

## **POLICY BRIEF**

### **on the introduction of registered partnership for same-sex couples in Ukraine**

#### **1. LEGISLATIVE SITUATION**

The main document regulating family relations in Ukraine is the Family Code of Ukraine (hereinafter abbreviated as FCU). Article 3 “Family” of this Code declares that “A family consists of persons who live together, are connected by common life, have mutual rights and obligations” (Part 2) and that “A family is created on the basis of marriage, blood relationship, adoption as well as on other grounds not prohibited by law and such that do not contradict the moral principles of society” (Part 4). Thus, in theory, same-sex partners living together as a family couple fall under the definition of family. It is worth noting that Ukrainian courts have already issued decisions on the recognition of de facto family relationships between cohabitants of the same sex (both women and men), although the presence of a remark about grounds “that do not contradict the moral principles of society” allows for arbitrary interpretation and leads to legal uncertainty of this provision, since no law defines exactly what constitutes these principles. However, this definition of the family has no practical significance due to the fact that the remaining articles of the FCU regulate relations not between family members in general, but between specific family members and close relatives --- for example, between parents and children, sisters and brothers, spouses, adoptive parents and adopted children, etc.

Article 21 of the Family Code of Ukraine defines marriage as “a family union of a woman and a man” thus effectively making it impossible to conclude a marriage between persons of the same sex. At the same time, the FCU recognizes certain rights of spouses even for cohabitants of different sexes who are not married to each other: Article 74 “The right to property of a woman and a man who live as a family not being in marriage between themselves or in any other marriage” determines that “property acquired by them during their cohabitation belongs to them under the right of joint co-ownership property” like for legal spouses; Article 91 “The right to maintenance of a woman and a man who are not married to each other” equates such permanent family partners with legal spouses with regard to maintenance in case of incapacity; finally, Article 211 “Persons who may be adopters” allows them to jointly adopt children. Meanwhile, the FCU does not contain any mention of same-sex family partners, and Article 211 expressly provides that “Adopters may not be persons of the same sex” (Part 3) thus establishing direct discrimination against same-sex family partners.

The Criminal Procedure Code of Ukraine (CPCU), which was adopted in 2013, unlike the Family Code, does not refer to “moral principles of society” when defining the concept of “close relatives and family members” among which it mentions “persons who live together, are connected by common life and have mutual rights and obligations, including persons who live together but are not married” (Article 3, Part 1, Paragraph 1). Theoretically, same-sex family partners also fall under this definition, although, as far as is known, this has not yet been verified in practice. The definition of the concept of “close relatives and family members” in the CPCU is of great practical importance, because it, in particular, allows the persons listed in the mentioned article of the code to refuse to give evidences or explanations against their relatives in accordance with Article 63 of the Constitution of Ukraine, and is also applied in all cases when it comes to close relatives and family members in criminal law.

Anyway, it should be noted that the absence of concepts such as “same-sex civil partner” and “same-sex civil partnership” in Ukrainian legislation means that any recognition of such relationships requires a decision of the relevant competent authority or official in each particular case. Likewise, the absence of any form of state registration for same-sex family partnership requires additional factual proof of the existence of family relationships in all cases when it comes to the recognition of any rights and obligations of such partners (usually, in court proceedings).

Although numerous references to “family members” and “close relatives” are scattered throughout many Ukrainian laws, there is no unified definition of these concepts in domestic legislation. In its decision No. 5-пн/99 dated June 3, 1999, the Constitutional Court of Ukraine (CCU) stated this and noted that “Regarding the concept of ‘family member,’ the Constitutional Court of Ukraine proceeds from the objective difference of its content depending on the branch of legislation.” Providing an official interpretation of the term “family member of a military serviceman, police officer, personnel of the state fire guard,” the CCU applied

a legal analogy and determined that the first group of family members includes the husband/wife, parents, and children, and the second group “consists of other persons who constantly live with them and run a joint household.”

