

# Rainbow families in the EU: trends, challenges and perspectives



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Cf. <https://meetshaus.de/blog/nodoption-paula-hat-zwei-mamas>

David Vig, Director of Amnesty Hungary, said:

"This is a dark day for Hungary's LGBTQ community and a dark day for human rights. These discriminatory, homophobic and transphobic new laws – rushed through under the cover of the coronavirus pandemic – are just the latest attack on LGBTQ people by Hungarian authorities."



**"These bills further restrict the rights of  
LGBTI children and parents in Hungary"**

Katrin Hugendubel, ILGA

Cf. <https://www.amnesty.org/en/latest/news/2020/12/hungary-dark-day-for-lgbti-community-as-homophobic-discriminatory-bill-and-constitutional-amendments-are-passed/>

## European Convention on Human Rights

### ARTICLE 12 Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

### ARTICLE 8 Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. ...

### ARTICLE 14 Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## European Convention on Human Rights

States have a positive obligation to provide some means of recognition to same-sex couples.

Excluding same-sex couples from civil unions is an unconventional discrimination

States have wide discretion on the question of whether or not to allow or register same-sex marriages

**Civil marriage can have a special status**

*differences based on sexual orientation require particularly serious reasons by way of justification*  
→ where a difference in treatment is based on sexual orientation, the State's margin of appreciation is narrow

# Charter of Fundamental Rights of the European Union

## Article 9 Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

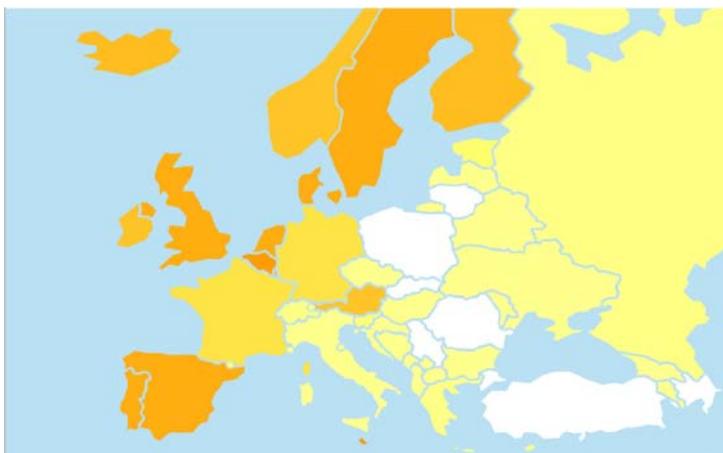
## Article 7 Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

## Article 21 Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

# Legal equality for rainbow families in Europe



<https://www.rainbow-europe.org/#0/8682/0>

	Marriage equality	Registered partnership (similar rights to marriage)	Registered partnership (limited rights)	Cohabitation	No constitutional limitation on marriage	Joint adoption	Second-parent adoption	Automatic co-parent recognition	Medically assisted insemination (couples)	Medically assisted insemination (singles)	Recognition of trans parenthood
Austria	•	•		•	•	•	•	•	•		•
Belgium	•		•	•	•	•	•			•	
Bulgaria										•	
Croatia		•		•						•	
Cyprus		•			•					•	
Czech Republic			•	•	•						
Denmark	•			•	•	•	•	•	•	•	
Estonia			•		•		•			•	
Finland	•	•		•	•	•	•		•	•	
France	•		•	•	•	•	•				
Germany	•	•		•	•	•	•				
Greece		•		•	•					•	
Hungary		•		•	•					•	
Ireland	•	•		•	•	•		•	•	•	
Italy		•									
Latvia										•	
Lithuania											
Luxembourg	•	•			•	•	•			•	
Malta	•	•	•	•	•	•	•	•	•	•	•
Netherlands	•	•		•	•	•	•	•	•	•	
Poland											
Portugal	•	•		•	•	•	•	•	•	•	
Romania											
Slovakia											
Slovenia		•	•	•	•		•				•
Spain	•	•	•	•	•	•	•	•	•	•	
Sweden	•			•	•	•	•	•	•	•	•

Cf. <https://www.rainbow-europe.org/#0/8682/0>

## Rainbow families in the EU: Trends, challenges and perspectives (2018-2020)



- Estonia → referendum proposing the definition of marriage as a union between a man and a woman - **defeated by 26 to 49 at second reading**
- Romania → rejection of two bills that would have introduced civil partnership for same-sex couples
- Croatia → introduction of a bill excluding same-sex life partners from fostering - **deemed discriminatory and unconstitutional by the Constitutional Court of Croatia**
- Czech Republic → blocking of an equal marriage bill
- Hungary → prohibition of adoption for non-married couples, amendment of the Constitution stating that "mother is a female and father is a male"



- Northern Ireland → introduction of same-sex marriage
- expansion of family rights in Andorra, Austria, Estonia, Finland, Germany, Greece, Malta, Poland, Sweden, and Switzerland

## Rainbow families: Cases pending before the ECHR

- **A.H. and Others v Germany** – recognition of trans parenthood
- **Buhuceanu and Ciobotaru v. Romania** – recognition of same-sex unions
- **Schlittner-Hay v. Poland** – Rainbow family and children rights
- **X. v Poland** – Custody rights

# Thank you!



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