

Ms. Florentina Bocioc, executive director, ACCEPT
Mr. Cary Alan Johnson, executive director, IGLHRC

In response to your letter to the Ministry of Justice and Citizens' Freedoms registered as 48402/2009, regarding the amendment by members of the special parliamentary committee to art. 479 from the draft Civil Code, we communicate the following:

The Ministry of Justice and Citizens' Freedoms, in its capacity as the specialized central public authority was charged with elaborating a draft civil code, a project which lasted about 10 years and to which a team of specialists contributed—theoreticians and practitioners—who did extensive study and documentation. They took into account not only the current modern national law, but also European level regulations, international documents, and, of course, the jurisprudence of the European Court of Human Rights.

The [executive] Government adopted this draft law in March 2009 and submitted it to the legislature for public debates. The Ministry of Justice and Citizens' Freedoms participated in its capacity as draft law proponent in these debates which took place within the parliamentary committee especially set up for this purpose, supporting the draft law, but also actively contributing to the analysis and discussion of amendments submitted to the [parliamentary] committee by social and professional groups who also took part in these meetings. There was an active and open debate, to which anyone interested could participate and in which all amendments were considered. After all arguments were heard, the parliamentary committee decided upon each amendment.

According to art. 61(1) of the Constitution of Romania, the Parliament is the "only legislative authority of the country."

Therefore, within parliamentary debates, the Ministry of Justice -as a specialized body of the [executive] Government - no longer possesses the constitutional authority to reject a proposed amendment.

As regards the substance of the issue you raised, we specify that, currently, domestic law regarding adoption is in accordance with the European Convention on Adoptions (Strasbourg, April 24, 1967), according to which the law can only allow for the adoption of a child by two people united through marriage, whether they adopt simultaneously or successively, or by a single adopter.

Also, the [current] law is in accordance with the principle of nondiscrimination, including on the ground of sexual orientation. We highlight that, according to the Romanian legislative approach, which is in accordance with all international documents regarding adoption, this [the adoption] is a measure to protect the child and is taken exclusively for the child's interest. In other words, the right to adoption belongs to the child and not to the one who wishes to adopt, so that recognizing this right is not a question of discrimination based on sexual grounds.

On the other hand, the European Court of Human Rights in the decision you quote (Karner v. Austria), recognizes that there are important and legitimate reasons for the state to grant a special protection to the family, in its traditional sense/form, protection that would justify a different treatment, respecting the principle of proportionality (para. 40). Therefore, as far as we are concerned, we consider that the legitimacy of the distinct legal status granted to the marriage between a man and a woman, cannot be questioned given that, as we pointed out, the interest protected through adoption is that of the minor, the only bearer of the right to adoption.

Beyond these considerations, we remind that at the level of the [executive] government there is openness regarding the individual rights and freedoms, the respect for equality in rights and as regards individual freedoms, being convinced that the legislative function must meet the needs of society and take into account its evolutions. At the same time though, one must respect the will expressed by the legislature which is, as we mentioned, not just the only legislative authority of the country, but also the "representative body" of Romanian society.

Yours,

Alina Radoi

Director, Direction for the elaboration of laws, studies, and documentation

Ministry of Justice and Citizens' Freedoms

No. 48402/2009 [05 June 2009]