

# **SAME-SEX MARRIAGE IN THE EUROPEAN UNION: A COMPARATIVE AND CONSTITUTIONAL ANALYSIS OF LEGAL AND ADMINISTRATIVE ANALOGIES**

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Received 28-01-2024 | Revised 19-03-2024, 13-03-2024, 13-06-2024, 13-08-2024, 13-09-2024, 13-10-2024, 13-12-2024, 23-01-2025 | Accepted 17-02-2025

**Abstrak:** Pernikahan sesama jenis menjadi salah satu isu utama dalam wacana hukum kontemporer di Eropa, mencerminkan dinamika sosial, budaya, dan politik yang semakin kompleks. Isu ini sangat relevan di negara-negara Eropa, di mana tuntutan masyarakat dan kewajiban internasional terkait hak asasi manusia saling bertemu. Penelitian ini bertujuan untuk mengkaji regulasi hukum terhadap pernikahan sesama jenis di Uni Eropa. Metode yang digunakan adalah analisis hukum komparatif dan klasifikatif dengan pendekatan doktrinal terhadap teks-teks hukum dan yurisprudensi terkini Mahkamah Hak Asasi Manusia Eropa (ECHR). Hasil analisis terhadap kasus seperti *Makate v. Lithuania* dan *Maimulakhin dan Markiv v. Ukraina* menunjukkan bahwa ketiadaan atau pelarangan pengakuan hukum terhadap pasangan sesama jenis dapat dianggap sebagai pelanggaran terhadap hak atas kehidupan pribadi dan keluarga, kebebasan berekspresi, serta larangan diskriminasi sebagaimana diatur dalam Konvensi Eropa tentang Hak Asasi Manusia. Penelitian ini menyimpulkan bahwa meskipun masih ada resistensi politik dan budaya di sejumlah negara Eropa, tren menuju legalisasi pernikahan sesama jenis semakin menguat sebagai respons terhadap tuntutan publik dan standar hukum internasional. Meskipun demikian, pernikahan ini masih bertentangan dengan tujuan awal pernikahan dan fitrahnya antara laki laki dan perempuan.

**Kata kunci:** analogi hukum, pernikahan sesama jenis, Mahkamah HAM Eropa, kemitraan sipil, hak asasi manusia, non-diskriminasi, Ukraina, pengakuan hukum.

**Abstract:** Same-sex marriage has become one of the main issues in contemporary legal discourse in Europe, reflecting increasingly complex social, cultural, and political dynamics. This issue is highly relevant in European countries, where societal demands and international obligations related to human rights intersect. This study aims to examine legal regulations on same-sex marriage in the European Union. The method used is comparative and classificatory legal analysis with a doctrinal approach to legal texts and recent case law of the European Court of Human Rights (ECHR). Analysis of cases such as *Makate v. Lithuania* and *Maimulakhin and Markiv v. Ukraine* indicates that the absence or prohibition of legal recognition of same-sex couples may be considered a violation of the right to private and family life, freedom of expression, and the prohibition of discrimination as stipulated in the European Convention on Human Rights. This study concludes that despite ongoing political and cultural resistance in some European countries, the trend toward legalizing same-sex marriage is gaining momentum in response to public demands and international legal

standards. However, such marriages remain inconsistent with the original purpose and nature of marriage between men and women.

**Keywords:** legal analogy, same-sex marriage, European Court of Human Rights, civil partnership, human rights, non-discrimination, Ukraine, legal recognition.

## INTRODUCTION

Crisis, pandemic, war - today these phenomena are not so distant for citizens of states in different parts of the world.<sup>1</sup> In our time, the attitude to moral values leads to more liberal positions on the roles of men and women, there are changes in gender relations from hierarchical to egalitarian, tolerance for different forms of behavior, in relation to sexual morality is growing. In recent times, so-called “conjugal” types of families have been formed within which “conditions for the self-realization of each individual are created”. In such relationships, moral and emotional marital autonomy and intimacy become the leading levers, and value orientations shift in favor of the individual, not the family, the interests of the individual, not the social order.

One of such modernized forms of the family has become the same-sex family, which has given rise to the question of why similar relationships fall under the category of family for heterosexual couples, but for same-sex couples they continue to remain private.

In the international legal practice of the European Court of Human Rights, the Inter-American Court of Human Rights, as well as the African Court on Human and Peoples' Rights, a general right to family life for sexual minorities has been recognized, and certain related possibilities have been enshrined to one degree or another. The most extensive such competences are revealed in the case law of the ECHR, but at the same time, more questions still remain than answers. In addition, the European Court of Human Rights has not rushed to conclusions, often in the most controversial (and therefore important) parts of the right to family life in the context of sexual orientation, choosing a neutral position.

Even the right to family life itself for same-sex couples has been recognized by the Court for years. At the stage of the first applications to the European Court on issues of sexual orientation, dating back to the 1980s, the complaints concerned not the possibility of concluding a same-sex union itself, but a number of property rights between “de facto” partners. Same-sex relationships were perceived by this international body as part of the right to respect for private life, perceiving family life as the exclusive right of opposite-sex couples.<sup>2</sup>

The first case in the history of the European Court of Human Rights concerning the right to housing and to social and labor benefits for unmarried persons took place back in 1986. It concerned a male same-sex couple who had been living together in a common home for a long time. After the death of one of the cohabitants, the other claimed the right to this home on the basis of a “civil marriage.” The Court then concluded that a stable homosexual relationship between two men did not concern the right to respect for family life, but such relationships could be a matter of private life.

A second similar case took place 10 years later, in 1996 in Germany. The case was declared inadmissible on the basis of a similar argument. As regards the issue of access to his partner's rented accommodation, the applicant's treatment under the applicable law

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<sup>1</sup> Horbatko V. 2019. Speeches that changed the world; translated from English by Kyiv. Published by KM-BUKS Group. 328 p.

<sup>2</sup> Abu Bakar dkk., “False Descendants of the Pontianak Sultan: The Practice and Legal Implications of Genealogical Fraud,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 (28 Desember 2024): 251–78, <https://doi.org/10.18326/ijtihad.v24i2.251-278>.

differed from the treatment he would have received if the partners were of different sexes. The Court further argues in the text of the judgment that public morality in terms of family values is a legitimate aim for restricting the rights of same-sex couples, which also complies with the principle of proportionality in a democratic society.<sup>3</sup>

It is well known that such a development of society led to the possibility of establishing new parameters of relations between the state and the person, which would be bound by the state's obligation to take measures to promote human rights of a new model and a new format. So the idea of the emergence of the fourth generation of human rights.

