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Labelling Relationships: On the Shared Surname[2]

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Abstract

Partners in a relationship develop a common language and a unique set of rules and behaviours – together, they define the reality in which they exist and co-exist. Where the legal status of a relationship is not fully regulated, the recognition of the relationship's identity is left to individual entitlements, which may not be specifically tailored to the nature of the bond. This is the case with changes in same-sex relationships. In countries where the legal status of such couples remains unrecognised, the issue governed by general administrative procedure for name changes. The paper has three aims. First, to examine the significance of adopting a shared surname in close romantic relationships, particularly in same-sex relationships. Second, to explore the reasons why legislators or courts may refuse to grant a surname change in such contexts, using same-sex relationships as a primary example. This analysis leads to a broader reflection on the legal meaning of a shared surname from the perspective of regulating legal closeness. The aim of the article is not to overstate the importance of a shared surname, nor to claim that it is a necessary component of legally shaped relationality. Rather, the intention is to show that seemingly minor issues – such as surname changes – reveal underlying assumptions about relationality, closeness, and the legal understanding of family, which can significantly influence the social functioning of relationships.

Keywords: close relationships, surname, legal closeness.

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MARLENA DRAPALSKA-GROCHOWICZ

Etykietowanie relacji: o wspólnym nazwisku[3]

Streszczenie

Partnerzy w relacji rozwijają wspólny język, w tym unikalny zestaw reguł i zachowań – razem definiują rzeczywistość, w której funkcjonują, w tym tożsamość w relacji. Gdy status prawny relacji nie jest uznany w określonym prawodawstwie, jedyną możliwością na usankcjonowanie relacji jest skorzystanie z ogólnych uprawnień i procedur. Tak też jest w przypadku zmiany nazwiska w relacji faktycznej (na wspólne nazwisko bądź nazwisko jednego z partnerów). Artykuł ma trzy cele. Po pierwsze, analizę znaczenia wspólnego nazwiska w bliskich relacjach romantycznych, zwłaszcza związkach jednopłciowych. Po drugie, ustalenie przyczyn dla których sądy odmawiają możliwości zmiany nazwiska w związkach jednopłciowych (metoda *case study*). Ta pozwoli ostatecznie dokonać oceny prawnego znaczenia „nazwy relacji" w kontekście bliskości prawnej. Celem artykułu nie jest przecenianie roli wspólnego nazwiska ani twierdzenie, że stanowi ono niezbędny element prawnie kształtowanej relacyjności. Intencją Autorki jest pokazanie, że pozornie drobna kwestia – taka jak zmiana nazwiska w procedurze administracyjnej – odsłania głęboko zakorzenione założenia dotyczące relacyjności, bliskości i prawnego rozumienia rodziny, które mogą istotnie wpływać na społeczne funkcjonowanie relacji.

Słowa kluczowe: bliskie relacje, nazwisko, bliskość prawna.

[3] Artykuł został opracowany w ramach projektu badawczego *Rekonstrukcja kategorii „bliskości" w polskim systemie prawnym*, nr 2018/29/N/HS5/00905, finansowanego przez Narodowe Centrum Nauki. Autorka pragnie również podziękować za wsparcie Fundacji na rzecz Nauki Polskiej (FNP).

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Introduction

One of the first thoughts that comes into mind when we see two people with the same surname surname (also occasionally referred to in the paper as *last name*) is the assumption that they are somehow related. This assumption may, of course, turn out to be entirely unfounded. When thinking about the essential characteristics of close relationships and their quality, having a shared surname appears rather as a marginal, secondary issue. From a legal perspective, bearing the same surname **is irrelevant to determining whether individuals are considered close to each other under the law**. It is treated as an external marker of a relationship, one that does not establish the existence of actual – or legally recognized – closeness. Indeed, individuals may share a surname without being related in any legal sense. As one court succinctly put it when analysing the relationship of two people, "they have no bond **other than the shared surname**."[4]

Legal closeness is not universally defined in legislation. However, there are various forms of closeness recognised under different legislations. Legislatures address the vagueness of the concept of closeness in two primary ways. One approach is to adopt a statutory definition of a "close person" or "immediate person", listing specific categories of such persons, e.g., spouse, ascendant, descendant, etc. I refer to this as the **formal understanding of closeness** or **formal closeness.**[5] The alternative approach is to refrain from defining closeness, thereby leaving the determination of its scope to those applying the law. I refer to this as **the tangible understanding of closeness** or **tangible closeness**. The concept of legal closeness creates

[4] Judgment of the Provincial Administrative Court in Wrocław of 27 May 2013, IV SA/Wr 50/13, LEX No. 1658107.

[5] Article 3(1)(2) of the Act on Patients' Rights and Patients' Ombudsman of 6 November 2008 (consolidated text: Journal of Laws of 2020 item 849): "The terms used in the Act mean: 2) close person – a spouse, a relative up to the second degree or a relative by affinity up to the second degree in a direct line, a statutory representative, a person in cohabitation, or a person designated by the patient." Such definitions are also adopted in other legislation. For example: Swiss Criminal Code of 21 December 1937. Fedlex. Available from: https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en (accessed: 21.05.2024): Article 110(1): "Close relatives of a person are his or her spouse, registered partner, relatives of direct lineage, full siblings nd half siblings, adoptive parents, adoptive siblings and adoptive children." Czech Criminal Code of 9 February 2009. Zakony Pro Lidi. Available from: https://www.zakonyprolidi.cz/cs/2009-40 (accessed: 21.05.2024): § 125: "Osobou blízkou se rozumí příbuzný v pokolení přímém, osvojitel, osvojenec, sourozenec, manžel a partner; jiné osoby v poměru rodinném nebo obdobném se pokládají za osoby sobě navzájem blízké jen tehdy, kdyby újmu, kterou utrpěla jedna z nich, druhá důvodně pociťovala jako újmu vlastní."

a framework for recognising the entitlements of individuals in close relationships whose legal status is otherwise unregulated. It enables the acknowledgement of the rights of persons who, despite being genuinely close, are typically considered strangers from a legal perspective. Persons formally recognised as close may, but need not, share a surname – what primarily determines matters their legal relationship is the existence of a formal bond between them, typically evidenced by legal documentation. This legal bond may, in some cases, result in a shared surname, if the individuals choose to adopt it. In the context of tangible closeness, a shared surname likewise carries limited significance, as only factual ties substantiated by evidence are relevant.

