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Navigating Legal Obstacles in Adoption by Foreign Nationals: A case
study of same-sex couples in Austria and the implications for
children's rights to nationality

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Pt. Ilias Myrsinias

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Dr. Andreas R. Ziegler

Abstract

Diese Arbeit untersucht die rechtlichen Herausforderungen, mit denen ein ausländisches gleichgeschlechtliches Paar in Österreich konfrontiert ist, das ein Kind im Rahmen einer internationalen Adoption adoptieren möchte, wobei der Schwerpunkt auf den Konflikten zwischen den österreichischen, tschechischen und slowakischen Rechtsvorschriften über die Anerkennung gleichgeschlechtlicher Beziehungen und deren Adoptionsrecht liegt. Die Studie analysiert kritisch Gerichtsentscheidungen auf verschiedenen Ebenen und beleuchtet die Auswirkungen des österreichischen Internationalen Privatrechts-Gesetz (IPRG) und der verfassungsrechtlichen Grundsätze auf den Adoptionsprozess unter dem Gesichtspunkt der Gewährleistung der Menschenrechte. Die Studie untersucht die wichtigsten rechtlichen Hindernisse, darunter die anfängliche Ablehnung der Adoption aufgrund der Anwendung ausländischer Gesetze, die die Adoption durch gleichgeschlechtliche Paare verbieten, und die Rolle des *ordre public*, der die Überschreitung ausländischer Rechtsvorschriften legitimiert, die diskriminierend sind und im Widerspruch zu den Bestimmungen des österreichischen Rechts stehen. Sie untersucht auch die Auswirkungen des Falls auf das Recht der Kinder auf Staatsangehörigkeit, insbesondere im Hinblick auf die Verhinderung von Staatenlosigkeit, wenn die rechtliche Anerkennung von Elternbeziehungen zwischen der österreichischen und der ausländischen Gesetzgebung inkonsistent ist. In dieser Arbeit werden die Verpflichtungen Österreichs nach europäischem und internationalem Menschenrechtsrecht (IHRL), einschließlich der Europäischen Menschenrechtskonvention (EMRK), des Internationalen Pakts über bürgerliche und politische Rechte (IPBPR), der Konvention über die Rechte des Kindes (CRC), der Konvention über die Rechtsstellung der Staatenlosen und der Konvention zur Verminderung der Staatenlosigkeit, bewertet und die Notwendigkeit stärkerer rechtlicher Maßnahmen zum Schutz von Regenbogenfamilien und ihren Kindern begründet. Die Ergebnisse tragen zur Debatte über die Harmonisierung der Adoptionsgesetze für gleichgeschlechtliche Paare, einschließlich ausländischer Paare, in ganz Europa bei und setzen sich für Gesetzesreformen des österreichischen Rechts ein, wie z. B. das *Jus soli*-Prinzip, die mit den Grundsätzen der Gleichheit, Nichtdiskriminierung und dem Wohl des Kindes im Zusammenhang mit dem Erwerb der Staatsbürgerschaft in Einklang stehen.

This thesis examines the legal challenges faced by a foreign same-sex couple in Austria wishing to adopt a child through intercountry adoption, focusing on the conflicts between Austrian, Czech and Slovak legal provisions on the recognition of same-sex relationships and their right to adoption. The study critically analyses judicial decisions at different levels, highlighting the impact of Austrian Private International Law (IPRG) and constitutional principles on the adoption process through the lens of ensuring human rights. The research explores key legal obstacles, including the initial rejection of adoption due to the application of foreign laws prohibiting adoption by same-sex couples, and the role of *ordre public* that legitimizes the transgression of foreign legal provisions that are discriminatory and contrary to the provisions of Austrian law. It also explores the implications of the case for children's rights to nationality, in particular with regard to the prevention of statelessness where the legal recognition of parental relationships is inconsistent between Austrian and foreign legislation. Evaluating Austria's obligations under European and International Human Rights Law (IHRL), including the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention relating to the Status of Stateless Persons, and the Convention on the Reduction of Statelessness, this thesis argues for the need for stronger legal safeguards to protect rainbow families and their children. The findings contribute to the debate on the harmonization of adoption laws for same-sex couples, including foreign couples, across Europe and advocate for legal reforms of Austrian law, such as the *jus soli* principle; that align with the principles of equality, non-discrimination and the best interests of the child around the acquisition of citizenship.

