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### **Abstract:**

According to Article 18 of the Constitution of the Republic of Poland from 1997 “Marriage, being a union of a woman and a man, as well as family, motherhood and parenthood shall be placed under the protection and care of the Republic of Poland”. As to the substance, the quoted provision means continuation of Polish legal order. The wording „being a community of a woman and a man” is, however, a novelty in the Polish constitutional legislation. The reason for inserting it into the text of the basic law, declared during the Parliamentary constitutional works and the political campaign for confirming the new Constitution in the referendum 1997, was the intention to exclude any legal institutionalization of partnerships between persons of the same sex in the future.

Article 18 of the Constitution implicates, inter alia, the guaranty of the legal institution of marriage. The Polish legislator is namely authorized and obliged to establish and maintain just this institution, whose essential attributes are: monogamy (union of only two persons and excluding of coincident staying of the same person in two or more unions); heterosexuality (union of one woman and one man); availability for everyone who is able to marriage according to objective standards, and these shall be sufficiently specialized by statute; basing of the union on personal connection of the two partners in important dimensions of private and intimate life; durability of the union; uniformity of marriage law in Polish legal order; existence of legal norms of property for economic stabilization of the union; official contracting and registration of it.

On the other hand, the Constitution does not authorize the legislator to establish legal institutions similar to the marriage (a kind or kinds of “paramarriage”, regardless of the legal name), either for hetero- or homosexual couples (or unions of more persons), such as the French pacte civil de solidarité (for couples regardless of the sex of partners) or the German eingetragene Lebenspartnerschaft (for homosexual couples). Considering Article 18 of the Constitution, legal recognition of homosexual couples registered abroad by Polish legal order is excluded too.

The constitutional reason for the exceptional legal status of marriage, being a union of one woman and one man, is the close functional and axiological connection of marriage with the other goods protected by Article 18 of the Constitution: family, motherhood and parenthood.

Establishing a legal institution of „paramarriage” for persons of the same sex, even under a name different from marriage and with a more modest legal status (as was tried to enforce in the Polish Parliament), would not conform to the Constitution. Besides, the experiences of states in which such a “little step” was made years ago show that the existence of a legal institution of homosexual „paramarriage”, parallelly to the usual legal institution of (heterosexual) marriage, evokes a political and judicial pressure in favor of progressive

equating the first with the marriage respect to the – misinterpreted – principle of non-discrimination. The real choice for the Polish legislator is: either maintaining of the standpoint – which is, in the opinion of the author, required by the Constitution – that various forms of non-marital cohabitation are a strictly private matter, and they must not be subjugated under a specific legal institution, or to tread the path that begins at establishing of a “modest” kind of „paramarriage” and ends at full realization of the idea of mariage pour tous, including the right to adopt children by registered homosexual couples.

As to the matter in consideration, the Constitution could be changed only in the way of a formal, democratic revision of it, not in the way of an “innovative” re-interpretation of its provisions in force that have been adopted by the National Assembly and confirmed by the Polish people in the constitutional referendum 1997.