To illustrate the issue, imagine a divorced couple who, after the dissolution of their marriage, did not change their surname adopted at the time of entering into marriage (e.g. switching back to their maiden name/surname at birth). Their shared surname in no way proves the formal closeness between them anymore, but neither does it prove tangible closeness. In the formal sense, they will not be considered close as former spouses; in the tangible sense – they can still be considered close, but only if there are some meaningful factual ties between them (a special, intimate emotional bond)[6].

The surname is an irrelevant circumstance for establishing the legal closeness between individuals, whether in its formal or tangible sense. Still, as a rule, very few people are entitled to take on a shared surname, there needs to be formal closeness between them, namely – they need to be spouses. Adopting a shared surname does not give rise to any further rights or obligations. However, as I have already pointed out, it is socially relevant and can be relevant psychologically – for the people involved themselves. A shared surname can express the development of the formal identity of a unitary entity from an "I-identity" to a "we-identity".[7]

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[6] See, for example, one court opinion: "The testimony of the plaintiff shows that the ex-husband did not seek a continuation of family relations after the divorce, they did not spend together their holidays, family celebrations, time off work (…). The former spouses did not pursue common passions and life plans. The evidence gathered in the case shows that their relationship was typical of divorced spouses who cooperate in raising a child. The plaintiff and her ex-husband shared a bond related to their son, but there is no basis for assuming that this bond has developed into a bond of personal and economic closeness and joint ownership justifying the recognition that she is the closest family member of S.K. The plaintiff's feelings towards her ex-husband cannot prove the existence of a relationship of closeness (…) as this is her subjective conviction. There was no family bond between the plaintiff and her ex-husband, as their relationship was solely about their son and parental ties. The fact that the plaintiff kept with her ex-husband's last name and, despite the passage of years, did not form a relationship with anyone else, demonstrates only her relationship with S.K. However, this does not result in the recognition that she is the closest family member of S.K. Therefore, one should not rely on the expert opinion which showed that despite the divorce, the plaintiff felt a bond with her ex-husband" (Judgment of the Administrative Court in Warsaw of 22 September 2016, I ACa 1548/15, LEX No. 2193039).

[7] J. Herring, *The Power of Naming: Surnames, Children, and Spouses*, [in:] M. Freeman, F. Smith (eds.), *Law and Language: Current Legal Issues Volume 15*, Oxford 2013, p. 311.

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In this paper, I look into situations in which people who are close to each other – but who are not spouses or relatives, wish to adopt a shared surname precisely as an outward expression of the closeness between them, but do not have this opportunity under the existing law in force. Adopting a shared surname by spouses is up to the decision of the interested parties themselves. Of course, an important role is played here by the traditions of a given society – that is, the informal rules that dictate the adoption of a shared surname (most often it is the husband's surname), even if the formal rules allow a choice to be made.[8] In the case of same-sex couples, empirical studies show diverse practices, with people either remaining with their family name, creating new one, adding their partner's surname to their own, or taking the surname of either of them. These possibilities are, of course, determined by the entitlements that same-sex couples have under legislation. However, as researchers point out: "individuals in lesbian and gay couples seem to be less likely than those in heterosexual marriages to change one partner's last name," which may be related to the desire to create one's own relational patterns, regardless of the dominant, imposed social norms.[9]

I have set three objectives as part of this paper. First, to establish the significance of adopting a shared surname (shared identity) in close romantic relationships, particularly in same-sex relationships. Second, to determine the reasons why legislators or courts refuse to allow changes to the surnames of people in close relationships, using same-sex relationships as an example. Finally, to explore the legal meaning of a shared surname from the perspective of the regulation of legal closeness. To achieve these objectives, I first discuss the psychological and sociological characteristics of special relationships and the significance of adopting a shared surname (Part II). Then, I present an overview of legislation affecting the practice of changing surnames in same-sex relationships (Part III). In Part IV, I analyse two case studies using the body of judicial decisions of Polish courts to illustrate the arguments used by the courts to justify their negative decisions for applicants who seek a surname change in light of being involved in a close relationship. Finally, in Part V, I summarise the considerations regarding the research objectives outlined above. The aim of the article is not to overstate the importance of a shared surname, nor to claim that it is a necessary component of legally shaped relationality. Rather,

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8 *Ibidem*, p. 317.
L. Hamilton, C. Geist, B. Powell, *Marital Name Change as a Window into Gender Attitudes*, "Gender & Society" 2011, 25(1), p. 166: As survey respondents with a more traditional worldview pointed out, "women should change their names »so that there's a connection there. Just a connection to let you know that she belongs to him (…) women's name change is important« for identification with the man … . with the family. It's better for the children if the family all have the same name."

9 Ch.J. Patterson, R.H. Farr, *What Shall We Call Ourselves? Last Names Among Lesbian, Gay, and Heterosexual Couples and Their Adopted Children*, "Journal of GLBT Family Studies" 2017, 13(2), pp. 97–113.

the intention is to show that seemingly minor issues – such as surname changes – reveal underlying assumptions about relationality, closeness, and the legal understanding of family, which can significantly influence the social functioning of relationships.

A shared surname: why might it matter to people in close relationships?

