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Discrimination Based on Sexual Orientation and the Recognition of Same-Sex Relationships in the Western Balkans - Legal and Economic Analysis

Abstract

The subject of this paper is discrimination based on sexual orientation in relation to the non-recognition of same-sex relationships in the Western Balkans countries through the application of the legal and economic analysis. The Western Balkans as a term in this paper is used as a political phrase coined by the European Union (EU) for the countries from the Balkans region which are not the EU member states at the moment, and are still in different positions to become a part of this organization. For this purpose, the analysis will focus on Albania, North Macedonia, Montenegro, Bosnia and Herzegovina and Serbia.

The aim of this paper is to present to what extent the process of the legal recognition of same-sex relationships has been done until the moment in these countries and how the economic arguments can support the idea of creating more inclusive and equal societies for same-sex couples. The first part will be dealing with an overview of the position of the LGBTI people in the Western Balkans, as well as the policy documents, different strategies and action plans, adopted by the governments where they expressed a concrete willingness to combat discrimination based on sexual orientation. For instance, some of the countries, such as Serbia recognized as one of the priorities to adopt the Law on the Same-Sex Partnership in the Action Plan for the Implementation of the Government's Program for the period from 2020 to 2022, but this was unsuccessful without parliamentary support. The second part will be the comparative legal analysis with an overview of constitutional and legislative prohibition of discrimination based on sexual orientation in the respective countries, followed by an overview of marriage definitions in constitutions and family laws. The author will analyse also concrete judgments of the European Court of Human Rights (ECtHR) where the right of the legal recognition of same-sex relationships was recognized by the ECtHR, within the legal form which is the most suitable in

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the context of the cultural and sociological background of a concrete country. The Western Balkans countries as member states of the Council of Europe are obliged to assess and adopt their legislative frameworks in accordance with the case law of the ECtHR. At the moment, only the Montenegro's National Assembly adopted the Law on the Same-Sex Partnership in 2020, which will be presented as a legal solution. The third part of the article is focusing on the economic side of the recognition of same-sex relationships. Implementation of microeconomic theory on same-sex relationships as a contract and explanation of economic benefits for its parties will provide very pragmatic argumentation which should support this kind of legal intervention to legalize this kind of relationships. The aim of contracting parties in every contract is maximization of their interests and efficiency. In this context, the author will be using some principles of economics implemented in analysis of contracts and family relations. In general, the improvement of the position of the LGBTI people in the Western Balkans will be an important element for further economic growth, foreign direct investments and a support towards the free movement of workres as a human capital among the Western Balkans countries.

As a methodology framework, the author will implement legal positivism, comparative legal method and economic analysis of legal institutions (law and economic approach).

Keywords: *sexual orientation, same-sex relationships, legal recognition, economic analysis of law/law and economics, European integration, Western Balkans.*