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On the basis of the first paragraph of Article 30 of the Rules of Procedure of the Constitutional Court (Official Gazette RS, Nos. 86/07, 54/10, 56/11, 70/17, and 35/20), the Constitutional Court issued the following

PRESS RELEASE

The reviewed regulation of marriage and joint adoption entails prohibited discrimination against same-sex couples.

By two decisions adopted on 16 June 2022, the Constitutional Court established that the statutory regulation which determines that (i) marriage may only be contracted by two persons of different sex and (ii) same-sex partners living in a formal civil union may not jointly adopt a child is inconsistent with the Constitution. The Constitutional Court required the legislature to remedy the established unconstitutionality within six months. In addition, it held that until the established unconstitutionality is remedied, it shall be deemed that (i) marriage constitutes a life union of two persons regardless of their sex and (ii) same-sex partners living in a formal civil union may jointly adopt a child under the same conditions as spouses.

The Constitutional Court initiated proceedings to review the constitutionality of the statutory provisions at issue of its own accord on the basis of the constitutional complaints of two same-sex couples who in administrative proceedings and in proceedings before the courts did not succeed with their requests to contract marriage and to be entered in the register of potential candidates for joint adoption, respectively.

The legal regulation of same-sex unions in the Republic of Slovenia has been developing for a longer period of time. In 2006, a regulation was adopted that enabled same-sex partners to register their union and granted them certain rights following from such relationship and, in 2016, a regulation that introduced a formal union between same-sex partners termed a civil union. Although the latter is close in substance to marriage, it still differs from the institution of marriage both in its designation and in some of its legal consequences.

By Decision No. U-I-486/20, Up-572/18, the Constitutional Court held that a regulation that does not allow same-sex partners to marry is discriminatory. Such discrimination cannot be justified by the traditional meaning of marriage as a union of husband and wife, nor can it be justified by the special protection of the family. The decision of the Constitutional Court neither diminishes the importance of the traditional institution of marriage as a life union between husband and wife, nor does it alter the conditions or consequences of marriage between persons of different sexes. It merely means that same-sex partners may now enter into marriage in addition to different-sex partners.

The constitutional requirement of the equal treatment of persons regardless of their sexual orientation requires the equalisation of their legal positions also in the area of joint adoption. In Slovenia, same-sex partners have thus far been able to establish joint parenthood if one partner adopted the child of the other partner (so-called unilateral adoption). However, according to Constitutional Court Decision No. U-I-91/21, Up-675/19, same-sex partners living in a formal civil union may henceforth jointly adopt a child under the same conditions as different-sex spouses.

In the assessment of the Constitutional Court, the aim of protecting the best interests of the child cannot justify the reviewed regulation of joint adoption, as the absolute prohibition of the entry of same-sex partners in the register of candidates for joint adoption is not an appropriate measure for achieving this aim. The best interests of the child can namely only be assessed in the context of an individual adoption procedure, in which the most suitable adoptive parents for the child are selected from among all potential candidates for joint adoption. The general *a priori* exclusion of same-sex partners from the possibility of being entered in the register of candidates for joint adoption merely results in a reduction in the number of possible candidates and therefore cannot constitute a measure that would increase the likelihood of a decision being made in accordance with the best interests of the child. This decision of the Constitutional Court does not introduce a right to adoption, diminish the importance of the traditional family, and in particular not the biological family, for the best interests of the child, nor does it affect the position of such families in any way. It does, however, entail that when regulating the special protection of children who are not (or are no longer) cared for by their biological parents and who are therefore unable to live with their primary family, the legislature must take into account the constitutional prohibition of discrimination and allow same-sex partners to be included in the register of candidates for joint adoption. In any event, the choice of the most suitable adoptive parents for a particular child is made by a social work centre, upon whose proposal a court decides on adoption, taking into account the best interests of the child.

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President