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*The concept of marriage under the laws of Ukraine and EU member states  
(Croatia, Germany, Poland)*

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# Secção I

## Investigação Científica\*

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## The concept of marriage under the laws of Ukraine and EU member states (Croatia, Germany, Poland)

### O conceito de casamento sob as leis da Ucrânia e dos Estados-Membros da UE (Croácia, Alemanha, Polônia)

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**ABSTRACT:** Marriage is an extremely important asset for humanity. It is a historical, legal, cultural, moral, ethical, and social phenomenon and is a complex category for research by scholars. Its research and legal analysis are particularly complicated by the multifaceted nature of the concept of marriage and the permanent impact on it of moral, ethical, and social norms. Since the lack of a clear interpretation of a concept creates obstacles to its application in the regulation of relations, the study of the concept of marriage is a topic that does not lose its relevance. In addition, Ukraine's legislation is currently being brought closer to EU standards and international law. Therefore, the purpose of this article is a comprehensive theoretical and practical analysis of the legislation of Ukraine and selected EU member states in terms of regulating the concept of marriage, as well as features of legal regulation of the phenomenon by law and studying and analyzing existing concepts of marriage. The leading method, the use of which determines the reliability of the results obtained, is the comparative method. The usage of this method has led to the possibility of obtaining results on the analysis of the concept of marriage in the legislation of different countries. In addition, the application of the comparative method provided an opportunity to identify commonalities and differences between these concepts in different legal acts. The comparative method also provided an opportunity to analyze different legal acts in different states in order to formulate the best definition of marriage.

**KEYWORDS:** marriage; the concept of marriage; marital and family relations; family law.

**RESUMO:** O casamento é um bem extremamente importante para a humanidade. É um fenômeno histórico, legal, cultural, moral, ético e social e é uma categoria complexa para pesquisa de estudiosos. Sua pesquisa e análise jurídica são particularmente complicadas pela natureza multifacetada do conceito de casamento e o impacto permanente sobre ele de normas morais, éticas e sociais. Uma vez que a falta de uma interpretação clara de um conceito cria obstáculos à sua aplicação na regulação das relações, o estudo do conceito de casamento é um tema que não perde a sua relevância. Além disso, a legislação da Ucrânia está atualmente a ser aproximada das normas da UE e do direito internacional. Portanto, o objetivo deste artigo é uma análise teórica e prática abrangente da legislação da Ucrânia e dos Estados-Membros da UE selecionados em termos de regulamentação do conceito de casamento, bem como características da regulamentação legal do fenômeno por lei e estudar e analisar

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conceitos de casamento. O método principal, cujo uso determina a confiabilidade dos resultados obtidos, é o método comparativo. A utilização deste método permitiu obter resultados sobre a análise do conceito de casamento na legislação de diferentes países. Além disso, a aplicação do método comparativo permitiu identificar semelhanças e diferenças entre estes conceitos em diferentes atos jurídicos. O método comparativo também proporcionou a oportunidade de analisar diferentes atos jurídicos em diferentes estados para formular a melhor definição de casamento.

**PALAVRAS-CHAVE:** casamento; conceito de casamento; relações conjugais e familiares; direito de família.

## Introduction

The family and marriage are social institutions to which all human beings on earth belong. Everyone is included in them in one way or another, or at least has a relationship to them. Being one of the oldest human social formations and an integral part of everyday life of modern people, marriage and family have been of interest to thinkers, scientists and researchers throughout human history. This interest is connected with the desire to understand the place and role of the family in society, the relationship of the family to the state and their mutual influence; it is also conditioned by the need to fulfill the vital and global function of reproduction of the human race, to meet the most urgent needs of the individual.

Marriage is considered a universal way of creating a family, but the concept of marriage is constantly evolving. It is a special organization of human life, which corresponds to the essence of human nature and society, combines economic and sexual in one. This is not just a biosocial union of man and woman, which performs reproductive functions in society, but a much more complex organism, which is under the care of the state and law<sup>3</sup>. Despite the fact that marriage is one of the oldest legal institutions, its first legislative definition in the Ukrainian lands appeared only in the current Family Code of Ukraine<sup>4</sup>. The appeal to the legal concept of marriage is not original, but the fundamental centuries-old principles on which the ancient institution of marriage rested have increasingly been undermined. This is reflected in a modified form of the public and legal consciousness and the legislation of numerous states. Thus, the traditional form

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<sup>3</sup> VOYTENKO, T. The concept of marriage. *Scientific Bulletin of Uzhhorod National University*, 2012, vol. 19, pp. 30-33.

<sup>4</sup> VERKHOVNA RADA OF UKRAINE. Family Code of Ukraine. Law of Ukraine No. 2947-III [Online]. 2002 [viewed 28 March 2022]. Available from: <https://zakon.rada.gov.ua/laws/show/2947-14#Text>.

of marriage, where the wife was solely the housewife, is being replaced by a form of marriage-partnership.

It should be emphasized that the study of marriage and family relations is extremely important, because this institution forms a new part of society, as well as forming new legal ties arising between the entering into marriage couple. Therefore, scientists pay extraordinary attention to this issue. During the entire period of study of the concept of marriage by lawyers, various theories of its origin have emerged. In particular, marriage is seen as a free union of spouses, a sacred sacrament, a civil contract, status, an institution of a special kind, etc. The emergence of different legal theories about the legal nature of marriage depended and depends on the period in the history of a particular people, the role of women, the state and the church in this process, the legal status of property and the legal consequences of marriage<sup>5</sup>.

The important issue of the definition of marriage in the legislation of different countries is also for the regulation of marital and family relations with a foreign element. It is necessary to emphasize that the foreign element is one of the important attributes, according to which private-law relations of international character differ from other private-law relations<sup>6</sup>. In general, the foreign element may appear in three main forms, as subject, object and juridical fact. The presence of at least one form of foreign element in this legal relationship is the basis for the application of international legal norms. It is the presence of a foreign element in family relations that gives them an international character<sup>7</sup>.

The presence of a foreign element in relations in its various forms raises the question of determining the substantive law of a particular country, which will be applied to the regulation of these relations<sup>8</sup>. This issue is urgent since the legislation of different countries on the regulation of family relations differs significantly based on cultural, ethnic, religious, and legal traditions<sup>9</sup>. Analysis of

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<sup>5</sup> FEDOROVA, V. The concept of marriage. *Journal of Civilization*, 2017, vol. 23, pp. 62-66.

<sup>6</sup> SHEMSHUCHENKO, Y. S., and KOSTRUBA, A. V. Corporate relations in the aspect of civil law. *Astra Salvensis*, 2022, vol. 2022, n. 1, pp. 37-50.

<sup>7</sup> KARPENKO, R. Legal regulation of marriage in Ukraine: Conflicting issues of marriage complicated by a foreign element. *Legal Scientific Electronic Journal*, 2021, vol. 12, pp. 131-133.

