code of the Latvian SSR]. Rīga: Liesma, 1979, p. 187.

32 VĒBERS, *op. cit*., pp. 223–224.

33 MILLERS, V. – MEĻĶISIS, E. (eds.). *Padomju tiesības* [Soviet Law]. Rīga: Zvaigzne, 1978, p. 146.

(apartments, rooms) of the building", whereas the second part of this article provided that "such an agreement, if it is certified by a notary and registered at the local Council of People's Deputies, is mandatory also for the person who in the future acquires a share of the ownership right to this building".

When commenting on the first part of CC Article 125, it is noted in legal literature that the establishment of the procedure for using a residential building does not mean actual division of this co-owned building since the co-ownership continues to exist when the procedure for using is determined.[34] Since a residential building is an object of co-ownership, the task of which is satisfy the needs of every co-owner for living space, each co-owner, on the basis of a reciprocal agreement, must receive for use premises of the co-owned residential building (a storey, an apartment, a room) proportionately to the size of co-ownership shares. Thus, each co-owner obtains the right to use a particular part of the residential building.[35] If the co-owners are unable to reach such an agreement, the procedure of using the co-owned residential building is determined by a court. Due to objective circumstances, it is not always possible to abide by the rule that the procedure of use should be determined proportionately to co-ownership shares. Therefore, if a more appropriate procedure for use can be determined by carrying out replanning (reconstruction) of premises in accordance with a project, approved in a procedure set out in law, it is admissible; moreover, in the case of a dispute reconstruction is admissible if it does not affect substantially the interests of other co-owners (significant decrease of the area of living space is deemed to be a significant infringement on the co-owners' valid interests). If it is impossible to determine the procedure for using premises without significantly derogating from the proportionality of the co-ownership shares then the co-owner who has received in use a part that is smaller than the one he is eligible to in accordance with his co-ownership share he has the right to demand appropriate payment for the use of that part which for another co-owner exceeds the part that he is entitled to.[36] In determining the procedure for using separate premises, first of all, the living area must be taken into consideration, which must be divided proportionally to the co-ownership shares of the co-owners; moreover, substituting the living area by ancillary rooms without the agreement of the respective co-owner is inadmissible. If due to the number and location of ancillary premises (the kitchen, the entrance hall, the toilet, the bathroom or shower, etc.) it is not possible to transfer these into exclusive use of each co-owner, the procedure for joint use of these must be established.[37]

According to the general principle, each co-owner, proportionately to his co-ownership share, not only receives income from the co-owned property but also participates in covering the expenses of managing and maintaining the co-owned property (CC Article 118). However, if the co-owner gains income from that part of the co-owned property that has been transferred into his exclusive use in accordance with the established procedure for use

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34 KRAUZE, R. *Komentārs 125. pantam* [Commentary on Article 125]. In: VĒBERS, J. (ed.). *Latvijas PSR Civilkodeksa komentāri* [Commentaries on the Civil Code of the Latvian SSR]. Rīga: Liesma, 1979, p. 195.

35 VĒBERS, *op. cit*., p. 224.

36 KRAUZE, R. *Komentārs 125. pantam* [Commentary on Article 125]. In: VĒBERS, J. (ed.). *Latvijas PSR Civilkodeksa komentāri* [Commentaries on the Civil Code of the Latvian SSR]. Rīga: Liesma, 1979, pp. 195–196; VĒBERS, *op. cit*., p. 224.

37 KRAUZE, R. *Komentārs 125. pantam* [Commentary on Article 125]. In: VĒBERS, J. (ed.). *Latvijas PSR Civilkodeksa komentāri* [Commentaries on the Civil Code of the Latvian SSR]. Rīga: Liesma, 1979, p. 196.

