

LAW(S) ON SAME SEX REGISTERED PARTNERSHIPS IN BOSNIA AND HERZEGOVINA

Sarajevo Open Centre

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Summary

A same sex registered partnership is a term that is not recognized by the existing legal documents in Bosnia and Herzegovina. Right and obligations of life partners and consequences arising from the factual registered partnership cannot be exercised due to non existence of legal grounds and (non-)established competencies of the institutions. It was necessary to start developing the Law on registered partnerships, in order to fill in this legal gap, which continually exposes life partners to different consequences of discrimination. Under the EU-funded “Enhancing Lesbian, Gay, Bisexual and Trans rights in BiH in line with EU standards“ project, the Sarajevo Open Centre, in cooperation with Mediacentar Foundation, brought together a working group to develop the draft Law on registered partnerships that would regulate rights of same sex couples in Bosnia and Herzegovina. In March 2015, the working group finished the preliminary draft Law regulating same sex registered partnership, principles, establishment and cessation of a registered partnership, actions of competent authorities pertaining to the establishment and cessation of a registered partnership, maintaining a registry of registered partnerships and legal effects of same sex registered partnerships. For life partners to be able to enjoy the rights recognized by this law, the law should be sent to the parliamentary procedure, and administrative and technical preconditions should be met, so that the law can start producing legal consequences.

1. Introduction and context

Every single article, roundtable, conference, debate or any other form of organized discussion on rights of persons with same-sex sexual orientation starts with a statement that the existing legal framework does not even provide minimum grounds required for successful recognition and regulation of same sex registered partnerships. In other words, when it comes to rights, same sex registered partnerships do not formally exist in Bosnia and Herzegovina. However, like in many other fields of life, factual situation is completely different. Same sex registered partnerships are a fact and an integral part of BiH's social reality.¹

Discrimination against life partners based on sexual orientation, due to failure to regulate the legal recognition of their partnership and deprivation of rights and obligations arising from such partnership, such as, among other, inheritance rights, social protection and healthcare rights, tax reliefs, pension insurance rights etc., is not only a reality in BiH, but also a consequence of the systemic failure to put an end to such discrimination by adopting relevant legislation. However, different interpretations can also be heard lately: according to one of them, in view of the fact that, in accordance with Article II of BiH Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms is directly applied in BiH and has supremacy over all other laws², one cannot deem that there is no legislation dealing with same sex registered partnerships whatsoever. On the contrary, that the European Court of Human Rights, by interpreting the provisions of Article 8 of the Convention, provided base for assertions that there are grounds in BiH's constitutional and legal system for establishment of a registered partnership³. This, theoretically interesting assertion, does not leave a lot of space for contesting, except for the inability to use this right due to non-existence of defined rules and procedures, competencies and powers of public institutions and organizations that would translate this right from philosophical and political spheres to the legal sphere as well. One could rather say that Bosnia and Herzegovina has unquestionable constitutional grounds for enactment of the Law on same sex registered partnerships that would regulate the field of registered partnerships and provide conditions for exercising of all rights that are yet to be recognized to life partners. Also, the European Court of Human Rights, ruling on applications in this field (the one submitted by Schalk and Kopf v. Austria⁴ seems especially applicable), noted that, despite the growing

- 1 Jelena Ravlija et al, Research of risky behavior with regard to HIV prevalence among groups exposed to increased risk, Partnership for Health Association, Sarajevo, 2011, page 26, available at: <http://www.zjzfbih.ba/wp-content/uploads/2012/04/Istrazivanje-rizicnog-ponasanja-u-odnosu-na-HIV-prevalencu-m.pdf>
- 2 Constitution of Bosnia and Herzegovina, available at: Ministry of Foreign Affairs of Bosnia and Herzegovina: http://www.mvp.gov.ba/dobro_dosli_u_bih/drzavno_uredjenje/ustav_bih/?id=261
Article II, paragraph 2. International standards: „The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.“
Article II paragraph 3. Enumeration of rights: „ All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include, among other: f) The right to private and family life, home, and correspondence, and j) The right to marry and to found a family.“
Article II paragraph 4. **Non-Discrimination.** „The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.“
- 3 Boris Krešić, Legal arrangement of same sex partnerships in the EU countries' law and legalization perspectives in the law of Bosnia and Herzegovina, PhD paper, University library, Tuzla, page 208, available at: <https://fedora.untz.ba/fedora/get/o:189/bdef:Content/get>
- 4 Application no. 30141/04, judgment pronounced on 24 June 2010.