In addition to the rights and obligations established in the Family Code, Ukrainian legislation contains a large number of provisions relating to spouses and other family members and close relatives contained in other laws. There is no way to provide an exhaustive list of them, but it can be noted that they, inter alia, relate to such spheres of life as:

- socio-economic issues — for example, social assistance for the family, bank loans (in particular, mortgages for young families), pension or compensation after the loss of a breadwinner, etc.;
- inheritance without a will and compulsory share in inheritance, taxation of inheritance;
- health care, namely the decision of important medical issues and the right of admission to a sick close relative;
- employment — for example, the right of wives/husbands of military personnel to take leave at a time convenient for them, the right to take leave to care for a sick relative by blood or marriage, etc.;
- representation of interests and the right to refuse to testify against a close relative in law enforcement and judicial bodies;
- simplified procedure for immigration and obtaining citizenship for persons who are married to a citizen of Ukraine.

Due to the lack of any form of legal recognition, same-sex family couples are either completely deprived of these rights or their implementation is so complicated that has no practical importance. It is worth noting that in late 2015, the Ukrainian government officially recognized the existence of this problem and the need for its quick solution by adopting the Action Plan for the Implementation of the National Strategy on Human Rights until 2020, in which Paragraph 105 provided for Action 6 — “Development and submission to the Cabinet of Ministers of Ukraine of a draft law on the legalization of registered civil partnerships in Ukraine for opposite-sex and same-sex couples, taking into account property and non-property rights, in particular ownership and inheritance of property, maintenance of one partner by the other in case of incapacity, the constitutional right not to testify against one's partner” with the term of execution in II quarter of 2017. However, during the Plan's validity period no government body even started the implementation of this action.

In 2021, a new Action Plan for the Implementation of the National Strategy on Human Rights for 2021-2023 was approved, which preserved the relevant provision that was not implemented during the previous document's validity (Paragraph 33, the execution deadline — December 2023). A similar clause is also contained in the draft Ukraine Recovery Plan (Section “Human Rights”: “Introduction of the Institute of Registered Civil Partnership,” the execution deadline — December 2023).

According to the Law of Ukraine “On the implementation of decisions and application of the practice of the European Court of Human Rights,” decisions of the ECtHR are mandatory to implement for Ukraine (Article 2), and courts apply the practice of the ECtHR as a source of law when considering cases (Article 17). Article 13 of the Law stipulates that the state also has to take measures of a general character “in order to ensure the state's compliance with the provisions of the Convention, the violation of which is established by the Decision, to ensure the elimination of systemic deficiencies that are the basis of the violation identified by the Court, as well as to eliminate the grounds for submitting applications to the Court against Ukraine, caused by the problem that was already the subject of consideration in the Court.” Such measures include “amendments to the current legislation and the practice of its application.”

At the time of writing this Policy Brief (February 2023), the European Court of Human Rights was going to consider case *Maymulakhin and Markiv v. Ukraine* (Application 75135/14) in which the plaintiffs complained about the violation of their right to private and family life (Article 8 of the European Convention on Human Rights) due to the absence of any legal form of recognition of same-sex couples' family relations in Ukraine. On January 17, 2023, the Grand Chamber of the ECtHR passed a decision on the similar case *Fedotova and others v. Russia* (Applications 40792/10, 30538/14 and 43439/14), for the first time directly stating in its decision that Article 8 of the European Convention of Human Rights should be

interpreted in such a way that it obliges Council of Europe member states to have some legal form of recognition of same-sex family partners which gives them the essential rights of family members.<sup>1</sup>

The decisions of the Grand Chamber of the ECtHR, in particular, provide an official interpretation of the European Convention on Human Rights' provisions which is used while adopting decisions of the ECtHR. In addition to the mentioned case *Maimulakhin and Markiv v. Ukraine*, which has already been communicated and is being prepared for consideration, few other similar complaints against Ukraine have been submitted to the ECtHR. After the decision in the case *Fedotova et al. v. Russia*, it is obvious that Ukraine will be found guilty of violating Article 8 of the ECHR that will entail corresponding negative financial and political consequences for our country. In particular, the problem of violation of human rights guaranteed by the ECHR will certainly affect the process of its achieving full membership in the European Union.