<sup>8</sup> HETMANTSEV, M., SHABALIN, A., HALIANTYCH, M., and KOSTRUBA, A. Comparative analysis of Ukrainian and Estonian law in the context of adaptation to EU legal standards. *International Journal of Public Law and Policy*, 2022, vol. 8, n. 3-4, pp. 298-312.

<sup>9</sup> LOPATA, N. Features of marriage registration with the participation of foreign citizens and stateless persons in Ukraine. *Bulletin of the Alfred Nobel University of Dnepropetrovsk*, 2015, vol. 1, n. 6, pp. 25-33.

the peculiarities of the legal regulation of marriages with foreigners should begin with a study of the differences in the legislation of various countries. This will help us to establish what may be the reasons for conflicts that need to be resolved.

The consideration of theoretical and practical aspects of the regulation of family and marital relations in modern conditions is also important in view of the ongoing processes of European integration in Ukraine, the implementation and specification at the level of the current legislation of the concept and general approaches defined by the rules of the Association Agreement concluded between Ukraine and the European Union<sup>10</sup>.

Therefore, the purpose of this article is a comprehensive theoretical and practical analysis of the legislation of Ukraine and selected EU member states in terms of regulating the concept of marriage, as well as features of legal regulation of the phenomenon by law and studying and analyzing existing concepts of marriage.

### **Methodological Framework**

During the research, a system of general scientific, philosophical, and special methods was applied in order to facilitate the results veracity and the achievement of the set objectives. The first to note is the comparative method. Its use provided an opportunity to obtain the results of the analysis of the concept of marriage in the legislation of Ukraine, Croatia, Germany and Poland. In addition, the use of the comparative method provided an opportunity to identify common and distinctive features between the given concepts in different legal acts. The comparative method also provided an opportunity to analyze various legal acts in different states in order to formulate the best definition of marriage. Through the application of the comparative method the author came to the conclusion that in the analyzed countries the understanding of marriage and its legal regulation is quite similar. The reason is that all the countries under consideration are located on the territory of Europe and therefore follow equal values and have similar legal mechanisms.

The legalistic method is another method widely applied during the scientific research. This method was used to analyze the concept of marriage according to

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<sup>10</sup> RADCHENKO, L. Marriage contract in foreign law: Some principles of legal regulation. *Entrepreneurship, Economy and Law*, 2017, vol. 9, pp. 38-41.

the legislation of Ukraine, Croatia, Germany and Poland. The authors of this article also applied the legalistic method to analyze the Constitutions and particular Family Codes of the states under study on the regulation of marriage and family relations. In addition, the application of the legalistic method provided an opportunity to identify the characteristic features of marriage under the legislation of each country.

The system-structural method provided an opportunity to consider the family legislation of Ukraine and EU Member States as a unified system of rules of law, the content of which is determined by the need to regulate marriage and family relations. Application of the system-structural method allowed to summarize and systematize disparate information on the legal and doctrinal definition of marriage in European countries. Through the application of the systematic method the author of the scientific article concluded that the legislation of each individual country provides the fundamental features of marriage. For example, according to the Ukrainian approach to the definition of marriage it is a union protected by the state, based on voluntariness and equality and concluded between a spouse (i.e. between persons of different sexes), drawn up in the form prescribed by the state, registered in authorized bodies and meets the requirements of the law. Under Croatian law, marriage is a union between two partners of different sexes (excluding same-sex marriages), concluded in accordance with the law and registered with authorized bodies, which gives rise to rights and obligations of the partners and is entered into by mutual consent. German law regulates that marriage refers to a legal contract concluded between a person and protected by the provisions of German law. The Polish approach to marriage assumes it to be a monogamous, permanent, secular union, entered into legally and mutually between persons of different sexes, subject to the formal requirements of the law.

Also, in the course of the study the author applied methods of scientific knowledge, which were used to study the features of marriage according to doctrinal approaches, as well as the history of the formation of the relevant legal institution and its transformation over time. The results of scientific-cognitive activity with the use of the above-mentioned method provided the need to clarify the ways to improve the relevant legislation in the countries under study, which is reflected in the conclusions of this article.

The method of analysis and synthesis allowed to study theoretical information, international legal acts, national legislation of Ukraine and on their basis to highlight the problems that exist in the studied area and ways to solve them. This method was used for the general study of the legal framework of marriage and family relations.

## Results

### *The concept of marriage in the law of Ukraine*

First of all, consider the legal regulation of marriage in accordance with the laws of Ukraine. According to the Article 3 of the Family Code of Ukraine<sup>11</sup>, which stipulates that the family consists of persons living together, connected by common life, have mutual rights and responsibilities. The family is created on the basis of marriage, consanguinity, adoption and other grounds that do not contradict the moral principles of society. Thus, marriage is the most important prerequisite for the emergence of a family, the main way to create it, its basis. According to Article 21 of the Family Code of Ukraine<sup>12</sup>, marriage is a family union of a woman and a man registered in the state bodies of registration of acts of civil status.

Article 51 of the Constitution of Ukraine states that marriage is based on the free consent of a woman and a man<sup>13</sup>. Each spouse has equal rights and responsibilities in marriage and family. The essence of marriage is determined by the established social relations. Marriage is carried out for the formation of a family, the birth of children, living together and the formation of common property. The rights and obligations of people entering into a civil marriage are fixed in the legislation, which may be very different in different countries, and which has changed throughout the ages<sup>14</sup>. Despite the presence of legal regulation of the concept of marriage in the legislation, not all scholars consider this regulation

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<sup>11</sup> VERKHOVNA RADA OF UKRAINE. Family Code of Ukraine. Law of Ukraine No. 2947-III [Online]. 2002 [viewed 28 March 2022]. Available from: <https://zakon.rada.gov.ua/laws/show/2947-14#Text>.

<sup>12</sup> VERKHOVNA RADA OF UKRAINE. Family Code of Ukraine. Law of Ukraine No. 2947-III [Online]. 2002 [viewed 28 March 2022]. Available from: <https://zakon.rada.gov.ua/laws/show/2947-14#Text>.

<sup>13</sup> VERKHOVNA RADA OF UKRAINE. The Constitution of Ukraine. Document No. 254k/96-VR [Online]. 1996 [viewed 23 March 2022]. Available from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>14</sup> YAROSHCHUK, A. The concept of family and marriage as a basis for the formation of matrimonial guidelines in high school students. *Young Scientist*, 2017, vol. 10, n. 50, pp. 737-741.



appropriate. L. Pchelintseva<sup>15</sup> believes that the absence of the definition of marriage in the last edition of the Family Code of Ukraine and the codes of other states is the right approach. The researcher argues marriage is a complex phenomenon influenced by legal and moral standards and economic laws; this makes it questionable and incomplete to consider the concept of marriage only from the legal position.

On the other hand, there are a number of scientists insisting on consolidation of the concept of marriage, arguing that it is necessary to avoid confusion when regulating marriage and family relations. For example, I. Trofimets notes that the definition of marriage is necessary in order to eliminate conventionality and bring clarity in the application of norms that constitute the institution of marriage<sup>16</sup>. A definition is an ideal (model) indicating the criteria of identification, which allows us to compare the correspondence of concrete life situations with its content. The definition should contain all essential elements and at the same time be flexible.