tendency in many members states to legally recognize a stable de facto same sex partnership, due to non-existence of sufficient common grounds between member states, they still enjoy wide discretionary margins (paragraph 93) when it comes to precise establishment of the status of (paragraph 109) same sex registered partnerships. In the aforementioned case, the Court also examined whether the responsible member state should have provided the applicants with alternative means of legal recognition of their relationship before it actually did (paragraph 105) and found that the Austrian legislator could not be objected for earlier failure to pass the Law on Registered Partnership (paragraph 107). Against this background, one could conclude that, at least from the perspective of the European Court of Human Rights, Bosnia and Herzegovina could not be objected for failing to enact the Law on same sex registered partnerships (yet) but, from the perspective of individuals who continually suffer various consequences of discrimination due to non-existence of such law, it is quite certain that a similar case before the European Court of Human Rights would have an unfavorable outcome for Bosnia and Herzegovina.

2. Legal regulation of same sex registered partnerships in BiH

So far, not a single legislative authority⁵ in Bosnia and Herzegovina had the chance to consider a law regulating same sex registered partnership. Although the need to ensure adequate legal position of same sex individuals already living in registered partnerships is of extreme importance for their daily life, and also a reflection of the need to regulate the existing state of affairs and legally define procedures for fulfillment of a range of practical needs related to the status of life partners, which is also pointed out in many recommendations⁶ defined in reports of organizations advocating for full respect of human rights and social inclusion of LGBT persons, there was no progress whatsoever in this regard until 2014. Finally, the process of development of the Law on same sex registered partnerships⁷ started in 2014 and ended in the first quarter of 2015 with the development of preliminary drafts of the BiH Federation and Republika Srpska laws. In view of the administrative division and division of competencies in Bosnia and Herzegovina, two mutually harmonized laws were developed – one to be sent to the legislative procedure in the Federation of Bosnia and Herzegovina, and the other one in Republika Srpska. In line with the separately defined competencies of Brčko District, this law shall assumingly be included in the agenda of the Brčko District Government and Assembly soon.

5 Bosnia and Herzegovina is divided to two administrative units: Federation of Bosnia and Herzegovina and Republika Srpska. The highest (joint) legislative authority in Bosnia and Herzegovina is the Parliamentary Assembly of Bosnia and Herzegovina, comprised of two houses, the House of Representatives and House of Peoples. The Council of Ministers of Bosnia and Herzegovina and Presidency of Bosnia and Herzegovina constitute the executive government of Bosnia and Herzegovina. Each entity has powers that belong to the Federation Parliament in the Federation of BiH and to the National Assembly of Republika Srpska in Republika Srpska. Executive power in the entities is divided between the Government and the President. Brčko District of Bosnia and Herzegovina is a single local self-governance administrative unit, established by the decision of the International Arbitration Court of 8 March 2000; it is under the sovereignty of Bosnia and Herzegovina, but with own legislative, executive and judicial government branches. The Federation of Bosnia and Herzegovina is divided to 10 cantons, each with legislative, executive and judicial government branches. This is a simplified explanation of the administrative division of powers in Bosnia and Herzegovina, in the part related to powers for the adoption, processing and proposing of laws.

6 Adopt and implement laws in the three administrative units (Republika Srpska, Federation of BiH, Brčko District) that would legally recognize same sex relationships and define rights and obligations arising from same sex partnership of two individuals (with a special focus on social and economic rights). More info: Pink Report – annual report on the situation with human rights of LGBT persons in Bosnia and Herzegovina in 2014. Authors: Vladana Vasić, Saša Gavrić, Emina Bošnjak. Sarajevo Open Centre. Sarajevo, 2015, page 15, available at: <http://soc.ba/site/wp-content/uploads/2015/03/Rozi-izvjestaj-2014-za-web.pdf>

See also: Rights of Lesbian, Gay, Bisexual and Transsexual persons in Bosnia and Herzegovina: New Approaches? Current State of Affairs and Guidelines for Future Actions of the Institutions and Civil Society. Author: Saša Gavrić. Sarajevo Open Centre. Sarajevo, 2014, page 5, available at: http://soc.ba/site/wp-content/uploads/2014/12/LGBT-OSOBE_bos_01.pdf