Today, speaking about the fourth generation of rights, we recall the rights that carry a new progressive meaning (the right to access the Internet, the right to change sex, artificial insemination, organ transplantation, euthanasia and cloning) - this is the result of human activity in the conditions of transformational challenges of cultural, social, social and political background. However, in our opinion, the very right to same-sex marriage occupies a prominent place among such rights. After all, the issue of legalizing same-sex marriage over the past 10 years has begun to rise more often in most countries of the world: some states refuse this kind of marriage, while others, on the contrary, encourage and thus citizens can freely exercise their rights and freedoms.<sup>4</sup>

In Ukraine, the issue of legalizing same-sex marriage is one of the most painful for Ukrainian society - part of the population opposes, the other creates petitions and requires the establishment of the right to marriage for same-sex couples.<sup>5</sup>

Trends in the development of human rights make it clear that we need to determine and resolve this issue at the legislative level, since internal social processes and war confirm such a need. And already with the advent of the bill on civil partnerships, we believe that it is advisable to consider in more detail the legalization of this institute through the prism of foreign experience.<sup>6</sup>

The state of elaboration of the problem of legal regulation of the right to same-sex marriage has a fairly high level, after all, this question was studied in the scientific works of Sokol A.V., Koreneva A.M., Medina T.V., Shimon S.I., Mironets O.M., Dorosh L.V., Len V.V. Voloshanivska, T. However, today, in our opinion, there is no thorough study of certain aspects of same-sex marriage, given the new current trends in development and implementation, as well as the practice of international judicial institutions.

The article aims to highlight the main problematic issues of implementing the right to same-sex marriage in European countries through the prism of social, economic, cultural and political challenges of our time.

## METHOD

This study adopts a normative legal analysis complemented by comparative and jurisprudential approaches. The dialectical method enables examination of the dynamic

<sup>3</sup> Decision of the European Commission of Human Rights of 15.05.1996 in case No. 28318/95 "Roosli v. Germany". URL: <http://echr.ketse.com/doc/28318.95-en-19960515/view/>

<sup>4</sup> Mohammad Ghozali dkk., "The Law Concept of Sharia Banking Compliance on Murabaha Financing in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (24 Agustus 2024): 1391–1408, <https://doi.org/10.22373/sjhk.v8i3.11313>.

<sup>5</sup> Voloshanivska, Tetiana, Inna Pozihun, Serhii Losych, Olha Merdova and Yevhen Leheza. 'Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors'. *Journal of Drug and Alcohol Research*, 12(10) (2023). <https://doi.org/10.4303/JDAR/236269>

<sup>6</sup> Saifuddin Herlambang dkk., "Ḥusn Al-Jawāb 'an Ithbāt al-Aḥillāh Bi al-Ḥisāb: Basyūnī 'Imrān's Method for Standardising the Determination of the Qamariyah Month in the Sultanate of Sambas (1913-1976)," *Journal of Islamic Law* 5, no. 2 (21 Agustus 2024): 222–41, <https://doi.org/10.24260/jil.v5i2.2775>.

tension between evolving social norms and traditional legal structures, particularly in interpreting rights under constitutional and international law. Countries were selected based on their legal recognition of same-sex unions and membership in regional human rights systems. The comparison focused on adoption rights, civil partnership laws, and relevant constitutional provisions. This study focuses on countries within the Council of Europe and does not include detailed analyses of Asian or African jurisdictions due to differing legal traditions.

The method of dialectics involves the study of phenomena and processes in their dynamic development, interaction with other phenomena and processes. One of the postulates of dialectics is the expression: "Everything flows, everything moves, everything changes, you cannot enter one and the other same river twice". The method of dialectics includes the law of unity and struggle of opposites, the law of transition of quantitative changes into qualitative ones and the technique of "negation of negation". Thus, in the process of studying the legal foundations of the right to same-sex marriage, it is necessary to take into account the unity of the system of all authorities.

Using the methods of analysis, synthesis and statistical methods, conclusions were drawn regarding same-sex marriages. Thus, in different countries, civil partnerships have different names and define different rights and obligations of partners. About 15 countries around the world have enshrined in their legislation the right to enter into civil unions or partnerships. Among them are France (which also allows same-sex marriages), Italy, Iceland, the Czech Republic, Hungary, Croatia, Estonia, Israel and others.

Civil partnerships are often considered an intermediate stage, after the legalization of which the state decides to legalize same-sex marriages. In Western countries, about 10-15 years usually pass between these two events.

As of 2021, same-sex marriages have been legalized in more than 30 countries around the world, including Spain, the Netherlands, Germany, Belgium, Switzerland, Sweden, Denmark, Finland, Montenegro and Canada. It should also be noted that some countries allow couples to choose between two available options - to register a same-sex marriage or to enter into a civil (civil) partnership.

The path of some countries from the legalization of civil partnerships to the final legalization of same-sex marriage is quite long. For example, Germany allowed same-sex partnerships back in 2001, and finally legalized same-sex marriage only in 2017, when the so-called "Marriage for All Law" came into force. In the same year, same-sex couples were allowed to adopt non-blood children, which led to a kind of adoption boom in this country. As of now, same-sex couples are equal in rights to heterosexual families.<sup>7</sup>

In 2020, the Swiss parliament legalized same-sex marriage. According to sociological research, about 82% of the Swiss population fully supported this law. Before the finalization of the right to marry for LGBT couples, Switzerland legalized civil partnerships in 2007, but partners were not allowed to adopt children at that time. Since 2020, same-sex couples who register a marriage in Switzerland have access to sperm banks and can use appropriate reproductive technologies to have a child.

Another country that decided to legalize same-sex marriage in 2020 is Montenegro. The law provides same-sex couples with the same rights as heterosexual couples, except for the adoption of children. The entry into force of the law was postponed for one year. During this time, Montenegro finalized its domestic legislation and conducted special training for civil servants. Thus, Montenegro became the 32nd UN member state to

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<sup>7</sup> Muh Afif Mahfud dan Naufal Hasanuddin Djohan, "The Expansion of Investor Access to Cultivation Rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 2 (30 Desember 2024): 55–67, <https://doi.org/10.30631/alrisalah.v24i2.1500>.

legalize same-sex marriage. The Prime Minister of Montenegro approved this step, calling it correct and consistent with democratic maturity and European integration processes in society.

The article uses the comparative legal research method.

