

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

5 June 2014
AI Index: EUR 72/001/2014

Slovakia: Amnesty International condemns discriminatory constitutional amendment defining marriage as the union between a man and a woman

Amnesty International today expressed concern that the definition of marriage included in a new constitutional amendment contravenes international and European human rights law, and will discriminate against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals on the ground of their sexual orientation.

On 4 June 2014, the National Council (Parliament) of Slovakia adopted a Constitutional Law (number 490/2014) amending the 1992 Constitution, which will enter into force on 1 September 2014.

Article 41 of the law defines marriage as "a unique union between a man and a woman". The explanatory memorandum that accompanies the law explicitly states that same-sex couples will not have the possibility to enter marriage.

Human rights treaty bodies, including the UN Committee on Economic, Social and Cultural Rights (CESCR) and the Human Rights Committee, have repeatedly highlighted that discrimination on grounds of sexual orientation is prohibited under international human rights law. The European Court of Human Rights has also clarified that sexual orientation is one of the prohibited grounds of discrimination listed in Article 14 of the European Convention of Human Rights (ECHR).

Moreover, Article 2 of the International Covenant on Civil and Political Rights (ICCPR) sets out that states may not discriminate with regards to any of the rights set out under the Covenant, including the right to marry and the right to found a family protected by Article 23. Article 14 of the ECHR prohibits any discrimination, including on grounds of sexual orientation, in the enjoyment of the rights protected by the Convention including the right to private and family life (Article 8).

In the case *Schalk and Kopf v Austria*, the European Court of Human Rights highlighted that the reference to "men and women" in the ECHR no longer means that "the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex". The Court also stated that: "it is artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy family life".

Excluding same-sex couples from the possibility of marriage may result in discrimination in other areas of life, including access to goods and services. It will also affect parenthood and may have a detrimental impact on the children of same-sex couples, which is at odds with the requirement under international human rights law to ensure the best interests of the child in all matters regarding children, as set out in the UN Convention of the Rights of the Child).

In recent years, while civil marriage has been opened to same-sex couples in some EU countries, including in France and the United Kingdom, legislative proposals seeking to limit the definition of marriage as to a union between a man and a woman have been discussed or adopted in several EU countries including Croatia, Hungary, Lithuania and Romania.

The adoption of this law represents a clear step back in Slovakia's compliance with their obligation to combat all forms of discrimination, including on grounds of sexual orientation, and contradicts some positive measures recently adopted to fulfil that purpose.

These include, for example, the revision of the Criminal Code in May 2013, which included sexual orientation among the grounds constituting an aggravating circumstance in instances where a crime is motivated by the sexual orientation of the victim.

BACKGROUND

The CESCR in their General comment No.20, on Non-Discrimination in Economic, Social and Cultural Rights, and the UN Human Rights Committee, tasked to monitor states' implementation of the ICCPR, have clarified that sexual orientation is a prohibited ground of discrimination (*Toonen v Australia* 488/1992 and *Young v Australia* 941/2000).

The European Court of Human Rights has found in several cases/complaints that sexual orientation is a prohibited ground of discrimination under European Human Rights Law *Schalk and Kopf v Austria*, no. 30141/04, 24 June 2010, *Lustig-Prean and Beckett v The United Kingdom*, 31417/96; 32377/96, 27 September 1999, *Smith and Grady v The United Kingdom*, nos. 33985/96 and 33986/96, 27 September 1999, *Salgueiro da Silva Mouta vs Portugal*, no.33290/96, 21 December 1999).

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