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PRESERVING MARRIAGE AS A UNION BETWEEN A MAN AND A WOMAN IN THE LAW OF NORTH MACEDONIA: A DE LEGE FERENDA PERSPECTIVE

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Abstract

The traditional model of marriage is the subject of intense debate, as LGBTI rights movements call for an expansion of the concept of marriage. This paper examines whether there are present-day institutional, family, reproductive, parental and social reasons for preserving the statutory definition of marriage as a union between a man and a woman in North Macedonia in light of evolving European human rights standards. It combines normative, case-law and comparative analysis with a review of legal, sociological and empirical literature, including scholarship and judicial opinions that reach the opposite conclusion. Article 6 of the Law on the Family defines marriage as a union of a man and a woman, and Article 15 requires that it be concluded by two persons of different sexes, while the Constitution leaves the regulation of legal relations in marriage to statute. The institution's reproductive dimension must be distinguished from a particular couple's capacity to have children, which is not a legal condition for marriage. The empirical studies on family structure reviewed support the importance of family stability and parental responsibility for children's well-being but do not examine parents' sexual orientation. The European Court of Human Rights requires States to provide legal recognition and protection for same-sex couples but leaves them a margin of appreciation as to the form of recognition, which need not be marriage, whereas the Court of Justice of the European Union requires same-sex marriages concluded in another Member State in the exercise of free movement to be recognised for the purposes of EU law, without obliging States to provide for them in national law. Separate legal regimes govern the conditions for concluding a marriage, marriages with a foreign element and protection against discrimination. Answering the research question in the affirmative, the paper recommends de lege ferenda that the statutory definition of marriage be preserved, including in the future Civil Code, a position grounded in the institutional character of marriage, its family, reproductive and parental dimensions and the social interest attached to it rather than in historical continuity alone. At the same time, the rights and interests of same-sex couples should be regulated separately and effectively, in accordance with constitutional guarantees and international obligations, with due respect for human dignity, equality and the prohibition of discrimination.

Keywords: definition of marriage, right to marry, reproductive dimension, parental responsibility, legal recognition of same-sex couples, European Court of Human Rights, Court of Justice of the European Union, North Macedonia, *de lege ferenda*.

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INTRODUCTION

As one of the oldest institutions of human society, marriage begins with a personal decision, but it does not remain a purely personal matter. Its conclusion creates a legal status that produces rights and duties between the spouses and, in many cases, consequences that reach beyond them. Precisely for this reason, the law treats marriage not as an ordinary private agreement but as an institution of family law. Historically, marriage has been closely linked to the birth and upbringing of children and to the legal organisation of the family (Reid, 2009, pp. 454–455). In Roman social practice, marriage, where it was available, was regarded as the legitimate means of procreation and the proper venue for raising children, as the rarity of children acknowledged from unions of concubinage suggests (Reid, 2009, pp. 458–459). In Roman law, the link also had a legal form. Children born of a lawful marriage were in paternal power, *patria potestas* (Gaius, trans. 1988, 1.55), and the father was the one indicated by the marriage: "*pater vero is est, quem nuptiae demonstrant*" (D. 2.4.5; Justinian, trans. 1985). Marriage thus determined paternity and the child's place in the family.

The Law on the Family of North Macedonia still reflects this link. The spouses, each according to their abilities, provide for the needs of the family, and the husband of the mother is presumed to be the father of a child born during the marriage or within 300 days of its termination (Law on the Family, 1992, Arts. 33, 50). Marriage therefore creates not only a relationship between two persons but also a legal framework for the care of the family and for the determination of children's parentage.

Marriage has nevertheless changed. The legal position of women, equality between spouses, individual autonomy and the organisation of family life have undergone deep transformations, which are also visible in demographic data. In the European Union (EU), the crude marriage rate fell from 8.0 per 1,000 persons in 1964 to 3.9 in 2024, the crude divorce rate rose from 0.8 to 1.6 over the same period, and an estimated 41.1% of live births in 2024 took place outside marriage (Eurostat, 2026). Part of this development has been described as the deinstitutionalisation of marriage, that is, the weakening of the social norms that define people's behaviour within the institution (Cherlin, 2004, p. 848). A change in the content of an institution, however, is not the same as the loss of its legal identity.

In the law of North Macedonia that identity is expressed above all in the statutory definition. Article 6 of the Law on the Family defines marriage as a legally regulated community of life of a man and a woman in which the interests of the spouses, the family and society are realised, and Article 15 provides that marriage may be concluded by two persons of different sexes, by freely expressed will, before the competent authority (Law on the Family, 1992, Arts. 6, 15). The Constitution ensures special care and protection for the family and leaves the regulation of legal relations in marriage, family and non-marital unions (*vonbrachna zaednica*, rendered as "cohabitation" in the English

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translation of the Constitution and as "extramarital union" in part of the domestic literature, e.g., Ristov & Shutova, 2022) to statute (Constitution of the Republic of North Macedonia, 1991, Art. 40(1)–(2)). At the international level, Article 16 of the Universal Declaration of Human Rights links the right to marry with founding a family, requires free and full consent and recognises the family as the natural and fundamental group unit of society (United Nations, 1948, Art. 16). Other instruments formulate this right in a similar way. Article 23 of the International Covenant on Civil and Political Rights describes the family as the natural and fundamental group unit of society, entitled to protection by society and the State, and recognises the right of men and women of marriageable age to marry and to found a family (United Nations, 1966, Art. 23), whereas Article 12 of the European Convention on Human Rights guarantees this right to men and women of marriageable age according to the national laws governing its exercise (Council of Europe, 1950, Art. 12). The UN Human Rights Committee has observed that Article 23(2) of the Covenant is the only substantive provision that defines a right by using the term "men and women" and that this wording has been consistently and uniformly understood as indicating that the obligation of States parties stemming from Article 23(2) is to recognise as marriage only the union between a man and a woman wishing to marry each other (*Joslin et al. v. New Zealand*, 2002, para. 8.2).

This framework now faces demands to extend the legal concept of marriage. The European Court of Human Rights leaves to national legislation the decision of whether to allow same-sex marriage (*Schalk and Kopf v. Austria*, 2010, §§ 61–63) but requires States to secure a form of legal recognition and protection for same-sex couples without obliging them to open marriage to these couples (*Fedotova and Others v. Russia* [Grand Chamber (GC)], 2023, §§ 165, 178). As the Court has noted, the Charter of Fundamental Rights of the European Union also guarantees the right to marry and the right to found a family in accordance with the national laws governing the exercise of these rights and thus leaves the decision on same-sex marriage to the States (*Schalk and Kopf v. Austria*, 2010, §§ 24, 60). In the same vein, the Court of Justice of the European Union, while requiring the recognition of a marriage lawfully concluded in another Member State for the purposes of EU law, has clarified that this obligation does not require a State to provide for same-sex marriage in its national law (*Wojewoda Mazowiecki*, 2025, paras. 61, 77). National arrangements therefore remain diverse (de Groot, 2025, pp. 5, 7), and the definition of marriage remains primarily a choice for the national legislature, a choice that must rest on clear legal and social reasons.