Another Ukrainian scholar, K. Kazarian also notes the consolidation of the legislative definition of marriage, since the absence of the concept of a certain legal category contradicts the principle of its certainty and one-sidedness<sup>17</sup>. The same opinion is held by T. Kashanina<sup>18</sup>, who notes that legal definitions refer to the means of expressing the content, since the institution of marriage is one of the most ancient and at each stage of development of society has its own characteristic features. Consequently, the majority of scientists still advocate the idea of the need to enshrine the legal definition of marriage in the law. The authors of this article also believe that a clear legal consolidation of the concept of marriage in the legislation (that is typical for Ukrainian law) will help to avoid any misunderstandings in the adoption of other legal acts in this area and judicial settlement of marriage and family relations.

Thus, the expediency of studying the relevant concept has not disappeared, which makes it advisable to consider scientific approaches to its definition. In

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<sup>15</sup> PCHELINTSEVA, L. *Commentary on the Family Code of the Russian Federation*. Moscow: Norma, 2004.

<sup>16</sup> TROFIMETS, I. About some approaches to the definition of marriage. *Family and Housing Law*, 2011, vol. 2, pp. 34-37.

<sup>17</sup> KAZARIAN, K. Legal definition of marriage. *Journal of Legal Sciences*, 2015, vol. 2014, pp. 124-134.

<sup>18</sup> KASHANINA, T. *Legal technique: a textbook*. Moscow: Eksmo, 2009.

terms of doctrinal approaches to the definition of marriage, it is worth dwelling on several definitions of Ukrainian scientists. Thus, V. Reznikova<sup>19</sup> notes that marriage should be considered as a free, equal and in principle lifelong union of a woman and a man, concluded in compliance with the order and conditions established by law, creating a family and generating mutual personal and property rights between the couple. V. Reznikova also notes that in the overwhelming majority of cases marriage relationships arise precisely for the purpose of having children<sup>20</sup>. In addition, the birth of children, as a rule, cements the marriage, makes it stronger, more stable and happier. Society gives special protection and strongly encourages marriages where children are born, but at the same time recognizes as a marriage the union of a man and a woman without children. V. Reznikova concludes the real purpose of marriage (union) for majority of people is to provide a stable relationship between a man and a woman, aimed at the birth and upbringing of children<sup>21</sup>.

According to L. Lypets<sup>22</sup>, marriage is a voluntary and equal union of a woman and a man, registered in the authorized state bodies, concluded for life, but with the right of the couple to dissolve it at any time, except in cases prescribed by law. Marriage symbolizes the formation of a new family, aimed at the occurrence of certain consequences of social and legal nature and is the basis for the spouses a certain amount of mutual rights and obligations established by the Family Code of Ukraine<sup>23</sup>, other normative legal acts, as well as the marriage contract or other agreements entered into by the spouses. As T. Voytenko notes<sup>24</sup>, it would be correct to define marriage as a union of the spouses, concluded in compliance with the conditions and form established by law, generating mutual rights and obligations of the spouses and aimed at

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<sup>19</sup> REZNIKOVA, V. The legal nature of marriage. *Current Issues of Domestic Jurisprudence*, 2011, vol. 2, pp. 87-93.

<sup>20</sup> REZNIKOVA, V. The concept of marriage and family in the new family code of Ukraine. *Visnyk*, 2004, vol. 2, pp. 86-89.

<sup>21</sup> REZNIKOVA, V. The concept of marriage and family in the new family code of Ukraine. *Visnyk*, 2004, vol. 2, pp. 86-89.

<sup>22</sup> LYPETS, L. *Settlement of marital and similar relations by law and contract*. Kyiv: Institute of State and Law named after V. M. Koretsky of the National Academy of Sciences of Ukraine, 2009.

<sup>23</sup> VERKHOVNA RADA OF UKRAINE. Family Code of Ukraine. Law of Ukraine No. 2947-III [Online]. 2002 [viewed 28 March 2022]. Available from: <https://zakon.rada.gov.ua/laws/show/2947-14#Text>.

<sup>24</sup> VOYTENKO, T. The concept of marriage. *Scientific Bulletin of Uzhhorod National University*, 2012, vol. 19, pp. 30-33.

acquiring them. Such a definition avoids reference to the family nature of marriage, since the family can exist without marriage; it does not note that it is a union of equal spouses, since the equality of rights of persons regardless of gender is a general principle of law and, in our opinion, does not require reference in the concept of marriage; the concept avoids reference to the lifetime or lifelong marriage, since this union can be terminated at any time, except for clearly established by law, which are of a short-term nature; the concept does not use the category of voluntariness.

Thus, in legal science there are different approaches to the interpretation of the concept of marriage. Based on the analysis of the above terms it is possible to identify the main characteristic elements of marriage in Ukraine:

1. marriage is a union protected by the state;
2. marriage is based on voluntariness and equality;
3. marriage is between a husband and wife (i.e., between persons of different sexes);
4. the marriage is formalized in the form prescribed by the state and is registered in the authorized bodies;
5. the marriage must be legal (the spouses must be of marriageable age, there is no previous marriage, etc.);
6. marriage gives rise to the respective rights and obligations of the persons.

Based on the definitions analyzed above and the characteristic features inherent in marriage, it is possible to give the author's definition of marriage. The authors of this article hold it is appropriate to define marriage as a voluntary union between a man and a woman on conditions of equality and legality, duly registered in competent public authorities and giving rise to the respective rights and obligations of persons. The definition avoids references to the familial nature of marriage, as a family can exist without marriage. It avoids references to the perpetual or lifelong nature of a marriage, since such a union may be terminated at any time, except in clearly defined circumstances of a short duration, which are established by law.

*The concept of marriage in the law of the EU member states: a case study of Croatia*

The legislation of EU member states contains its own legal regulation of marriage, which differs from country to country. Despite this, in the law of different countries there are many similarities in the regulation of marriage. In our opinion, this is due to the fact that the global principles of marriage and family relations, in general, have significant classical features in their formation. In order to analyze the approaches to the definition of marriage in different countries and find common and distinctive features between the regulation of this phenomenon in Ukraine and the EU, let us consider examples of several EU member states.

An interesting example of classical marriage relationships is Croatia. Thus, the Croatian government and its citizens support the traditional values of marriage and family relations. This is evidenced by the fact that in 2013 Croatia held a referendum in which the citizens of the state voted to enshrine in law the provision that people who marry must be of different sexes<sup>25</sup>. In the country's first-ever publicly initiated referendum on December 1, 2013, the electorate voted in favor of adding a provision to the constitution that enshrines the traditional understanding of marriage as the union of a man and a woman.

