



2021/2679(RSP)

15.7.2021

MOTION FOR A RESOLUTION

pursuant to Rule 227(2) of the Rules of Procedure

on LGBTIQ rights in the EU
(2021/2679(RSP))

Dolors Montserrat
on behalf of the Committee on Petitions

**European Parliament resolution on LGBTIQ rights in the EU
(2021/2679(RSP))**

The European Parliament,

- having regard to the Treaty of the European Union, in particular Articles 2 and 3, and the Treaty on the functioning of the European Union, in particular Articles 8, 10, 18 and 21,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 21, 24(2), 24(3) and 45,
- having regard to the European Convention on Human Rights, in particular Article 8 on the right to respect for private and family life and Article 14 and Protocol N.12 on the prohibition of discrimination,
- having regard to the Universal Declaration of Human Rights, having regard to the European Social Charter signed at Turin on 18 October 1961,
- having regard to the UN Convention on the Rights of the Child (UNCRC),
- having regard to the Resolution 2239(2018) adopted by the Parliamentary Assembly of the Council of Europe on 10 October 2018 on ‘Private and family life: achieving equality regardless of sexual orientation’¹,
- having regard to the Resolution 2048(2015) adopted by the Parliamentary Assembly of the Council of Europe on 22 April 2015 on ‘Discrimination against transgender people in Europe’²,
- having regard to the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC,
- having regard to the Commission communication of 12 November 2020 ‘Union of Equality: LGBTIQ Equality Strategy 2020-2025’,
- having regard to Council *Directive 2000/78/EC* of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,
- having regard to European Parliament legislative resolution of 11 March 2021 on the declaration of the EU as an LGBTI Freedom Zone,

¹ [Resolution 2239\(2018\) PACE](#)

² [Resolution 2048\(2015\) PACE](#)

- having regard to European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones,
 - having regard to European Parliament resolution of 14 February 2019 on the future of the LGBTI List of Actions (2019-2024),
 - having regard to the European Parliament resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law,
 - having regard to the Court of Justice of the European Union (CJEU) judgment of 5 June 2018 in the case *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*³ and of 23 April 2020 in the case *NH v Associazione Avvocatura per i diritti LGBTI - Rete Lenford*⁴, C-507/18 and to the opinion of the Advocate General Kokott delivered on 15 April 2021 in the case *V.M.A. v. Stolichna Obsthina, Rayon ‘Pancharevo’*⁵,
 - having regard to the *Maruko, Römer, and Hay* judgments of the CJEU⁶ and the *Taddeucci & McCall* judgment of the European Court of Human Rights (ECtHR),⁷
 - having regard to Rule 227(2) of its Rules of Procedure,
- A. whereas LGBTIQ rights are human rights;
- B. whereas the Committee on Petitions has received several petitions raising concerns over the discrimination experienced by the LGBTIQ persons in the EU in general and in particular same-sex couples and rainbow families;
- C. whereas these petitions call, on the one hand, for rainbow families to be guaranteed the same family rights as different-sex families and their children in all Member States, especially the right to free movement within EU borders and the mutual recognition of their relationship and of parenthood and, on the other hand, for measures against Poland, for violating the principles of non-discrimination, equality, and freedom of expression, also in relation to “Regional Charters of Family Rights” and resolutions declaring municipalities and regions free from ‘LGBTI ideology’ (so-called “LGBTI-free zones”)
- D. whereas the Committee on Petitions held a "Workshop on LGBTI+ Rights in the EU" on 22 March 2021, during which the study commissioned upon request of the Committee on Petitions by the European Parliament Policy Department on Citizens' Rights and Constitutional Affairs on "Obstacles to the Free Movement of Rainbow Families in the EU" was presented;

³ [Case C-673/16 *Coman* ECLI:EU:C:2018:385](#)

⁴ [Case C-507/18 *NH* ECLI:EU:C:2020:289](#)

⁵ [Case C-490/20 *V.M.A* ECLI:EU:C:2021:296](#)

⁶ [Case C-267/06, *Maruko*, ECLI:EU:C:2008:179; Case C-147/08, *Römer* ECLI:EU:C:2011:286; Case C-267/12, *Hay*, ECLI:EU:C:2013:823.](#)

⁷ [ECHR *Taddeucci and McCall v. Italy*, no. 51361/09](#)

