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*Plenary sitting*

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**B9-0431/2021**

9.9.2021

# 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 on European Union (TEU), in particular Articles 2 and 3 thereof, and to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 8, 10, 18 and 21 thereof,
- having regard to the Charter of Fundamental Rights of the European Union (the Charter), 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 No 12 on the prohibition of discrimination,
- having regard to the Universal Declaration of Human Rights,
- having regard to the European Social Charter signed in Turin on 18 October 1961,
- having regard to the UN Convention on the Rights of the Child (UNCRC),
- having regard to the Parliamentary Assembly of the Council of Europe (PACE) Resolution 2239 (2018) of 10 October 2018 on private and family life: achieving equality regardless of sexual orientation<sup>1</sup>,
- having regard to the Parliamentary Assembly of the Council of Europe (PACE) Resolution 2048 (2015) of 22 April 2015 on discrimination against transgender people in Europe<sup>2</sup>,
- having regard to 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<sup>3</sup>,
- having regard to the Commission communication of 12 November 2020 entitled ‘Union of Equality: LGBTIQ Equality Strategy 2020-2025’ (COM(2020)0698),
- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>4</sup>,
- having regard to its resolution of 11 March 2021 on the declaration of the EU as an

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<sup>1</sup> [Resolution 2239 \(2018\) PACE.](#)

<sup>2</sup> [Resolution 2048 \(2015\) PACE.](#)

<sup>3</sup> OJ L 158, 30.4.2004, p. 77.

<sup>4</sup> OJ L 303, 2.12.2000, p. 16.

LGBTI Freedom Zone<sup>5</sup>,

- having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI-free zone<sup>6</sup>,
  - having regard to its resolution of 14 February 2019 on the future of the LGBTI List of Actions (2019-2024)<sup>7</sup>,
  - having regard to its 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<sup>8</sup>,
  - 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*<sup>9</sup> and of 23 April 2020 in the case *NH v Associazione Avvocatura per i diritti LGBTI - Rete Lenford*<sup>10</sup>, 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'*<sup>11</sup>,
  - having regard to the *Maruko*, *Römer*, and *Hay* judgments of the CJEU<sup>12</sup> and the *Taddeucci & McCall* judgment of the European Court of Human Rights (ECtHR)<sup>13</sup>,
  - 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 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, and in particular the right to free movement within the EU 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, including 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 on 22 March 2021 the Committee on Petitions held a workshop on LGBTI+ rights in the EU, during which the study that the European Parliament’s Policy

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<sup>5</sup> Texts adopted, P9\_TA(2021)0089.

<sup>6</sup> OJ C 255, 29.6.2021, p. 7.

<sup>7</sup> OJ C 449, 23.12.2020, p. 146.

<sup>8</sup> Texts adopted, P9\_TA(2020)0225.

<sup>9</sup> [Case C-673/16, \*Coman\*, EU:C:218:385.](#)

<sup>10</sup> [Case C-507/18, \*NH\*, EU:C:2020:289.](#)

<sup>11</sup> [Case C-490/20, \*V.M.A.\*, EU:C:2021:296.](#)

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

<sup>13</sup> [ECHR \*Taddeucci and McCall v Italy\*, No 51361/09.](#)

Department on Citizens' Rights and Constitutional Affairs had commissioned on the committee's behalf on 'Obstacles to the Free Movement of Rainbow Families in the EU' was presented;

- 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 the 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 TFEU 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 in the Charter, and should be fully respected; whereas equality and the protection of minorities are among the EU values enshrined in Article 2 TEU that 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 Union Address, stressed that 'If you are parent in one country, you are parent in every country', referring to the need for 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 while the EU has seen progress in terms of marriage and civil unions, adoption rights for LGBTIQ persons and protection in law from discrimination, hate speech and hate crime, there have also been steps backwards, 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 positively affecting 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, healthcare, education, and 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 EU rules on the recognition of judgments on parenthood between Member States and no EU provisions aimed at resolving conflicts in this respect; 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 children<sup>14</sup>; whereas transgender parents are frequently denied recognition of their 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 for 2020-2025, adopted by the European Commission on 12 November 2020 (COM(2020)0698), two key actions of which are a legislative initiative aimed at protecting the rights of rainbow families and an update of the 2009 guidelines on free movement by 2022;
  2. Expresses its deepest concern regarding 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 the full enjoyment of fundamental rights by LGBTIQ persons in all EU Member States and recalls that the 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 with international law;
  4. Insists that the EU needs to take a common approach to the recognition of same-sex marriages and partnerships; calls on the Member States specifically 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 the legal gender of transgender parents;
  5. Recalls that EU law prevails over any type of national law, including over conflicting constitutional provisions, and that therefore, Member States cannot, invoke any constitutional ban on same-sex marriage or constitutional protection of ‘morals’ or ‘public policy’ in order to obstruct the fundamental right to free movement of persons within the EU in violation of the rights of rainbow families that move to their territory;
  6. Condemns in the strongest possible terms the fact that the proposal for a Council

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<sup>14</sup> ‘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 Committee on Petitions, 2021. [Obstacles to the Free Movement of Rainbow Families in the EU \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/interinstitutional-relationships/2021/04/obstacles-to-the-free-movement-of-rainbow-families-in-the-eu).

directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation<sup>15</sup>, launched on 2 July 2008 (COM(2008)0426), has not yet been adopted; calls on the Council to approve it; underlines that this blockage sends the wrong message from the EU institutions, namely that they turn a blind eye to – and allow the persistence of – serious discrimination taking place in EU Member States;

7. Calls on the Commission to ensure that all EU Member States respect continuity in law as regards the family ties of members of rainbow families which move to their territory from another Member State, at least in all the circumstances in which 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 on 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; emphasises 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 issues priorities 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 the judgment in the case of *Coman & Hamilton*<sup>16</sup>, which states that the term 'spouse' as used in the Free Movement Directive is also applicable to same-sex partners; requests that the Commission examine whether the Member States comply with the *Coman & Hamilton* 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 over its ongoing failure to comply with this judgment and the lack of legal remedy which forced the plaintiff to resort to the ECtHR for redress;
11. Requests that the Commission 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;

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<sup>15</sup> [COM\(2008\) 426 final](#).

<sup>16</sup> Judgment of 5 June 2018, *Coman*, C-673/16, EU:C:2018:385.

12. Calls on the Commission to table a proposal for the review of Article 2(2)(b) of Directive 2004/38/EC, notably to remove the condition ‘if the legislation of the host Member State treats registered partnerships as equivalent to marriage’ in order to comply with Article 21 of the Charter;
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 that the Commission 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 proceedings against Poland and Hungary under Article 7 TEU, 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 the 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 Commission and the governments and parliaments of the Member States.