A sense of oneness with a close other: inclusion of the other in the self. The intimacy that arises between partners in a close relationship can cause a merging of the selves, resulting in a sense of oneness and inclusion of the other in the self. Psychology also points out that in addition to the merging of the selves in a close relationship, there is an expansion of each individual's self (self-expansion theory): "one way in which people seek to expand the self is through close relationships because in close relationships, the other's resources, perspectives, and identities are experienced, to some extent, as one's own. That is, the other is to some extent included in the self."[10]

Rituals of closeness. Individuals approaching each other in a relationship confront their visions of everyday life, including their understanding of closeness. On the basis of shared experiences, intense and frequent interactions, they develop a common language of their relationship and its informal rules. As Campbell and her colleagues mentioned, "couple members might use certain nicknames or private jokes that are only understood by each other. This process helps partners establish a couple identity and enhance the intimacy in their relationship (…) Rituals are an example of how couple members engage in the construction of a shared reality."[11] Rituals primarily have to do with specific, repetitive behaviors in a relationship; they provide a sense of stability and belonging to a specific community[12]. Observation of rituals in close relationships "help[s] us see interpersonal relationships as micrcultures, in which relational identities are produced through symbolic enactments and reenactments."[13] The creation of a 'shared identity' in a close relationship, even

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10 A. Aron, G.W. Lewandowski, D. Mashek and E.N. Aron, *The Self-Expansion Model of Motivation and Cognition in Close Relationships*, "Journal of Social and Personal Relationships" 2022, 39(12), p. 90.

11 K. Campbell, L. Silva, D.W. Wright, *Rituals in unmarried couple relationships: An exploratory study*, "Psychology Faculty Publications" 2011, 6. Available from: https://core.ac.uk/download/pdf/160477719.pdf (accessed: 21.03.2024).

12 J.C. Pearson, J.T. Child, A.F. Carmon, *Rituals in Committed Romantic Relationships: The Creation and Validation of an Instrument*, "Communication Studies" 2010, 61, p. 466.

13 *Ibidem*, p. 467.

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an informal one (e.g. a nickname), is therefore an important part of the relationship's identity and influences its further development.

We are a family. Naming is a family practice, emphasising the value of the ties that bind individuals.[14] The adoption of a shared surname in a factual relationship has thus a symbolic dimension – it highlights the value of the relationship between individuals and can influence the conviction of the permanence of the bond, a belief held by both the individuals involved and third parties. From the outside, having the same surname can reinforce the perception that two people are a family. As Frank F. Furstenberg and his colleagues claim:

> "Naming practices **may promote family network resilience** by attaching familial meanings to otherwise unspecified identities, events, and relationships. For instance, the visible nature of shared surnames **enhances the kinship significance of** the surname when families become increasingly complex and family members are confronted with how to constitute or deny family and kin identities."[15]

The adoption of a shared surname can be considered a "legal record of (…) commitment."[16] One respondent to a survey conducted by Kathryn Almack explained that the adoption of a shared surname represents the co-creation of a particular family and the mutual commitment of individuals to the relationship:

> "If I got married I could've taken on my husband's name like my sister did when she got married. Really this was just the same, it was about us making some kind of sign of our **commitment to each other and to our family**."[17]

Moreover, naming (as part of politicisation) is "a resilience process as it enables network members to make sense out of what is happening in their private lives by linking it to a larger societal context."[18] In this context, it is worth pointing to the situation of same-sex couples in countries that do not regulate the status of same-sex relationships, who, lacking the legal possibility of "including the other

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14 H. Davies, *Sharing Surnames: Children, Family and Kinship*, "Sociology" 2011, 45(5), p. 555.

15 F.F. Furstenberg, L.E. Harris, L.M. Pesando, M.N. Reed, *Kinship Practices Among Alternative Family Forms in Western Industrialized Societies*, "Journal of Marriage and Family" 2020, 85(3), p. 1413.

16 E.A. Suter, R.F. Oswald, *Do Lesbians Change Their Last Names in the Context of a Committed Relationship?*, "Journal of Lesbian Studies" 2003, 7(2), p. 72.

17 K. Almack, *What's in a Name? The Significance of the Choice of Surnames Given to Children Born within Lesbian--parent Families*, "Sexualities" 2005, 8(2), p. 244.

18 F.F. Furstenberg, L.E. Harris, L.M. Pesando, M.N. Reed, *op. cit.*, p. 1413.

in the self", seek its substitute by making efforts to use a shared surname[19]. Adopting a shared surname "affords their relationship greater legitimacy in the eyes of friends, family members, and the broader society."[20] The adoption of a shared surname, however symbolic, can prove to society the permanence of the obligation made by two people and their mutual commitment. As Patterson and Farr point out, although "marital satisfaction may not be affected by choice of names, however, the social consequences of naming may be substantial (…) The social consequences of unconventional choices about naming can thus be negative."[21] Individuals in relationships can thus be viewed from the perspective of adopting a 'common' identity or staying with the existing ones.[22]

Making everyday life easier. The adoption of a shared surname by those in a factual relationship can facilitate their daily functioning. Since the shared surname gives the impression of legal ties, it thus makes it possible to avoid, in many situations, insensitive questions about the type of ties existing between the individuals in the relationship. As Renate Reimann writes, "strategy to minimize the need for public explanations included child and co-mother sharing a last name to avoid a question from healthcare professionals, teachers, and representatives from various other institutions."[23]

The case study cited by Nancy D. Polikoff is highly educational in this context. Julia and Hilary were in a romantic relationship for 9 years and planned to have children together. They finally had a daughter. Unfortunately, due to postpartum complications, Julia was placed in neonatal intensive care. Hilary was not allowed to visit either her daughter or Julie – "hospital staff said she was not immediate family."[24] It was only when Hilary lied that she was Julie's sister could she visit her partner. The success of this lie, in turn, was made possible by the fact that Julie and Hilary adopted a shared surname – "so that they could claim to be sisters in an emergency."

In summary, the actual closeness between individuals is a product of many different factors, including the intimacy, frequency, uniqueness, and intensity of

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19 C.R. Underwood, R.D. Robnett, *"I Would Like Us to Share a Name so That We Can Be Recognized in Society." Marital Surname Preferences in Same-Sex Relationships*, "Journal of Homosexuality" 2021, 68(2), p. 292.

20 *Ibidem*.

21 Ch.J. Patterson, R.H. Farr, *What Shall We Call Ourselves?…*, p. 99.

22 *Ibidem*: „For example, women who do not change their names upon marriage have been seen as less kind or nurturant than women who take their husbands' names (Etaugh, Bridges, Cummings-Hill, & Cohen, 1999). Men who change their last names upon marriage may be seen as "feminine," or as not being "real men" (Emens, 2007)."