P.B. and J.S. v. Austria in the same year added to the rights of “de facto family” same-sex couples the right to be included in their partner’s insurance, reasoning the decision in a similar way to the previous two cases, and clearly stating that “the Court finds it wrong to assume that, unlike opposite-sex couples, same-sex couples cannot enjoy “family life” within the meaning of Article 8. Consequently, the relationship between the applicants (a same-sex couple in a stable “de facto” partnership) falls within the meaning of the concept of “family life” in the same way as the relationship of a different-sex couple in the same situation”.<sup>8</sup>

Due to the lack of the aim of protecting the general interest of society by the Italian authorities as a prerequisite for balancing the important interests of the applicants, in the light of the conclusions of the domestic courts, which remained unclear, the Italian government had exceeded the limits of its own competence and had failed to fulfil its positive obligation to provide the applicants with a specific legal regulation for the recognition and protection of same-sex unions. And this violates Article 8 of the Convention (§ 185).

## RESULTS AND DISCUSSIONS

### **The right to fatherhood and motherhood**

The most painful and difficult issue that inevitably arises in the process of discussing the rights of the LGBT community is the right of same-sex couples to have children. As the experience of other countries shows, the legalization of civil partnerships or same-sex marriages does not always lead to the granting of the right to adoption or the use of reproductive technologies to have children in same-sex marriages.

There is a widespread belief that upbringing in a same-sex family has a negative impact on the child. In order to find out whether this is really the case, thorough research was conducted in the USA and Germany.<sup>9</sup>

A large-scale study on this subject was conducted by the State Institute for Family Studies at the University of Bamberg in cooperation with the Institute for Early Pedagogy in Munich. Over the course of three years, scientists surveyed representatives of same-sex families - 1,059 parents and 123 children. In addition, interviews were conducted with experts from various fields: from lawyers and workers in child and family services to teachers, educators and doctors.

The researchers concluded that children raised in same-sex families do not suffer any harm from their parents. If we talk about the competence and skills of raising children, then same-sex parents are in no way inferior to heterosexual ones. As a rule, partners try to avoid punishments in relation to children, not to put pressure on the child in any way, either psychologically or physically. The family climate in same-sex families is characterized by researchers as positive, it is distinguished by openness and the opportunity to talk on any topics. As a rule, in same-sex families, parents go through a difficult path to the birth of a child or adoption, and therefore such parenthood is especially conscious, balanced and desirable.

<sup>8</sup> Judgment of the European Court of Human Rights of 2010 in the case of “P. B. and J. S. v. Austria”. [http://www.menschenrechte.at/orig/10\\_04/P.B.\\_J.S..pdf](http://www.menschenrechte.at/orig/10_04/P.B._J.S..pdf)

<sup>9</sup> Ahmad Musonnif dkk., “Government Position in Religious Authority Contestation in Indonesia: Reviewing the Government Authority in Determining the Beginning of Islamic Months,” *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (17 Desember 2024): 336–62, <https://doi.org/10.18860/j-fsh.v16i2.27517>.

Positive experiences of parenthood are demonstrated by well-known homosexual couples. For quite a long time, composer and singer Elton John, who has been legally married to producer and director David Furnish since 2005, fought for the right to be a father. The couple even tried to adopt a boy from Ukraine, but due to the mandatory ban on adoption by same-sex couples or unmarried foreigners, which exists in our legislation, the adoption was impossible. Today, the couple is raising two sons, who were born to the couple by a surrogate mother. Singer Ricky Martin, who openly declared his homosexuality in 2010, has two twin sons born to a surrogate mother. The children are being raised in the family of Martin and his partner, artist Jwan Yosef. The adopted child is being raised by designer Tom Ford and Richard Buckley, who are considered one of the strongest unions and have been living together since the late 80s, and since 2014 - in an official marriage.

Despite the positive conclusions of the above-mentioned studies and the positive experience of individual couples, one cannot dismiss the negative factor caused by condemnatory reactions from society. Children raised in same-sex families are discriminated against by their close environment. Such cases are recorded even in the most developed and democratic countries (Great Britain, USA, Germany).<sup>10</sup>

As for Ukraine, the issue of parenthood for same-sex couples is also relevant and debatable. Using the popular electronic democracy tools today, activists registered petition No. 22/150424-ep, which directly concerns the rights of same-sex couples to raise children. The petition was registered on July 18 of this year on the website of the official online representation of the President of Ukraine. The author of the appeal asks to allow LGBT representatives to take children from orphanages under their care, justifying such an initiative by the large number of orphans deprived of parental care and attention. As of early October, the petition had only 299 votes.

As noted, as of now, Ukrainian family law clearly states that adoptive parents cannot be persons of the same sex (Part 3, Article 211 of the Family Code). Similarly, the right of same-sex couples to use reproductive technologies of surrogacy is limited, which is allowed only for married couples (a wife and a husband who have the appropriate medical indicators).

### **European Union human rights decision on same-sex marriage**

One of the most problematic and relevant rights is the right to same-sex marriage, as many countries have begun to implement a nationwide practice of citizens exercising the right to same-sex marriage, where Ukraine ranks not the last in terms of interest in this issue and desire to legalize such an institution.

Let us turn to foreign experience. On April 1, 2001, the law on same-sex marriage came into force in the Netherlands, and therefore the country became the first in the world to legalize marriage in this way. Subsequently, other countries adopted this trend, in particular, as of 2022, same-sex marriage is recognized in more than 30 countries around the world (Spain, Belgium, France, Sweden, Denmark, Canada, Australia, Switzerland). Germany allowed same-sex partnerships back in 2001, and finally legalized same-sex marriage only in 2017, when the so-called “Marriage for All Act” came into force.<sup>11</sup>

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<sup>10</sup> Edi Gunawan dkk., “Interfaith Marriage of North Sulawesi Multicultural Community in Minority Fiqh Perspective,” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 2 (18 Oktober 2024): 384–412, <https://doi.org/10.19105/al-lhkam.v19i2.8072>.

<sup>11</sup> Legalization of civil partnership: world experience and Ukrainian perspectives. 2024. <https://yur-gazeta.com/dumka-eksperta/legalizaciya-civilnogo-partnerstva-svitoviydosvid-ta-ukrayinski-perspektivi.html>.

The 2017 case of *Orlandi and Others v. Italy* concerned six Italian couples who had married abroad (Canada, the USA, the Netherlands), but upon returning to Italy, did not receive permission from the authorities to recognize their marriage under Italian legal conditions. The process also ended in favor of the applicants.<sup>12</sup>

The issue of the balance between the right to family life and the right to marriage in the context of the family rights of same-sex couples has been and remains relevant for more than a decade.