## 2. SOCIO-POLITICAL SITUATION

Legal institutions such as marriage are, in their essence, only the legalization of existing social relations; they do not create a new reality, but only reflect it. Despite the lack of legal recognition of same-sex families in Ukraine, they are formed and exist simply because homosexual people feel the need for family life.

Currently, there are no reliable factual data both on the total number of LGBT people in Ukraine and on the number of married couples formed by them, so we can only rely on rough estimates based on the general ideas of modern science about same-sex relationships in society. Although the exact share of LGBT people in the population is unknown, various scientific studies estimate it at 2-10%.<sup>2</sup> According to a very rough estimate given in a 2009 study by Nash Svit Center, the number of same-sex couples in Ukraine may already amount to 100-200 thousand.<sup>3</sup>

As already mentioned, Ukrainian legislation does not regulate the relations of same-sex couples which de facto have all the signs of a stable and long-term family relationship. This means that from the legal point of view partners in same-sex families are actually considered as strangers to each other. They do not have the right to joint co-ownership of jointly acquired property, if it was purchased or registered only by one of them. Thus, for example, if a partner, who was registered as the sole owner of the dwelling, dies, the other may simply end up on the street. All these problems became very relevant and intensified in connection with the Russian invasion. In particular, painful problems may consist in the lack of state assistance after the death of the partner (for example, a military serviceperson), the inability to make vital decisions for the partner, to freely dispose of joint property, to receive an inheritance from the partner without a will, etc.

Children raised by same-sex couples constitute a separate topic. Without touching on the issue of joint adoption of children, it should be noted that same-sex partners quite commonly jointly bring up children of one of the partners, and in the case of female couples, it is a very widespread phenomenon. The lack of opportunity to formalize family relations between partners and the ban on adoption of children by persons of the same sex lead to blatant discrimination of such children by the state. The partner who is not the child's biological parent is deprived not only of parental rights and privileges but also of obligations and options regarding this child – for example, s/he cannot receive state assistance for upbringing or parental leave if necessary. If the biological mother of the child, who was raised by her together with her partner, dies, the child actually loses both parents at once.

A 2009 study by Nash Svit Center found that about 2/3 of respondents had same-sex partners,<sup>4</sup> with about half of such couples living together and running a joint household.<sup>5</sup> About a tenth of the respondents raised children together with their partner (women twice as often as men).<sup>6</sup> In general, about a sixth of the respondents had children, and slightly more than half did not have them, but would like to have.<sup>7</sup> In their

---

<sup>1</sup> <https://hudoc.echr.coe.int/eng/?i=001-222750>, paras 178-180, 189, 190.

<sup>2</sup> Please see, for example, <https://williamsinstitute.law.ucla.edu/publications/how-many-people-lgbt>

<sup>3</sup> [https://gay.org.ua/publications/same\\_sex\\_partnership.pdf](https://gay.org.ua/publications/same_sex_partnership.pdf), p. 25.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid., p. 34.

<sup>6</sup> Ibid., p. 39.

<sup>7</sup> Ibid., p. 16.

life as a same-sex married couple, the respondents faced such problems as:

- impossibility to jointly obtain a loan or ownership of property — 17%;
- impossibility to legally settle property disputes when separating from the partner — 11%;
- lack of right not to testify against the partner — 10%;
- inability to receive an inheritance after the death of the partner — 10%;
- inability to adopt a partner's child — 8%;
- refusal in social assistance in case of the need to care for a partner's child — 8%;
- refusal in rent housing — 7%.<sup>8</sup>

If there were some form of state registration of same-sex couples in Ukraine, 77% of the respondents would like to formalize their relationship,<sup>9</sup> particularly 83% of those who already have a permanent partner, and 66% of those who do not.<sup>10</sup> 51% of the respondents believed that same-sex marriage should be allowed in Ukraine, 38% agreed with the introduction of registered partnerships for same-sex couples.<sup>11</sup>