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List of Abbreviations

AIRE	Centre for Advice on Individual Rights in Europe
B-VG	Bundes-Verfassungsgesetz
BGBI	Bundesgesetzblatt
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRC	Convention on the Rights of the Child
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECN	European Convention on Nationality
ECtHR	European Court of Human Rights
EEA	European Economic Area
EP	European Parliament
EPG	Eingetragene Partnerschaft-Gesetz
EU	European Union
EUCFR	Charter of Fundamental Rights of the European Union
FIDH	Fédération internationale des Ligues des Droits de l'Homme
FRA	Fundamental Rights Agency
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
IHRL	International Human Rights Law
IPRG	Internationale Privatrecht-Gesetz
IVF	In Vitro Fertilization
MEP	Members of the European Parliament
NGO	Non-Governmental Organization
OGH	Oberste Gerichtshof
PACE	Parliamentary Assembly of the Council of Europe
PETI	petition to the Committee of Petitions
SOGIESC	Sexual Orientation, Gender Identity and Expression, and Gender Characteristics
TEU	Treaty on European Union

TFEU	Treaty on the Functioning of the EU
TGEU	Transgender Europe
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
VfGH	Verfassungsgerichtshof
VfSlg	Verfassungsgerichtshofes
WKJH	Wiener Kinder- und Jugendhilfe

Introduction

This thesis examines the legal complexities surrounding the intercountry adoption of a child by a same-sex couple in Austria, focusing on the intersection of the Austrian, Czech, and Slovak legal frameworks. The case under analysis concerns a Czech-Slovak same-sex couple residing in Vienna whose adoption application faced legal obstacles due to conflicting provisions of Austrian private international law and discriminatory foreign legislation. The Austrian judicial authorities initially applied Czech and Slovak adoption laws, which prohibit adoption by same-sex couples, leading to the rejection of the adoption application. This decision raised legal challenges on the basis of fundamental rights set out in Austrian law, including equality, non-discrimination, and the best interests of the child.

Chapter 1 provides an overview of the adoption journey and the legal obstacles faced by the same-sex couple, analyzing the court decisions and the complexity of the legal procedures – in particular, the role of *ordre public* in circumventing discriminatory foreign laws and ensuring compliance with Austria's constitutional values – the implications of the case for children's rights, in particular with regard to citizenship and statelessness, and the relevant national and international legal provisions around discrimination and inequalities. Chapter 2 assesses Austria's obligations under European and International Human Rights Law (IHRL) and its compliance with treaties such as the European Convention on Human Rights (ECHR) and the Convention on the Rights of the Child (CRC). The final chapter offers a comparative perspective on adoption laws for same-sex couples across Europe and explores possible legal reforms to address inconsistencies in intercountry adoption and nationality rights.

By conducting a critical legal analysis, this thesis aims to highlight the importance of non-discrimination, equality, and the best interests of the child in cases of adoption by foreign same-sex parents and statelessness of their children. This highlighting is supported through proposed legal reforms that strengthen the protection of rainbow families and their children within the Austrian and EU legal framework.

1 Overview and legal analysis of the case

1.1 Background of same-sex couple's adoption journey

The case examined in this thesis concerns a same-sex couple of two men who reside in Vienna, Austria. Both individuals hold foreign nationality; the first person is from the Czech Republic and the second from Slovakia. Since 2015, the couple have been registered partners within the meaning of the Registered Partnership Act.¹ In 2021, they decided to create their own family, and on 24 June 2021, an incognito and intercountry adoption contract was concluded between the couple and Wiener Kinder- und Jugendhilfe (WKJH),² an adoption of a Slovak national minor. This arrangement was defined as a fostering for an indefinite period, with the prospect of eventual adoption in mind. The biological mother of the child assigned full parental responsibility to the agency, and agreed to intercountry adoption, while the biological father is unknown.