The ECtHR has addressed the issue of interpreting the right to marriage for persons of the same sex in its current case-law, but it does not provide clarity in its position. For example, in the case of *Rees v. The United Kingdom*, in relation to Article 12 of the Convention, the ECtHR did not find a violation because: “the traditional concept of marriage is based on a union between persons of the opposite biological sex.” This argument is almost verbatim duplicated in other similar decisions.

A reference to the Strasbourg Court concerning the right to a same-sex union came before the body in 2010 in the case of *Schalk and Kopf v. Austria*. Although the complaint was ultimately dismissed, the decision that there had been no violation of Article 14 in conjunction with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms by the Austrian authorities was adopted by a margin of only 1 vote (4 to 3). In addition, the text of the decision highlights the Court’s strong positions on the right to same-sex marriage (a complaint in this case was also filed under Article 12 of the Convention, which was also rejected by the Court). The right to a same-sex union, as well as the recognition of same-sex relationships as part of the right to respect for family life, entered the ECHR’s case-law in 2015. It was then, in the case of *Oliari and Others v. Italy*, that the Court first ruled that the inability of a same-sex couple to legally formalize their union was a violation of the right to private and family life.

The Court reached this conclusion on the basis of the fact that, unlike the case of *Schalk and Kopf v. Austria* in 2010, which had a negative decision in similar circumstances, at the time of the proceedings against Italy in 2015, a minority of the Council of Europe countries still did not have a legal form for the recognition of same-sex unions. In addition, the Court based its opinion on the fact that the Italian Constitutional Court, in its statements in other cases, had repeatedly stressed the need for appropriate amendments to Italian family law, and that in Italy there were statistically very many representatives of same-sex love who lived as couples and openly.

In the case of *Schalk and Kopf v. Austria* already mentioned in this scientific work, as well as in some subsequent ones, not recognizing the obligation of the member states of the Council of Europe to legalize same-sex marriages, the ECtHR refers to such arguments as the lack of consensus on this issue among European countries, the significant dependence of the institution of marriage on deeply rooted social and cultural prerequisites in a particular society, and therefore a question of this kind should be left to the discretion of the national authorities, since they know such features and traditions better. Therefore, the Court notes that Article 12 on the right to marry, based on traditional family values, cannot be applied to same-sex marriages. However, such studies do not draw any unambiguous conclusions regarding such an institution. They only mean that, in the opinion of the Court, the right to marry should not in all possible cases be strictly applied only to heterosexual unions.<sup>13</sup>

<sup>12</sup> Judgment of the European Court of Human Rights of 14.12.2017 in case No. 26431/12, 26742/12, 44057/12, 60088/12 “Orlandi and Others v. Italy”. [https://www.olir.it/ricerca/getdocumentpdf.php?lang=ita&Form\\_object\\_id=6884](https://www.olir.it/ricerca/getdocumentpdf.php?lang=ita&Form_object_id=6884)

<sup>13</sup> Musda Asmara dkk., “Tabot Ritual in Islamic Law: Philosophical Reflections on Sunni and Shiite Harmonization,” *AHKAM : Jurnal Ilmu Syariah* 24, no. 2 (1 Desember 2024): 251–62.



In its decisions on the right to same-sex marriage, the Court agrees that if the content of Article 12 of the ECHR is determined in isolation, then the idea of its legitimacy in relation to marriages between two men or two women may arise. However, if we look at the entire Convention as a whole, it becomes clear that it always uses such indefinite prepositions as “all”, “everyone”, “everybody”, “nobody”, etc. Therefore, this allows us to conclude that the terminology in Article 12 was not accidental. Moreover, it is also necessary to take into account the historical context at the time when the Convention was adopted. In the 1950s, marriage was perceived in the traditional sense, as a union between partners of the opposite sex.

The historical background to the creation of the article on the right to marriage in the ECHR, in particular the wording of its text, is interesting in this context.

The definition of the content of the rights specified in the Convention was based, like many other documents in the field of human rights, on the provisions of the Universal Declaration of Human Rights (hereinafter referred to as the UDHR) of 1948. Accordingly, the content of Article 12 of the Convention directly followed from Article 16 of the UDHR. And according to the original plan, it was supposed to duplicate it almost verbatim.<sup>14</sup>

The very first version of the text of the modern norm of the Convention on the right to marry read as follows: “The family, arising from marriage, is the natural and fundamental institution of society. Men and women shall have equal freedom to marry according to the law. Marriage and the family shall enjoy protection from the State and from society”.<sup>15</sup>

One of the main changes, compared to the provisions of the UDHR, was the non-use of the term “family established by marriage.” This was done solely with the aim of protecting the rights of a child born out of wedlock. Furthermore, the separation of the right to marry into a separate article never had any religious connotation. On the contrary, it was aimed at ensuring the right to marry regardless of religious beliefs.<sup>16</sup>

The inclusion of the wording “man and woman” in the text of the article, as well as the use of the term “adults”, was motivated by the desire to ensure women’s rights and their equality with men. The logic behind such actions was to prevent any external influence from parents, or partners, authorities or anyone else on a woman’s free will to enter into marriage. The article was intended to put an end to the then widespread practice of forced marriages for women and girls. The word “adults” should also be understood in conjunction with this fact, establishing the minimum age from which a person can give voluntary consent. According to the travaux préparatoires, this norm was intended to oppose child marriages by using the terms “man” and “woman” to emphasize the maturity and adulthood required for marriage.<sup>17</sup>

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<sup>14</sup> Leheza, Yevhen. Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena. Marchenko, Olesia. (2024). Características de la suspensión o denegación total/parcial del cumplimiento de una obligación en caso de incumplimiento de la contraparte según la legislación civil de Ucrania. *Novum Jus*, 18(2), 131–150. <https://doi.org/10.14718/NovumJus.2024.18.2.5>

<sup>15</sup> Van der Sloot B. Between Fact and Fiction: an Analysis of the Case Law on Article 12 ECHR. *Child and Family Law*. 2014-4. URL: <https://www.ivir.nl/publicaties/download/1561.pdf>

<sup>16</sup> Judgment of the European Court of Human Rights of 22 October 1981 in case No. 7525/76 “Dungeon v The United Kingdom”. URL: <http://ceere.eu/wp-content/uploads/2016/03/CASE-OF-DUDGEON-v.-THE-UNITED-KINGDOM.pdf> art. 21 para. 66

<sup>17</sup> Judgment of the European Court of Human Rights of 09.01.2003 in case No. 39392/98, 39829/98 “L. And V. v Austria”. URL: [http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20L.%20and%20V.%20v.%20Austria%20\\_criminal%20conviction\\_.pdf](http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20L.%20and%20V.%20v.%20Austria%20_criminal%20conviction_.pdf)



Later, during the formulation of the ECHR, the text was constantly changed and shortened, as a result of which most of it was cut out, and the final version of Article 12, known today, retained only the phrase “man and woman”.