A sociological survey conducted in May 2022 by the Kyiv International Institute of Sociology (KIIS) commissioned by Nash Svit Center demonstrated a radical improvement in the attitude of Ukrainian society towards LGBTQ people in recent years. Compared to the results of the previous similar survey in 2016, the number of LGBT-friendly responses increased by two to five times. In particular, support for the introduction of registered civil partnership for same-sex couples increased fivefold — from 4.8% to 23.6%, and the number of those who are indifferent to this issue increased one and a half times — from 18% to 27.1%. Thus, less than half of Ukrainians, namely 41.9%, were against same-sex partnerships, while in 2016 those constituted 69%.<sup>12</sup>

In February 2022, another survey conducted by the Center for Social Expertise of the Institute of Sociology of the National Academy of Sciences of Ukraine was completed. Its results turned out to be quantitatively different, but they qualitatively confirm the conclusions of the KIIS survey about a significant improvement in the attitude of Ukrainian society towards its LGBTQ fellow citizens. In particular, 27% definitely supported the right of same-sex couples to state registration of their family relationship, and 26% supported such a right with certain exceptions.<sup>13</sup>

Similar results were also obtained in a study by the National Democratic Institute conducted in January 2023.<sup>14</sup> 56% generally agreed that LGBTQ people have the right to register their family relationships in the form of civil partnerships; 24% disagreed with this. The relative majority of respondents (44%) generally supported even the right of same-sex partners to enter into a regular marriage; 36% were against it.

### 3. INTERNATIONAL EXPERIENCE

As of February 2023, 34 countries in the world had laws on regular marriage that also extended to same-sex couples; same-sex marriages were not allowed in Israel, but such marriages concluded abroad under the laws of other countries were recognized. Another fourteen countries of the world, not allowing to enter into ordinary marriages between persons of the same sex, introduced for such couples a legal form of registration for their marital relations alternative to regular marriage (in different jurisdictions it is called differently: registered partnership, civil union, domestic partnership, life partnership etc). In Europe, same-sex marriages were legalized in 19 countries, and in some of them registered partnerships were also available as an alternative to marriage. Only same-sex partnerships, but not marriage, were allowed in 11 European countries. Among the 27 EU member states, only six did not recognize regular marriages or civil unions for same-sex couples. Some countries, which once had introduced registered partnerships and then allowed same-sex couples to enter into regular marriages, either automatically converted existing

---

<sup>8</sup> Please see footnote 3, p. 53.

<sup>9</sup> Ibid., p. 61.

<sup>10</sup> Ibid., p. 62.

<sup>11</sup> Ibid., p. 67.

<sup>12</sup> <https://gay.org.ua/blog/2022/05/31/ukraintsi-kardynalno-polipshyly-stavlennia-do-lhbt>

<sup>13</sup> <http://csep.org.ua/wp-content/uploads/2022/01/Ukrayinske-suspilstvo.pdf>

<sup>14</sup> <https://www.ndi.org/publications/ndi-january-2023-poll-opportunities-and-challenges-facing-ukraines-democratic>

partnerships into marriages or simply stopped registering new partnerships, but left already registered ones in the same status (Denmark, Norway, Sweden, Iceland); meanwhile, others retained both forms of marital status registration — both marriages and partnerships, with the option of converting partnership into marriage. Generally, in countries that recognize registered same-sex partnerships but not same-sex marriages, such marriages performed abroad are recognized as same-sex partnerships under domestic law.

The registered partnership was originally invented as a form to register de facto marital relationships of same-sex couples (Denmark, 1989) who could not enter into regular marriage then, but the Netherlands in 1998 passed a law on registered partnerships that could be concluded by both same-sex and opposite-sex couples. It turned out to be in demand for heterosexual couples — within the first three years after its adoption, about a third of the partnerships was concluded between people of opposite sexes. Over time, some other countries followed the example of the Netherlands, introducing civil unions available to both same-sex and opposite-sex couples (in particular, France, Estonia, the United Kingdom, Cyprus).

The scope of rights and obligations provided by a registered partnership varies in various countries from practically the same compared with regular marriage (for instance, the Netherlands) to significantly more limited — mostly, in financial and property issues and the status of a family member (for instance, France). It is noteworthy that in all countries where registered partnership for same-sex couples significantly limited partners' rights and obligations compared to spousal ones, the relevant legislation was gradually reformed over time toward bringing registered partnership closer to regular marriage or the latter became available to same-sex couples as well.