According to the State Election Commission, 66 % of voters who came to the polls voted for the constitutional amendment and only 34 % voted against it. The referendum passed without major violations or incidents. Turnout was low, at 38 %, comparable to the previous state-initiated plebiscite on Croatia's accession to the European Union. Then about 44 % of voters decided to express their opinion<sup>26</sup>. Accordingly, the relevant changes were reflected in the approaches to the definition of marriage. Therefore, the authors of this article consider it appropriate to refer to the legislative definition of marriage in Croatian law. Thus, since the results of the referendum concerned the amendment of the Constitution, it is appropriate to consider this legal act. According to Article 61 of the Constitution of Croatia<sup>27</sup>, as amended in 2014, marriage is a living union

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<sup>25</sup> GENDERZED. TRANSNATIONAL JOURNALISM. Croatia to enshrine the concept of marriage as the union of a man and a woman in a referendum [Online]. 2013 [viewed 20 June 2022]. Available from: <https://genderz.org.ua/horvatiya-zakreplit-ponyatie-braka-kak-soyuzamuzhchinyi-i-zhenshhinyi-po-rezultatam-referenduma/>.

<sup>26</sup> GENDERZED. TRANSNATIONAL JOURNALISM. Croatia to enshrine the concept of marriage as the union of a man and a woman in a referendum [Online]. 2013 [viewed 20 June 2022]. Available from: <https://genderz.org.ua/horvatiya-zakreplit-ponyatie-braka-kak-soyuzamuzhchinyi-i-zhenshhinyi-po-rezultatam-referenduma/>.

<sup>27</sup> THE CROATIAN PARLIAMENT. The Constitution of the Republic of Croatia [Online] 1990 [viewed 20 June 2022]. Available from:

between a woman and a man. Marriage and legal relations in marriage, common-law marriage and the family shall be regulated by law.

In the previous version of the Family Act, according to the Article 5 marriage is a legally governed life union between a woman and a man<sup>28</sup>. Article 6 emphasizes that marriage is contracted with the statement of consent of a woman and a man in a civil or religious form. It should be noted that the legislative definition of marriage has not changed for a long time. Thus, in the version of The Family Act from 2014 (latest edition) in accordance with Articles 12-13 it is noted that marriage is a legal community between a woman and a man. Marriage is the consent of a woman and a man in civil or religious form. Marriage in civil form is concluded in the presence of the civil registry office. Marriage in religious form with the consequences of a civil marriage is concluded before an official of the religious community<sup>29</sup>. Thus, the Family Act has undergone minor transformations over time, but to a large extent the essence of the concept has not changed. It is important to emphasize that the main emphasis in the definition is made on marriage as an established legal relationship between a man and a woman.

Regarding scientific approaches to the definition of marriage, it is worth noting the views of Croatian scientist, D. Jakovac-Lozic, who emphasizes, marriage is defined as the union of a man and a woman for life<sup>30</sup>. This decision therefore presents a traditional standing toward the institution of marriage. Homosexual cohabitation has effectively been rejected in Croatia. The rejection of homosexual cohabitation in Croatian law is an attempt to protect traditional marriage as the foundation of the family and ensure the future of the human race. Thus, the author emphasizes Croatia's adherence to the classical understanding of marriage. Among the main features of marriage that can be distinguished on the basis of Croatian law are: the union of two partners of the opposite sex

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[https://www.usud.hr/sites/default/files/dokumenti/The\\_consolidated\\_text\\_of\\_the\\_Constitution\\_of\\_the\\_Republic\\_of\\_Croatia\\_as\\_of\\_15\\_January\\_2014.pdf](https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf).

<sup>28</sup> THE CROATIAN PARLIAMENT. The Family Act. Text No. 1992 [Online]. 2009 [viewed 27 June 2022]. Available from: <http://pak.hr/cke/propisi,%20zakoni/en/FamilyAct/EN.pdf>.

<sup>29</sup> THE CROATIAN PARLIAMENT. The Family Act. Text No. 1404 [Online]. 2014 [viewed 12 March 2022]. Available from: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101656/122585/F1052999276/HRV101656%20Hrv.pdf>.

<sup>30</sup> JAKOVAC-LOZIC, D. Croatia's New Family Act and its implications on marriage and other forms of family life. *California Western International Law Journal*, 2000, vol. 31, pp. 83-99.

(excluding same-sex marriages); concluded in accordance with the law and registered by the authorized bodies; creates rights and responsibilities for partners; is pushed by mutual consent.

### *Legal interpretation of marriage under German law*

Under German law, marriage occurs between a man and a woman, as stated in the German Civil Code. The Civil Code does not explicitly state that the spouse must be of the opposite sex to his or her spouse. However, this requirement was previously a generally accepted<sup>31</sup>. Until 2017 there was no same-sex marriage in Germany; only registered partnerships were possible. The legal basis for registered homosexual unions was the German Registered Life Partnership Act of 2001 amended<sup>32</sup>. However, as of 2017, German law began to allow same-sex partners to marry officially. A bill for the legalization of same-sex marriage passed the Bundestag on 30 June 2017 and the Bundesrat on 7 July. It was signed into law on 20 July by President Frank-Walter Steinmeier and published in the Federal Law Gazette on 28 July 2017<sup>33</sup>.

Despite the growing social recognition of cohabitation without marriage, there are no rules in family law governing the consequences of non-marital cohabitation between two parties. The law gives only partial recognition to cohabitation in certain areas of law (e.g., the right to inherit a lease upon the death of the tenant, § 563(2) s. 4 of the German Civil Code)<sup>34</sup>. According to the German researchers N. Dethloff et al.<sup>35</sup>, in social security law in general the cohabitant does not occupy the same position as the spouse. However, in the payment of family social security benefits, the resources of the cohabitant may be taken into account. The purpose of these is essentially to equate an informal relationship with marriage in Social Security benefits. An unmarried claimant should not be in a better position than a married person. It is important to

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<sup>31</sup> BUNDESTAG. Bürgerliches Gesetzbuch [Online]. 1900 [viewed 14 June 2022]. Available from: <https://www.gesetze-im-internet.de/bgb/>.

<sup>32</sup> BUNDESTAG. Lebenspartnerschaftsgesetz [Online]. 2001 [viewed 14 June 2022]. Available from: <https://www.gesetze-im-internet.de/lpartg/>.

<sup>33</sup> KIRKEBY, B. Det første homoseksuelle par har giftet sig i Tyskland. Flensborg Avis [Online]. 2017 [viewed 10 March 2022]. Available from: <https://www.fladaily.com/wp/dailys/det-foerste-homoseksuelle-par-har-giftet-sig-tyskland/>.

<sup>34</sup> BUNDESTAG. Bürgerliches Gesetzbuch [Online]. 1900 [viewed 14 June 2022]. Available from: <https://www.gesetze-im-internet.de/bgb/>.

<sup>35</sup> DETHLOFF, N., MARTINY, D., and ZSCHOCHE, M. National Report: Germany [Online]. 2015 [viewed 17 June 2022]. Available from: <http://ceflonline.net/wp-content/uploads/Germany-IR.pdf>.

emphasize that, unlike in the countries discussed earlier, the German Constitution of 1949 does not contain the concept of marriage<sup>36</sup>. Article 6 of the Constitution on marriage and the family refers only to the existence of state protection of the family, but the concept of marriage itself is not interpreted.