Over time, the history of the creation of the ECHR was forgotten, social values changed, and new legal issues arose. And today, the non-use of the phrase “family established by marriage” involuntarily raised a wave of ongoing discussions about the relationship between the right to marriage and the right to respect for family life. And in light of the relevance of the issue of LGBT rights, the words “man and woman” in the text of only this article of the Convention became an argument in favor of understanding marriage as an exclusively heterosexual union.

The main arguments in favor of the fact that Article 12, despite the understanding of marriage as a union exclusively for “a man and a woman”, is part of the content of the right to respect for family life, are primarily Article 1 of the ECHR, which establishes that the rights specified therein apply to all people without exception. Another interpretation is based on the rules of application and interpretation of the ECHR norms, which are specified in procedural and statutory documents of international law, which determine that the understanding and interpretation of the text of the norms may acquire a newer meaning due to the conditions of modernity.

It is important to note that the right to same-sex marriage, according to many scholars, is not only one that is enshrined in Article 12 of the Convention, it can also, and even should, be considered as part of the right to family life, which is recognized as including same-sex relationships. The inability of a same-sex couple in such a context to officially formalize their family union, according to many researchers, is indirect discrimination on the grounds of sexual orientation.<sup>18</sup>

The Court itself, regarding discrimination in the absence of the possibility of concluding a same-sex marriage, determines the presence in certain legislation of an alternative method of legally establishing family rights and obligations in a same-sex couple as a determining factor.<sup>19</sup>

This opinion is found in the above-mentioned case against Austria in 2010. The absence of a violation of the article on the right to marriage was confirmed by the Court unanimously. However, as regards the violation of the right to family life and discrimination, the opinions of the judges were divided. And those who voted “against” substantiate this position as follows: “The applicants complained not only of discrimination from the fact that they were denied marriage, but also, and this is important, because they had no other opportunity to formally formalize their relationship.

Today, it is widely recognized and accepted in society that same-sex couples can enter into stable relationships. The absence of any institution in the legal system that would offer such couples a list of rights and freedoms that is even close to those of marriage must have very good reasons, especially given the trend in Europe towards consolidating legal forms of such unions”.<sup>20</sup>

<sup>18</sup> Korniienko, Maksym, Anatolii Desyatnik, Galina Didkivska, Yevhen Leheza, and Oleksiy Titarenko. ‘Peculiarities of Investigating Criminal Offenses Related to Illegal Turnover of Narcotic Drugs, Psychotropic Substances, Their Analogues or Precursors: Criminal Law Aspect’. *Khazanah Hukum* 5, no. 3 (2023): 205–15. <https://doi.org/10.15575/kh.v5i3.31742>.

<sup>19</sup> Leheza, Yevhen. Dubenko, Oleksandr. Pavlyk, Liudmyla. Prasov, Oleksandr. Pavlov, Volodymyr. (2024). Foreign Experience of Responsibility for Driving Vehicles in Condition of Alcohol Intoxication: International Standards, Administrative and Criminal Aspects. *Revista Jurídica Portucalense*, 161–174. [https://doi.org/10.34625/issn.2183-2705\(35\)2024.ic-08](https://doi.org/10.34625/issn.2183-2705(35)2024.ic-08)

<sup>20</sup> Judgment of the European Court of Human Rights of 24 June 2010 in case No. 30141/04 “Schalk and Kopf v. Austria”. URL: <https://www.juridice.ro/wp-content/uploads/2017/06/001-99605.pdf>

The countries that were among the last to legalize same-sex marriage were Montenegro (2021) and Cuba (in 2022, after a national referendum in which they voted for a new family code that included a provision allowing same-sex couples to marry).

In this context, we cannot ignore the countries that are against the legalization of same-sex marriage, and moreover, about 64 countries (almost half of them in Africa) have criminalized same-sex relationships (Nigeria, Uganda). The main arguments against same-sex marriage are that: marriage is defined as the union of a man and a woman, and changing this contradicts natural law and risks undermining both the institution of marriage and the role of the family in sustaining society, and legalization denies the central role of marriage as a step towards procreation.<sup>21</sup>

The key role of religion as the moral foundation of society is undermined: same-sex marriage is fundamentally at odds with the religious views of many people, so legalizing it would offend deeply held beliefs; Christian, Jewish, and Islamic leaders oppose same-sex marriage and point out that it contradicts scripture.

All rights have limits: talking about equal rights in this context makes no sense; if that were the case, polygamous or incestuous marriages would also have to be legalized.

As for Ukraine, the Constitution of Ukraine in Article 21 proclaims that all people are free and equal in their dignity and rights. At the same time, Article 51 declares: marriage is based on the free consent of a woman and a man.<sup>22</sup> The Family Code of Ukraine emphasizes that marriage is a family union of a woman and a man, registered in the state registration of civil status acts (Part 1 of Article 21), and the family is the primary and fundamental unit of society (Part 1 of Article 3).<sup>23</sup>

Therefore, the marriage of same-sex couples is not provided for by the legislation of Ukraine. However, the issue of same-sex marriage began to gain momentum after the petition of June 3, 2022 calling for the legalization of this institution gained the necessary 25 thousand votes, and the President, in turn, responded. Head of State Volodymyr Zelenskyy reported that the Government was developing options for decisions regarding the legalization of registered civil partnerships in Ukraine as part of the work to establish and ensure human rights and freedoms, referring to the fact that the Constitution of Ukraine cannot be changed under martial law, and the Prime Minister must inform about the relevant results.<sup>24</sup>

Ultimately, the issue began to be resolved, as on March 13, 2023, a bill on the institution of registered partnerships was submitted to the Verkhovna Rada [8]. Thus, in parallel with same-sex marriages, civil partnerships were legalized in many countries (France, the Netherlands, Switzerland, Great Britain). Using the experience of the aforementioned countries, the deputies developed a draft law, which defines that a registered partnership is a voluntary family union of two adults, of the same or different sexes, based on mutual respect, mutual understanding, mutual support, and mutual rights

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<sup>21</sup> Dymko, Iegor, Arsen Muradian, Yevgeny Leheza, Andrii Manzhula, and Oleksandr Rudkovskiy. 'Integrated Approach to the Development of the Effectiveness Function of Quality Control of Metal Products'. *Eastern-European Journal of Enterprise Technologies* 6, no. 3 (90) (2017): 26–34. <https://doi.org/10.15587/1729-4061.2017.119500>.

