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NEWS REPORT

Country:	Slovenia
Title:	New Civil Unions Act Adopted
Date:	14 June 2016
Expert:	Neža Kogovšek Šalamon
<u>Context</u>	
Issue at stake:	New legislation affecting employment rights in line with Directive 2000/78/EC
Ground of discrimination:	Sexual orientation
Source:	National Assembly of the Republic of Slovenia
Field:	All fields (employment and work, education, social security, social benefits, access to goods and services)
Applicable law:	Civil Unions Act, Official gazette of the Republic of Slovenia, No. 33/2016, 21 April 2016, to be applied from 24 February 2017

Content

Law: On the 21 April 2016 the National Assembly passed a new Civil Unions Act. The new act, which entered into force on 24 May 2016, replaced the previous Registration of Same-Sex Partnership Act of 22 June 2005. The new Civil Unions Act introduced the institution of same-sex "partnership union" which will replace "same-sex registered partnership". Also, almost all the rights enjoyed by different-sex couples will now be recognised to same-sex couples, regardless of whether same-sex partners have formally concluded their partnership or not. The new act will be applied from 24 February 2017, which is nine months after its entry into force. The need for delay in application was explained by the need to pass the implementing acts and to allow a transition into the new Civil Unions system. The system is introduced for same-sex partners only and will exist in parallel to the institution of marriage which remains open only for different sex couples.

The first important implication of the law is introduction of the missing rights that registered same-sex couples have not been enjoying under the 2005 Registration of Same Sex Partnership Act or under other pieces of legislation. This means that those same-sex partners, who will conclude a civil union, will have equal rights as married partners, with the exception of joint adoption, conclusion of marriage, and assisted reproduction services. These remain exclusively available to different sex couples only. Full equality in all other fields also means that partners in civil union will have equal rights in the area of work and employment, including the right to sick leave to care for a sick partner and additional days of leave awarded to couples for conclusion of a civil union. In this sense the law is bringing new rights to same-sex partners as required by the Directive 78/2000/EC which prohibits sexual orientation discrimination in the field of employment.

The second important implication of the new law is legal recognition of co-habiting same-sex partners in a way comparable to cohabiting different sex partners. In the Slovenian legislation co-habiting different sex partners are recognised some of the rights of spouses if the specific piece of legislation explicitly defines so. The fact that cohabiting same-sex partners are now treated on equal footing as cohabiting different sex couples means that they will have access to all those rights and obligations that are recognised in different laws to different sex couples who have not married. Since cohabiting same-sex partners did not enjoy any protection of the law before the Civil Unions Act (the only area where they have been recognised before was inheritance, pursuant a Constitutional Court decision),¹ this means that they will now be entitled to a whole new range of rights also in the field of work and employment, including the right to paid sick leave to care for an ill partner, the right to additional days of leave for concluding a civil union, and the right to obtain a survivor's pension that is based on contributions paid during the employment of the deceased partner.

Key points of analysis: This is a long awaited act which could be regarded as a strong partnership act, bringing almost all the same rights to same-sex partners that different sex partners already enjoy. At the same time the Civil Unions Act is a compromise, as the equalisation is not complete. Since the start date of the application of the law is delayed for nine months, it is not certain that the act will in fact sustain and be applied. If a referendum takes place the Civil Unions Act might be repealed before the start date of the application.

Since the start date of the application of the law is delayed for nine months, it is not certain that the act will in fact sustain and be applied. Namely, the Civil Unions Act was in the package of six acts which were again threatened by referendum, this time initiated by a group of Slovenian workers who are residents of Slovenia but work in Austria and are subject to, in their eyes, double taxation. Namely, since they pay lower taxes in Austria than they would in Slovenia with the same income, the Slovenian tax authorities charge them with income tax. The tax authorities and the government are deaf for their pleas so the workers started exercising civic disobedience. They gathered 2500 signatures to hold referendums against six laws (Civil Unions Act included). By law, the Parliament Speaker should withhold these laws and allow them to start collecting 40.000 signatures in order for the referendums to be held. However, the Parliament Speaker decided that they are abusing the institution of the referendum (because they do not really care about the content of the laws, they are not affected by the law in any way and they are only using this instrument of referendum to pursue their own specific goals unrelated to the laws in question) and sent the laws to the President of the Republic for promulgation and publication. The group of Slovenian migrant workers appealed to the Constitutional Court and claimed that their right to referendum was violated. If the Constitutional Court finds in their favour the referendum might take place and the Civil Unions Act might be repealed before the start date of the application.

Internet link source:

<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335>.

¹ Constitutional Court of the Republic of Slovenia, Decision No. U-I-212/10-15 of 14 March 2013.