7 Sarajevo Open Centre in cooperation with Mediacentar Foundation, under the EU-funded „Enhancing Lesbian, Gay, Bisexual and Trans rights in BiH in line with EU standards“ project brought together a working group to develop the draft Law on registered partnerships that would regulate rights of same sex couples in Bosnia and Herzegovina. The working group was comprised of four members, experts in family law, and activists for LGBT rights, with participation of Sarajevo Open Centre members: Fedra Idžaković, executive director of „Rights for All“ Association; Gordan Bosanac, program manager at the Centre for Peace Studies from Zagreb, Boris Krešić, family law professor at the Faculty of Law, University of Tuzla and Natalija Petrić, legal consultant of the United Women from Banja Luka.

3. Preliminary drafts of the BiH Federation and Republika Srpska laws on same sex registered partnerships

The purpose of this text is to introduce the content of the Preliminary draft laws on same sex registered partnerships. For simplification purposes, the preliminary draft law on registered partnerships of Republika Srpska will be used, noting that the laws have been harmonized, and that differences apply to articles of the laws that should include references to relevant legislation regulating specific fields, in line with the constitutional division of competencies in Bosnia and Herzegovina regulated by laws of Republika Srpska and the Federation of BiH, i.e. fields that are regulated differently in these regulations, which will be separately referred to.

The Law on Same Sex Registered Partnership is divided to eight chapters and includes 79 articles.

Chapter One – Main provisions; It includes 6 articles: they stipulate the content and purpose of the law, provides terms “registered partnership” and “informal partnership” and the effects of informal partnership, and emphasize that the expressions with gender meaning equally apply to males and females. Article 1 reads that this law regulates same sex registered partnership, principles, establishment and cessation of a registered partnership, actions of competent authorities pertaining to the establishment and cessation of a registered partnership, maintaining a registry of registered partnerships and legal effects of same sex registered partnerships. The purpose of this law is to ensure legal protection to same sex individuals living in a registered partnership and to protect their family life (Article 2). Definition of registered partnership is provided in Article 3, which reads that a registered partnership, within the meaning of this law, means a legally defined family partnership of two same sex adults who are not married, or in a common law marriage or registered partnership with another person, who established the registered partnership before the competent authority, in accordance with the provisions of this law⁸, unlike informal partnership of two same sex individuals that is defined as a family partnership of two same sex adults who are not married, or in a common law marriage or registered partnership or informal partnership with another person, which lasted for minimum three years, noting that provisions of this law pertaining to effects of registered partnerships also apply to informal partnerships and that, in the event of a dispute about rights and obligations of registered partners, the existence of informal partnership shall be proved before the relevant court (Articles 4 and 5). Article 6 stipulates that the expressions used in this law and regulations adopted based on it, which involve gender connotation, shall equally apply to females and males, regardless whether they are used in male or female gender.

Chapter Two – Principles stipulates the protection of dignity and prohibition of discrimination by particularly indicating that a registered partnership shall be based on the principles of equality, respect for one’s dignity and mutual assistance and respect of registered partners; that gender identity and expression of partners shall

⁸ See articles 18-29 of the Law, stipulating the procedure for establishment of a registered partnership.

be respected and protected, and that direct and indirect discrimination based on the status of a registered partnership shall be prohibited (Article 7).

Chapter III – Conditions for Establishment of Registered Partnership includes 10 articles (8 - 17) that stipulate preconditions that should be met for a registered partnership to be valid, i.e. to produce legal consequences. Article 8 stipulates that a registered partnership is established for the purpose of forming a life companionship of two same sex individuals, and Article 9 stipulates that the registered partnership shall be established with the consent of two same sex individuals given before an authorized officer – registrar⁹. For the start of existence of a registered partnership, future registered partners who intend to establish the registered partnership should be of the same sex and they should give their consent to the registered partnership before the registrar (Article 10). Any individual with legal interest in it shall be entitled to initiate legal proceedings for the purpose of establishing the existence or non-existence of a registered partnership (Article 11). Person under the age of 18, a married person, an individual in a common law marriage or registered partnership (Articles 12 and 13), a person deprived of legal capacity or an individual who, due to mental illness, mental retardation or for other reasons, is unable to engage in independent reasoning may not enter a registered partnership. Nevertheless, there is a possibility for a court to allow establishment of a registered partnership in a non-contentious procedure to a person unable to reason independently, if the court has found that the person is able to understand the meaning of the registered partnership and obligations arising from it, and that the registered partnership is obviously in their interest (Article 14). Registered partnership may not be established between blood relatives by vertical and horizontal lines up to and inclusive of the fourth degree, including relationships established by full adoption (Article 15), nor between adoptive parents and their adopted children in case of incomplete adoption (Article 16). Registered partnership shall be invalid if a partner consented to it in fear caused by a serious threat, or while in delusion about personality of the other registered partner or his/her significant traits. It is specified that delusion about registered partner's personality exists when a registered partner believed that he/she would enter registered partnership with one person, and actually established partnership with another person, while the delusion about a significant registered partner's trait exists when such trait or circumstances would have dissuaded the registered partner from entering the registered partnership had they known about them. This especially applies to extremely dangerous or severe diseases or previous conviction for a criminal offense against one's dignity and morale, or concealment of significant liabilities incurred before the establishment of the registered partnership (Article 17).