23 R. Reimann, *Does Biology Matter?: Lesbian Couples' Transition to Parenthood and Their Division of Labor*, "Qualitative Sociology" 1997, 20, pp. 165–166.

24 N.D. Polikoff, *Beyond (Straight and Gay) Marriage: Valuing All Families under the Law*, Boston 2008, p. 159.

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interactions between them. By becoming closer to each other, they shape a shared reality at the level of language, emotion, and behaviour. It can be said that certain relationship-specific rules of intuitive law are formed between them, which influence their choices far more than the applicable law. People's behaviour under the influence of informal rules is the result of internal compulsions that can arise from intense emotional bonds. Individuals define themselves through the relationships (*relational self*[25]) in which they remain – an element of this definition can therefore be the feeling (desire to be) also connected to the other – to have the choice to be or not, called by the same surname, in a world of formal categories of law. This can be of particular importance when it is the only legal possibility to express closeness in the legal sense.

Surname change in law: an overview

In most European legislations where the legal status of same-sex couples is regulated, partners or spouses may decide to adopt a shared surname (e.g. Italy, Germany, Spain, Austria, Germany). However, this is not the case in all European legal systems, some of which do not regulate the status of same-sex partnerships at all. Also, having a shared surname is, in some legislations, a legal feature of a relationship formed in a reality that distinguishes marriage from partnership.[26] In some countries, the issue of surname change is not explicitly regulated in the laws governing the status of relationships, but it is still possible to change one's surname under name change acts for "compelling reasons" (Slovenia[27], Hungary[28]) – much depends here, however, on the practice of local administrative authorities and courts.

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25 J. Herring, *Law And The Relational Self*, Cambridge 2020, p. 13.

26 K. Waaldijk, *What First, What Later? Patterns in the Legal Recognition of Same-Sex Partners in European Countries*, [in:] M. Digoix (ed.), *Same-Sex Families and Legal Recognition in Europe, European Studies of Population*, Springer, Cham 2020.

27 N. Kogovsek Salamon, *Formalisation of legal family formats in Slovenia*, [in:] K. Waaldijk *et al.* (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, INED, Paris 2017. Available from: www.LawsAndFamilies.eu, LawsAndFamilies-SI-Section1.pdf

„The Law does not specifically regulate the change of the surname of the partners when entering a registered partnership. They can, however, change their name in the same manner as any other citizen of age can by submitting an application and paying the administrative tax. The procedure is still quite easy and accessible".

28 In 2009, a law on registered partnerships was adopted in Hungary. One important difference between marriage and registered partnership is that registered partners cannot take each other's name; there is no registered partnership name analogous to a married name; Á. Fuglinszky, *Hungarian Law And Practice Of Civil Partnerships With Special Regard To Same-Sex Couples*, "Cuadernos de Derecho Transnacional" 2017, 9(2), p. 299.

As a rule, therefore, a change of name is linked to the existence of a legally recognised relationship. Where the legislation governing the status of relationships does not regulate the issue of the surname or the overall status of a relationship is not regulated at all, the general rules on administrative surname changes apply. In the next section, I will explore exactly such a situation in more detail.

Poland can be included in the group of countries that do not in any way regulate the status of same-sex relationships (similar to: Slovakia, Bulgaria, and Latvia). Under Polish law, the adoption of a shared surname by two unrelated persons is possible only as a result of marriage or a ruling on adoption. Under the Polish Family and Guardianship Code, spouses have to decide on the surname they are going to use after getting married.[29] They may have a shared surname which is the former last name of one of them; however, each spouse may also keep their former surname or combine it with their spouse's pre-marriage surname. In the event of failure to make declarations regarding their surname, the spouses **keep their current (pre-marriage) surnames**.[30]

The issue of surname change is also regulated by the Act on the Change of First and Last Names. However, it needs to be stressed that this is exclusively a change made by an individual "separately"; two people can't adopt simultaneously the same surname – unless two separate decisions changing their last names into the same last name are issued in their cases in two separate proceedings.

Under the law in force, a surname change is possible "only for **compelling reasons**."[31] The provisions list such "compelling reasons" (e.g. change to the last name being used), but as emphasised in the views of legal academics, scholars, and commentators, as well as in judicial decisions, these reasons are examples only – so the relevant authority may also treat other reasons – not listed in said act – as compelling. A surname change can only be made at the request of a party. However, a different view is presented in judicial decisions, suggesting that compelling reasons "must not be **based solely on the subjective conviction of** the person requesting the change, but must also meet **objectified and rationalized evaluation**

29 Article 25 § 1 of the Family and Guardianship Code of 25 February 1964 (consolidated text: Journal of Laws of 2020 item 1359).

30 *Ibidem*, § 3.

31 Article 4(1) of the Act on Changing First and Last Names of 17 October 2008 (consolidated text: Journal of Laws of 2021 item 1981): "A change of first or last name can be made only for compelling reasons, in particular when they concern a change: 1) of the first or last name that ridicules or disrespects human dignity; 2) to the first name or last name being used; 3) to the first name or last name that has been changed against the law; 4) to the first name or last name held in accordance with the laws of the country whose citizenship one actually holds."

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criteria."[32] The motivations that are considered subjective in judicial decisions are ones that result from emotions and feelings:

> "**the mere convictions, feelings, beliefs or emotional states of** the person requesting a change of their first and last name cannot constitute a compelling reason justifying such a change. The necessity of making such a change should be based on **objective need** or even necessity."[33]

What is interesting in this context is the legislative proposals that have attempted to regulate the legal status of civil unions (both hetero – and homosexual) in Polish law. The draft law on the civil union agreement of 2011 adopted the solution that the very conclusion of the agreement will not affect the marital status of the parties, but the parties to the agreement may decide to adopt a shared surname by their declarations.[34] This proposal was challenged by the Supreme Court of Poland, which pointed out that "the possibility for spouses to bear a shared surname is a consequence of their founding of a family. It is linked to the principle of permanence of marriage (marriage is intended to be a lifelong union, albeit a dissolvable one (…)) and of protection of the family created by its conclusion." "(…) A shared surname creates a presumption that the given persons are married."[35] As the Supreme Court further argued, "the proposed solution thus changes the existing rule without sufficient justification (…) the purpose of this proposal is to make the union created by conclusion of an agreement similar to marriage."[36] In the explanatory memorandum to the next bill of the 2012 act on civil unions, it was already clearly emphasised that civil unions are "a separate institution, with a character

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32 Judgment of the Supreme Administrative Court in Wrocław of 9 July 1993, SA/Wr 605/93, ONSA 1994, No. 3, item 110.