On the third day following the child's birth, the foster daughter was entrusted to the guardianship and care of the foster parents by the agency without any charges. Since then, and from the moment of her birth, the foster daughter has resided with her foster parents as if she were their biological child. The parents have shown immense affection and familiarity towards her, resulting in her thriving and healthy development. On 25 September 2021, the couple made the decision to apply with the agency to Bezirksgericht Innere Stadt Wien (District Court of Inner City Vienna) for approval of the intercountry adoption. In Austria, any legally recognized couple or individual in a matrimonial relationship seeking to adopt a child must secure judicial approval for the act to attain legal validity, which called judicial approval procedure.³ Thus, the subsequent step for the couple was to obtain the Court's ruling.

The judicial ruling was rendered by the District Court of Inner City Vienna on 20 January 2022 and was formally served on 26 January 2022. The Court ultimately ruled to dismiss the application. According to the justification of the decision, the Court applied the Article 26, paragraph 1 of the Austrian International Private Law Act

¹ Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz*) (AT) BGBl. I Nr.135/2009

² City of Vienna - Child and Youth Services

³ The adoption process <https://www.oesterreich.gv.at/en/themen/familie_und_partnerschaft/familie-und-kinderfuersorge/adoption/Seite.720003.html>

(IPRG),⁴ which stipulates the adoption must comply with the personal statutes of both adopters and the child, which are governed by Czech and Slovak law in this case. The personal statute refers to the national law applicable to each individual involved. Consequently, the adoption requirements under both Czech and Slovak law must be met. The Czech Act on Private International and Procedural Law (Article 61, paragraph 1)⁵ and the Slovak Act on Private International and Procedural Law (Article 26, paragraph 1)⁶ dictate that the adoption process must satisfy the legal conditions of the adopters' and adoptee's respective states.

However, under Czech law, particularly Article 13, paragraph 2 of the Registered Partnership Act,⁷ there is a clear prohibition against adoption by individuals in a registered partnership. This provision explicitly states that being in a registered partnership prevents either partner from adopting a child. Due to this prohibition, P.S. and his partner are ineligible for adoption approval under Czech law, as their registered partnership legally disallows them from adopting. Given this legal barrier, the adoption cannot proceed as it mentioned before, and the Court decided there is no need to examine further requirements under Czech and Slovak law.

Under the Austrian domestic law, the same-sex couple was able to appeal against the decision of the District Court of Inner City Vienna, within 14 days of service of the decision. On 6 February 2022, the applicants concurrently filed an appeal against the Court's decision and submitted a motion to the Constitutional Court for a review of the statute's constitutionality, pursuant to Article 140, paragraph 1, item 1, letter d of the Federal Constitution.⁸ Two days after the plaintiffs' appeal, the agency (WKJH) similarly appealed the decision representing the minor. According to the appeal, the applicants claim that the interpretation of the IPRG by the first Court violate the applicants' constitutionally protected rights, notably their right to privacy and family life (Article 8 of the European Convention on Human Rights (ECHR)),⁹ as well as their

⁴ Private International Law (*IPR-Gesetz*) (AT) art 26, para 1

⁵ Private International Law Act (*Zákon o mezinárodním právu soukromém*) (CZ) Zákon č. 91/2012 Sb. art 61, para 1

⁶ Private International Law and Procedure Act (*Zákon o medzinárodnom práve súkromnom a procesnom*) (SK) Zákon č. 97/1963 Zb. art 26, para 1

⁷ Registered Partnership Act (*Zákon o registrovaném partnerství*) (CZ) Zákon č. 115/2006 Sb. art 13, para 2

⁸ Federal Constitutional Law (*Bundesverfassungsgesetz*) (AT) art 140, para 1, item 1d

⁹ European Convention on Human Rights, art 8

rights to be free from discrimination and to receive equal treatment (Article 14 ECHR¹⁰ in conjunction with Article 8 ECHR; Article 21 of the Charter of Fundamental Rights of the European Union;¹¹ Article 1 of the Austrian Federal Constitutional Law on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination).¹²