Tradition taken alone is not a sufficient legal argument, and it is therefore not enough to say that marriage should be preserved because "it has always been so". The question addressed in this paper is whether there are present-day institutional, family, reproductive, parental and social reasons that justify preserving marriage as a union between a man and a woman in the law of North Macedonia. Its aim is to analyse these

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reasons and, with a view to the expected codification of family law in a future Civil Code, to formulate proposals *de lege ferenda* that respect the dignity of every person and the prohibition of discrimination.

METHODS

The paper combines four methods. The first is a normative analysis of the domestic provisions in force in 2026, in particular the Constitution, the Law on the Family, the Law on Private International Law, the Law on Prevention and Protection against Discrimination and the Law on Administrative Disputes, together with three rulings of the Constitutional Court, two on the procedure for concluding a marriage and one on the definition of the non-marital union. The second is an analysis of the case law of the European Court of Human Rights and of the Court of Justice of the European Union and of the views of the UN Human Rights Committee on the right to marry and the recognition of same-sex couples, together with the relevant international instruments. The third is the comparative method, which uses Germany as an example of the extension of marriage to same-sex couples and registered partnership as an alternative model, against the background of the diversity of EU Member States. The fourth is a review of the legal, sociological and empirical literature on the institution of marriage, family stability and child well-being, including domestic and regional doctrine, as well as scholarship and judicial opinions that reach conclusions different from those of this paper. The case law published up to September 2026 was also examined. It revealed no decision of a court of North Macedonia that expressly ruled on the refusal to conclude a same-sex marriage or on the full recognition of a marital status acquired abroad. This does not rule out unpublished proceedings; the analysis *de lege lata* therefore rests on the text of the law, and conclusions about judicial practice are limited to what has been published.

RESULTS

Marriage as a Legal and Social Institution

Freedom to marry is part of personal autonomy. No one may be compelled to marry, and the free and full consent of the intending spouses is a basic condition of marriage (United Nations, 1948, Art. 16; United Nations, 1966, Art. 23). The Law on the Family likewise requires freely expressed will and does not regard a marriage to which consent was given under duress or by mistake as valid (Law on the Family, 1992, Arts. 15, 19). Once a marriage has been concluded, however, the parties do not themselves determine the legal content of their status. The law lays down the conditions for concluding a marriage, the impediments, the rights and duties of the spouses, the relations with children and the dissolution of marriage (Law on the Family, 1992, Arts. 15, 23–30; 16–

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22a; 6, 31–33a; 44–94; 34–43, 228–261), which distinguishes marriage from a purely contractual relationship. The European Court of Human Rights has also held that the exercise of the right to marry gives rise to personal, social and legal consequences (Registry of the European Court of Human Rights [ECtHR Registry], 2026, para. 1; *F. v. Switzerland*, 1987, § 32, as cited in *Schalk and Kopf v. Austria*, 2010, § 49). Article 6 of the Law on the Family expresses both sides of the institution, linking marriage not only to the interests of the spouses but also to those of the family and society, and basing relations between the spouses on the free decision of the man and the woman to marry, on their equality, mutual respect and mutual assistance (Law on the Family, 1992, Art. 6). Individual autonomy and the institutional character of marriage are therefore not mutually exclusive.

The institutional character of marriage does not mean that its content is immutable. Changes in the rules organising married life, such as the spouses' property relations, maintenance or the family home, should not, however, be confused with the question of whether the constitutive elements that distinguish marriage from other relationships remain, namely, under the law in force, the union of a man and a woman concluded by their freely expressed will (Law on the Family, 1992, Arts. 6, 15). Domestic doctrine stresses that personal and property relations within the family are closely intertwined, as with property relations between spouses and the right and duty of maintenance between spouses and between parents and children (Ristov & Shutova, 2022, p. 150). The family home illustrates this connection. The same doctrine regards it as a necessity for the existence of the family and advocates its special protection under family law within the future Civil Code, above all in the interests of children, since a change of home and living environment after divorce has a stressful effect on their development (Ristov & Shutova, 2022, pp. 159–160). Under the law in force, the spouses decide by agreement on the place of their common residence and on running the common household (Law on the Family, 1992, Art. 32). Such rules organise married and family life and can be reformed, for example, by protecting the family home more strongly without affecting who may marry.

The public dimension of the institution is also visible in the scope of the Law on the Family, which regulates marriage and the family, relations within them, certain forms of special protection of the family, domestic violence, adoption, guardianship, maintenance, court proceedings in matrimonial and family disputes and the procedure for imposing interim measures of protection against domestic violence (Law on the Family, 1992, Art. 1). Family solidarity has a public side as well. Maintenance is a right and duty of parents, children, other relatives and persons living in a marital or non-marital union, and where it cannot be secured by them, the Republic provides the necessary means under conditions laid down by law (Law on the Family, 1992, Art. 11). This solidarity may continue after the dissolution of marriage, since a spouse without sufficient means who

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is unable to work or unemployed through no fault of their own may claim maintenance in the divorce judgment or, under statutory conditions, by a separate action within one year of the termination of the marriage (Law on the Family, 1992, Arts. 185–186). Sociological theory of late modernity contrasts marriage with the "pure relationship", which lasts only as long as the partners are satisfied with it, is not tied to the desire to raise children and, unlike marriage, is not regulated by law and does not give its members special legal rights (Giddens, 1991, 1992, as cited in Cherlin, 2004, p. 853). The public interest in marriage therefore does not rest on a single function but is connected with solidarity between spouses, a stable framework of responsibility for children, family and property consequences and the continuity of obligations even when the relationship goes through difficulties.

The Family and Reproductive Dimension

The capacity to procreate is not a legal requirement for entering into a valid marriage. The Law on the Family mentions the capacity to have children neither among the conditions for marriage nor among the impediments (Law on the Family, 1992, Arts. 15–22). In *Christine Goodwin v. the United Kingdom* [GC], the European Court of Human Rights held that the ability to found a family is not a condition for marriage and that the inability of a couple to conceive or parent a child cannot be regarded as *per se* removing their right to marry (*Christine Goodwin v. the United Kingdom* [GC], 2002, § 98). The institution cannot therefore be reduced to the concrete biological capacity of each couple to have offspring. When it reiterated this finding in *Schalk and Kopf v. Austria*, the Court added that it "does not allow any conclusion regarding the issue of same-sex marriage" (*Schalk and Kopf v. Austria*, 2010, § 56). It does not follow that the reproductive dimension is legally irrelevant, because the factual capacity of a particular couple must be distinguished from the general structure of the institution. This structure is visible in international instruments, which formulate the right to marry together with the right to found a family (Council of Europe, 1950, Art. 12; United Nations, 1948, Art. 16; United Nations, 1966, Art. 23). Historically, in four Western societies, namely, pre-Christian Rome, the early medieval West, the High Middle Ages and the Anglican high-church culture of the early modern period, marriage was regarded as the legitimate means of bringing a new generation into being, and its procreative dimension served as the central organising principle of legal analysis and social life (Reid, 2009, p. 455). Enlightenment liberals defended stable monogamous marriage with arguments from human nature and natural law rather than from the Bible and theology, seeing it as the best way to secure paternal certainty and joint parental investment in children (Witte, 2015, pp. 597–598). Until the mid-twentieth century, marriage remained the only socially accepted way of raising children in the United States, Canada and Europe, with the possible exception of

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the Nordic countries; from the 1960s, childbearing outside marriage became less stigmatised and more widely accepted (Cherlin, 2004, pp. 851–852).