Chapter IV – Procedure for Establishment of a Registered Partnership (Articles 18-29) stipulates the procedure for establishment of a registered partnership. Persons who intend to establish a registered partnership shall file an application with the registrar at the city or municipality where they want to establish the registered partnership, enclosing copies from the birth registry and other documents, if necessary (Article 18). Article 19 stipulates registrar's actions upon receiving the application

⁹ In the BiH Federation Law on Registered Partnerships: registrar – registrar is a civil servant (Law on Registration Books, Article 10, paragraph 1, subparagraph 2).

and the possibility for persons wishing to establish a registered partnership to file a complaint to the competent municipal or city authority that shall immediately decide on the complaint, in case the registrar has found that a requirement for establishment of the registered partnership was not fulfilled. Article 20 stipulates the manner of determining the date for establishment of a registered partnership, and Article 21 imposes the obligation on the registrar to recommend future registered partners to mutually obtain information about health condition, possibilities for arrangement of property relations¹⁰ and to reach an agreement about future surname¹¹ before the date of entry into the registered partnership. If one or both future registered partners fail to appear on the date scheduled for the establishment of the registered partnership and fail to offer any justification for their absence, the application for establishment of the registered partnership shall be deemed withdrawn (Article 22). Registered partnership shall be established in a solemn way at specifically designated premises and, at a properly reasoned request of future registered partners, registrar may approve the establishment of the registered partnership to be done at a different location (Article 23). This article also stipulates that an approval can be issued for the act of establishment of a registered partnership to be done at another location outside the designated premises even without justified reasons. However, in that case, future registered partners shall pay a fee, the amount of which shall be determined by the competent authority. Registered partnership shall be concluded by registered partners, in presence of a registrar and two witnesses (Article 24). In particularly justified cases, the competent city or municipal authority may issue a decision allowing the registered partnership to be established if only one future partner and the other's proxy are present, provided that the power of attorney was certified by the court or a notary, and that it specifies personal data of the giver of the power of attorney, the proxy and of the future registered partner of the giver of the power of attorney, and date of issuance of the power of attorney. The power of attorney shall be valid for 90 days¹² after the certification date (Article 25). Any adult with legal capacity may witness the conclusion of a registered partnership (Article 26). The establishment of a registered partnership shall start with a registrar's report, ascertaining that future registered partners are present and that it was found, based on their statements, witnesses' statements and personal documents that the requirements for existence and validity of the registered partnership were fulfilled (Article 27). The registrar shall then inform the future registered partners about their rights and duties and the importance of the registered partnership, and then individually ask each of the future registered partners whether they consent to the establishment of the mutual registered partnership (Article 28). Registered partnership shall be deemed concluded once the future registered partners give their consent, and the registrar announces that the registered partnership has been concluded and enters it into the registry of registered partnerships. Once the registered partners, witnesses and the registrar have put their signatures in the registry of registered partnerships, registration certificate shall be immediately issued (Article 29).

¹⁰ In accordance with the provisions of Article 52 of this law

¹¹ In accordance with the provisions of Article 35 of this law

¹² 60 days in the BiH Federation Law on Registered Partnerships, in line with Article 24, paragraph 3 of the BiH Federation Family Law, which stipulates that a power of attorney given to a proxy for entry into marriage shall be valid for 60 days from the certification date (Republika Srpska Family Law, Article 23, paragraph 3 stipulates the deadline of 90 days).

