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CONSTITUTIONAL LITIGATION IN CALIFORNIA ABOUT THE RIGHT TO GET MARRIED

After amendments in the legislation of California state conducted in the years 1999-2011, only the name and the lack of a nationwide recognition distinguish a partnership relationship between two people of the same sex from a marriage between a man and a woman. The issue of using the term „marriage” has led to a division in the society of California, which has become visible after adopting the definition of a marriage providing that „only marriage between a man and a woman is valid and recognized in California” in state referendums (first legislative and then constitutional).

The dispute involved state and federal courts. The Supreme Court of California held that the statutory limitation of the term „marriage” to the relation „between a man and a woman” violates fundamental constitutional right to get married, which cannot be denied neither by the legislature nor the electorate implementing its legislative initiative.

On the other hand, after the adoption by referendum of the Proposal 8, which introduced the aforementioned definition of marriage to the state constitution, the Federal Court of Appeal stated that the people of California by following their initiative deprived, without due cause, a minority group of rights which they were previously entitled to. Such decision resulted in the breach of the equal protection by law clause established in the fourteenth amendment to the Constitution of the United States. On this basis, the Court found the Proposal 8 unconstitutional.

In the dispute at the state level, the question whether and to what extent the ability of voters (and thus the sovereign state) to create the law at the constitutional level may be limited in its content by state judges, seems to be relevant.

At the federal level there is also another issue. If the competence to regulate marriage (or wider family) is left to state law, how the legal consequences of marriages of same-sex couples should be treated in states that do not allow such marriages. The problem is how to ensure the freedom of movement, the freedom of establishment, equal access to education, etc. in such uniform economic organism as the United States.