When introducing a civil partnership, the legislators of different countries chose one of the possible forms of its integration into the current legislation: to declare in the law that it provides the partners with all the rights and obligations of spouses with certain exceptions expressly specified in the law (“exceptions model”); to explicitly list all the rights and obligations granted to partners by the new law (“list model”); or combine these two options in a certain way (“hybrid model”). Historically, the first registered partnership law was the Danish law of 1989, which was worked out under the “exceptions model.” Article 3 of this law states:

1. *Subject to the exceptions of section 4, the registration of a partnership shall have the same legal effects as the contracting of marriage.*
2. *The provisions of Danish law pertaining to marriage and spouses shall apply similarly to registered partnership and registered partners.*

The Danish example was followed, in particular, by legislators of all Scandinavian countries and Hungary. It is very effective from the viewpoint of minimally necessary reform of the current legislation, clarity and definiteness of the legal consequences of entering into a partnership. The “list model” has been chosen by such countries as Germany, the Czech Republic, Estonia, Croatia, the United Kingdom, etc. Due to the fact that the articles of this type of law, for the most part, duplicate the relevant provisions of national legislation regarding marriage and spouses, the laws on registered partnerships in these countries are very extensive yet still do not guarantee that partners are given all the necessary spousal rights and obligations, which may be scattered amongst many different laws (as is the case in Ukraine), and also may be introduced already after the adoption of the legislation on registered partnership. The “hybrid model” has so far been used very rarely — for example, in the law on civil unions of Vermont state (USA).

Comparing the status of registered same-sex partners in different countries, it can be concluded that at present so to say “standard” same-sex partnership differs significantly from marriage mostly in matters of joint adoption of children and procedures for entering into and ending partnership / marriage. Civil partners are usually allowed to adopt their partners' biological children or children they adopted before the partnership, but joint adoption of third-party children is often not allowed. Registered partnership laws for same-sex couples in Croatia and Montenegro created a new legal institution of extended partnership custody over children raising jointly by same-sex partners. With the consent of the child's legal parent, her / his partner receives certain rights to care for the child and represent the child's interests, similar to the rights of a legal parent. In case of death or deprivation of parental rights of a partner, the second partner has the right become the child's guardian under the court's decision, if the other parent of this child is unknown, died or was deprived of parental rights, as well as for the purpose of protecting the interests and well-being of the child.

As for the procedure for entering into and terminating partnerships, it often has a simplified nature compared to the corresponding provisions for regular marriage (in particular, it does not provide for the application of the court when terminating a partnership). The rest of the differences between partnership and marriage varies greatly from country to country and, for the most part, relates not to family law, but to certain rights which spouses have in other areas — for instance, simplified immigration procedures, pension schemes and so on.

Statistics on the conclusion of registered partnerships shows that they make up a few percent of the total number of marriages concluded during a certain period of time in a given country, which roughly corresponds to the estimated number of homosexuals in human society — for example, in Ireland in 2013, the number of registered partnerships (same-sex) was 1.6%, and in 2014 — 1.8% of the number of marriages (opposite-sex);<sup>15</sup> in Finland, the same data amounted to about 1.4% in both of these years<sup>16</sup>. Countries providing for registered partnership for both same-sex and opposite-sex couples demonstrate that it is also quite popular among heterosexual partners — particularly in France, a total of 162,698 civil unions were concluded in 2013 (which is 72% of marriages concluded in the same year), of which heterosexual partnerships accounted for 96%; the same data for 2014 are 173,728 civil unions (77% of the number of marriages), of which 96% were heterosexual.<sup>17</sup> In the Netherlands in 2013, 9,445 partnerships (14.6% of the number of marriages) were registered, of which 96% were heterosexual, as in France.<sup>18</sup> It is worth noting that the conclusion of registered partnership in the Netherlands entails almost the same legal consequences as marriage, while in France couples who have entered into “civil solidarity pact” have a much smaller scope of rights and obligations than spouses in ordinary marriage do.

