

ADVOCACY PAPER: STRENGTHENING LGBTQ+ RIGHTS THROUGH THE LEGISLATION OF SAME-SEX PARTNERSHIPS IN SERBIA



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The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality. This is true for all persons, whatever their sexual orientation. There is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices.

(Obergefell V. Hodges)



INTRODUCTION

The journey towards legal recognition of same-sex partnerships in Serbia has been ongoing for years. The National Strategy for the Prevention of Discrimination (2013-2018) highlighted the need for a law on same-sex partnerships, yet it took until February 2021 for the Ministry of Human and Minority Rights and Social Dialogue to initiate a draft. Despite the established consensus of the CSOs and the executive government, the further adoption of the law was stopped.

CURRENT LEGISLATIVE EFFORTS

In early 2021, the Ministry proposed an initial framework for the Same-Sex Unions Law, drawing on best comparative legal practices. Stakeholders, including individuals and organizations, were invited to contribute, resulting in a draft that received broad approval, particularly from the LGBTQ+ community and civil sector. The draft covered practical aspects such as partnership formation and dissolution, rights during illness, property sharing, taxation, pensions, inheritance, and unregistered partnerships. However, it fell short in addressing issues of parenthood, adoption, and guardianship compared to existing family laws.

CHALLENGES AND SETBACKS

Despite progress in drafting, the legislative process halted after the President expressed unwillingness to sign the bill, citing constitutional obligations. The draft never reached the government session or parliamentary procedure for formal deliberation.

REGIONAL CONTEXT AND COMPARATIVE LEGISLATION

Neighboring countries have shown more progress. Montenegro enacted a law on life partnerships for same-sex couples in 2020, and Croatia has had laws governing same-sex partnerships since 2003 and 2014, with constitutional court rulings favoring adoption rights for same-sex couples. Slovenia's Constitutional Court in 2020 found certain marriage and family relations laws inconsistent with the constitution, indicating a regional trend towards greater LGBTQ+ rights recognition. The legalization of same-sex marriage has taken off globally in the last thirty years, especially in Europe. Thirty-three countries around the world, nineteen of which are in Europe, have opened up civil marriage to same-sex couples.

OUR ADVOCACY GOALS:

- ▶ **Renewed Legislative Push:** The Serbian Government must revisit and adopt the draft Law on Same-Sex Unions. Its comprehensive nature, addressing a range of practical and civil rights issues, makes it a robust framework for safeguarding the rights of same-sex couples.
- ▶ **Maintaining Agreed Rights as the Baseline for Future Developments:** The agreed-upon text between LGBT+ organizations and the executive government, outlining essential rights for future legislation, should serve as a foundational benchmark. Any subsequent discussions on alternative forms of legal recognition, like marriage or civil partnerships, should aim to expand upon, not diminish, the rights already established in the draft law. This approach ensures that the minimum consensus on the scope of rights for the LGBT+ community is not only preserved but also potentially enhanced in future legal frameworks.
- ▶ **Alignment with International Human Rights Standards:** The European Court of Human Rights (ECHR) has consistently established a general positive obligation for states to recognize same-sex couples, reinforcing the need for compliance. The adoption of this law aligns Serbia with its neighboring countries and upholds recommendations from international bodies like ECRI and the UN Committee on Human Rights. Considering Serbia's Universal Periodic Review (UPR) is especially relevant, taking into account the recommendations regarding LGBTQ+ rights received during the 4th cycle of the review process.
- ▶ **Societal and Political Engagement:** There's a need for constructive dialogue within Serbian society and political spheres to foster understanding and acceptance of LGBTQ+ rights, overcoming existing biases and resistance.
- ▶ **Integrating EU Accession Goals:** The laws' enactment would demonstrate Serbia's commitment to EU accession criteria, particularly in the realm of human rights and non-discrimination.

CONCLUSION:

The adoption of the Law on Same-Sex Communities is not just a legal necessity but a moral imperative for Serbia. It reflects a commitment to inclusivity, equality, and respect for human rights, crucial for Serbia's societal advancement and international standing. The government and society must collaborate to ensure this vital legislation's swift enactment and implementation.