<sup>22</sup> Arguments for and against gay marriage. 2024. <https://www.debatingeurope.eu/focus/arguments-for-and-against-gay-marriage/#.ZGTQv3ZBy5e>.

<sup>23</sup> Family Code of Ukraine dated 10.01.2002 № 2947-III. <https://zakon.rada.gov.ua/laws/show/2947-14/conv#Text>.

<sup>24</sup> Petition "Legalization of same-sex marriage" dated 03.06.2022 No. 22/144562-ep. <https://petition.president.gov.ua/petition/144562>.

and obligations. Registered civil partners will be considered close relatives and will enjoy almost the same rights as spouses.<sup>25</sup>

In the explanatory note, the authors note that a neutral, new institution of registered partnerships in Ukraine will allow to regulate the relationship of the state with partners as part of society, to consolidate their rights and obligations. And at the same time, no changes need to be made to the regulation of marital relations, which may be sensitive at this stage for practitioners of certain religious beliefs. As of 01.05.2022, the draft law is at the review stage, however, we believe that it will be adopted in the near future, and registered partnerships in Ukraine will be legalized - as one of the steps towards realizing the right to same-sex marriage and implementing European standards.<sup>26</sup>

In addition, we find it appropriate to pay attention to the current practice of the European Court of Human Rights, because the interpretation of the norms of the Convention for the Protection of Rights and Fundamental Freedoms concerning the right to same-sex marriage is extremely important, and can also serve as a guideline in the legalization of same-sex marriage.<sup>27</sup>

On 23 January 2023, the judgment in the case of *Macate v. Lithuania* concerning a children's book of fairy tales containing storylines about same-sex marriage was published.<sup>28</sup> After the book was published in 2013, its distribution was suspended. It was resumed a year later after the book was declared dangerous for children under 14.

The applicant brought an action against the University (publisher of the book), in which she challenged the decision to suspend the distribution of the book. However, the domestic courts dismissed the action.

Relying on Article 10 of the Convention (right to freedom of expression) taken separately and in conjunction with Article 14 of the Convention (prohibition of discrimination), the applicant complained about the temporary suspension of the distribution of her book and its subsequent labelling as harmful to children, stating that such measures had been taken solely because the book spoke positively about same-sex relationships.

The Court emphasised the violation of Article 10 of the Convention: any measures taken solely on the basis of sexual orientation have wider social implications. Such restrictions are therefore incompatible with the concepts of equality, pluralism and tolerance inherent in a democratic society.

One of the most striking examples is also the judgment of 1 June 2023 in the case of *Maymulakhin and Markiv v. Ukraine*.<sup>29</sup> Since 2010, the applicants, Andriy Maimulakhin and Andriy Markov, have been living together as partners. In 2014, they decided to apply to the ECHR because of the impossibility of legalizing their relationship in Ukraine. In considering the case, the court noted that "unlike heterosexual couples who have the right to legal recognition and protection... the applicants have neither access to marriage in

<sup>25</sup> Leheza, Yevhen, Larysa Yerofieienko, and Volodymyr Komashko. 'Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects'. *Revista Justiça Do Direito* 37, no. 3 (2023): 157–72. <https://doi.org/10.5335/rjd.v37i3.15233>.

<sup>26</sup> Draft Law on the Institute of Registered Partnerships dated 13.03.2024 No. 9103. <https://itd.rada.gov.ua/billInfo/Bills/Card/41497>.

<sup>27</sup> Rezvorovych, K., Gorinov, P., Sokol, M., Kutsyk, K., & Opatskyi, R. (2023). Peculiarities of the Legislative Regulation of the Protection of Rights of Workers on the Background of Russian Military Aggression (the Ukrainian Experience). *Review of Economics and Finance*, 21. <https://doi.org/10.55365/1923.x2023.21.60>

<sup>28</sup> Case *Macate v. Lithuania* of 23 January 2023 No. 61435/19. [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-13955%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-13955%22]})

<sup>29</sup> Case of *Maymulakhin and Markiv v. Ukraine* of 1 June 2023 No. 75135/14 [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-224984%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-224984%22]})

Ukraine nor the possibility of obtaining any alternative form of legal recognition”.<sup>30</sup>

In considering the case, Ukraine acknowledged that the applicants were deprived of any possibility of regulating the main aspects of their life as spouses, with the exception of certain property aspects, and only as private individuals concluding contracts in accordance with civil law.<sup>31</sup>

At the same time, the ECHR noted that “such private contractual agreements cannot be considered as providing spouses with recognition and the necessary protection, since they have a limited scope and do not provide for some of the basic needs that are fundamental for regulating relations between spouses”.<sup>32</sup>

The Court also took into account the clear trend at European level towards legal recognition and protection of same-sex couples in the member States of the Council of Europe, thirty of which provide for the possibility of legal recognition of same-sex couples. Thus, in connection with the unjustified refusal to grant the applicants, as a same-sex couple, any form of legal recognition and protection compared to different-sex couples, there was discrimination against the applicants on the grounds of their sexual orientation.

Accordingly, the ECHR found a violation by Ukraine of Art. 14 (prohibition of discrimination) in conjunction with Art. 8 (right to respect for private and family life) of the Convention for the Protection of Human Rights and Fundamental Freedoms. Each applicant was awarded 5,000 euros in compensation.<sup>33</sup>

### Reforming same-sex marriage in Ukraine

About 55% of Ukrainians are not against civil partnerships for same-sex couples, but without the right to jointly adopt children, according to a survey by the Kyiv International Institute of Sociology.<sup>34</sup>

The introduction of civil partnerships is supported by 28.7% of respondents. Another 25.6% of people have a neutral attitude and 35.7% are against it. Two years ago, the difference between the number of people who support partnerships for same-sex couples and those who do not like it was 18.3% in favor of the latter. However, in 2024 this figure decreased to 7%.