The legal significance of this link lies in its consequences. The relationship between a man and a woman may result in the birth of a child, towards whom special obligations arise: establishing descent, care, maintenance, upbringing and parental rights and duties (Law on the Family, 1992, Arts. 8, 44–46, 50–75, 179). As noted in the introduction, the law gives this link a concrete legal form: the presumption that the mother's husband is the father of a child born during the marriage (Law on the Family, 1992, Art. 50) attaches descent to marital status and, as currently formulated, rests on the union of a man and a woman. The Convention on the Rights of the Child recognises the child's right, as far as possible, to know and be cared for by his or her parents and the common responsibility of both parents for the upbringing and development of the child (United Nations, 1989, Arts. 7, 18). The Constitution gives parents the right and duty to provide for the maintenance and upbringing of their children (Constitution of the Republic of North Macedonia, 1991, Art. 40(3)), while the rights and duties between parents and children are the same whether the children are born within or outside marriage (Law on the Family, 1992, Art. 9). The legal assessment of the family dimension should therefore focus on responsibility and the protection of persons, not only on the biological link from which a child may be born.

The reproductive argument should not be made absolute. The literature has pointed to the problems of under- and over-inclusiveness that arise when procreation is used as the sole explanation of the legal boundaries of marriage (Stein, 2009, pp. 432–435). The same objection has been made in stronger terms, with the observation that marriage has never been limited to the fertile or to those of an age to be fertile (Nussbaum, 2010, p. 679), and the Supreme Court of the United States relied on similar reasoning when it opened marriage to same-sex couples, stating that an ability, desire or promise to procreate "is not and has not been a prerequisite for a valid marriage in any State" (*Obergefell v. Hodges*, 2015, p. 669). These objections are directed against an argument that would condition the marriage of a particular couple on its capacity to procreate, an argument that this paper does not advance. They do not affect the claim defended here, which concerns the general structure of the institution: the legal framework of descent that the law attaches to marriage, in particular the presumption that the mother's husband is the father of a child born during the marriage, which, as currently formulated, presupposes the union of a man and a woman (Law on the Family, 1992, Art. 50). The reproductive dimension therefore carries weight as part of a wider structure that includes spousal solidarity, parental responsibility, family stability and the best interests of the child. As a public commitment to a long-term relationship, marriage allows partners to invest in their relationship, including time and effort in their children, with less fear of abandonment, although this advantage over cohabitation is diminishing (Cherlin, 2004,

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pp. 854–855); when children are present or expected soon, issues of commitment and support come into consideration (Cherlin, 2004, p. 858). Among these elements, the best interests of the child carry a particular weight, since in all actions concerning children, they must be a primary consideration (United Nations, 1989, Art. 3).

Parental Responsibility, Family Stability and the Best Interests of the Child

Children's outcomes are not determined by the legal form of the family alone. Economic circumstances, father involvement, the co-parental relationship, conflict between the parents and the stability of the child's environment all matter (Amato, 2005, pp. 82–84), and the quality of parenting is one of the best predictors of children's emotional and social well-being, whatever the family structure (Amato, 2005, p. 83). Some children with continuously married parents face poverty, serious conflict between the parents, violence, inadequate parenting and mental illness or substance abuse, whereas some children of divorced parents cope well, perhaps because their parents are able to separate amicably and cooperate in parenting (Amato, 2005, p. 77). It would therefore not be scientifically justified to claim that every family composed of a mother and a father is, by virtue of its structure alone, better for the child.

The empirical literature nevertheless gives reasons to value stability. On average, children with continuously married parents do better than children of divorced parents in academic success, conduct, psychological well-being, self-esteem and peer relations, although the differences are modest and children's problems have many causes, of which the family structure is only one (Amato, 2005, pp. 77, 90). Children who grow up in stable two-parent families have a higher standard of living, receive more effective parenting, experience more cooperative co-parenting, are emotionally closer to both parents and are exposed to fewer stressful events (Amato, 2005, p. 89). Because researchers cannot conduct a true experiment by randomly assigning children to single or married parents, it is difficult to rule out the role of selection, although many studies cast doubt on it (Amato, 2005, p. 85). Research on fragile families stresses parental resources, mental health, relationship quality, parenting quality, father involvement, selection and stability (Waldfogel et al., 2010, pp. 89–94). Neither study examines parents' sexual orientation; both compare children in married, cohabiting and single-parent families, including stepfamilies (Amato, 2005, pp. 78–82; Waldfogel et al., 2010, p. 89). Studies that examine children of same-sex parents directly form a separate body of literature. Reviewing it, a technical report of the American Academy of Pediatrics concluded that children's well-being is affected much more by their relationships with their parents than by the parents' gender or sexual orientation, while noting that much of the research relied on small and selective samples (Perrin et al., 2013, pp. e1378, e1380). Whatever the merits of these findings, they do not bear on the argument of this

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paper, which does not rest on claims about the parenting of same-sex couples but on the legal structure of marriage itself.

Marriages marked by persistent conflict and hostility remain "intact" in structural terms, yet they do not necessarily offer a good environment for raising children: where parental conflict is chronic and overt, children seem to fare better over the long term if the parents separate, whereas where conflict is low, they seem to fare better if the parents stay together (Amato, 2005, p. 80). If conflict turns into violence, the Law on the Family unequivocally prohibits any kind of violence in marriage and the family (Law on the Family, 1992, Art. 33a). The best-supported and most measured conclusion is that stability, continuity of care and the quality of parental responsibility matter greatly. Marriage is one of the legal mechanisms through which the legal order seeks to place these relationships within a stable framework of rights and duties; it does not in itself guarantee a functional family. Domestic doctrine reflects this approach in proposing the shift from parental right to parental responsibility, linked to the conception of the child as a holder of rights (Ristov & Shutova, 2022, pp. 155–156), and respect for the best interests of the child also requires the child's participation in proceedings affecting family life (Sutova, 2025, pp. 72–73; United Nations, 1989, Art. 12). In the divorce judgment, the court decides on the custody, upbringing and maintenance of the children and, where the parents' agreement is not consistent with the children's interests, makes its own determination after obtaining the opinion of the centre for social work (Law on the Family, 1992, Arts. 80, 256). Where the parents do not live together, the child's personal relations and direct contacts with a parent may be restricted or temporarily prohibited only to protect the child's health and other interests (Law on the Family, 1992, Art. 79).