Therefore, in Germany, the definition of marriage refers to a legal contract between a woman and a man that is protected by the provisions of the German Constitution. This procedure ensures the legal rights of the couple in terms of taxation, pension, and adoption. It is important to know that the legal act of marriage in Germany provides more rights than in the case of a civil partnership. Those who choose to marry can take advantage of tax benefits, whereas a civil partnership does not have such rules. Based on the legal provisions outlined above, as well as the views of German scholars, some features of marriage can be highlighted. Firstly, marriages are considered legal unions or legally binding contracts between the persons involved. Secondly, same-sex unions are allowed in Germany, which means that not only a man and a woman can marry legally. This is a distinctive feature, unlike in the countries discussed earlier. Hence the third feature of the marriage union is legality. Marriage is recognized as a legal union and must be registered accordingly. In addition, marriage gives rise to a number of legal consequences for the couple, as mentioned earlier, that is, it gives rise to those legal relationships, rights and obligations that do not arise in cohabitation (even though in some respects it is also equated with marriage).

#### *Legal interpretation of the concept of marriage under Polish law*

The study of Polish law on marital relations is especially relevant for Ukraine. First, Poland is a neighbor of Ukraine, and therefore has close economic, cultural and social ties with it. Secondly, given the current situation in Ukraine due to the armed aggression of the Russian Federation, many Ukrainians left for this country, which in the future may lead to marriages between citizens of these countries. That is why it is expedient to consider the legal regulation of the concept of marriage in Poland.

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<sup>36</sup> DER PARLAMENTARISCHE RAT. Grundgesetz für die Bundesrepublik Deutschland [Online]. 1949 [viewed 20 March 2022]. Available from: <https://www.gesetze-im-internet.de/gg/>.

According to the Article 18 the Constitution of the Republic of Poland<sup>37</sup>, marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland. However, the Family and Guardianship Code<sup>38</sup> does not provide a precise definition of marriage. Article 1 states the following: “A marriage shall be concluded when a man and woman at the same time present before the Head of the State of the State of the Civil Service a declaration that they enter into a marriage relationship.”

The notion of marriage elicits the subconscious idea of a lasting and lifelong relationship between a man and a woman. In Polish literature it is interpreted in a similar way. As is customary in doctrine, marriage is a formalized and permanent (but not inseparable) relationship between a man and a woman, arising out of their will. The above doctrine should definitely be viewed through the prism of four fundamental rules:

- the rule of monogamy is explicitly expressed in the content of Article 13 of the Family and Guardianship Code<sup>39</sup>, according to which: no person who is already married may marry. According to the second paragraph, a bigamist may be annulled at the suit of any person who has an interest in it;
- the rule of permanence means that the marriage is a permanent relationship;
- rule of secularity means that from a legal point of view only those marital relationships that were concluded in civil form or in religious form, but which entailed civil legal consequences that required a marriage certificate to be drawn up at the civil registry office, are considered marriages<sup>40</sup>.

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<sup>37</sup> THE NATIONAL ASSEMBLY OF POLAND. The Constitution of the Republic of Poland [Online]. 1997 [viewed 25 June 2022]. Available from: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>38</sup> THE SEJM OF THE REPUBLIC OF POLAND. Family and Guardianship Code [Online]. 1964 [viewed 22 February 2022]. Available from: <https://www.global-regulation.com/translation/poland/3353737/the-act-of-25-february-1964-family-code-and-caring.html>.

<sup>39</sup> THE SEJM OF THE REPUBLIC OF POLAND. Family and Guardianship Code [Online]. 1964 [viewed 22 February 2022]. Available from: <https://www.global-regulation.com/translation/poland/3353737/the-act-of-25-february-1964-family-code-and-caring.html>.

<sup>40</sup> KOSIOR, W., and ŁUKASIEWICZ, J. *Family Law in Poland*. Rzeszow: Legal Publishing House, 2018.



- the rule of equality is expressed in the content of Article 23 of the Family and Guardianship Code<sup>41</sup>.

Among the essential conditions of marriage according to Article 1 of the Family and Guardianship Code are the following: the difference of sexes of the bride and the groom, since according to the Polish law same-sex marriages cannot be performed; the consent to the marriage; the simultaneous presence of the bride and the groom, but the possibility of performing the wedding ceremony through a lawyer according to Article 6 of the Family and Guardianship Code<sup>42</sup>.

According to Polish law, marriages can be concluded in civil and religious form. However, it is necessary to follow particular procedures prescribed by law to consider marriage legal. The legal form of marriage is also a prerequisite for a marriage to be considered a marriage. It can be stated that the Ukrainian legislation and the EU legislation in the field of family relations have developed a fairly representative legal basis for conflict regulation of marriage involving foreign citizens, its registration and recognition of marriage. The key rules for regulating these relations are based on the personal law of their participants, place of residence or stay, on the principles of the closest connection, the most favorable law and autonomy of will. The current stage of development of society has led to the transformation of traditional family relations, which results in a change in the emphasis of legal regulation of family relations in foreign law and the need for in-depth research of relations in this area.

It should be noted that despite the significant common features in the legal regulation of the concept of marriage in these countries, there are a number of differences between them. First of all, it is worth emphasizing the legal consolidation. Thus, the concept of marriage is contained in the Constitutions of Ukraine, Croatia and Poland, in contrast to the Constitution of Germany, which does not enshrine such a definition. Thus, the authors of this article believe that the German Constitution does not sufficiently regulate this issue. In addition,

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<sup>41</sup> THE SEJM OF THE REPUBLIC OF POLAND. Family and Guardianship Code [Online]. 1964 [viewed 22 February 2022]. Available from: <https://www.global-regulation.com/translation/poland/3353737/the-act-of-25-february-1964-family-code-and-caring.html>.

<sup>42</sup> THE SEJM OF THE REPUBLIC OF POLAND. Family and Guardianship Code [Online]. 1964 [viewed 22 February 2022]. Available from: <https://www.global-regulation.com/translation/poland/3353737/the-act-of-25-february-1964-family-code-and-caring.html>.

Germany is the one of the countries which legally allows same-sex marriages, and such provisions are quite progressive. However, the lack of such a rule in the law of the other three states can be explained by differences in mentality and differences in approaches to determining family principles. In general, it can be stated that in the analyzed countries the understanding of marriage and its legal regulation is quite similar. This can be explained by the fact that all the countries in question are located in Europe, and therefore follow similar values and have similar legal mechanisms.