(see CC Articles 117 and 125) then this co-owner is entitled to all income (e.g., rent) that is gained directly from the use of this part. Likewise, the expenses that are related to maintaining the part that has been separated for the co-owners' exclusive use (e.g., renovation costs of the premises that do not affect the parts separated for the use of other co-owners) must not be divided among the co-owners.[38]

The law did not envisage a special form for concluding the co-owners' agreement on the procedure for using the residential building; moreover, in the case of a dispute, such procedure could have been determined by a court's judgment (often, such a judgment consolidated the order that actually had formed). However, if the co-owners' agreement on the procedure for use had been certified by a notary and registered at the executive committee of the Council of the People's Deputies then in accordance with the second part of CC Article 125 it was mandatory not only for the parties entering into this agreement but also to third persons who, by obtaining the co-ownership shares of the participants who had left the co-ownership, joined the co-ownership.[39]

It needs to be added that, pursuant to the CC regulation, the agreement itself on alienating the residential building (a part thereof) if even one party was a natural person had to be certified by a notary mandatorily and such an agreement was considered to be concluded at the moment when it was registered at the executive committee of the Council of the People's Deputies, moreover, at this moment of registration the acquirer obtained the title to property, unless a later date for the transfer of the title to property had been set in the agreement (see, the second part of CC Article 136, the fourth part of Article 164, Article 248, and the third part of Article 275).

3. Development of legal regulation following the restoration of the national independence

3.1 Restoration of the historical legal regulation and its implementation in practice

Following the declaration on restoring the independence of the Republic of Latvia on 4 May 1990, already on 14 January 1992, the law "On the Civil Law of the Republic of Latvia of 1937" was adopted, envisaging reinstatement of CL and determining by special regulation the date and the procedure in which separate parts of CL entered into effect. In accordance with the law of 7 July 1992 "On the Time Period of Coming into Force and the Procedures for the Application of the Introduction, Parts on Inheritance Rights and Property Rights of the Renewed Civil Law of 1937 of the Republic of Latvia", on 1 September 1992, the CL part on property law (CL Articles 841–1400), in its basic wording, *inter alia*, the first part of CL Article 1070 entered into effect, at the same time the regulation of CC Articles 92–159, which regulated "ownership right", became invalid.[40]

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38 KRAUZE, R. *Komentārs 118. pantam* [Commentary on Article 118]. In: VĒBERS, J. (ed.). *Latvijas PSR Civilkodeksa komentāri* [Commentaries on the Civil Code of the Latvian SSR]. Rīga: Liesma, 1979, pp. 188–189; VĒBERS, *op. cit*., p. 225.

39 KRAUZE, R. *Komentārs 125. pantam* [Commentary on Article 125]. In: VĒBERS, J. (ed.). *Latvijas PSR Civilkodeksa komentāri* [Commentaries on the Civil Code of the Latvian SSR]. Rīga: Liesma, 1979, p. 196.

40 LĒBERS, *op. cit.*, pp. 463–465.

Although the validity of the first part of CL Article 1070 was restored, without introducing any amendments to this provision, both legal literature and case law retained continuity not only with the understanding of this provision that had evolved in the practice of the Senate in the 1930s but also very pronounced continuity was maintained with the rules of invalid CC Article 125, which met the practical needs of life.

Thus, when commenting on the first part of CL Article 1070, in the legal literature of the end of the 20th century, attention is paid, first of all, on how the procedure for using a co-owned residential building previously had been specially regulated by CC Article 125, moreover, the finding was taken over from the commentary on this article that determining the procedure on divided use did not mean actual division of the co-owned real estate because, when the procedure for use was determined, the co-ownership continued to exist. The next conclusion, important in practice, was derived from this finding that – contrary to the opinion expressed in the legal literature of the end of the19th century – the area, to which the provision of the first part of CL Article 1070 was applied, was not limited to such property that could be legally divided into actual shares (see CL Article 847). In other words, "divisibility of property", in the meaning of the first part of CL Article 1070, denotes only the possibility to determine sufficiently separated parts of the co-owned property that are transferred into the exclusive possession and use of each co-owner. Thus, e.g., divided use of a residential building may be determined by vertical (according to sections) or horizontal (according to storeys) boundaries or by combining these two types.[41]

If the co-owners have established the procedure for divided use then each co-owner has the right not only to use the part transferred into exclusive use separately from all other co-owners, *inter alia*, to lease (rent) this part independently and receive all income gained from the use (leasing, renting) of exactly this part[42] but, also, the respective co-owner alone, e.g., carries the public law liability for preventing arbitrary construction in the part transferred into his exclusive use.[43]