European Case Law and Standards: Recognition Without an Obligation to Open Marriage

The case law of the European Court of Human Rights distinguishes between recognition and access to marriage. In *Schalk and Kopf v. Austria*, the Court no longer considered that the right to marry under Article 12 must in all circumstances be limited to marriage between persons of the opposite sex, but it stressed the deep-rooted social and cultural connotations of marriage, noted the absence of a European consensus and left the question of same-sex marriage to national law; Article 12 did not impose such an obligation (*Schalk and Kopf v. Austria*, 2010, §§ 58, 61–63). This position under Article 12 was confirmed in later judgments such as *Gas and Dubois v. France* (2012) and *Hämäläinen v. Finland* (2014) (as cited in Hodson, 2025, p. 76). In *Oliari and Others v. Italy*, the Court found that Italy had failed to fulfil its positive obligation to ensure that the applicants had available a specific legal framework for the recognition and protection of their same-sex unions and that there had been a violation of Article 8, while stating that Article 12 of the Convention does not oblige the respondent State to grant a same-

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sex couple access to marriage (*Oliari and Others v. Italy*, 2015, §§ 185, 187, 192). The Grand Chamber consolidated this approach in *Fedotova and Others v. Russia*, noting that neither Article 8 nor Article 12 has been interpreted as imposing a positive obligation to make marriage available to same-sex couples (*Fedotova and Others v. Russia* [GC], 2023, § 165) and that States enjoy a wider margin of appreciation in choosing the form of recognition, which need not necessarily be marriage but must offer adequate protection (*Fedotova and Others v. Russia* [GC], 2023, §§ 188–190). The approach was then applied in *Buhuceanu and Others v. Romania*, *Koilova and Babulkova v. Bulgaria* and *Przybyszewska and Others v. Poland*, all decided in 2023 and concerning States that offered no form of legal recognition (as cited in Hodson, 2025, p. 80).

Critical literature has pointed to tensions between Articles 8, 12 and 14 of the Convention in this case law: while under Article 8, the Court now requires a form of legal recognition for same-sex couples, its case law under Article 12 has remained unchanged, and it usually avoids examination under Article 14 (Hodson, 2025, pp. 69, 76). Already in *Schalk and Kopf*, three dissenting judges found a violation of Article 14 taken together with Article 8 because Austria had provided no legal framework for same-sex couples before 2010 and had advanced no argument to justify the difference in treatment (*Schalk and Kopf v. Austria*, 2010, joint dissenting opinion of Judges Rozakis, Spielmann and Jebens, paras. 4, 8, 10), a position later reflected under Article 8 in *Oliari* and *Fedotova* but never extended by the Court to Article 12 and the right to marry (*Oliari and Others v. Italy*, 2015, §§ 185, 187, 192; *Fedotova and Others v. Russia* [GC], 2023, §§ 165, 178). The Court's approach has been described as incoherent, but in the post-*Fedotova* cases, the freedom of States to exclude same-sex couples from marriage was explicitly or implicitly reaffirmed (Hodson, 2025, p. 80). At the same time, the Court requires particularly serious reasons to justify differences on the basis of sexual orientation (*Schalk and Kopf v. Austria*, 2010, § 97). As summarised in the *Guide on Article 12* prepared by the Court's Registry, the Court has reiterated that neither Article 12 nor Article 14 taken together with Article 8 can be read as obliging States to grant same-sex couples access to marriage. It has also recognised that civil unions, such as a registered partnership or the French civil solidarity pact (PACS), can offer a legal status equal or similar to marriage in many respects, and in *Chapin and Charpentier v. France* (2016) it noted, in finding no violation, that the applicants had been able to conclude a PACS (ECtHR Registry, 2026, para. 31).

Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe distinguishes three situations. Where national law grants rights and obligations to unmarried couples, these should apply without discrimination to different-sex and same-sex couples alike; where it recognises registered same-sex partnerships, States should seek to give them a legal status, rights and obligations on a par with those of heterosexual couples in comparable circumstances; and where it recognises neither,

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States are invited to consider providing legal or other means of resolving the practical problems faced by same-sex couples, without any discrimination, including against different-sex couples (Council of Europe, Committee of Ministers, 2010, paras. 23–25). In EU law, sexual orientation is recognised as a ground of discrimination, but the relevant directive protects it only in employment, occupation and vocational training, and EU anti-discrimination law leaves the recognition of marital and family status to national law (de Groot, 2025, pp. 1, 4–5). In *Coman* (C-673/16), the Court of Justice held in 2018 that Member States which do not provide for same-sex marriage must, as a minimum, respect the right of same-sex spouses to reside together on their territory when the couple moves there in the exercise of free movement (de Groot, 2025, p. 7). In *Wojewoda Mazowiecki* (C-713/23), the Court held that the Member State of origin must recognise, for the exercise of the rights conferred by EU law, a marriage lawfully concluded in another Member State between two of its nationals of the same sex who, while exercising their freedom of movement and residence, had created or strengthened family life there. Where the transcription of the foreign marriage certificate into the national civil register is the only means of recognition provided, the State may not refuse it on the ground that its law does not permit same-sex marriage. This obligation of recognition does not, however, require the State to provide for the institution of same-sex marriage in its national law (*Wojewoda Mazowiecki*, 2025, paras. 61, 77).

Comparative Law

Comparative law demonstrates that there is no uniform European legal model for regulating marriage and alternative forms of union between persons of the same sex. According to the analysis of the European Parliamentary Research Service, national laws differ considerably, and seven EU Member States, namely, Bulgaria, Croatia, Latvia, Lithuania, Hungary, Poland and Slovakia, have constitutional provisions that exclude same-sex marriage (de Groot, 2025, p. 5). Within the Council of Europe, 22 States recognise same-sex marriage, whereas 12 States have statutory or constitutional provisions that either expressly prohibit it or can be interpreted as excluding it (Hodson, 2025, pp. 70, 84). This category includes, among others, Bulgaria, Croatia, Serbia and Montenegro. Nine European States also recognise registered partnerships between persons of the same sex, including Croatia, Hungary and Montenegro, even though their legislation does not permit same-sex couples to marry (Hodson, 2025, pp. 70, 84). North Macedonia does not appear in these lists, although its legislation also limits marriage to persons of different sexes. Unlike the States that have laid down this limitation at the constitutional level, in North Macedonia, it derives from the Law on the Family, whereas the Constitution provides that legal relations in marriage, the family and non-marital unions are regulated by statute, without expressly defining marriage as a union between

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a man and a woman (Constitution of the Republic of North Macedonia, 1991, Art. 40(2); Law on the Family, 1992, Arts. 6, 15).

