



Albulena HAXHIU
Minister of Justice,
Government of Kosovo

Cc: Isuf Jahmurataj
Chair, Working group for reviewing the draft Civil Code

Brussels, 15 June 2021

Subject: Civil Code of Kosovo and the inclusion of same-sex partnerships

Dear Minister of Justice, Albulena Haxhiu,

As Members of the LGBTI Intergroup in the European Parliament, a cross-party grouping of Members of the European Parliament working on equality for LGBTI people, we contact you today to send a strong message of support for the inclusion of same-sex partnerships in the Civil Code of Kosovo.

We are aware that, with the support of the European Commission, the government of Kosovo has been working and developing its first ever Civil Code. This presents a golden opportunity for affording legal protection to LGBTI persons, namely in the context of the regulation of their relationships.

In its official position on Kosovo, adopted 25 March 2021 by a majority, the European Parliament referred specifically to LGBTI rights and to same-sex partnerships, welcoming the government's work on the matter and calling for specific measures:

54. Welcomes the progress on the protection of LGBTI rights at the legislative and policy level; [...] **calls on the government to include same-sex partnerships in the draft Civil Code, as guaranteed by the country's Constitution;**¹

It therefore comes as a surprise that, in the final Draft Civil Code, 1) marriage is defined as a legally registered union between spouses of different sexes, in contradiction of the letter and principles of the Constitution, and that 2) same-sex partnerships are not regulated, as per below:

CHAPTER II – MARRIAGE | Sub-chapter I – Meaning of Marriage

Article 1138 - Marriage

1. Marriage is a legally registered union of two spouses of different sexes, through which they freely decide to live together as husband and wife. Marriage is continuous legally regulated live union of husband and wife. Marriage is concluded by given consent of husband and wife and their signature before the official (registrar) of civil status.

¹ European Parliament resolution of 25 March 2021 on the 2019-2020 Commission Reports on Kosovo (2019/2172(INI)), accessible at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0113_EN.html.

2. Other forms of civil unions are regulated with a specific law.
3. Man and woman, have the right to marry and found a family without any limitation due to race, nationality or religion and they are equal to marriage, during marriage and at its dissolution.
4. According to this law married couple enjoy reciprocal rights and obligations.

We believe that this moment in time provides an opportunity to develop a legal framework that is not only in line with Kosovo's Constitution, but also progressive, inclusive and far-reaching in the region. Let us highlight some arguments that resituate the current discussion and our concerns:

1. The Constitution of Kosovo is unequivocal in determining that *"Based on free will, everyone enjoys the right to marry and the right to have a family provided by law"* (art. 37(1)). This is therefore a fundamental right that all Kosovars are entitled to as it is constitutionally protected.
2. The Constitution of Kosovo equally enshrines the right to equality before the law, noting that *"No one shall be discriminated against grounds of [inter alia] sexual orientation"* (art. 24(2)).
3. The Constitutional Court has furthermore highlighted that *"Legislation should be in accordance with the Constitution and its principles"* (Ko 119/10, ¶54). If a law were to restrict a constitutional right, that restriction would have to be proportionate.
4. Article 22 of the Constitution refers to the direct applicability of International Agreements and Instruments, stating that *"in case of conflict, [they] have priority over provisions of law and other acts of public institutions"*, referring specifically the Universal Declaration of Human Rights and the European Convention on Human Rights and its Protocols.
5. Protocol 12 of the European Convention on Human Rights establishes that in art. 1 that *"The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*²
6. Since the Constitution of Kosovo provides protection against discrimination, including on the basis of sexual orientation, as mentioned above, it can be said that the Constitution of Kosovo, in its letter and spirit, provides sufficient indications of allowance constitutionally that everyone enjoys the right to marriage (under Article 37) and without discrimination on grounds of sexual orientation (under Article 24).

Against the backdrop of the following, we would like to address you, Minister Haxhiu, to pose the following questions:

1. **Regarding same-sex partnerships**
 - a. **In this light, will the government reconsider Art. 1138(2) of the Draft Civil Code, whereby it proposes that other forms of civil unions are to be regulated with a specific law, and to commit instead to include regulation for same-sex partnerships in the final Civil Code?**
 - b. This would be in line with recommendations from the Parliamentary Assembly of the Council of Europe³ and the case-law of the European Court of Human Rights, which has recognised 1) that same-sex relationships fall under the notion of "family life" under art. 8 of the ECHR⁴ and 2) that

² Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, accessible at <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680080622>.

³ Recommendation 1474 (2000), Situation of lesbians and gays in Council of Europe member states, accessible at <https://pace.coe.int/pdf/70aef45d7d2370d2d0270840be488d6c49c11297fd09ecfc3a59268a47ebdaca/recommendation%201474.pdf>.

⁴ ECtHR, Case of Schalk and Kopf v Austria (Application no. 30141/04), accessible at <http://hudoc.echr.coe.int/fre?i=001-99605>.

conferred upon Member States a positive obligation to ensure legal recognition of same-sex partners as a way to protect their family life.⁵

2. Regarding marriage

a. Will the government consider, in line with the language of the Constitution, to remove any gendered language in the Civil Code on marriage?

We thank you in advance for your attention to this letter and welcome a reply on your behalf to the arguments laid out before.

Sincerely,

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Terry REINTKE, *Co-Chair, LGBTI Intergroup (Greens-EFA, Vice-President)*

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⁵ ECtHR, Case of Valliantos and others v Greece (Application nos. 29381/09 and 32684/09), available at <http://hudoc.echr.coe.int/fre?i=001-128294>.