**Table 1. Do you support the introduction of a registered partnership for same-sex couples, similar to a regular marriage, but without the right to adopt**

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<sup>30</sup> Leheza, Yevhen, Yankovyi, Mykola, Medvedenko, Nadiia, Vaida, Taras. Koval, Marat. (2024). Application of Artificial Intelligence in Motivating Court Decisions: Legal Basis and Foreign Experience. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 24(1), 58–69. <https://doi.org/10.30631/alrisalah.v24i1.1531>

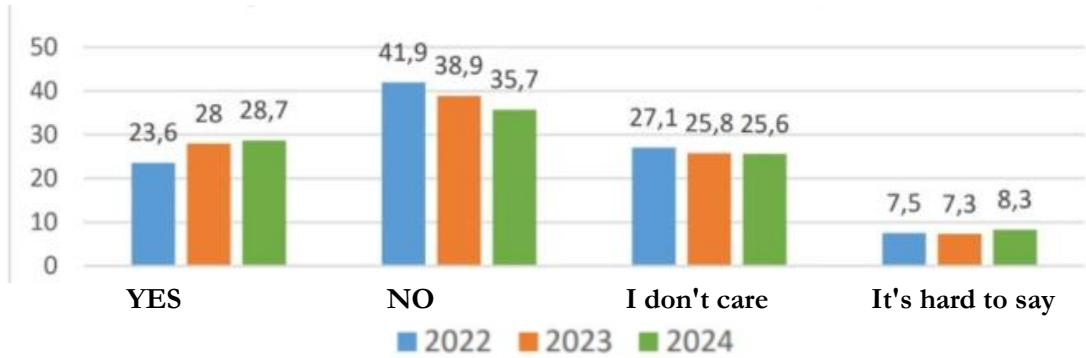
<sup>31</sup> Leheza, Yevhen, Yurovska, Viktoriia, Zamryha, Artur, Ulozhenko, Vadym, Bohdan, Bohdana 2024. Administrative and legal regulation of the status of internally displaced persons in ukraine during the war. *University of western Australia law review*. 51 (2). 297-313. <https://www.uwa.edu.au/schools/-/media/documents/uwa-law-review/volume-51-issue-2/leheza-et-al-formatted.pdf>

<sup>32</sup> Nalyvaiko, L., Pryputen, D., Verba, I., Lebedieva, Y., & Chepik-Trehubenko, O. (2023). The european convention on human rights and the practice of the ecthr in the field of gestational surrogacy. *Access to Justice in Eastern Europe*, 6(2). <https://doi.org/10.33327/AJEE-18-6.2-n000203>

<sup>33</sup> Volobuieva, Olena, Yevhen Leheza, Vita Pervii, Yevhenii Plokhuta, and Roman Pichko. ‘Criminal and Administrative Legal Characteristics of Offenses in the Field of Countering Drug Trafficking: Insights from Ukraine’. *Yustisia Jurnal Hukum* 12, no. 3 (2023): 262–77. <https://doi.org/10.20961/yustisia.v12i3.79443>

<sup>34</sup> Dudyk, I., Rezvorovych, K., Melnyk, V., Gayevaya, O., & Tumalavičius, V. (2024). Strategies for Ukraine’s Legal Integration into the EU: Learning from the Experience of Central and Eastern Europe. *Evropský politický a právní diskurz*, 11, 6, 13-21. <https://doi.org/10.46340/eppd.2024.11.6.2>

children?



The majority of Ukrainians maintain an indifferent-neutral or positive attitude towards LGBT people, and the indicators have not changed since 2023 (all differences are within the statistical error range). Thus, 14% of all Ukrainians have a positive attitude towards LGBT people (in 2023 – 15.5%), 47% are indifferent, and another 6% have not decided on their position. That is, in total, those who have an indifferent / undecided / positive attitude are now 68% (in 2023 it was 66%).

At the same time, a third of Ukrainians (32%) have a negative attitude towards LGBT people.

**Table 2. Do you support the introduction of a registered partnership for same-sex couples, similar to a regular marriage, but without the right to jointly adopt children? (% among respondents in the relevant socio-demographic category)**

100% у порядку	2023 year				2024 year			
	Yes	No	I don't care	It's hard to say.	Yes	No	I don't care	It's hard to say.
Region								
Western	22.5	44.8	26.1	6.7	25.7	43.2	19.3	11.8
Central	31.5	35.2	26.3	6.9	29.7	32.5	28.6	9.2
Southern	30.7	37.2	24.7	7.4	31.3	31.7	27.3	9.7
Eastern	23.8	39.7	26.0	10.5	27.0	36.5	27.6	8.9
Gender								
Male	26.0	39.3	27.2	7.5	24.3	39.6	26.8	9.2
Female	29.6	38.6	24.7	7.1	32.3	32.4	24.5	10.7
Age								
18-29 years	35.0	25.5	37.5	2.0	37.3	24.9	32.8	5.0
30-39 years	37.2	37.0	19.4	6.4	37.5	33.2	26.3	3.0
40-49 years	32.5	33.7	24.9	8.9	28.3	37.3	23.2	11.2
50-59 years	26.2	40.3	24.3	9.2	30.9	36.6	27.3	5.2
60-69 years	17.9	47.7	25.8	8.7	18.6	40.6	21.2	19.6
70+	13.8	52.9	24.6	8.7	14.7	43.5	22.1	19.8

Type of settlement								
Village	22.5	42.8	27.5	7.2	19.5	43.6	25.3	11.6
SMT / city up to 20 thousand	29.5	41.2	24.4	4.8	31.9	32.9	25.1	10.2
City 20-99 thousand	29.5	38.8	22.6	9.1	32.1	39.2	17.5	11.2
City 100 thousand and more	31.1	35.4	25.9	7.5	33.7	29.9	27.9	8.6
Education								
Complete secondary and lower	20.7	42.1	29.5	7.6	24.5	40.7	23.8	11.1
Special secondary	24.4	44.0	24.8	6.8	21.1	41.1	25.8	12.0
Higher	34.2	34.3	24.4	7.1	35.1	30.8	25.9	8.2
Main occupation								
Worker	26.3	39.3	26.4	7.9	24.5	38.5	27.3	9.8
Clerk	39.0	33.0	26.8	1.2	31.5	31.1	29.5	7.9
Specialist	40.8	33.9	20.4	4.9	37.2	26.7	28.9	7.2
Self-employed / entrepreneur	37.8	26.3	25.2	10.7	39.4	34.9	22.0	3.7
Army, police	27.1	40.0	30.9	2.0	31.0	37.0	29.4	2.6
Household	33.9	39.9	20.6	5.6	32.4	31.4	28.5	7.8
Retired	16.2	48.8	25.2	9.8	17.7	43.7	21.2	17.4
Student	22.4	23.6	53.4	0.7	44.7	18.1	34.6	2.6
Unemployed	20.8	40.1	28.1	10.9	30.1	36.7	18.9	14.3
Family income								
Very low	---	---	---	---	14.5	38.1	35.4	12.0
Low	---	---	---	---	22.2	37.6	25.7	14.4
Below average	---	---	---	---	23.4	37.8	25.8	13.0
Average	---	---	---	---	30.9	33.9	27.0	8.3
High	---	---	---	---	38.2	32.1	24.9	4.7
Very high	---	---	---	---	35.7	42.9	17.9	3.5