See also: Judgment of the Supreme Administrative Court of 16 June 2020, II OSK 313/20, LEX No. 3035727: "there is no compelling reason for a change of last name within the meaning of Article 4(1) of the Act on Changing First and Last Names, and there is **only a subjective conviction of the applicant about the need to change it, justified by emotional ties**."

33 Judgment of the Provincial Administrative Court in Łódź of 16 March 2023, III SA/Łd 874/22, LEX No. 3518829.

See also: judgment of the Supreme Administrative Court of 22 September 2017, II OSK 69/16, LEX No. 2380970; judgment of the Provincial Administrative Court in Wrocław of 7 October 2009, III SA/Wr 83/09, LEX No. 574063; judgment of the Provincial Administrative Court in Olsztyn of 28 October 2005, II SA/Ol 565/05, LEX No. 870913; judgment of the Provincial Administrative Court in Cracow of 19 July 2018, III SA/Kr 178/18, LEX No. 2531112; judgment of the Provincial Administrative Court in Wrocław of 15 September 2020, II SA/Wr 840/19, LEX No. 3104323.

34 Article 7 of the MP's bill on the partnership agreement, 6th legislature, Sejm print no. 4418. Available from: orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/4418 (accessed: 4.06.2024).

35 Uwagi Sądu Najwyższego do poselskiego projektu ustawy o umowie związku partnerskiego (2011) 19. Available online: 4418-001.pdf (sejm.gov.pl) (accessed: 4.06.2024).

36 *Ibidem*, 20.

different than marriage and different legal effects (…) the regulation scrupulously distinguishes civil unions from marriages." [37] The inability to adopt a shared surname has been identified precisely as one such key difference as an expression of *marriage premium*.

The 2024 draft bill on civil partnerships includes a solution that would change the current discretion of the procedure for changing the surname in the case of same-sex couples or cohabitants.[38] According to the proposed solutions, partners could adopt a shared surname or they could also keep their current surnames. However, it is difficult to predict the fate of this bill at the moment, as well as the solution regarding partners' surnames, especially considering the previous attempts to incorporate the institution of a civil partnership into Polish law.

Changing one's surname to a shared one in a same-sex relationship: a case study

This part of the paper offers two case studies from the existing body of decisions issued by Polish courts, illustrating the usual judicial practice. Interestingly, in the case of ruling on a change of the surname of cohabiting partners (including the possibility of adopting the surname of a deceased partner[39]), the court used similar arguments as those quoted earlier: *emotional bond is not enough*.

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37 Parliamentary bill on civil partnerships, 7th legislature, Sejm print no. 552, 28., 28. Available from: https://orka.sejm.gov.pl/Druki7ka.nsf/0/97A9C9C40D26CB7CC1257A370043EC84/%24File/552.pdf (accessed: 4.06.2024).

38 According to Article 6 of the draft law on civil partnerships: "Persons in a civil partnership may use a joint surname, which is the current surname of one of them. Each person in a civil partnership may also keep their previous surname or combine it with the previous surname of the other person in the civil partnership. The surname created as a result of the combination may not consist of more than two elements." (Draft bill of October 18, 2024, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Flegislacja.rcl.gov.pl%2Fdocs%2F%2F2%2F12390651%2F13088507%2F13088508%2Fdokument688101.docx&wdOrigin=BROWSELINK).

39 Judgment of the Provincial Administrative Court in Łódź of 23 October 2020, III SA/Łd 378/20, LEX No. 3081169. In this case, the plaintiff applied to change her surname to that of her deceased partner. In her application to change her surname, she stated that she was doing so "out of love for the deceased (…) partner with whom she lived together for over fourteen years". The deceased never divorced his wife; nevertheless, the complainant "had a very good relationship with the partner's wife and children and treated them like family, and her family treated her partner like a son-in-law."

Judgment of the Provincial Administrative Court in Cracow of 20.02.2023 r., III SA/Kr 1460/22, LEX No. 3512229. The plaintiff requested a change of surname, justifying the request with "the embarrassing nature of the current surname, as well as the fact that he is in a cohabitation relationship with his long-term partner and the need to emphasize the emotional relationship with his partner and respect for her family".

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Case study I.[40] The applicant applied for a change of her maiden name. She cited two reasons for the request: (1) lack of an emotional bond with her father, whose last name she had been using[41] (the applicant's parents divorced when she was a child, and her mother was currently in a new marriage and therefore changed her last name to that of her second husband), and (2) a special emotional bond with her (female) partner and her family. In the course of the proceedings, the applicant argued that there were permanent emotional and economic ties between her and her female partner (a joint lease agreement, a joint purchase of an apartment, running a joint household, a joint bank account). It was established that the applicant was cohabiting with her partner, they had a joint bank account, and were running a household together.

The authority of the first instance held that these were not "compelling reasons" to justify a change of the surname. It was argued that the change cannot "result only **from the subjective conviction of** the person requesting the change, but must also meet **objectified and rationalised evaluation criteria**" and also "the mere feeling of connection and belonging to another family and closeness to its members is not a sufficient or compelling reason, either." According to the authority, surname is an element allowing to identify a person, indicates descent from certain parents, and "should therefore be stable. It is a **permanent attribute of a person** (…)."

The authority of the second instance upheld the decision made by the authority of the first instance. In doing so, it pointed out that being in a permanent factual relationship with a woman is "a factual circumstance, not a legal one, as such relationships are not known to Polish law." As the authority stressed, one of the attributes of marriage is the ability to choose a surname – while extending such a possibility to other unions would constitute an unauthorised preference for factual relationships. A mere change of the last name would not bring about a change in the legal nature of the relationship between the women; instead, "for outsiders – **it could create the illusion that they are in a family relationship**."