Germany represents one of the models of extending the legal definition of marriage. Under legislative amendments that entered into force on 1 October 2017, the German Civil Code expressly provides that marriage is concluded for life by two persons of different or the same sex (Bürgerliches Gesetzbuch, 2002, § 1353(1); de Groot, 2025, p. 7). The German example demonstrates that changing the legal definition of marriage is one of the options open to the legislature, without implying that the same solution must be transplanted into other legal systems. Another model is the legal recognition of same-sex relationships through registered partnership or similar forms of civil union. Alongside the 16 EU Member States that allow same-sex marriage, most of the others have introduced alternative forms of legal recognition, such as Czechia (2006), Hungary (2009), Croatia (2014), Cyprus (2015), Italy (2016) and Latvia (2024); in Italy, civil unions between persons of the same sex were regulated by a law of May 2016, following the judgment of the European Court of Human Rights in *Oliari and Others v. Italy* (de Groot, 2025, p. 7). According to the 2025 analysis, five Member States, namely, Bulgaria, Lithuania, Poland, Romania and Slovakia, offered no legal recognition of same-sex relationships (de Groot, 2025, p. 7). This classification should nevertheless be read together with the ruling of the Lithuanian Constitutional Court, which the same analysis mentions. Lithuania illustrates the distinction between the constitutional definition of marriage and the legal recognition of family relationships through partnership: although its Constitution excludes same-sex marriage (de Groot, 2025, p. 5), its Constitutional Court ruled on 17 April 2025 that the lack of a registered partnership was unconstitutional (de Groot, 2025, p. 7). This development shows that the legal recognition of family relationships between persons of the same sex can be achieved without necessarily changing the constitutional definition of marriage while preserving the distinction between the institution of marriage and alternative forms of legal recognition.

Marriages Concluded Abroad and Public Policy

Marriages concluded abroad must be distinguished from the conclusion of marriage before domestic authorities, both with respect to the applicable law and with respect to the recognition of legal effects. Under the Law on Private International Law, the conditions for concluding a marriage are governed, for each person, by the law of the State of which that person is a national at the time of marriage, whereas the form of marriage is governed by the law of the place where it is concluded (Law on Private International Law, 2020, Arts. 24–25). For a national of North Macedonia, where the matter is assessed under domestic conflict-of-law rules, Article 24 therefore makes the different-sex requirement of Article 15 of the Law on the Family (1992) applicable even when the marriage is concluded abroad, including for a person who also holds another nationality,

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since, for the purposes of that law, such a person is regarded solely as a national of North Macedonia (Law on Private International Law, 2020, Art. 4(2)). Determining the law applicable to the conditions of marriage does not, however, in itself resolve every question concerning the recognition and legal effects of a marriage concluded abroad. Public policy becomes relevant where conflict-of-law rules point to foreign law, particularly for foreign nationals whose national law permits same-sex marriage, and the public-policy clause can limit its application. The public-policy exception operates at two levels: foreign law is not applied where the effects of its application would be manifestly contrary to the public policy of North Macedonia, and a foreign judicial decision is not recognised where the effects of its recognition would be manifestly contrary to public policy (Law on Private International Law, 2020, Arts. 12, 163). Both provisions apply only where the concrete effect would be manifestly contrary to public policy; they do not allow every marriage concluded abroad to be rejected automatically. Nor is a marriage certificate issued by a civil registry office abroad necessarily a foreign judicial decision. Such a certificate is in principle a public document attesting the registered data, whereas under Article 157, a foreign judicial decision is a decision of a foreign court, a court settlement or a decision of another body equated with them in the State of origin, provided that it regulates private-law relations with an international element (Art. 1). The rules on the effect of recognition (Art. 158) and on the procedure initiated by a proposal (Art. 165) therefore do not automatically apply to such a certificate (Law on Private International Law, 2020, Arts. 1, 157, 158, 165).

DISCUSSION

Autonomy and the Individualisation of Marriage

In the twentieth century, American marriage moved from an institutional to a companionate and then to an individualised model, in which personal choice and self-development became more important (Cherlin, 2004, pp. 851–853). A similar shift has been described in regional family law, from the protection of the family as an institution towards an emphasis on the individual rights of its members (Ponjavić, 2015, pp. 25–27). In a 2001 national survey of Americans aged 20–29, 94% of never-married respondents wanted their spouse to be, above all, a "soul mate", whereas only 16% agreed that the main purpose of marriage today is having children (Whitehead & Popenoe, 2001, as cited in Cherlin, 2004, p. 856). Yet while marriage has become less important in practical terms, its symbolic significance has stayed high and may even have grown, as marriage has changed from a marker of conformity into a marker of prestige achieved through one's own efforts (Cherlin, 2004, p. 855). Social change explains why the debate arises but does not determine the legal answer. The European Court of Human Rights, while acknowledging that marriage as an institution has undergone significant

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social change since the Convention was adopted, found no European consensus on same-sex marriage at the time and left the matter to national law (*Schalk and Kopf v. Austria*, 2010, §§ 58, 61–63).

Personal freedom is not foreign to the legal concept of marriage but is one of its fundamental premises, since marriage itself rests on the free decision of the man and the woman to marry (Law on the Family, 1992, Arts. 6(2), 15). Freely expressed consent to marry is, however, a necessary but not sufficient condition for the validity of a marriage (Law on the Family, 1992, Arts. 19, 35). The law also requires other conditions to be met, including the age of majority (18 years), with court permission possible from the age of 16 under the conditions laid down by law, the absence of an earlier marriage that has not yet ended and the absence of marital impediments arising from kinship (Law on the Family, 1992, Arts. 10, 16–17, 20–22).

Accordingly, the freedom to decide whether to marry and the normative definition of the conditions for marrying are two legally distinct questions. The first concerns personal autonomy and the free expression of will, the second the legislature's competence to define the conditions and legal effects of the institution of marriage. This distinction is supported by Article 40(2) of the Constitution, which provides that legal relations in marriage, family and non-marital unions are regulated by statute (Constitution of the Republic of North Macedonia, 1991, Art. 40(2)). Relying on this provision, the Constitutional Court held that the requirement then in force for prospective spouses to submit a certificate of having attended premarital and marital counselling at a centre for social work did not restrict the right to marry freely. In the Court's view, marriage is an institution of special social interest for which the law lays down precisely defined conditions; it is not merely a private relationship between a man and a woman but also has a social character (Constitutional Court of the Republic of Macedonia, 2002, points 1, 4–5). Likewise, Article 12 of the European Convention on Human Rights guarantees the right to marry and to found a family in accordance with the national laws governing its exercise, although the limitations imposed by the legislature must be neither arbitrary nor disproportionate and must not impair the very essence of the right (Council of Europe, 1950, Art. 12; ECtHR Registry, 2026, paras. 2–3, 5). The requirement in Article 15 of the Law on the Family that marriage be concluded by two persons of different sexes belongs to the second of these questions, the legislature's competence to define the conditions of marriage (Law on the Family, 1992, Art. 15; *Schalk and Kopf v. Austria*, 2010, § 63).

Consequently, respect for personal autonomy does not, by itself, determine the scope of the legal boundaries of marriage, which must be assessed in light of the constitutional order, international human rights standards and legitimate aims of legal regulation. The legal protection of the individual and the definition of the legal content of marriage are thus interrelated but not identical questions. This distinction retains its significance even

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when the legal debate shifts from individual autonomy to the principle of equality and the prohibition of discrimination.