Chapter V – Registry of Registered Partnerships (Articles 30-32) stipulates the competency for maintenance of the registry of registered partnerships, method of keeping and contents of the registry. The Registry of registered partnerships shall be established and maintained by the register office of the local self-governance unit, and the authorized clerk - registrar shall keep it (Article 30). Article 31 specifies more closely the method of registry keeping and stipulates that the registry shall be maintained in the form of a central electronic database of all concluded registered partnerships, that legislation regulating personal data protection shall be applicable to the data processing, and that basic files used for entry of data into the registry shall be the integral part of the registry. This article vests the power on the Minister of Administration and Local Self-governance¹³ to issue rulebooks that will regulate more closely the content, format and method of keeping the registry of registered partnerships and forms of registration certificates that shall be issued based on the entry into this registry. As for the registry contents, the following shall be entered: name and surname, date and place of birth; nationality, single birth registration numbers (JMB) of registered partners, registered partners' place of residence, date and place of the establishment of the registered partnership, statements of registered partners about their surname, name and surname and place of residence of a proxy, if one registered partner was represented by a proxy on that occasion; names and surnames of registered partners' parents and their surnames before the entry into the registered partnership, if that fact is recorded, name and surname and place of residence of witnesses to the conclusion of the registered partnership, names and surnames of the registrar and the interpreter, if an interpreter attended the establishment of the registered partnership; cessation of the registered partnership (annulment and termination, death of a registered partner or proclamation of death of a missing registered partner) and changes of names and surnames of registered partners (Article 32).

Chapter VI – Effects and Legal Consequences of Registered Partnership (Articles 33-66) is divided to four sections: 1 Support, 2 Property Relations of Registered Partners, 3 Inheritance and 4 Rights of Registered Partners. Articles 33-35 stipulate general rights and obligations, personal rights and obligations and the way of reaching an agreement between registered partners about their surname. Section 1 Support (Articles 36-41) stipulates the right of registered partners to mutual support, the procedure and method of determining the support and its amount, and cessation of the right to support. Section 2 stipulates property relations of registered partners (Articles 42-52) and specifies more closely the forms of property, and precisely defines the property categorized as separate property and property categorized as joint property of registered partners. The possibility for registered partners to agree on their joint property otherwise is also stipulated (Article 45), and also, if one partner is registered as the owner in the land registry, the other registered partner may request a correction of the entry (Article 46). Article 47 stipulates more closely management and disposal with joint property, Article 48 defines the way of dividing the joint property, and Article 49 stipulates the way of including objects from joint property used for performing a business or for personal use of one of the registered partners into the co-ownership share. Article 50 stipulates that obligations assumed before the establishment of the

¹³ In the Federation of BiH, the Ministry of Interior has been authorized to pass the rulebooks.

registered partnership shall be within the responsibility of the partner who assumed such obligations, and Article 51 defines solidary liability of registered partners for obligations assumed for the purpose of accommodating the needs of living together in the registered partnership. Article 52 stipulates the possibility of contracting a special property regime and that such contract must be notarized. Special attention is paid to the fact that custodian of a person under custody must have an approval from the custody authority for conclusion of such contract, and that registered partners may not contractually define the application of a foreign state's law to their property and legal relations.¹⁴ Article 53, subparagraph 3 stipulates registered partners' inheritance rights, and Article 54 stipulates cases that result in loss of inheritance rights. Subparagraph 4 Registered Partners' Rights (Articles 55-66) stipulates registered partners' rights by referring to legislation regulating taxation of physical persons' income, pension and disability insurance rights of registered partners, social protection rights, health insurance and healthcare rights, and rights in the event of disease.¹⁵ Discrimination and different treatment when it comes to registered partners' access to all services shall be prohibited (Article 60), and it is also regulated that, when it comes to apartment lease agreements, both registered partners shall be deemed lessees and, accordingly, the manner of termination and rights and obligations arising from such agreements are specified (Article 61). Article 62 prohibits any kind of unfavorable treatment pertaining to employment, labor, working conditions and participation in the labor market based on the registered partnership status, and specifies that such treatment shall constitute a form of discrimination. Article 63 stipulates that the registered partner of a criminal offense perpetrator or convict serving prison sentence or a security measure shall be entitled to all rights under equal terms as a spouse, in accordance with the law regulating criminal offenses and proceedings, execution of criminal sanctions and other related legislation, while Article 64 stipulates that a registered partner of Republika Srpska citizen may obtain citizenship under equal terms applicable to the spouse of a Republika Srpska citizen, in accordance with the law regulating the method, conditions and procedure for obtaining and cessation of Republika Srpska citizenship¹⁶. Article 65 recognizes the right of a registered partner of Republika Srpska citizen to temporarily and permanently reside in Republika Srpska¹⁷ under equal terms stipulated for spouses, while Article 66 stipulates that a foreign registered partner shall be entitled to the international protection provided to asylum seekers, asyants, foreigners under subsidiary protection and foreigners under temporary protection, and it especially stipulates the possibility to exercise the right to family reunion under equal terms as a spouse. It is emphasized that the competent authority issuing a decision on international protection shall pay special attention to the circumstance that registered partners kept in secrecy their registered partnership and family life.