### *Conflicting problems of interpretation of the concept of marriage*

The institution of marriage is considered one of the oldest legal institutions. It should be noted that the issue of the legal basis of family relations with a foreign element remains relevant today. Every year more and more Ukrainian citizens get married in foreign countries and with foreign citizens. Research on the legal regulation of marital relations with a foreign element is necessary, especially in the context of differences that exist in the interpretation of marriage and the peculiarities of its conclusion in different countries. There are also some conflicts in the process of defining the term marriage, as different interpretations of the concepts of marriage and family are enshrined in law in different countries. O. Safonchyk singled out the following three main features in her work: 1) the subjects of family law are persons related by marriage, kinship; 2) family relationships arise not only from the direct instruction of the law, but also with the consent of the parties (marriage contract); 3) family relationships are usually long-term<sup>43</sup>.

It should be noted that during the emergence of family relations with a foreign element there is a certain conflict of interest, is the problem of choosing the rule of law that should be applied to a particular type of legal relationship. These obstacles can be easily resolved in accordance with the conflict of laws, which refers to a certain rule of the state in order to properly regulate public relations. Currently, theoretical knowledge of the conflict rule and the law of another state may be lacking for the application and realization of their rights and interests in practice. Undoubtedly, for a long time the regulation of marital

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<sup>43</sup> SAFONCHYK, O. Theoretical aspects of marital and family relations. *Journal of Civilization*, 2016, vol. 21, pp. 28-31.

relations was decided only on the basis of place of marriage, but with the development of international private relations, this relationship has received many negative reviews, especially in Ukraine, which means that it may lead to the recognition of such marriage is invalid. It would be appropriate to emphasize that legislative improvement in Ukraine in this area, as well as accession to international conventions, treaties, agreements was a proper provision of legal regulation of marriages<sup>44</sup>.

Despite the differences in legal systems, mentality, the degree of satisfaction of the material, cultural and spiritual needs of citizens in the legislation governing the marriage, in Ukraine and the EU countries have similarities, similarities, in particular: all clearly defined legal acts governing marriage and family relations; marriage is permitted after the age of majority, in all countries is possible to get married earlier, but in different circumstances and exceptional cases, there is an exhaustive list of documents<sup>45</sup>.

According to the Law of Ukraine On International Private Law<sup>46</sup>, the legal consequences of marriage are determined by the common personal law of the spouses, and in its absence - by the law of the state in which the spouses had their last common residence, provided that at least one of the spouses still has a residence in that state, and in its absence a law with which both spouses have the closest connection in another way. Spouses who do not have a common personal law may choose the law that will apply to the legal consequences of the marriage if the spouses do not have a common domicile or if the personal law of neither of them is the same as the law of the state of their common domicile. Spouses may choose to regulate the property consequences of marriage under the law of the personal law of one of the spouses, or the law of the State in which one of them has his or her habitual residence, or, with respect to real property, the law of the State in which the property is located.

## Discussion

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<sup>44</sup> KARPENKO, R. Legal regulation of marriage in Ukraine: Conflicting issues of marriage complicated by a foreign element. *Legal Scientific Electronic Journal*, 2021, vol. 12, pp. 131-133.

<sup>45</sup> CHUHA, C. The order of marriage: A comparative analysis of the legislation of Ukraine and EU Countries. *Transcarpathian Legal Readings*, 2014, vol. 1, pp. 213-216.

<sup>46</sup> VERKHOVNA RADA OF UKRAINE. Law of Ukraine No. 2709-IV On International Private Law [Online]. 2005 [viewed 21 June 2022]. Available from: <https://zakon.rada.gov.ua/laws/show/2709-15#Text>.

Important scientific conclusions about the concept of marriage in domestic legislation in her works gives V. Fedorova<sup>47</sup>. She notes that the study of this concept should be conducted from the side of theoretical developments of science of family law and family legislation of Ukraine. In addition, the author notes that the development of legislation in this direction is quite promising. The attention of scientists has been riveted to marriage and family relations throughout the development of civilistics and family law in particular. Scientists revised the existing concepts of marriage at each new stage of the development of science. The interpretation and attitude to marriage changed in accordance with the actual marital relations that developed over time. V. Fedorova emphasizes that despite the fixation of the relevant concept in the Family Code of Ukraine, the modern stage of development of society requires constant changes in the legislation, and therefore the concept of marriage may be revised<sup>48</sup>. Legislation is a flexible element, changing depending on the requirements of our time. That is why the study of marriage is the key to effective regulation of the institution of the family.

The opinions of the domestic researcher K. Kazarian are interesting<sup>49</sup>. She has analyzed different scientific views of scientists on the concept of marriage and the appropriateness of its definition in the legislation. By analyzing the various scientific approaches to the issue, the author provides the definition of marriage, stressing that marriage is a legal condition arising from the registration in the manner prescribed by law of the relationship between a man and a woman who are of marriageable age, for the purpose of creating a family, under voluntary, monogamous, in the absence of circumstances preventing marriage and is the basis of the rights and obligations of the spouses. K. Kazarian formulated her own definition by researching the views of scholars, conducting an analysis of the legislation and highlighting the essential features<sup>50</sup>.

It is also necessary to pay attention to the work of T. Voytenko, which considers approaches to the understanding of the concept of marriage and

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<sup>47</sup> FEDOROVA, V. The concept of marriage. *Journal of Civilization*, 2017, vol. 23, pp. 62-66.

<sup>48</sup> FEDOROVA, V. The concept of marriage. *Journal of Civilization*, 2017, vol. 23, pp. 62-66.

<sup>49</sup> KAZARIAN, K. Legal definition of marriage. *Journal of Legal Sciences*, 2015, vol. 2014, pp. 124-134.

<sup>50</sup> KAZARIAN, K. Legal definition of marriage. *Journal of Legal Sciences*, 2015, vol. 2014, pp. 124-134.

characterizes the categories used to define it<sup>51</sup>. In addition, the author criticizes the existing definition of marriage, which is built on the characteristic of it as a life union for the purpose of birth and upbringing of children, as a union of equal spouses, as a family union. The author compares the categories marriage as a union of a man and a woman and marriage as a contract between a man and a woman. T. Voytenko<sup>52</sup>, in the conclusions to the work, offers his own author's definition of the marriage and the selection of its features.

In the context of the study, the research of D. Jakovac-Lozic<sup>53</sup>, a researcher from Croatia, is important. In addition, the author identifies some characteristics of marriage and forms of its conclusion. D. Jakovac-Lozic highlights an important addition concerns the procedure for establishing a valid marriage. In addition to the civil marriage long recognized by the state, the legislation also introduces a previously unrecognized religious ceremony<sup>54</sup>. Polish researchers W. Kosior and J. Łukasiewicz in their work deeply and comprehensively examine the features of Polish family law<sup>55</sup>. The authors consider the formation of family law from ancient times to modern legal regulation of marital and family relations. In addition, they review the development of Polish family law and current legislation in this area.

Certain aspects of the study of the concept of marriage have been carried out by such scholars as: S. Chuha<sup>56</sup>, N. Dethloff et al.<sup>57</sup>, R. Karpenko<sup>58</sup>, T.

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<sup>51</sup> VOYTENKO, T. The concept of marriage. *Scientific Bulletin of Uzhhorod National University*, 2012, vol. 19, pp. 30-33.