Developing the understanding of the provision of the first part of CL Article 1070 further, it has been recognised in the case law of the Supreme Court (Senate) that, in principle, divided use can be determined with respect to any real estate, establishing each co-owner's right to exclusive use of a particular part (component) of the co-owned real estate, except those parts (components) of this property that, in the particular case, may be held only in the co-possession and co-use of all or some co-owners (e.g., the common access road and the gate, the staircase, the elevator, halls). Therefore, in determining the divided use of real estate, usually the parts of this property that are in separate possession

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41 GRŪTUPS, A. *Latvijas Republikas Civillikuma komentāri. Īpašums* (*927.–1129. p.*) [Commentaries on the Civil Law of the Republic of Latvia. Ownership Right (Art. 927–1129)]. Rīga: Mans Īpašums, 1996, p. 153.

42 GRŪTUPS, A. – KALNIŅŠ, E. *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums. 2. izdevums* [Commentaries on the Civil Law. Part Three. Rights *in Rem*. Ownership Right. 2nd Edition]. Rīga: Tiesu namu aģentūra, 2002, pp. 255, 260, 261; The Senate's Judgement of 27.04.2018 in case No. SKC-190/2018, ECLI:LV:AT:2018:0427.C17140811.1.S, para. 10.1. [online]. [seen 2025-04-23]. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/351728.pdf.

43 The Senate's Judgement of 16.09.2019 in case No. SKA-201/2019, ECLI:LV:AT:2019:0916.A420387314.3.S, paras. 8–13. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/5991.

and use of each co-owner, as well as the parts that remain in co-possession and co-use of all (or some) co-owners are defined.[44]

In determining the divided use, consideration should be made not only of the compliance of the area to be transferred into the exclusive use of each co-owner with the size of his co-ownership share vis-à-vis the total area of the real estate but also the nature of such real estate or its respective part, the purpose of use, economic significance, profitability, as well as other circumstances, e.g., the procedure for use that has actually become established over a longer period of time.[45] In particular, these criteria must be taken into account when the co-owners are unable to reach an agreement on the divided use of the co-owned property and, on the basis of a respective claim, it is determined by a court.[46] Thus, for example, the total area of premises cannot be just counted and aligned it mathematically with the co-ownership shares of the co-owners because the purpose of use and the economic significance of the premises must be taken into account, therefore the residential premises of the co-owned residential building must be divided proportionally to the size of the co-owners' co-ownership shares separately from the proportional division of the auxiliary premises, *inter alia*, it is inadmissible to deprive one co-owner of the possibility to use the only kitchen or toilet since it is incompatible with the need to create normal living conditions for every co-owner of the residential building, taking into the account the purpose for which premises are used.[47]

The first part of CL Article 1070 is not an imperative provision, i.e., co-owners may agree on such divided use of the co-owned real estate that is not proportionate to the size of the co-owners' co-ownership shares and usually this means also different division among the co-owners of the fruits borne by the co-owned property (income and other benefits), as well as the burden linked to this property, expenditure and losses.[48] However, when the procedure for divided use is determined by a court's judgement, this order must be made as proportionate to the size of the co-owners' co-ownership shares as possible; however, the requirement of absolutely precise conformity with the size of the co-ownership shares should not be set also for the order established in this way.[49] Therefore, in exceptional cases, to ensure reasonably the possibility of divided use of the particular co-owned real estate in

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44 The Senate's Judgement of 30.03.2017 in case No. SKC-95/2017, C17085505, para. 11.2. [online]. [seen 2025-04-23]. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/306003.pdf; The Senate's Judgement of 11.03.2021 in case No. SKC-211/2021, ECLI:LV:AT:2021:0311.C33555717.13.S, para. 13.2. [online]. [seen 2025-04-23]. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/441887.pdf.

45 The Senate's Judgement of 08.06.2017 in case No. SKC-124/2017, C19051312, para. 10. [online]. [seen 2025-04-23]. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/317372.pdf.