Chapter VII – Cessation of Registered Partnership (Articles 67-77). This chapter stipulates the following: cessation of registered partnership, keeping one's surname, annulment of a registered partnership, right to initiate legal proceeding for

¹⁴ The BiH Federation Law on Registered Partnerships allows the implementation of a foreign country's law to be contractually established if one of the partners is a foreigner, while the Republika Srpska Law does not foresee such possibility, because it is prohibited by the Family Law, Article 271, Paragraph 7.

¹⁵ The BiH Federation Law on Registered Partnerships refers to the existing FBiH legislation regulating these issues.

¹⁶ I.e. the Federation of BiH.

¹⁷ I.e. the Federation of BiH.

annulment, termination of registered partnership and jurisdiction for dispute resolution. Article 67 stipulates that a registered partnership shall cease to exist with death of a registered partner, upon proclamation of death of a registered partner, by annulment and termination of a registered partnership, and defines that, if a missing registered partner is proclaimed dead, the registered partnership shall cease to exist as of the date of death as determined in a final court decision; if a registered partnership ceases by annulment and termination, it shall cease to exist once the court decision on annulment or termination of the registered partnership becomes final. In case of annulment or termination of a registered partnership, each registered partner may keep the surname they carried at the time when the registered partnership ceased to exist. However, in the event of annulment, the registered partner who is not responsible for the annulment must consent to the other partner's decision on keeping the surname (Article 68). Registered partnership shall be annulled if it is found that one of the requirements specified in Articles 12-17 of this Law¹⁸ did not exist at the time of its establishment, and if the registered partnership was not established for the purpose of cohabitation (Article 69). Registered partners and any person with legal interest in annulment of a registered partnership shall be entitled to initiate legal proceedings for annulment of the registered partnership for the reasons specified in Articles 13 and 69, paragraph 2 of this Law¹⁹. The court shall not annul a newly registered partnership that was concluded in the period of duration of a former registered partnership of one of the partners, if the former registered partnership had ceased to exist before the end of the main hearing (Article 70). Article 71 stipulates that registered partners shall be entitled to initiate legal proceedings for annulment of a registered partnership at the time while the reasons specified in Article 14²⁰ exist and, once these reasons cease to exist, only the registered partner

¹⁸ Article 12. Registered Partnership may not be established by a person under the age of 18.

Article 13. Registered Partnership may not be established by a person already married, or living in a common law marriage or a registered partnership.

Article 14

(1) A person deprived of legal capacity or an individual who, due to mental illness, mental retardation or for other reasons, is unable to engage in independent reasoning may not enter a registered partnership.

(2) Exceptionally, the court may, in a non-contentious procedure, allow a person incapable of independent reasoning to enter a registered partnership, if the court has found that the person is able to understand the meaning of the registered partnership and obligations arising from it, and that the registered partnership is obviously in their interest.

Article 15

(1) Registered partnership may not be established between blood relatives by vertical and horizontal lines up to and inclusive of the fourth degree.

(2) Provisions from paragraph 1 of this Article shall also apply to a relationship established by complete adoption.

Article 16

Registered partnership may not be established between adoptive parents and their adopted children in case of incomplete adoption.

Article 17

(1) Registered partnership shall be invalid if a partner consented to it in fear caused by a serious threat, or while in delusion about personality of the other registered partner or his/her significant traits.

(2) Delusion about registered partner's personality exists when a registered partner believed that he/she would enter registered partnership with one person, and actually established partnership with another person.