In Ukraine, the legal status of same-sex couples is not currently recognized, although discussions are underway regarding the possibility of introducing legislation on civil partnerships. Therefore, these people remain legally unprotected, since there are no separate norms in the legislation that would recognize their rights.<sup>35</sup>

Same-sex partners cannot jointly own property under the conditions provided for spouses. In the case of acquiring joint property in Ukraine, such couples are faced with the need to register property rights as co-owners or through civil contracts.

Partners can own joint property through purchase and sale agreements or other legal mechanisms, but without special rights to live together and use the property. Also, same-sex partners do not have priority in inheritance after the death of their partner. Inheritance is possible only through a will, which is a limitation compared to heterosexual spouses.

As for non-property rights, Ukrainian legislation does not recognize the right of same-sex partners to make decisions on medical or legal matters on each other's behalf.

<sup>35</sup> Sotska, Alla, Serhii Tryhub, Tetiana Voloshanivska, Vadym Kolomiets, and Krystyna Rezvorovych. 'Legal Regulation of the Protection Of Children's Rights By European Standards: a Comparative Perspective'. *Syariah: Jurnal Hukum dan Pemikiran*. 24, no. 2 (2024). 359-375. <https://doi.org/10.18592/sjhp.v24i2.13973>.

This makes it difficult to access information or make decisions in critical situations. After all, same-sex partners do not have automatic access to medical information or the right to make decisions about the treatment of their partner in the event of his or her incapacity.<sup>36</sup>

It is also impossible to make joint decisions regarding children, custody or establishing paternity, and the right to cohabitation and use of housing is not regulated

The bills providing for the introduction of civil partnerships have not yet found widespread support, although gradual shifts in public opinion demonstrate some support for the ideas of equal rights. Thus, in May 2023, a bill was submitted that provided for the introduction of registered civil partnerships, which could include same-sex couples. However, this initiative was not approved.

Despite the lack of legislative recognition of same-sex partnerships in Ukraine, discussions are underway on the introduction of civil partnerships, which could improve their legal status. There are gradual steps towards reforming legislation aimed at expanding the rights of the LGBTQ+ community. The proposed draft laws on civil partnerships could bring the country closer to international human rights standards, meeting the requirements of the European Union and democratic principles.

There are many countries in the world, especially Western ones, that have achieved a high level of legal inclusion, ensuring equal property and non-property rights for homosexual couples with heterosexual spouses. Recognition of same-sex marriages or civil partnerships allows same-sex couples to fully exercise their property and non-property rights. This approach reflects the priorities of Western states regarding the legal equality of all citizens, regardless of their sexual orientation.

The Western approach to the rights of same-sex couples is based on the principles enshrined in international human rights standards, including the UN Universal Declaration of Human Rights and the Convention on Human Rights and Fundamental Freedoms. These standards require equal treatment for all citizens and the protection of their personal freedoms, including the right to marriage, privacy, property, and freedom from discrimination. It is precisely the compliance of the Western approach with human rights principles that is an important component of achieving a more just society, where all couples, regardless of their orientation, have equal rights and opportunities.

## CONCLUSION

The right to same-sex marriage continues to face implementation challenges, even as an increasing number of countries adopt legal frameworks recognizing same-sex unions. This development reflects a growing demand for equality, including within unique social contexts such as Ukraine's military community, where LGBT personnel advocate for recognition of their relationships. The expansion of civil partnerships and marriage rights for same-sex couples signals a broader shift toward inclusivity in the legal recognition of family life.

Nevertheless, the European Court of Human Rights (ECtHR) maintains a differentiated interpretation of the right to marriage under Article 12 of the European Convention on Human Rights. The Court continues to reserve this right exclusively for opposite-sex couples, while acknowledging that same-sex relationships fall within the scope of "private life" under Article 8. The landmark 2015 decision marked a turning point, where the ECtHR for the first time recognized same-sex relationships as constituting "family life," thereby advancing a more nuanced understanding of rights protection.

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<sup>36</sup> Artyukhov, A., Volk, I., Surowiec, A., Skrzypek-Ahmed, S., Bliumska-Danko, K., Dluhopolskyi, O., & Shablysty, V. (2022). Quality of Education and Science in the Context of Sustainable Development Goals—From Millennium Goals to Agenda 2030: Factors of Innovation Activity and Socio-Economic Impact. *Sustainability*, 14(18), 11468. <https://doi.org/10.3390/su141811468>



While the ECtHR stops short of imposing a pan-European obligation to legalize same-sex marriage, its jurisprudence encourages member states to develop legal instruments—such as civil partnerships—that ensure legal recognition and protection of same-sex couples. As such, despite persistent differences in legal interpretations and political resistance in some jurisdictions, the trajectory of European human rights law appears to support a gradual expansion of legal protections. It is therefore reasonable to expect that, over time, same-sex relationships—whether through marriage or civil unions—will gain broader acceptance and legal recognition across the region, contributing to the fuller realization of fundamental rights and freedoms.

It can be concluded that separate mutual property rights for same-sex couples began to be recognized by the European Court of Human Rights at the beginning of the third millennium. However, the latter were considered part of the right to respect for a person's private life, while similar relationships in opposite-sex "traditional" couples were recognized as family life.

The first precedent of recognition by homosexual partners of the right to same-sex union, and relations in such couples - family life, the right to respect for which is enshrined in the ECHR, took place in the court practice of the ECHR in 2015. The right to marriage enshrined in Article 12 of the Convention continues to be interpreted by the Court as a form of family formation for exclusively opposite-sex couples. At the same time, the ECHR does not deny the right to same-sex marriage, but refers this issue to the internal competence of the member countries of the Council of Europe.

However, such marriages remain inconsistent with the original purpose and nature of marriage between men and women.

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