46 The Senate's Judgement of 18.05.2023 in case No. SKC-14/2023, ECLI:LV:AT:2023:0518.C04058815.13.S, para. 7.2. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/9191.

47 The Senate's Judgement of 16.11.1999 in case No. SKC-654/1999. In: *Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedumi un lēmumi 1999* [Judgments and Decisions of the Department of Civil Cases of the Senate of the Supreme Court of the Republic of Latvia. 1999]. Rīga: Latvijas Tiesnešu mācību centrs, 2000, p. 480.

48 GRŪTUPS – KALNIŅŠ, *op. cit*., pp. 260, 262–263, 265.

49 The Senate's Judgement of 17.03.1999 in case No. SKC-169/1999. In: *Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedumi un lēmumi. 1999* [Judgments and Decisions of the Department of Civil Cases of the Senate of the Supreme Court of the Republic of Latvia. 1999]. Rīga: Latvijas Tiesnešu mācību centrs, 2000, p. 429; The Senate's Decision of 02.11.2011 in case No. SKC-781/2011, C01161910, para. 12. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/3156.

practice, derogations from precise conformity with the co-owners' co-ownership shares are admissible; moreover, the procedure for divided use of the co-owned real estate must be established as cautiously as possible, respecting the order that has actually been established over time, insofar possible, aligning the valid interests of all co-owners.[50]

3.2 Corroboration of the procedure for divided use in the Land Register

Maintaining pronouncedly close continuity with the regulation of CC Article 125, it has been recognised in the legal literature of the end of the 20th century that the procedure for the divided use of co-owned real estate may be corroborated in the Land Register because such procedure for use is encumbrance on the ownership right to property.[51] Thus, taking into account the public credibility of the entries in the Land Register and validity vis-à-vis third persons, the procedure for use, corroborated in the Land Register, is binding upon the new co-owners (i.e., the subsequent acquirers of the co-ownership shares).[52] Whereas in the legal literature of the beginning of the 21st century, the following finding has been specified as follows: by corroborating the procedure for divided use in the Land Register, the respective entry in the Land Register consolidates the right of use of each co-owner to that part of the co-owned real estate, which has been transferred into their exclusive use, and, by analogy with the corroboration of right of the lease (rent) in the Land Register (see CL Article 2126), such right of exclusive use should be corroborated in that part of the Land Register's division (folio), in which the right *in rem* to real estate is corroborated.[53]

Although it is not explicitly provided either in the first part of CL Article 1070 or any other provision of the law that the procedure for divided use can be legally corroborated in the Land Register, the finding, referred to above, regarding such possibility was gradually implemented in the practice of Land Registers.

Responding to such practice, an opposite view has been expressed in legal literature, arguing that, in accordance with *numerus clausus* principle, only such subjective right can be corroborated in the Land Register, the corroboration of which is explicitly envisaged in law, thus granting an absolute effect to such right, and that, in this regard, analogy with the corroboration of the right of lease (rent) in the Land Register is inadmissible because the said contractual right can be legally corroborated in the Land Register only because the law, i.e., CL Article 2126, explicitly provides for such an exception to the general principle of non-corroboration.[54]

A solution to the said problem has been proposed in legal literature – adding a new provision to CL, which would explicitly provide for the corroboration of the procedure for

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50 The Senate's Judgement of 24.10.2007 in case No. SKC-703/2007. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/3448.

51 As set out in Land Register Law, "immovable properties shall be entered in Land Registers and the rights related thereto shall be corroborated therein", "understanding rights also as the securities and restrictions of rights if the contrary does not arise from the content and direct meaning of the law", moreover, "rights to immovable property shall be corroborated in the form of an entry", whereas "the securities and restrictions of rights shall be corroborated in the form of notations" (see Articles 1, 4 and 44 of Land Register Law).