<sup>52</sup> VOYTENKO, T. The concept of marriage. *Scientific Bulletin of Uzhhorod National University*, 2012, vol. 19, pp. 30-33.

<sup>53</sup> JAKOVAC-LOZIC, D. Croatia's New Family Act and its implications on marriage and other forms of family life. *California Western International Law Journal*, 2000, vol. 31, pp. 83-99.

<sup>54</sup> JAKOVAC-LOZIC, D. Croatia's New Family Act and its implications on marriage and other forms of family life. *California Western International Law Journal*, 2000, vol. 31, pp. 83-99.

<sup>55</sup> KOSIOR, W., and ŁUKASIEWICZ, J. *Family Law in Poland*. Rzeszow: Legal Publishing House, 2018.

<sup>56</sup> CHUHA, C. The order of marriage: A comparative analysis of the legislation of Ukraine and EU Countries. *Transcarpathian Legal Readings*, 2014, vol. 1, pp. 213-216.

<sup>57</sup> DETHLOFF, N., MARTINY, D., and ZSCHOCHE, M. National Report: Germany [Online]. 2015 [viewed 17 June 2022]. Available from: <http://ceflonline.net/wp-content/uploads/Germany-IR.pdf>.

<sup>58</sup> KARPENKO, R. Legal regulation of marriage in Ukraine: Conflicting issues of marriage complicated by a foreign element. *Legal Scientific Electronic Journal*, 2021, vol. 12, pp. 131-133.

Kashanina<sup>59</sup>, B. Kirkeby<sup>60</sup>, N. Lopata<sup>61</sup>, L. Lypets<sup>62</sup>, L. Pchelintseva<sup>63</sup>, L. Radchenko<sup>64</sup>, V. Reznikova<sup>65</sup>, O. Safonchyk<sup>66</sup>, I. Trofimets<sup>67</sup>, A. Yaroshchuk<sup>68</sup>, and others. Despite the existence of scientific works that deeply study the concept of marriage in Ukraine and some EU member states, the relevant issue is still not fully resolved in legal terms. Thus, the study of the legal regulation of the concept of marriage requires a more detailed analysis at the research level in order to find the most profitable legal ways to regulate it.

The article analyzes the legal regulation of the concept of marriage and the legislation of different countries (Ukraine, Croatia, Germany, Poland). The author considered the consolidation of the relevant concept in legal acts (including Constitutions and codes), as well as analyzed scientific approaches to the interpretation of the concept of marriage. Based on the analysis of the law and doctrine of each country, the author highlights the key features that are inherent in marriage and its features. Based on this, the author provides a definition of marriage in Ukraine, as well as a comparative analysis of approaches to the interpretation of marriage in different countries, which is reflected in the conclusions to the article. The study also establishes that marital and family relations, like any other legal institution, develop in parallel with society; therefore, there are changes in the legal regulation of marriage. This is evidenced by the consolidation of the concept of marriage in the legal sources of Ukraine, the

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<sup>59</sup> KASHANINA, T. *Legal technique: a textbook*. Moscow: Eksmo, 2009.

<sup>60</sup> KIRKEBY, B. Det første homoseksuelle par har giftet sig i Tyskland. Flensborg Avis [Online]. 2017 [viewed 10 March 2022]. Available from: <https://www.flb.de/wp/dailys/det-foerste-homoseksuelle-par-har-giftet-sig-tyskland/>.

<sup>61</sup> LOPATA, N. Features of marriage registration with the participation of foreign citizens and stateless persons in Ukraine. *Bulletin of the Alfred Nobel University of Dnepropetrovsk*, 2015, vol. 1, n. 6, pp. 25-33.

<sup>62</sup> LYPETS, L. *Settlement of marital and similar relations by law and contract*. Kyiv: Institute of State and Law named after V. M. Koretsky of the National Academy of Sciences of Ukraine, 2009.

<sup>63</sup> PCHELINTSEVA, L. *Commentary on the Family Code of the Russian Federation*. Moscow: Norma, 2004.

<sup>64</sup> RADCHENKO, L. Marriage contract in foreign law: Some principles of legal regulation. *Entrepreneurship, Economy and Law*, 2017, vol. 9, pp. 38-41.

<sup>65</sup> REZNIKOVA, V. The legal nature of marriage. *Current Issues of Domestic Jurisprudence*, 2011, vol. 2, pp. 87-93; REZNIKOVA, V. The concept of marriage and family in the new family code of Ukraine. *Visnyk*, 2004, vol. 2, pp. 86-89.

<sup>66</sup> SAFONCHYK, O. Theoretical aspects of marital and family relations. *Journal of Civilization*, 2016, vol. 21, pp. 28-31.

<sup>67</sup> TROFIMETS, I. About some approaches to the definition of marriage. *Family and Housing Law*, 2011, vol. 2, pp. 34-37.

<sup>68</sup> YAROSHCHUK, A. The concept of family and marriage as a basis for the formation of matrimonial guidelines in high school students. *Young Scientist*, 2017, vol. 10, n. 50, pp. 737-741.

adoption of same-sex marriages in German law and amendments to the Croatian Constitution on marriage.

The scientific achievements of the article are of great practical importance in several aspects. The materials of the article can be used in future research by scientists. In addition, the information presented in the article can be used in the teaching of specialized disciplines in higher education institutions. In law-making and law-enforcement activities, the meaning of the article is revealed in the context of improving existing and adopting new legal acts on the issue of determining marriage and improving existing legislation. The practical significance of the article is revealed in the possibility of using research materials in court activities in resolving family cases, as well as in resolving cases with a foreign element. Finally, scientific achievements can be used to improve international relations between Ukraine and foreign countries in the context of the development of bilateral relations and the introduction of European standards and best practices in Ukrainian law.

In the context of the topic of the study, it is important to analyze the practice of the ECtHR. It is worth noting that the practice of the ECtHR has also begun to pay more attention to same-sex marriages. A separate group of ECtHR decisions concerns same-sex marriages, partnerships, etc. It must be recognized that the ECtHR's decisions in this area are quite diverse and at times contradictory. For example, in a number of cases this body has recognized that Article 12 of the European Convention on Human Rights (hereinafter - the Convention) embodies the traditional concept of marriage as a union between a man and a woman, based on biological criteria for determining sex<sup>69</sup>.

Changing moral principles and approaches to marital and sexual relations entail the so-called pluralization of types of the conjugal partnership. It should be recognized that the ECtHR in its decisions is very progressive, rejects everything conservative and tries to keep up with everything new-fangled in social trends<sup>70</sup>. Based on this approach, the tribunal often allows marriage between persons of the same sex. From the point of view of the significance for Ukraine, it is

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<sup>69</sup> COUNCIL OF EUROPE. European Convention on Human Rights [Online]. 1950 [viewed 24 March 2022]. Available from: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf).