The court argued similarly. The adoption of a shared surname by female partners "would suggest that we are dealing with a marriage, and in the case of relationships between people of the same sex, then, for example – with siblings. In essence, this would also constitute a circumvention of the law, as it would be a substitute for getting married." In the court's opinion, the abnormal character of the applicant's emotional bond with her father – the reason to change the last

[40] Judgment of the Provincial Administrative Court in Łódź of 21 October 2015, III SA/Łd 679/15, LEX No. 1930825.

[41] The applicant indicated that she had not had contact with her father since her parents' divorce, that is since 1992.

name must be "compelling also from an objective point of view" – was not an example of a "compelling reason" either.

The Supreme Administrative Court also ruled against the applicant's claims[42]. The court stressed that admitting that it is possible to change one's last name due to being in a civil union "violates the legal order." The statement of reasons reads as follows:

> "**[t]he subjective need to** change the last name assigned at birth to a last name resulting from a factual relationship, although justified by emotional ties and the fact of living together, is not the fulfillment of the premise <only for compelling reasons>. Just as the European Court of Human Rights emphasizes, one must keep in mind the fair balance that must be maintained between the competing interests of the individual and the society as a whole. **The interest of the society as a whole is expressed in the applicable legal order**."

Case study II.[43] The applicant requested that her maiden name be changed. She cited three reasons for the request: (1) failure to maintain contact with the family of origin; (2) the fact of remaining in a civil union with a woman with whom she had spiritual and material ties involving e.g. mutual care; they have been living together for 16 years; (3) changing her last name would make it easier for her to access her partner's health information and avoid discrimination based on sexual orientation.

As in Case Study I, public authorities refused to recognise that there were "compelling reasons" in the applicant's circumstances. The court agreed with the authorities' decisions, pointing out that fulfilling the applicant's request would harm the public interest:

> "A last name change would lead to **socially undesirable consequences** in the form of misleading social relationships. This is because identical last names (at birth) usually illustrate kinship. Nor can there be a coincidence of last names in a situation where last names at birth and last names used currently, are identical. Such a situation in practice can only apply to relatives, as long as they have not changed their last names as a result of marriage. The desire

42 Judgment of the Supreme Administrative Court of 10 October 2017, II OSK 293/16, LEX No. 2419453.

43 Judgment of the Provincial Administrative Court in Gliwice of 10 March 2017, II SA/Gl 1187/16, LEX No. 2269847.

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> to pass themselves off in social life as sisters[44] cannot be accepted as a compelling reason in favor of changing both last names."

The court stressed that it did not deny the value of the relationship between the applicant and her female partner – claiming that they were undoubtedly in a "relationship of a family nature." According to the court, however, the administrative procedure for changing a surname cannot replace "general statutory regulation of the legal situation of persons in factual unions, regardless of gender."

To sum up, the argumentation of public authorities and courts is very similar in both of the case studies presented above. First of all, it is possible to reconstruct **two basic arguments** used for justifying the rejection of requests for a surname change.

A subjective sense of connection with another person is not an objective reason to justify a surname change. In all the cases cited, the courts emphasised that the desire to change one's last name was a "subjective need", arising "only from the intention" of the applicants. It was considered "subjective", because it is related to the individual's experiences (i.e. emotions and feelings)[45], associated with being in a long-term, close relationship. This, in turn, is considered irrational and non-objective. This kind of experience does not merit legal recognition, and the refusal to change one's last name as such would not – in the opinion of the courts – negatively affect the emotional bonds between the partners.

The existence of ties between individuals is both subjective and objective – an individual knows best what they feel towards the other person, and experiences the bond themselves; on the other hand, however, it is also possible to determine, using psychological criteria, whether there are ties between two people and how intense they are. What is also important, close relationships do not consist only of the "undisclosed" experience of the other person; on the contrary – people who are close to each other behave in a specific, outwardly observable way, which can be described as **the behavioural dimension of close relationships**. This dimension of closeness refers to the interactions that occur between certain individuals, and the degree to which these individuals exhibit a high degree of interdependence[46]. It is evaluated based on the intensity and frequency of interactions, among other things.

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44 The suggestion that the applicant and her partner wanted to pass themselves off as sisters originates only from the court. There is no trace in the reasons for the ruling to indicate that such a desire was expressed by the applicant herself.

45 L. Rodak, *Judicial Objectivity: Limits, Merits and Beyond*, Berlin 2020, pp. 198–199.

46 P. Regan, *Close relationships*, New York 2011, p. 11.

It is difficult to understand what would constitute an "objective reason" for the judges to justify a last name change when long duration and intimacy in a close relationship prove insufficient. The juxtaposition of subjective and objective categories thus served as means of persuasion. Belittling the motives of individuals as "subjective" is a well-established way for courts to express disapproval of claims rooted in the emotions and feelings of an individual.[47] At the same time, by appealing to "objectivity," the courts were able to hide the real reasons behind the decisions made. After all, "[e]motions – and subjectivity more broadly – are generally viewed as **sources of bias or flawed perception** to be disciplined and contained, rather than as positive elements in experts' tool kits."[48]

Although the story presented by the plaintiffs may be important for themselves, it does not gain recognition and validity under the law, which is also related to the specifics of the application of the law. As Stina B. Blix and Alessandra Minisale argue, "[l]egal encoding is done to ensure objective and impartial evaluation that builds on categorization, procedure, and rules (…). Legal professionals need to evaluate whether stories match the relevant criteria for fitting within a statute or precedent. This explains why law stories, which are made to facilitate encoding, are often *'anti-storylike'*.[49] The courts have – more or less intentionally – invalidated the story presented by the plaintiffs, in favor of fitting the ruling to the narrative they know. They referred to the criteria developed in judicial decisions for evaluating the vague phrase "compelling reasons", but were unable to break the established way of proceeding.