- E. whereas the aforementioned study concludes that rainbow families still face major obstacles to their freedom of movement in the EU in 2021 with adverse consequences for the interests of their children and that by exercising the EU's competence in relation to free movement of EU citizens and their family members, EU institutions could act to remove these hindrances; whereas transgender parents whose identity documents are not recognised after crossing a border may lose all legal ties to their children, impacting severely on the best interests of the children;
- F. whereas Article 21 of the Treaty on the Functioning of the European Union establishes that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States;
- G. whereas the European Union must combat social exclusion and discrimination;
- H. whereas the right to equal treatment and non-discrimination is a fundamental right enshrined in the Treaties and the Charter of Fundamental Rights of the European Union, and should be fully respected; whereas equality and the protection of minorities are among the EU values enshrined in Article 2 TEU, which the EU is developing through the "Union of Equality" initiatives and actions;
- I. whereas in September 2020 Commission President von der Leyen, in her State of the European Union speech, stressed that 'If you are parent in one country, you are parent in every country', referring to the need of mutual recognition of family relations in the EU;
- J. whereas all Member States have assumed obligations and duties under international law and the EU Treaties to respect, guarantee, protect and fulfil fundamental rights;
- K. whereas progress is being marked in the EU on marriage and civil unions, adoption rights for LGBTIQ persons and protection in law from discrimination, hate speech and hate crime, there are also backward steps, such as hostile rhetoric from elected politicians, surges in homophobic and transphobic violence and the proclamation of the so-called 'LGBTI-free zones';
- L. whereas LGBTIQ persons continue to suffer discrimination and violence in Europe; whereas the 2021 Rainbow Europe Map, ILGA-Europe's annual benchmarking tool, reveals widespread and almost complete stagnation on human rights of LGBTIQ persons, in particular regarding the recognition of family legislation across Europe, and that this year, there was no single legal or policy change affecting positively LGBTIQ persons;
- M. whereas in a 2019 survey, the European Union Agency for Fundamental Rights (FRA) found that discrimination on grounds of sexual orientation, gender identity, gender expression and sex characteristics was increasing in the EU;
- N. whereas LGBTIQ persons still face discrimination in some Member States regarding social protection, social security and healthcare, education, access to and supply of goods and other services which are available to the public, including housing; whereas the horizontal directive on non-discrimination, which could partially fill this gap in protection beyond employment, has remained blocked in the Council for over 10 years;

- O. whereas not all EU Member States provide legal protection for LGBTIQ persons against discrimination;
- P. whereas there are no Union conflict rules on parenthood or Union rules on the recognition of judgments on parenthood between Member States; whereas some Member States do not recognise a same-sex marriage from another Member State for any purpose of national law other than a residence permit; whereas some Member States that allow same-sex couples to marry appear to be unwilling to recognise same-sex registered partners from other Member States; whereas in some Member States same-sex couples with children may be refused to be legally recognised as the joint parents of their children⁸; whereas transgender parents are frequently denied recognition of the legal gender when crossing borders, resulting in border authorities not recognising them as parents to their own children;
1. Welcomes the first-ever LGBTIQ Equality Strategy 2020-2025, adopted by the European Commission on 11 November 2020, two key actions of which are a legislative initiative aimed at protecting rights of rainbow families and the update of the 2009 guidelines on free movement by 2022⁹;
 2. Expresses its deepest concern on the discrimination suffered by rainbow families and their children in the EU and the fact that they are deprived of their rights on grounds of sexual orientation or gender identity or sex characteristics of the parents or partners; calls on the Commission and the Member States to overcome this discrimination and to remove the obstacles they face when exercising the fundamental right to freedom of movement within the EU;
 3. Underlines the need to work towards a full enjoyment of fundamental rights by LGBTIQ persons in all EU Member States and recalls that EU institutions and the Member States therefore have a duty to uphold and protect them in accordance with the Treaties and the Charter, as well as the international law;
 4. Insists that the European Union needs a common approach on the recognition of same-sex marriages and partnerships, specifically calls on the Member States to introduce relevant legislation to ensure full respect for the right to private and family life without discrimination and free movement of all families including measures to facilitate the recognition of transgender parents in their legal gender;
 5. Recalls that EU law prevails over any type of national law, including over conflicting constitutional provisions and that therefore, Member States cannot, in order to obstruct the fundamental right to free movement of persons within the EU invoke any constitutional ban on same-sex marriage or constitutional protection of ‘morals’ or ‘public policy’ in violation of the rights of rainbow families that move to their territory;
 6. Condemns in the strongest way possible the fact that the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective

⁸ Obstacles to the Free Movement of Rainbow Families in the EU, Study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the PETI Committee, 2021. [Obstacles to the Free Movement of Rainbow Families in the EU \(europa.eu\)](#)

⁹ [COM\(2020\) 698 final](#)

of religion or belief, disability, age or sexual orientation'¹⁰, launched on 2 July 2008, has not yet been adopted; calls on the Council to approve it; underlines that this blockage sends the wrong message from EU institutions, turning a blind eye on - and allowing the persistence of - serious discrimination taking place in EU Member States;

7. Calls on the Commission to ensure that all EU Member States respect the continuity in law of the family ties of the members of rainbow families which move to their territory from another Member State, at least in all the circumstances that this is required under the European Convention on Human Rights;
8. Calls on the Commission to propose legislation requiring all Member States to recognise, for the purposes of national law, the adults mentioned in a birth certificate issued in another Member State as the legal parents of the child, regardless of the legal sex or the marital status of the adults and requiring all Member States to recognise, for the purposes of national law, the marriages or registered partnerships formed in another Member State, in all situations in which the spouses or the registered partners would have a right to equal treatment under the case law of the ECtHR; emphasizes the importance of the recognition of birth certificates in all Member States regardless of the sex of the parents, as this would ensure that children do not become stateless when moving to another Member State;
9. Supports the Commission's commitment to propose a legislative initiative with the aim of extending the list of "EU crimes" to hate crimes and hate speech, including when targeted at LGBTIQ persons, as well as the proposal on the mutual recognition of parenthood and possible measures to support the mutual recognition of same-gender partnership between Member States; calls on the upcoming Council presidencies to make these a priority in their agendas;
10. Calls on the Commission to take concrete measures to ensure freedom of movement for all families, including rainbow families, in line with *Coman & Hamilton* judgment, which states that the term "spouse" as used in the Free Movement Directive is also applicable to same-sex partners; requests the Commission to examine whether the Member States comply with the *Coman & Hamilton* EUCJ judgment and take enforcement action under Article 258 TFEU against those that do not comply; calls on the Commission to take enforcement action against Romania for its ongoing failure to comply with this judgment, the lack of legal remedy which forced the plaintiff to resort to the ECtHR for redress;
11. Requests the Commission to include in its upcoming guidelines on free movement a clarification to ensure that Directive 2000/78/EC is read, in the light of the *Maruko*, *Römer*, and *Hay* judgments of the CJEU and the *Taddeucci & McCall* judgment of the ECtHR, as requiring Member States to prohibit any discrimination against same-sex couples in employment, vocational training, or any other area within the material scope of the Directive;
12. Calls on the Commission to table a proposal for the review of Article 2(2)(b) of Directive 2004/38/EC by notably removing the condition "*if the legislation of the host*

¹⁰ [COM\(2008\) 426 final](#).

Member State treats registered partnerships as equivalent to marriage" to comply with Article 21 of the Charter of Fundamental Rights of the European Union;

13. Calls on the Commission, in its upcoming guidelines on free movement, in order to ensure the correct application of free movement law, to urge the Member States to consistently implement Directive 2004/38/EC without discrimination between the beneficiaries of the Directive, such as different-sex and same-sex couples, to clarify that any reference to a 'partner', a 'parent', a 'child', a 'direct descendant', or a 'direct relative in the ascending line' should be inclusive of rainbow families, to ensure that, when they exercise their EU free movement rights, they enjoy the same family reunification rights under EU law as families founded by opposite-sex couples and to ensure that the assessment of the personal circumstances of the couple undertaken by Member States for the purposes of 'facilitating' the admission of the unregistered partner of the Union citizen into their territory is free from discrimination on the grounds of sexual orientation;
14. Requests the Commission to address the discrimination suffered by the LGBTIQ community in Poland and Hungary in order to urge the Member States to correctly apply and respect the EU legislation on this matter; calls on the Council to resume discussions on Art. 7 TEU proceedings on Poland and Hungary, including on LGBTIQ rights; recalls its position of 17 September 2020 and calls on the Commission to make full use of the tools available to it, to address a clear risk of a serious breach by Poland and Hungary of the values on which the Union is founded, in particular expedited infringement procedures and applications for interim measures before the Court of Justice, as well as budgetary tools; calls on the Commission to continue to keep Parliament regularly informed and closely involved;
15. Instructs its President to forward this resolution to the Council, the European Commission and to the governments and the parliaments of the Member States.