Equality and Non-Discrimination

Protection against discrimination has an express normative basis in North Macedonia. The Constitution guarantees the equality of citizens in their freedoms and rights irrespective of sex, race, colour of skin, national and social origin, political and religious belief, property and social status and establishes their equality before the Constitution and the law (Constitution of the Republic of North Macedonia, 1991, Art. 9(1)–(2)). The Law on Prevention and Protection against Discrimination, in turn, expressly extends this protection by listing, among others, sexual orientation, gender identity and family or marital status as prohibited grounds of discrimination. Under this law, discrimination includes any distinction, exclusion, restriction or preference based on discriminatory ground, by act or omission, which has the purpose or effect of preventing or restricting the recognition, enjoyment or exercise of the rights and freedoms of a person or group on an equal basis with others (Law on Prevention and Protection against Discrimination, 2020, Arts. 5–6).

With respect to judicial protection, the law provides for an action before the competent civil court, in urgent proceedings, to establish discrimination, prohibit discriminatory acts and oblige the defendant to remove discrimination or its consequences, as well as to obtain compensation for pecuniary and non-pecuniary damage (Law on Prevention and Protection against Discrimination, 2020, Arts. 32(1), 32(3), 34(1)). The law also allows an action for protection against discrimination in the public interest (*actio popularis*), which may be brought by the entities specified by law where they show it to be probable that a larger number of persons have been discriminated against (Law on Prevention and Protection against Discrimination, 2020, Art. 35(1)–(2)). These remedies nevertheless have their own object, function and conditions and cannot, in themselves, be equated with a constitutive decision creating marital status or with a decision recognising it. Such matters must be examined in accordance with the relevant family legislation and applicable procedural rules.

Equality and the legal identity of marriage must be analysed in relation to each other but without being merged into a single question. Arguments in favour of preserving marriage as a union between a man and a woman must rest on an analysis of the nature, functions and legal purposes of the institution, not on prejudice against, or the devaluation of, persons who fall outside its definition. This paper does not call into question the dignity of any person, regardless of sexual orientation, or the need for effective protection against discrimination. In this respect, the Constitution guarantees every citizen respect for and protection of the privacy of his or her personal and family

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life, dignity and reputation (Constitution of the Republic of North Macedonia, 1991, Art. 25).

The question that arises in this context is whether respect for these rights and the provision of legal protection necessarily require a change in the statutory definition of marriage or whether they can also be achieved through other forms of legal recognition. This distinction is also supported by the case law of the European Court of Human Rights, which, while requiring States to provide a legal framework allowing adequate recognition and protection of the relationships of same-sex couples, leaves them a wider margin of appreciation in determining the form of that recognition, which need not necessarily be marriage (*Fedotova and Others v. Russia* [GC], 2023, §§ 178, 188). This question leads directly to the distinction between the legal recognition of family relationships and the institution of marriage.

Recognition is Not the Same as Marriage

Between the absence of legal protection and inclusion in the institution of marriage, there are other forms of recognising and protecting family relationships (Council of Europe, Committee of Ministers, 2010, paras. 23–25; de Groot, 2025, pp. 6–7). In this respect, the family law of North Macedonia also distinguishes between the institution of marriage and the non-marital union, attaching different legal effects to these relationships. Specifically, Article 13 of the Law on the Family provides that a community of life of a man and a woman which has not been established through marriage and has lasted at least one year is equated with the marital union with respect to the right to mutual maintenance and property acquired during its existence (Law on the Family, 1992, Art. 13).

Domestic legal literature has noted that the law does not expressly require the absence of marital impediments as a condition for the creation and legal effects of a non-marital union and does not lay down any specific form for proving its existence and duration. To overcome these shortcomings, it proposes that the law should provide that there must be no marital impediments between the partners for a non-marital union to produce legal effects, that the partners should be able to register the union by a declaration before a notary and that cohabitants who have lived together for more than five years, or for more than three years if they have children together, should have statutory inheritance rights under the rules applicable to spouses (Ristov & Shutova, 2022, p. 152).

These proposals concern the non-marital union of a man and a woman and are not proposals for the legal recognition of same-sex couples. They are nevertheless methodologically relevant to the analysis of alternative forms of legal recognition because

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they show that the interests requiring protection, the modes of recognition and the legal consequences of a relationship can be determined separately from marital status. This distinction provides a basis for examining different legislative options without implying that the legal recognition of a relationship must necessarily take place through the institution of marriage.

From the standpoint of legislative policy, a registered partnership is a model distinct from the extension of marriage itself. Instead of changing the definition of marriage, a separate legal framework could be considered for the specific interests of persons who fall outside its legal structure. The content of such a model should not, however, be determined in the abstract. Any concrete proposal would require a separate analysis of the rights and duties to be recognised, of their relationship to marriage and the family and of their compatibility with the constitutional and legal order of North Macedonia, in which the Constitution mentions the non-marital union, alongside marriage and the family, as a relationship regulated by statute, whereas the Law on the Family defines that union as a community of life of a man and a woman (Constitution of the Republic of North Macedonia, 1991, Art. 40(2); Law on the Family, 1992, Art. 13). The Constitutional Court declined to initiate proceedings to review the constitutionality of Article 13 insofar as it contains the words "of a man and a woman", holding that the legislature, acting within its constitutionally defined powers, regulates legal relations concerning marriage, the family and the non-marital union; that the provision does not discriminate on grounds of sexual orientation; that its failure to regulate other forms of union does not render it unconstitutional; and that the adoption of new legal norms falls within the competence of the Assembly rather than the Court (Constitutional Court of the Republic of North Macedonia, 2021, points 1, 4). The protection of individual rights and the preservation of the identity of marriage should not, therefore, be presented as mutually exclusive alternatives. A legal order can seek solutions for the specific interests of persons without starting from the premise that every form of legal recognition must be called marriage. Whatever solution is chosen must, however, provide adequate protection (*Fedotova and Others v. Russia* [GC], 2023, § 190) and comply with the requirements of equality and non-discrimination.

Opposing Perspectives and Their Limits

The position defended in this paper must be tested against the strongest arguments raised against it. The first is the argument from equal dignity. It has been argued that, because marriage carries an expressive and dignitary dimension, offering same-sex couples a civil union instead creates "a kind of second-class status, lacking the affirmation and recognition characteristic of marriage" (Nussbaum, 2010, pp. 690–691). The Supreme Court of the United States reasoned in a similar way in *Obergefell v. Hodges*, reasoning that the exclusion of same-sex couples conflicted with a central premise of the

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right to marry and that such marriage laws "harm and humiliate the children of same-sex couples" (*Obergefell v. Hodges*, 2015, p. 668). Within the Strasbourg system, critical scholarship identifies an apparent inconsistency in the Court's treatment of Articles 8, 12 and 14 (Hodson, 2025, pp. 69, 76), and, as noted above, the dissenting judges in *Schalk and Kopf* considered that the absence of a legal framework for same-sex couples "would need robust justification" in view of the growing European trend towards their recognition (*Schalk and Kopf v. Austria*, 2010, joint dissenting opinion of Judges Rozakis, Spielmann and Jebens, para. 9). The second argument is empirical and normative at once: the American Academy of Pediatrics, relying on research reporting that children raised by gay or lesbian parents fare as well as children of heterosexual parents, concluded that children should not be deprived of the opportunity for their parents to be married (Perrin et al., 2013, pp. e1374, e1377).