<sup>70</sup> KOSTRUBA, A. Legal aspects of transnational scale corporations' activity in terms of sustainable development. *Rivista Di Studi Sulla Sostenibilita*, 2021, n. 2, pp. 49-61.

appropriate to mention the ECtHR decision on *Schalk and Kopf v. Austria*, which challenged the Austrian authorities' refusal to grant permission to marry applicants in a homosexual relationship<sup>71</sup>. The national courts motivated their decision by the fact that, under Austrian law, only persons of different sexes can marry. In this regard, the ECtHR recalled that although in the 1950s marriage was considered exclusively as a union between a man and a woman, there have been significant social changes since the adoption of the Convention and same-sex relationships are now legally recognized in many European States.

An analysis of a number of decisions of the European Court of Human Rights suggests that the concept of family in its jurisprudence is filled with a relatively specific meaning, although it does not lend itself to an exhaustive definition. It is also important to note that the Court mainly uses the term "family life" which seems closely related to the category of family. The European Court of Human Rights has previously noted that the family is not reducible to the marital relationship alone and may encompass actual family ties<sup>72</sup>.

In particular, issues related to the status of children born out of wedlock were also considered in the case of *Johnston and Others v. Ireland*<sup>73</sup>, where the first and second applicants had been in a de facto marital relationship for 15 years, and the third applicant was their daughter born out of wedlock. The parents could not formalize the relationship because one of them was in a registered marriage, and domestic law did not provide for the possibility of divorce. The European Court noted that the applicants constituted a "family" within the meaning of Article 8 of the Convention and, accordingly, were entitled to its protection, despite the fact that their relationship existed outside a legal marriage. In the Court's view, for the natural family relationship between the applicants and their daughter to develop normally, his legal and social status must be considered similar to that of a child born in wedlock. An analysis of the third petitioner's legal status revealed significant differences between her status and that of the children

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<sup>71</sup> EUROPEAN COURT OF HUMAN RIGHTS. Case of *Schalk and Kopf v. Austria*. Appeal No. 30141/04 [Online]. 2010 [viewed 17 July 2022]. Available from: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22002-912%22>].

<sup>72</sup> HAVRIK, R. On the specifics of the protection of the family rights of persons acquired in marriage or other family unions in the practice of the European Court of Human Rights. *Scientific Bulletin of Uzhhorod National University*, 2021, vol. 63, pp. 119-123.

<sup>73</sup> EUROPEAN COURT OF HUMAN RIGHTS. Case of *Johnston and Others v. Ireland*. Appeal No. 9697/82 [Online]. 1986 [viewed 30 March 2022]. Available from: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-57508%22>]



born in wedlock; moreover, the petitioners had no means of eliminating or reducing those differences. The court concluded that the lack of an appropriate legal regime reflecting the third applicant's natural family ties constituted a lack of respect for her family life as well as that of her parents, because the ties between them and the third applicant were close and personal. At the same time, the Court in no way imposed an obligation on Ireland to grant the applicant the right to divorce and remarry; it was only a question of equalizing the rights of children born in wedlock and those born in a de facto marriage, given the general nature of both legal states<sup>74</sup>.

Therefore, it is possible to emphasize the controversial nature of the concept of marriage. Despite the existing approaches to the definition of this concept in different legislation, there is still room for different interpretations of marriage, which is confirmed by the practice of the ECtHR. It is worth noting that the ECtHR is quite progressive in its decisions, not limited to any framework. The Court interprets marriage as both a partnership of same-sex partners and de facto family relationships, which indicates the progressiveness of the judicial practice, as well as the potential for further development of the concept of law in national law. In addition, such approaches of the ECtHR, as opposed to the legislative definitions of the reviewed countries, provide a field for further study of the topic of marriage and the development of approaches to its understanding.

## **Conclusion**

Since for some time there was no legislative definition of marriage in the legislation, scientific approaches to its interpretation differed significantly. Researchers gave their own definitions that differed significantly from each other. However, even after the enshrining of the definition of marriage in the law, scientists still differ in their views on the interpretation of marriage. The disclosure of the concept of marriage and the definition of its main features, however, contributes to a proper understanding of this institution. However, the existence of a large number of researches on this issue has not eliminated the problem of

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<sup>74</sup> EUROPEAN COURT OF HUMAN RIGHTS. Case of Johnston and Others v. Ireland. Appeal No. 9697/82 [Online]. 1986 [viewed 30 March 2022]. Available from: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-57508%22>}

unambiguous definition of the concept and conditions of marriage, and therefore indicates the relevance of further research on this issue.

Based on research and analysis of the legislation the author defines marriage as a voluntary union between a man and a woman on terms of equality and legality, duly registered in the competent public authorities and giving rise to the relevant rights and obligations of persons. Such a concept indicates the main features of marriage that reveal its legal essence, namely: a) marriage is the union of a woman and a man; b) marriage is a union registered with a public authority and, therefore, religious marriage is not recognized; marriage is concluded in compliance with the conditions necessary for its conclusion, including the conditions of voluntariness; d) marriage generates rights and duties of spouses; e) marriage aims to acquire rights and duties of spouses (otherwise marriage is fictitious). As evidenced by historical experience, marriage was primarily an agreement between a man and a woman, and served as a stability of family and material relations. Article 21 of the Family Code of Ukraine allows to use all the advantages of the contractual concept of understanding marriage to create new forms of mediating family relationships and the introduction of the state form of registration of such relations.

In Croatian law, the approach to the definition of marriage is quite conservative. This is evidenced by the amendment of the Constitution of the country to enshrine the traditional understanding of marriage as the union of a man and a woman. Moreover, the legislative definition of marriage has not been changed for a long time. Thus, among the basic features of marriage that can be distinguished from the Croatian law are: the union of two partners of different sex (excluding same-sex marriages); concluded in accordance with the law and registered by the authorized bodies; generates rights and obligations of the partners; is concluded by mutual consent.

German law is more progressive in its approach to the definition of marriage, since it allows same-sex marriage. A bill for the legalisation of same-sex marriage passed the Bundestag on June 30, 2017 and the Bundesrat on July 7. Previously such marriages had only been recognized on the level of partnership. It is important to emphasize that, unlike in the other countries examined, the German Constitution of 1949 does not contain the concept of marriage. Article 6 of the Constitution concerning marriage and the family refers only to the existence of

state protection of the family, but the concept of marriage itself is not interpreted. In Germany, the definition of marriage refers to a legal contract between people and is protected by the provisions of the German Constitution. In general, three features of German marriage can be distinguished: 1) marriages are considered legal unions between the persons involved; 2) same-sex unions are allowed, which means that not only a man and a woman can enter into a legal marriage; 3) marriage is recognized as a legal union only if it is properly registered.

Polish law also provides an understanding of marriage as a formalized and permanent (but not inseparable) relationship between a man and a woman, arising from their parties. Among the essential conditions of marriage according to Article 1 of the Family and Guardianship Code 1964, the following should be mentioned: the difference in gender of the groom and the bride, since according to the Polish law it is impossible to enter into a same-sex marriage; the consent to enter into marriage; the simultaneous presence of the groom and the bride.

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