There is no evidence that the introduction of registered partnerships or regular marriage for same-sex couples has caused in some country any significant legal or social problems. Instead, studies conducted in various countries have shown that legal and social recognition of same-sex registered partnerships or marriages has a positive impact on the health and general wellbeing of LGBT people.<sup>19</sup>

#### 4. CONCLUSIONS AND RECOMMENDATIONS

Summarizing the above, several conclusions can be drawn:

- A certain percentage of Ukraine’s population consists of LGBT (homosexual, bisexual and transgender) people who need to regulate their actual family relationships.
- Ukrainian legislation does not provide for any form of legal recognition of such relationships meanwhile containing provisions that directly discriminate against same-sex domestic partners even compared to unmarried opposite-sex domestic partners.
- International, and especially European, trends, as well as the case law of the European Court of Human Rights, indicate the need for legislative regulation of same-sex families’ legal status and addressing their urgent problems.
- Ukrainian society has ambiguous attitude towards LGBT people in general and the effective implementation of their rights, particularly to personal and family life. However, a modern democratic state has the duty to take into account, if possible, the interests of all social groups and to counteract manifestations of intolerance against such vulnerable groups — in particular, homophobia as is mentioned in many international documents concerning Ukraine.
- The Ukrainian authorities recognize this responsibility, as evidenced by the government's Action Plan for the Implementation of the Human Rights National Strategy. Paragraph 33 of this document provides for “Development and submission to the Cabinet of Ministers of Ukraine of a draft law on: elimination of discriminatory provisions that may violate the property and non-property rights of unmarried partners; introduction of the institute of registered civil partnership.”

---

<sup>15</sup> Central Statistics Office, *Marriages and Civil Partnerships 2014*, 31.05.2015, *cso.ie*

<sup>16</sup> Statistics Finland, *Fall in the number of marriages contracted tapered off*, 21.04.2015, *stat.fi*

<sup>17</sup> Institut National d'Etudes Démographiques, *Marriages, divorces, civil unions (PACS)*, 2013, 2014, *ined.fr*

<sup>18</sup> Statistics Netherlands, *Marriages and partnership registrations; key figures*, 11.09.2014, *statline.cbs.nl*

<sup>19</sup> Please see, for example, WC Buffie, *Public Health Implications of Same-Sex Marriage*, *American Journal of Public Health*, 2011 June, 101(6), pp. 986–990.

- The international experience shows that the legal recognition of same-sex couples does not cause social and legal problems on a societal scale and at the same time helps to solve such problems for these couples. The expected number of registered family same-sex couples ranges from a few tenths of a percent to a few percent of the number of ordinary marriages concluded during the same time period. Registered partnership, as an alternative form of recognition of marital relations, is also in demand among heterosexual family couples who, for one reason or another, do not want to enter into regular marriage.
- The main differences between regular marriage and registered partnership are the simplified procedure for entering into and terminating the latter, as well as in issues related to the adoption of children. Registered partners are often not allowed to jointly adopt the children of third parties, but are allowed to adopt the children of their partners whom they jointly raise.

Taking into account all of the above, we recommend that the Ukrainian authorities ensure the adoption of legislation with the aim of introducing in Ukraine registered civil partnership of two people of any gender, in general terms similar to regular marriage, following the examples of similar legislation in developed countries. Legal provisions related to marital and family rights and obligations are found in many laws of Ukraine, therefore the introduction of registered family partnerships requires a comprehensive reform of Ukrainian legislation in order to take into account the status of a family member/close relative, which should be obtained by registered civil partners.

Andrii Kravchuk, Expert in Advocacy, LGBT Human Rights Nash Svit Center

© Nash Svit Center, Kyiv, 2023

When using materials, a reference to Nash Svit Center is mandatory.

**LGBT Human Rights Nash Svit Center**

E-mail: [nashsvit@gay.org.ua](mailto:nashsvit@gay.org.ua)

Postal address: P.O. Box 173, Kyiv, 02100

Website: <https://gay.org.ua/en/>