



Opinion about Constitutional Amendments Related to Marriage

The below signatory organizations are concerned by the initiative presented in the Constitutional Commission for definition of marriage in the Constitution. The proposed formulation carries homophobic connotation and can potentially foster negative sentiments towards LGBT people. Such amendments to the Constitution will have a chilling effect on the human rights situation in Georgia. If adopted, negative effects of these new regulations must be outweighed by legalization of civil partnership as a form of legal recognition of same-sex marriage.

Over the recent years, different political groups have actively exploited the issue of prohibition of same-sex marriage for populist reasons; in an attempt to score political

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points they appealed to public's homophobic sentiments and the desire to preserve traditions and have artificially created a problem that didn't exist in the first place. Here we must also note that exploitation of protection of traditional marriage and prohibition of same-sex marriages has been a component of Russian and anti-Western propaganda for many years.

The said initiative is particularly unreasonable considering that legal prohibition of same-sex marriage already exists, while marriage equality has never been demanded by the LGBT groups. While homophobic and transphobic crimes are frequent in Georgia and hate crimes are not effectively investigated, placement of a stiff restriction on rights of LGBT people will directly encourage homophobic sentiments and aggravate the human rights situation of LGBT groups.

Constitutional prohibition of same-sex marriage will affect international image of Georgia and will be criticized by international human rights organizations. Over the recent years, a trend of improvement of legal recognition of same-sex couples has been evident in most European countries. Although marriage equality is not a common European standard, the European Court of Human Rights jurisprudence (Vallianatos and Others v. Greece, also Oliari and Others v. Italy) demonstrates the trend of legal recognition of same-sex couples.¹ In 2015, the European Court held that lack of legal norms necessary for recognition of homosexual couples amounts to a violation of Article 8 of the Convention – Right to respect for private and family life.

By prohibiting theoretical possibility of marriage equality without having any form of legal recognition of same-sex couples, Georgia will contradict the ECHR standard. If the constitutional amendments about marriage are adopted, the Constitution must also guarantee civil partnership for same-sex couples. We believe that the following sentence should be added to the Constitutional provision about marriage:

“other forms of cohabitation shall be regulated by the law.”

This way, constitutional prohibition of marriage will no longer be viewed as a

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restriction of rights of LGBT people and the legislation will still supply other important legal guarantees to them (inheritance rights, property rights, spousal support, right to visit a hospitalized partner, right to visit an imprisoned partner, etc.). Some European countries already practice such regulations – for instance, when Croatia passed the Constitutional prohibition of same-sex marriage it also adopted the law about civil partnership of same-sex couples.

In addition, to ensure meaningful equality it is important that the list of protected characteristics provided in the Constitution must also include sexual orientation and gender identity. Because such interpretation of the applicable Article by the Constitutional Court already exists, it is peculiar that the Constitutional Commission is reluctant to expand the list of protected characteristics under the right to equality.

International Society for Fair Elections and Democracy (ISFED)

Equality Movement

Open Society - Georgia Foundation

Human Rights Center

Georgian Young Lawyers' Association

Media Development Fund (MDF)

Transparency International - Georgia

Georgian Democratic Initiative (GDI)

Partnership for Human Rights (PHR)

Sapari Union

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Women's Initiatives Support Group (WISG)

Human Rights Education and Monitoring Center (EMC)