These arguments explain why some legal orders have opened marriage to same-sex couples (Hodson, 2025, p. 70), but they do not alter the conclusion of this paper. The equal-dignity argument presupposes that the name and the structure of marriage are interchangeable. If marriage is understood instead, as in this paper, as an institution whose man–woman structure is linked to the legal framework of descent, in particular the presumption of paternity, a separate institution reflects a difference in legal structure rather than a judgment about the worth of persons. Under the Convention, this choice remains within the State's margin of appreciation, provided that the separate framework offers adequate protection and that any difference in treatment is supported by particularly serious reasons (*Fedotova and Others v. Russia* [GC], 2023, §§ 188–190; *Schalk and Kopf v. Austria*, 2010, § 97). The empirical argument, in turn, answers a question that this paper does not ask. Two clarifications follow. First, the reasons for preserving the definition rest on the legal structure of marriage, not on claims about the parenting capacity of same-sex couples. Second, the separate regime must offer the adequate protection required by the Convention (*Fedotova and Others v. Russia* [GC], 2023, § 190), which is a matter of protecting persons and does not call for any change in the definition of marriage. The man–woman structure of marriage therefore remains justified.

Proposals De Lege Ferenda

The Constitution of North Macedonia does not define marriage as a union of a man and a woman. Its Article 40 ensures special care and protection for the family and provides that legal relations in marriage, family and non-marital unions are regulated by statute (Constitution of the Republic of North Macedonia, 1991, Art. 40(1)–(2)). In this respect, North Macedonia differs from the seven EU Member States with constitutional provisions against same-sex marriage (de Groot, 2025, p. 5). The definition of marriage as a union of a man and a woman thus derives from the Law on the Family and was not

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affected by the most recent, technical amendment of the law in 2025 (Law on the Family, 1992, Arts. 6, 15), and preserving or changing it is primarily a matter of legislative policy rather than of constitutional amendment. This legislative choice must nevertheless comply with the Constitution and with the State's international obligations for the protection of human rights (Constitution of the Republic of North Macedonia, 1991, Arts. 51(1), 118).

The same statute governs the procedure for concluding a marriage. Persons intending to marry submit an application to the administrative body responsible for keeping the register of marriages (Law on the Family, 1992, Art. 23(1)). The registrar verifies whether there is any legal impediment and, on finding that the marriage is not permitted by law, must refuse it by a decision. The applicants may lodge an appeal against that decision with the same body within eight days of its receipt (Law on the Family, 1992, Art. 24(1)–(3)). In the original 1992 text, paragraph 4 of Article 24 provided that the appeal was to be decided by the administrative body responsible for keeping the registers, that is, by the person heading it. The Constitutional Court, however, annulled this provision in 2000, finding that a decision on the appeal by the same administrative body that had taken part in adopting the first-instance decision breached the constitutional principle of two-instance decision-making, that is, the right of appeal against first-instance decisions (Constitutional Court of the Republic of Macedonia, 2000, points 1, 4–5). The refusal to conclude a marriage is thus a first-instance administrative act and should not be confused with a judicial decision, although it is subject to administrative and judicial remedies. Once the applicable administrative remedies have been exhausted, an administrative dispute (an action for judicial review) may be brought against the final individual administrative act before the Administrative Court, which decides on its legality. The action must, as a rule, be filed within 30 days of the delivery of the contested act, and, save in the cases excluded by law, the judgment of the Administrative Court may be appealed to the Higher Administrative Court (Law on Administrative Disputes, 2019, Arts. 3(1), 15(1)–(2), 26(1), 69(1), (4) and (6)). Accordingly, distinguishing between the administrative procedure for concluding a marriage, the decision refusing it and judicial review in an administrative dispute is essential for an accurate assessment of institutional practice and of the remedies available to the persons concerned.

On the basis of the preceding analysis, the paper defends the position *de lege ferenda* that the definition of marriage in Articles 6 and 15 of the Law on the Family should be preserved. The man–woman structure is defended not merely because of its historical continuity but also because of the institutional character of marriage, its family, reproductive and parental dimensions and the social interest attached to the institution. This position should be distinguished from other reforms of family law. Domestic doctrine has noted that significant reform of family law is expected during the drafting of the Civil Code and has proposed, among other things, the introduction of the marriage contract,

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the replacement of the term "parental right" with "parental responsibility", a general obligation for authorities to hear the child in decisions concerning him or her and special legal protection for the family home (Ristov & Shutova, 2022, pp. 149, 155–156, 158, 160). Preserving the definition of marriage therefore does not mean rejecting reforms aimed at the equality of spouses, the protection of property interests or the rights of children.

Comparative experience does not, in itself, dictate any particular legislative solution. The fact that another State has changed the definition of marriage is not a sufficient reason to change domestic legislation, just as the existence of the current model does not exclude a serious examination of the arguments in favour of change. The legislative decision should rest on an independent assessment of the nature and functions of the institution, the principles of the legal order and the interests requiring protection, while respecting constitutional guarantees and international obligations for the protection of human rights. Religious traditions may help to explain the historical and cultural development of marriage, but they cannot replace legal argument. The Constitution guarantees freedom of religion and establishes the separation of religious communities from the State (Constitution of the Republic of North Macedonia, 1991, Art. 19(1) and Amendment VII, point 1), whereas the Law on the Family provides that a marriage concluded according to religious customs produces no legal effect (Law on the Family, 1992, Art. 30). Consequently, the position in favour of preserving the statutory definition of marriage must rest on legal arguments that can be examined and assessed independently of individual religious convictions. Such an approach has precedents in the history of legal thought: many Enlightenment liberals, although critical of established churches and sometimes of Christian theology, defended the traditional model of marriage and the family not by citing the Bible and theology but with "arguments from human nature, natural law, natural rights, and natural fairness", together with arguments drawn from utility, economics, comparative anthropology and evolutionary biology, and from common sense (Witte, 2015, p. 597).

CONCLUSIONS

Marriage is at once a personal relationship and an institution of family and social significance. This dual character is reflected in the Constitution, which guarantees respect for and protection of private and family life and ensures special care and protection for the family (Constitution of the Republic of North Macedonia, 1991, Arts. 25, 40(1)), and in the view of the Constitutional Court that marriage is not merely a private relationship between a man and a woman but also has a social character (Constitutional Court of the Republic of Macedonia, 2002, points 1, 4). At the same time, the institution has changed: in the United States, marriage has undergone deinstitutionalisation and individualisation, although its symbolic importance has remained high (Cherlin, 2004, pp. 852–853, 855,

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858), and a similar shift, from protecting the family as an institution towards emphasising the individual rights of its members, has been described in regional family law (Ponjavić, 2015, pp. 25–27). These developments show that marriage is not an immutable institution, but they do not mean that every social transformation justifies a change in its legal identity. Nor does a long history in itself justify preserving a feature of marriage; what matters is whether that feature retains a reasonable link with the nature of the institution and with the legal, family and social functions attributed to it.