52 GRŪTUPS, *op. cit*., pp. 153–154.

53 GRŪTUPS – KALNIŅŠ, *op. cit*., p. 263.

54 VIRKO, E. *Zemesgrāmatu pieejamība un ticamība (II)* [Accessibility and Credibility of Land Register]. Jurista Vārds. 15.04.2008, No. 15 (520).

divided use, established by an agreement or a court's judgement, in the Land Register, thus granting to it a binding effect vis-à-vis third persons.[55]

However, in accordance with the currently prevailing opinion, which, on the basis of considerations regarding legal certainty and foreseeability, has been enshrined in the Senate's judicature, it is legally possible, on the basis of a legal transaction or a court's judgement, to corroborate in the Land Register the procedure for the divided use the co-owned real estate, established among the co-owners, pursuant to which each co-owner has the right to exclusive use alone the part of the real estate, transferred into his exclusive use (e.g., a storey of a residential building, an apartment or an isolated premise, a part of an outbuilding or a land plot) because such order is related to the title to real estate and is understood as a restriction on the title to property co-owned by the co-owners. The procedure for divided use, corroborated in the Land Register, is in effect vis-à-vis third persons and it can be reckoned with when deciding on the acquisition of the co-ownership share of a particular co-owner.[56] At the same time, it means that the right of exclusive use, established by the procedure of divided use, determined by the co-owners, and corroborated in favour of the particular co-owner, can be inherited and alienated together with co-ownership share of this co-owner.

It must be added that the findings of judicature, referred to above, prove once again that the principle of *numerus clausus*, which prevails in the property law, pursuant to which subjects of law may use only those legal institutions that are envisaged in law and may not, through agreements, create new legal institutions of the rights *in rem* or significantly modify the content of the existing institutions,[57] does not exclude the possibility to create new legal institutions or modify the content of the existing institutions not only through legislation but also through further development of case law.[58]

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55 KUDEIKINA I. *Kopīpašuma institūta problemātika darījumos ar nekustamo īpašumu. Promocijas darbs* [Problems of the Institution of Co-Ownership in Real Estate Transactions. Doctoral Thesis]. Rīga: [B. i.], 2015, pp. 39–42, 101–113; NEILANDS, R. *Atsevišķi kopīpašuma problēmjautājumi un to iespējamie risinājumi* [Some Problematic Issues Pertaining to Co-ownership and Possible Solutions to Them]. Jurista Vārds. 28.01.2020., No. 4 (1114); NEILANDS, R. *Vienošanās par kopīpašuma dalītas lietošanas kārtību ierakstīšana zemesgrāmatā* [Registering of the Agreement on Divided Use of Co-ownership in the Land Register]. In: Likumdošana un tās rezultāts Latvijā: pagātnes mācības, mūsdienu tendences, problēmas un risinājumi. Latvijas Universitātes 82. starptautiskās zinātniskās konferences tiesību zinātnes rakstu krājums [Legislation and Its Outcome in Latvia: Lessons from the Past, Current Trends, Problems and Solutions. Legal Science Proceedings of the 82nd International Scientific Conference of the University of Latvia]. Rīga: LU Akadēmiskais apgāds, 2024, pp. 144–151.

56 The Senate's Decision of 02.11.2011 in case No. SKC-781/2011, C01161910, paras. 10–14. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/3156; The Senate's Decision of 05.12.2012 in case No. SKC-1800/2012, C01161910, para. 10. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/3065; The Senate's Decision of 26.11.2024 in case No. SKC-980/2024, ECLI:LV:AT:2024:1126.SKC098024.6.L, paras. 8.1–8.2. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/10741.

57 BALODIS, K. *Ievads civiltiesībās* [Introduction to Civil Law]. Rīga: Zvaigzne ABC, 2007, p. 122.

58 WELLENHOFER, M. *Sachenrecht. 33. Auflage*. München: Verlag C. H. Beck, 2018, § 3, Rn. 3; REY, H. *Die Grundlagen des Sachenrechts und das Eigentum.* 3. Auflage. Bern: Stämpfli Verlag, 2007, N 321 ff.