(3) Delusion about a significant registered partner's trait exists when such trait or circumstances would have dissuaded the registered partner from entering the registered partnership had they known about them, and especially in case of extremely dangerous or severe diseases or previous conviction for a criminal offense against one's dignity and morale, or concealment of significant liabilities incurred before the establishment of the registered partnership.

¹⁹ Article 13. Registered Partnership may not be established by a person already married, or living in a common law marriage or a registered partnership.

Article 69, paragraph 2. Registered partnership shall be annulled if it was not established for the purpose of cohabitation in the registered partnership.

²⁰ Article 14.

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(2) Exceptionally, the court may, in a non-contentious procedure, allow a person incapable of independent reasoning to enter a registered partnership, if the court has found that the person is able to understand the meaning of the

with resumed legal capacity who was incapable of independent reasoning shall be entitled to initiate legal proceedings for annulment of the registered partnership. The legal proceedings may be initiated within one year from the time of cessation of the incapacity for independent reasoning, i.e. within one year from the date when the decision reinstating the legal capacity became final. Article 72 stipulates that registered partners shall be entitled to initiate legal proceedings for annulment of a registered partnership in cases specified in Articles 15 and 16 of this Law²¹, and Article 73 stipulates that the annulment of a registered partnership that was established in fear caused by a serious threat may only be sought by the registered partner who was forced into the partnership, by initiating legal proceedings within one year from the date when the danger from the execution of the threat ceased to exist at the latest, while registered partners lived together during that time. Article 74 stipulates that only the registered partner who consented to the registered partnership while in delusion specified in Article 17²² herein may initiate legal proceedings for annulment of the registered partnership within one year from the date of finding out about the delusion, while registered partners lived together during that time. A registered partner may request termination of the registered partnership if mutual relations of partners are severely and permanently impaired, which makes their life together unbearable, and termination may be initiated by a petition or application for amicable termination of the registered partnership (Article 75). The court shall terminate a registered partnership based on the application for amicable termination of the registered partnership, if at least six months have lapsed since the establishment of the registered partnership, and if an agreement between registered partners exists, which was concluded in the mediation process regarding conditions and manner of maintaining personal relations and supporting the registered partner (Article 76). Provisions of laws regulating family relations pertaining to marital disputes shall apply to all disputes conducted in cases regulated by this law, as well as provisions of laws regulating litigation, non-contentious and enforcement procedures, unless this law stipulates otherwise (Article 77).

Chapter VIII – Transitional and Final Provisions (Articles 78-79), contains two articles: Article 78 authorizes the minister of administration and local self-governance to issue a bylaw within 90 days from the date of entry into force of this law,

registered partnership and obligations arising from it, and that the registered partnership is obviously in their interest.

21 Article 15.

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regulating contents, format and method of keeping the registry of registered partnerships and forms of registration certificates issued upon the entry into the registry, and Article 79 stipulates that this law shall enter into force within 8 days from the date of its publication in the “Official Gazette of Republika Srpska”.

4. Conclusion and recommendation

The preliminary draft law on same sex registered partnerships defines the obligation of equal treatment of all citizens in terms of equalizing rights of same sex registered partnerships with those of recognized heterosexual partnerships. The preliminary draft law recognizes the fact that a significant number of citizens have personal viewpoints and even prejudices when it comes to legal regulation of family life in any other way but the traditional one. This was the reason why this law introduced the term and institute of registered partnerships in order to avoid confusion with marriage, and to establish an alternative method of recognition of personal relations and legal consequences arising from them. This institute is only available to those couples who are not able to get married because they are of the same sex. Registered partners in a registered partnership do not enjoy equal status as spouses in marriage. Legal consequences of registered partnerships regulated by this law include material and other consequences, while parenthood (parental relationship and the possibility to provide parental care) remains the exclusive privilege of a marriage, thus protecting traditional family values while recognizing and expanding the term family life to same sex registered partnerships as well. In order to be able to exercise the rights recognized by this law, the law should be sent to the parliamentary procedure and, upon its adoption, administrative and technical preconditions should be met, so that the law can start producing legal consequences.

About the author

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Initiative for the monitoring of the European Union integration of Bosnia and Herzegovina, 2014 Alternative Progress Report. Sarajevo: Sarajevo Open Centre, 2014. http://soc.ba/site/wp-content/uploads/2014/07/Alternativni-izvjestaj-2014_ENG_zaweb.pdf

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