Combining the analysis of domestic law with European case law, comparative law and the relevant literature, the paper reaches four main conclusions. First, the man–woman structure of marriage is expressed both in its statutory definition and in the condition that marriage be concluded by two persons of different sexes. It also runs through other provisions of the Law on the Family, such as the declaration that the marriage between the woman and the man has been concluded and the definition of the non-marital union (Law on the Family, 1992, Arts. 6(1), 13, 15, 29(6)).

Second, the family and reproductive dimensions remain important for understanding the historical development and legal functions of marriage. The reproductive dimension attributed to the institution must, however, be distinguished from the reproductive capacity of a particular couple. Neither domestic law nor the European Court of Human Rights makes that capacity a condition of marriage (Law on the Family, 1992, Arts. 15–22; *Christine Goodwin v. the United Kingdom* [GC], 2002, § 98), and the Court has added that this finding allows no conclusion on same-sex marriage (*Schalk and Kopf v. Austria*, 2010, § 56). This dimension is therefore not an absolute criterion; it carries weight as part of a wider structure that includes spousal solidarity, parental responsibility, family stability and the best interests of the child, which must be a primary consideration in all actions concerning children (United Nations, 1989, Art. 3).

Third, the empirical literature reviewed supports the importance of stability, parental responsibility and the quality of the family environment for children's well-being. On average, children with continuously married parents do better than children of divorced parents, although the differences are modest, and children's outcomes are not determined by the legal form of the family alone. Since the studies on family structure do not examine parents' sexual orientation, they provide no basis for claiming that it determines a child's well-being. Such evidence complements the normative legal assessment of marriage rather than replacing it.

Fourth, European standards distinguish between the right to marry and the obligation to secure the legal recognition and protection of same-sex couples, leaving room for the domestic legislature. Neither Article 12 nor Article 14, taken together with Article 8, obliges States to open marriage to same-sex couples, although Article 8 requires a specific legal framework for the recognition and protection of these couples (ECtHR Registry, 2026, paras. 30–31; *Fedotova and Others v. Russia* [GC], 2023, §§ 164–165).

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The same distinction appears in EU law: a marriage lawfully concluded in another Member State must be recognised for the exercise of the rights conferred by EU law, but a State is not required to provide for same-sex marriage in its national law. The legal recognition of a relationship and the definition of marriage in domestic law are thus closely related but legally distinct questions.

The analysis of domestic legislation also shows that three areas of law must be kept apart. The Law on the Family governs the substantive conditions for marriage and the administrative procedure for concluding it (Law on the Family, 1992, Arts. 6, 15–24). Relations with a foreign element are governed by the Law on Private International Law, which lays down the rules on the applicable law, on the recognition of foreign decisions and on public policy (Law on Private International Law, 2020, Arts. 12, 24–25, 157–158, 163, 165). Remedies against discrimination derive from a separate legal regime with its own procedures (Law on Prevention and Protection against Discrimination, 2020, Arts. 5–6, 32–35). Since these regimes pursue different aims and produce different legal effects, keeping them apart prevents general conclusions from being drawn from provisions that govern different legal problems. In particular, an administrative decision on the conclusion of a marriage, the recognition of a situation created abroad and judicial protection against discrimination cannot be treated as interchangeable means of creating or recognising marital status.

The answer to the research question is therefore affirmative: there are present-day institutional, family, reproductive, parental and social reasons that justify preserving marriage as a union between a man and a woman in the law of North Macedonia. The parental reasons concern the legal framework of descent, in particular the presumption of paternity, that the law attaches to marriage, not a comparison of parents by sexual orientation. This answer rests not merely on the historical continuity of the model or on the absence of an international obligation to open marriage to same-sex couples but also on the institutional character of marriage, its family, reproductive and parental dimensions and the social interest attached to the institution. At the same time, the arguments supporting this position must remain consistent with the principle of equality and the prohibition of discrimination. The opposing arguments based on equal dignity, examined in the discussion, do not alter this answer.

Two recommendations *de lege ferenda* follow from this answer. First, the definition of marriage in Articles 6 and 15 of the Law on the Family should be preserved. Since the Constitution provides that legal relations in marriage are regulated by statute (Constitution of the Republic of North Macedonia, 1991, Art. 40(2)), this recommendation is addressed to the legislature. If the rules on marriage are moved into a future Civil Code, as discussed in domestic doctrine (Ristov & Shutova, 2022, pp. 149–152), the man–woman structure should be retained there as well. This should not, however, stand in the way of reforms aimed at the equality of spouses, the protection of property

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interests or the rights of children, such as the shift to parental responsibility and the special legal protection of the family home proposed in the same doctrine (Ristov & Shutova, 2022, pp. 155–156, 160). Preserving the legal definition of marriage and modernising family law are not mutually exclusive aims.

Second, the legal recognition and protection of same-sex couples, including their specific legal interests, should be regulated separately from marriage, in accordance with the State's applicable legal obligations. Its content should be based on an analysis of the rights and duties that require regulation, without starting from the premise that every form of legal recognition must be called marriage. The European Court of Human Rights requires a legal framework for the adequate recognition and protection of such relationships but leaves States a wider margin of appreciation in choosing its form, which need not be marriage (*Fedotova and Others v. Russia* [GC], 2023, §§ 178, 188–190); in the cases against Romania, Bulgaria and Poland, States that offered no form of recognition, it found violations of Article 8, while the freedom of States to exclude same-sex couples from marriage was explicitly or implicitly reaffirmed (Hodson, 2025, p. 80). Domestic law currently provides for no registered partnership and recognises the non-marital union only between a man and a woman (Law on the Family, 1992, Art. 13). The Constitutional Court declined to initiate proceedings to review this definition; in its view, the provision is not rendered unconstitutional by its failure to regulate other forms of union, and the adoption of new legal norms falls within the competence of the Assembly (Constitutional Court of the Republic of North Macedonia, 2021, points 1, 4). The matter thus lies with the legislature, whose choice must comply with the State's international obligations for the protection of human rights (Constitution of the Republic of North Macedonia, 1991, Art. 118). The need for legal protection in particular areas should therefore be addressed, but it should not automatically be taken as an argument for changing the definition of marriage.

The law should neither resist every change nor accept a change merely because it has appeared in other legal systems. Using legal arguments and respecting the dignity of every person, it should distinguish changes that develop an institution from those that affect its very identity. In the view of this paper, the man–woman structure belongs to that identity and should therefore be preserved *de lege ferenda*, whereas the legitimate legal interests of persons who fall outside this definition should enjoy effective protection through appropriate legal measures.

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