3.3 Divided use of the "jointly owned part" of all apartment owners

Already at the end of the 20th century, i.e., with the law of 28 September 1995 "On Apartment Property", which entered into effect on 26 October 1995, the institution of "apartment property" was introduced into the Latvian legal system, pursuant to which each apartment property as independent real estate consists of the following legally inseparable elements: 1) "separate property" or the interior of groups of premises separated from the other part of a multi-apartment building (i.e., the premises of a particular apartment or non-residential premises), and 2) certain co-ownership shares of the "jointly owned part" of all apartment owners, which, in turn, consists of the external building envelope (*inter alia*, the exterior walls, the roof, the entrance door), interior load-bearing constructions and intermediate floors, premises in common use (*inter alia*, the staircase, the basement, the attic) and the common land plot. The new Law on Apartment Property is in effect since 1 January 2011, and also this law provides that provisions of CL Articles 1067–1072 (see the second part of Article 4 of Law on Apartment Property), *inter alia*, the rules of CL Article 1070 on divided use of the co-owned property are applicable to the "jointly owned part" of all apartment owners.

Therefore, all the above regarding the understanding of the first part of CL Article 1070 and legal aspects in the application of this provision *mutatis mutandis* applies also to the possibility for apartment owners to determine, through an agreement or by turning to court, divided use of the "jointly owned part" of all apartment owners,[59] e.g., by establishing in favour of every apartment owner an exclusive right to use a particular parking space, located on the common land plot, or to a particular part of the basement or attic space (e.g., for storing movable property), or a particular part of the building's façade (e.g., for placing advertisements or a signboard) or the roof of the building (e.g., for installing photovoltaic panels). The procedure for divided use, established among the apartment owners, also can be corroborated in the Land Register, thus not only granting to the particular right to exclusive use the validity vis-à-vis third persons,[60] but also making this right inheritable and alienable together with the apartment property, in favour of whose owner such right has been once established.

Summary

1. The Latvian legal regulation on the procedure for divided use of co-owned real estate, which is based on "present-day Roman law" (the Pandect law) and was for the first time posited already in Article 935 of CCL of 1864, experienced very serious development during the period of Soviet law because Article 125 of CC of 1963 comprised special rules that regulated the determination of the divided use of co-owned residential building and the possibility to register it publicly at the local government institution (where registration of the agreements on alienating residential buildings was mandatory), in order to make, thus, such procedure binding also upon third persons (successive acquirers of co-ownership shares).

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59 The Senate's Judgement of 18.05.2023 in case No. SKC-14/2023, ECLI:LV:AT:2023:0518.C04058815.13.S, paras. 7.1–7.3. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/9191.

60 The Senate's Decision of 26.11.2024 in case No. SKC-980/2024, ECLI:LV:AT:2024:1126.SKC098024.6.L, paras. 8.1–8.2. [online]. [seen 2025-04-23]. Available: https://www.at.gov.lv/downloadlawfile/10741.

2. Following the restoration of independence of the Republic of Latvia and the validity of CL of 1937, the first part of CL Article 1070 (taken over from CCL Article 935 of 1864) again entered into effect, at the same time CC Article 125 of 1963 became invalid. Although the first part of CL Article 1070 was reinstated unamended, in the practical implementation of this provision pronounced continuity with the invalid rules of CC Article 125 was maintained, thus meeting the practical needs of life. Namely, the second part of CC Article 125 envisaged public registration of the procedure for divided use as an effective legal solution to the unsolved matter, which was highlighted already in the Latvian legal literature of the 1930s but was not resolved until Latvia's occupation, of how to grant the validity vis-à-vis third persons to the right of each co-owner of a residential building to the exclusive use of the part of real estate transferred into his exclusive use (a storey, an apartment or separate premises).
3. The abovementioned legal solution, created in the Soviet civil law, on the basis of legal doctrine has been taken over in the current case law and, although law does not explicitly provide for such a possibility, in accordance with the currently prevailing view, which has been consolidated in the judicature of the Supreme Court (Senate), it is possible to legally corroborate in the Land Register the procedure for divided use of the co-owned real estate (*inter alia*, "jointly owned part" of all apartment owners), established by a legal transaction or a court's judgement, thus not only grating to the particular right to exclusive use the validity vis-à-vis third persons (successive acquirers of co-ownership shares) but also rendering this right inheritable and alienable together with the respective co-ownership share or apartment property.