Interestingly, by selectively adopting the described narratives, courts referred to ECtHR rulings as if it were implied that changing one's surname due to the existence of a special emotional bond is not possible.[50] ECtHR emphasises the importance

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47 As can be seen in many of the court's judgments, they refer to the dichotomy of objective and subjective in a very similar way. For example, "the decision in this regard should be based on objectivized criteria, and only the subjective feelings of the injured party cannot be taken into account." (Judgment of the Administrative Court in Warsaw of 29 November 2017, VI ACa 1014/16, LEX No. 2449734); "Legal interest also exists when there is an uncertainty of the state of law or right, which is objective in nature, and is not merely a subjective feeling of the plaintiff." (Judgment of the Administrative Court in Łódź of 20 June 2017, I ACa 1627/16, LEX No. 2369673); "the assessment of the degree of harm affecting the amount of redress should be made from the point of view of the average person, and not only the subjective experience of the applicant. If one were to do otherwise, and therefore use a subjective assessment, there would undoubtedly be an escalation of demands – from grossly excessive to completely unreasonable ones." (Judgment of the Administrative Court in Gdańsk of 23 November 2016, II AKa 258/16, LEX No. 2660950).

48 S.R. Anleu, K. Mack, *A Sociological Perspective on Emotion Work and Judging*, "Oñati Socio-Legal Series" 2019, 9(5), p. 836.

49 S.B. Blix, A. Minisale, *(Dis)passionate law stories: the emotional processes of encoding narratives in court*, "Journal of Law and Society" 2022, 49(2), p. 247.

50 European Court of Human Rights, Judgment of 25 November 1994, Case No. 18131/91, Stjerna v. Finland, [1994] ECHR 25/11/94, LEX No. 80513.

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of the first and last name in identifying a person and, at the same time, stresses that "even if there may be genuine reasons causing an individual to want to change his/her last name, it should be recognized that legal restrictions on such a possibility may be justified in the light of the public interest, for example, to ensure accurate population records or to secure means of personal identification and to **link the users of a given last name with their family**."[51] While the ECtHR emphasises the margin of discretion on the part of member states in regulating this issue, it recognises that the concept of "social interest" includes the possibility of changing one's last name to confirm one's affiliation with an existing family.

The adoption of a shared surname, despite the lack of legal ties, creates a fiction of the existence of family relations, including legal ones. In each of the cases cited, the courts emphasised that changing the applicants' last names would lead to "socially undesirable consequences" because it could mislead third parties about the relationship between the individuals. The courts stressed that a change would mislead as to reality, and would cover up the "truth" about the nature of the relationship linking individuals. The question arises, however, what is the actual social – including legal – cost of adopting such a "false" shared surname, beyond the creation of certain superficial perceptions about the relationship between individuals. Isn't it a much greater social cost to be seen as strangers despite remaining in a long-term romantic relationship?

Conclusion

At the beginning of the study, I formulated three research objectives. First, to establish the significance of adopting a shared surname (shared identity) in close romantic relationships, particularly in same-sex relationships (5.1). Second, to determine the reasons why legislators or courts refuse to fulfil the request to change the last names of people in a close relationship, using same-sex relationships as an example (5.2). Finally, to explore the legal meaning of shared surname from the perspective of the regulation of legal closeness (5.3.).

European Court of Human Rights, Judgment of 1 July 2008, Case No. 44378/05, Daróczy v. Hungary, [2008] ECHR 44378/05, LEX No. 411367.

European Court of Human Rights, Judgment of 16 May 2013, Case No. 20390/07, Garnaga v. Ukraine, [2013] ECHR 20390/07, LEX No. 1314315.

[51] ECHR judgment of 1 July 2008, *ibidem*.

The significance of the surname in a close relationship

In relationships that lack legal recognition, certain rights may become especially significant for individuals navigating their place within society. The adoption of a "relationship label," such as a shared surname, can serve as an informal expression of the bond between partners. Taking a shared surname – or adopting the surname of one partner – may be used to signal the existence of a meaningful connection, although it does not determine the quality of the relationship itself. This act may be viewed as a kind of *legal ritual of closeness* – a voluntary and symbolic gesture of attachment to a particular person or a specific family. The experience of emotional closeness between individuals can lead to a blending of identities, which may, in turn, motivate the adoption of a shared surname. Naturally, there are also many cases in which individuals, despite their deep, genuine commitment to one another, choose to retain their own surnames. Such decisions depend on how the partners experience closeness and on the meaning they assign to it within their relationship.

In the case of relationships that are not legally recognised or regulated, the ability to define their own "label" can be significant in at least two respects:

a. **social significance**: individuals draw on culturally accepted ways of labelling relationships to enhance their visibility and legitimacy in society. In this sense, the option to adopt a shared surname contributes to the legal and symbolic recognition of the relationship. Using a shared surname can also carry pragmatic: in the absence of other formal legal markers, it may facilitate everyday interactions by eliminating the need to explain the nature of the bond between individuals (e.g. *"we are family"*).
b. **emotional significance:** a shared or combined surname may reflect the internal definition of the relationship developed by the partners themselves. The ability to make this choice reinforces the sense of agency in shaping the relationship and contributes to a feeling of recognition, visibility, and social legitimacy.

It must be acknowledged, however, that the practice of adopting a shared surname – like other socially meaningful relationship-related practices (e.g. wedding ceremonies) – is culturally constructed and shaped by social norms as they interact with the legal system. In contexts where relationships are not recognised by law, or where they do not conform to prevailing legal definitions, individuals often seek recognition through socially acceptable categories. In doing so, they aim to protect themselves and the relationship from marginalisation and further discrimination.

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The reasons for refusal

When determining the reasons behind the refusal to let individuals change their surname despite remaining in factual relationships, at least three related causes can be identified.

Firstly, the **understanding of the concept of family**. The legal discourse is still dominated by the view of family from the angle of formal ties (marriage, kinship, affinity) as being decisive for the membership and status of certain relationships. Marriage still plays a special role in the understanding of the notion of family. The reasons behind the non-recognition of certain rights in close relationships that are not marriage can be collectively called **marriage premium**.

Legal systems allow spouses to adopt both a joint and a separate relationship label. They can then change it after divorce, or remain with the "post-spousal" surname even when they are no longer in a relationship. What's more, a shared surname can bind people in a difficult or toxic relationship.

