

Legalization of same-sex

Lutsenko. V.A., Chumakova A.V.

Tyumen State University, Tyumen, e-mail: leralu72@mail.ru

The purpose of this article is to raise the issue of legalization of same-sex marriage in Russia. Firstly, we will consider the countries in which same-sex marriages are legalized; secondly, we will analyze the arguments for and against the legalization of same-sex marriages; then we will consider at Russian family law and analyze whether it is possible to legalize same-sex marriage in Russia.

Same-sex marriage (also known as gay marriage) is the marriage of two persons of the same sex or gender, entered into in a civil or religious ceremony[1].

A growing number of governments around the world are considering whether to grant legal recognition to same-sex marriages. So far, more than two dozen countries have enacted national laws allowing gays and lesbians to marry, mostly in Europe and the Americas. In Mexico, some jurisdictions allow same-sex couples to wed, while others do not.

As of 1 January 2019, same-sex marriage is legally performed and recognized (nationwide or in some jurisdictions) in Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, the United Kingdom, the United States, and Uruguay. Armenia, Estonia, and Israel recognize same-sex marriages entered into elsewhere. Same-sex marriage is also due to become legal in Costa Rica and Taiwan. Furthermore, the Inter-American Court of Human Rights has issued a ruling which is expected to facilitate recognition in several countries in the Americas.

The introduction of same-sex marriage (also called marriage equality) has varied by jurisdiction, and came about through legislative change to marriage law, court rulings based on constitutional guarantees of equality, recognition that it is allowed by existing marriage law, or by direct popular vote (via referendums and initiatives). The recognition of same-sex marriage is considered to be a human right and a civil right as well as a political, social, and religious issue[2].

Why same-sex marriage should be legal: firstly, proponents argue that equal rights must mean equal rights. A civilized society does not discriminate on grounds of race, religion, sex or sexuality and denial of marriage rights is clear discrimination. Gay and heterosexual couples both deserve the legal rights associated with marriage – on taxes, property ownership, inheritance or adoption. No matter how you try to dress it up, denying equal rights to gays and lesbians is homophobia.

Secondly, marriage is a successful institution and it makes sense to open it to as many people as possible. Since the beginning of history, couples have sought to seal their love and solemnly bind themselves together through marriage. Opening that bond to all will strengthen society. Legalization recognizes reality: there are gay people, they love each other and they want to commit to each other through marriage in the same way as straight couples.

Thirdly, the state should have no say on how consenting adults conduct their lives. If two people love each other and want to get married they should be allowed to do so regardless of the colour, religion, nationality or sex of their partner. Love and marriage should be a purely personal choice. When governments interfere in the private lives of people, dictating who can marry who, individual freedoms are compromised with potentially dangerous implications.

Why same-sex marriage should not be legal: firstly, critics argue that marriage is defined as the union of a man and a woman, and to change that would go against natural law and risk undermining both the institution of marriage and the family's role in holding society together. Legalization denies marriage's central role as a step towards procreation. There are civil partnerships available for gays, but marriage is a step too far. In the French context, the changes in the law will remove the terms "mother and father" from the civil code weakening the rights of heterosexual families.

Secondly, gay marriage runs fundamentally counter to many people's religious views. To legalize it would offend deeply held beliefs and further erode the key role religion plays as a moral bedrock in society. Christian, Jewish and Islamic leaders have all spoken out against gay marriage and point out that it runs counter to sacred writings.

Thirdly, it makes no sense to talk about equal rights in this context. If that were the case, polygamous or incestuous marriages would have to be legalized too. There are always limits to rights. Legalization would be another step towards the mainstreaming of homosexuality in society. Nobody is stopping gay people from loving each other or staying in relationships, but that does not mean they can marry[3].

In Russia, a registered marriage is the only form of recognition of the family relations of two unrelated adults marriage Definition. The "Family Code of the Russian Federation" also does not contain a definition of the concept of "marriage". According to some lawyers, this feature is due to the fact that marriage is a complex social institution that can be considered on the basis of legal, ethical, moral and economic ideas. So only the legal wording of its definition would be incomplete. However, the Family Code uses the concept of marriage in the context of the union of a man and a woman. «Section I. General Propositions Chapter 1. Family Legislation. Article 1. 3. Family relations shall be regulated in conformity with the principles of a voluntary conjugal union between a man and a woman, of the equality of spouses' rights in the

family, of resolving internal family problems by mutual consent, of the priority of bringing children up in a family, of taking care of their well-being and development, and of ensuring priority protection of the rights and interests of underaged and disabled family members.»; « Article 12. The Terms for Entering into a Marriage 1. To enter into a marriage, the voluntary consent of the man and of the woman entering into it, and their reaching the marriageable age, shall be necessary»[5].

Russian citizens can register same-sex marriages in some countries. According to article 158 of the Family Code of the Russian Federation, marriages concluded abroad are recognized in Russia if this does not contradict article 14, which prohibits marriage between close relatives, adoptive parents and adopted children. As a result, the recognition of same-sex marriage in Russia remains a controversial issue among lawyers. Some of them address this legal conflict. Other lawyers and authorities refer to Article 167, which states: “The rules of foreign family law do not apply if such an application would contradict the fundamentals of the rule of law of the Russian Federation. In this case, the legislation of the Russian Federation applies. ” Thus, they claim that same-sex marriages abroad are not recognized.

According to a survey by the All-Russian Center for the Study of Public Opinion conducted in 1995, in general, 18% of respondents were positive about the resolution of same-sex marriage in Russia, 38% were negative. In subsequent years, All-Russian Center for the Study of Public Opinion noted a downward trend in support[4].

To sum up, the idea of legalizing such relations in Russia causes a strong reaction in a country dominated by Orthodoxy and Islam, which categorically do not recognize such marriages. Numerous polls show a negative tendency to support same-sex marriage. The Family Code of the Russian Federation also states that a marriage can be entered into by mutual consent between a man and a woman who have reached the age of majority.

References:

1. Информационный портал [Электронный ресурс] — Режим доступа. — URL: https://en.wikipedia.org/wiki/Same-sex_marriage
2. Информационный портал [Электронный ресурс] — Режим доступа. — URL: https://en.wikipedia.org/wiki/Same-sex_marriage
3. Информационный портал [Электронный ресурс] — Режим доступа. — URL: <https://www.debatingeurope.eu/focus/arguments-for-and-against-gay-marriage/#.XHFzraozY2z>
4. Информационный портал [Электронный ресурс] — Режим доступа. — URL: https://ru.wikipedia.org/wiki/%D0%9E%D0%B4%D0%BD%D0%BE%D0%BF%D0%BE%D0%BB%D1%8B%D0%B5_%D0%B1%D1%80%D0%B0%D0%BA%D0%B8_%D0%B2_%D0%A0%D0%BE%D1%81%D1%81%D0%B8%D0%B8#%D0%9E%D0%B1%D1%89%D0%B5%D1%81%D1%82%D0%B2%D0%B5%D0%BD%D0%BD%D0%BE%D0%B5_%D0%BC%D0%BD%D0%B5%D0%BD%D0%B8%D0%B5_%D0%B8_%D0%B4%D0%B8%D1%81%D0%BA%D1%83%D1%80%D1%81
5. THE FAMILY CODE OF THE RUSSIAN FEDERATION [Электронный ресурс] — Режим доступа. — URL: <http://www.jafbase.fr/docEstEurope/RussianFamilyCode1995.pdf>