The possibility of adopting a shared surname and other rights specific to marriage can therefore be classified as a **status legislation**, i.e. one that aims to strengthen the position of a specific social group, in this case the type of relationship – heterosexual marriage. Status legislation has an expressive function, emphasising the values that are important to the legislator. As Bart von Klink stresses, "this expression of values does not take place for its own sake, but in order to change the status distribution in society."[52]

Secondly, **distrust of what is considered subjective**. A close relationship based on long-term interaction and mutual commitment – if the partners thereto are not married but want to adopt a shared surname – is, in the opinion of the courts, only an expression of their subjective experience, which is not objectively verifiable. The courts reduce the factual relationship to a "subjective experience," emphasising that recognising the right to change the surname would lead to a fiction – admitting that a given relationship is a family, although in the light of the law it is not. This is related to a narrow understanding of the notion of family, as well as the devaluation of the personal narrative that individuals present in relation to their relationship. Paradoxically, it is precisely this subjective experience, for example when entering into marriage (although not verified in any way), that plays a constitutive role in the existence and duration of a relationship.

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[52] B. van Klink, B. van Beers, L. Poort, *Symbolic Legislation Theory and Developments in Biolaw*, Springer, Cham, 2016, p. 22; M. Suska, *Normativity and Expressiveness of Legislation. The Case of Polish Resolutions Against the So-Called LGBT Ideology*, "The Theory and Practice of Legislation" 2025, pp. 1–19.

Thirdly, the **practice of reiterating and reinforcing vague expressions** – which in the case in question is "compelling reasons." Once the scope of this vague expression has been established, it is then treated as adequate for each case. "Compelling reasons" are considered to be "rational and objective" reasons, although it is not clearly articulated what constitutes such a reason; an individual must demonstrate that their request is not an expression of "whim or obstinacy."[53] As stated by one of the courts (this view has been replicated many times in other judicial decisions): "the mere ideas, feelings, beliefs or emotional states of the person requesting a change of name cannot constitute a valid reason for such a change."[54] Here, a significant similarity can be found in the interpretation of the vague Polish term "wspólne pożycie,"[55] translated loosely as "cohabitation" – Polish courts narrow the relationships falling within the scope of this term to romantic relationships based on sexual relations, thus rejecting, for example, friendship from the scope of discretion.[56] This may mean that the courts are more inclined to petrify meaning in cases where the concept in question concerns social issues to a greater extent.

A shared surname and legal closeness: straitjacket and relationship freedom

Having the same surname or having different surnames **is irrelevant in the context of legal closeness**. The key factor is the existence of legal ties between the entities or factual ties, depending on what kind of legal relationship is involved – formal or material. This means that the key factor for legal closeness is the type of relationship between people, its external label, which can only be an *empty shell*.[57] The law requires the type of relationship to be determined based on available options. The type of relationship determines its legal status, sometimes regardless of the actual level of commitment of the individuals involved, nor does it necessarily

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53 Judgment of the Administrative Court in Białystok of 28 November.2019 r., II SA/Bk 685/19, LEX No. 2752214.

54 Judgment of the Administrative Court in Łódź of 16 March 2023 r., III SA/Łd 874/22, LEX No. 3518829.

55 In this case, the courts limit the relationships that fall under this term to romantic relationships based on a sexual relationship, thus rejecting friendships, for example, from the scope of discretion.

The term "wspólne pożycie" is difficult to translate accurately into English, hence it will remain in the text in the original. Similar terms include "to live together" or "cohabitation."

56 M. Drapalska-Grochowicz, *Podobne do małżeństwa, czyli…? Dylematy interpretacyjne wokół wspólnego pożycia*, Państwo i Prawo 2023, 10, pp. 52–78; A. Bielska-Brodziak, M. Drapalska-Grochowicz, M. Suska, *Petrified and Updated, or How the Interpretive Community Exercises Power Over the Meaning of Vague Terms in the Legal Text (on the Example of Polish Criminal Law)*, "International Journal of Semiotics of Law" 2024, 37, pp. 2205–2207.

57 J.H. Harvey, B.G. Pauwels, *Recent developments in close-relationships theory*, "Current Directions in Psychological Science" 1999, 8(3), p. 93.

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have to reflect its "real" content. In practice, it can be very difficult to determine the type of relationship within the existing options, but it is not necessary for the relationship itself (e.g. the boundaries between friendship and a romantic relationship).[58]

The law significantly limits the possibility of shaping relationships according to the will of the partners thereto. Even if this is justified in the light of the value of legal certainty, it can lead to paradoxical situations – people who are in no sense close to each other but are perceived as such by law on the basis of the existing legal bond between them may enjoy a number of rights that are invisible and irrelevant to them. They do not experience the disadvantages of "being unrecognised." For relationships that remain unrecognised by law, these small cases of legal vagueness create the possibility of at least some recognition and legitimacy – after all, they are perceived by the law as foreign. The law significantly limits the ability of individuals to shape the identity of relationships, even if the legal system itself loses little as a result of such a concession (having a shared surname does not entail having rights and obligations).

What defines a relationship itself is the level of commitment of the individuals involved – what is created *between* them. Closeness, when enduring and supported by appropriate evidence, should not only affirm a shared identity within the relationship, but may also serve as the basis for certain other rights. **In the case under consideration, such closeness should be regarded as sufficient grounds for adopting a shared surname**. It is closeness that establishes and sustains the relationship, and it is something that can, at least to some extent, be objectively demonstrated. This serves to limit arbitrariness, as genuine closeness is not easily manufactured. One of the first reports in the Polish press to address same-sex relationships (1981) included a statement that remains relevant till this day, and not only for same-sex couples: "A couple (…) isolated socially relies entirely on an interpersonal relationship, which by its nature is subject to constant revision (…) love is the only plane of evidence. When it ends, the relationship ends."[59]

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[58] H.C. Hanel, K. Jenkins, *On Relationships*, "Zeitschrift für Ethik und Moralphilosophie" 2024, 7, p. 483.

[59] B. Pietakiewicz, *Gorzki fiolet* [in:] M. Szczygieł (ed.), *Antologia polskiego reportażu XX wieku*, tom 2, Wołowiec 2014, p. 388.

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