Additionally, it violates the constitutionally assured rights of the adoptive daughter, including her entitlement to the best possible development and fulfillment, safeguarding of her interests, and the prioritization of her welfare in all actions concerning children (Article 1 of the Austrian Federal Constitutional Law on the Rights of Children;¹³ Article 24, paragraph 2 of the Charter of Fundamental Rights of the EU).¹⁴ Moreover, the Court's enforcement of Czech and Slovak legal provisions that prohibit adoption by same-sex couples' results in an outcome that is inconsistent with the core principles of the Austrian legal framework. Consequently, these foreign provisions should be disregarded and supplanted by Austrian legal standards governing adoption by same-sex couples, as outlined in Article 6 IPRG.¹⁵ Therefore, through this petition, the applicants seek, primarily, to modify the challenged ruling in favor of the applicants' request of adoption be granted. Alternatively, it calls for the annulment of the contested order and the remand of the case to the lower Court for reconsideration, potentially accompanied by a binding legal directive.

As indicated by the motion of the review of the law, the applicants have pursued the same arguments in their appeal against the judgment of the Court. At the end of the petition the applicants requested for annulment of paragraph 1 of Article 26 IPRG, because in their view, the repeal of this paragraph is essential to re-establish the rule of law with minimal interference from the constitutional Court, ensuring the restoration with the least judicial intervention. Subsequently, on 30 May 2022, the Austrian Federal Government has submitted its statement on the applicant's application, requesting the

¹⁰ *ibid* art 14

¹¹ Charter of Fundamental Rights of European Union, art 21

¹² Federal Constitutional Act on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (*Bundesverfassungsgesetz zur Durchführung des Internationalen Übereinkommens über die Beseitigung aller Formen rassistischer Diskriminierung*) (AT) BGBl. Nr. 390/1973 art 1

¹³ Federal Constitutional Act on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*) (AT) BGBl. I Nr. 4/2011 art 1

¹⁴ See (n 11), art 24, para 2

¹⁵ See (n 4), art 6

rejection of the application as inadmissible, or, in the alternative the declaration that the contested provisions are not unconstitutional. The legal arguments of the Federal Government will be dealt with in another section of this chapter.

Nevertheless, a pivotal element influencing the Constitutional Court's forthcoming decision, as it will be explored in the subsequent discussion, was the federal government's explicit declaration in its official statement 'In the present case, the domicile and habitual residence of the adoptive parents and the adopted child mean that the adoption case is very closely connected to Austria, which is further reinforced by the domestic place of conclusion of the adoption contract. This requires a strict public policy examination, which the District Court Innere Stadt Vienna has failed to carry out and which would have to be made up for in the appeal proceedings. In view of the specific circumstances of the adoption plan (incognito adoption, orderly and stable circumstances of the adoptive parents, parental relationship between the adoptive fathers and the adopted child comparable to a biological parent-child relationship, which has existed since the third day after the birth of the child to date), the granting of the adoption would also be in the best interests of the child. Due to the special importance attached to safeguarding the welfare of the child in the Austrian legal system and the prohibition of discrimination on the grounds of gender and sexual orientation, the adoption should therefore have been approved by applying the public policy clause of § 6 IPRG and the application of Austrian substitute law, the adoption should have been approved (the emergence of a "limping legal relationship" in relation to the Czech and Slovak Republics would have to be accepted...'. This implies that the government itself concedes the erroneous nature of the District Court's ruling, a rare occurrence in legal discourse (see *Bostock v. Clayton County*).¹⁶

Following the statement of the Austrian Federal Government, the applicants submitted a formal response to the Constitutional Court on 17 April 2022, indicating their concern

¹⁶ In this case, the Supreme Court ruled in June 2020 that Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex, also covers sexual orientation and gender identity. Before the case reached the Supreme Court, there were conflicting decisions in the lower Courts, with some rulings not recognizing this protection. In their proceedings, the government, through the Department of Justice, acknowledged the importance of a correct interpretation of the law and effectively conceded that earlier interpretations by some lower Courts were not in line with the broader principles of Title VII < https://www.supremecourt.gov/opinions/19pdf/17-1618_hfcj.pdf> accessed 5 March 2024

is not with the foreign law itself but with the domestic law (Article 26, paragraph 1 IPRG) that requires Austrian Courts to apply foreign laws in certain situations, which they believe is unconstitutional. They emphasize that foreign laws should not influence Austrian legal decisions, particularly when such laws conflict with Austrian legal principles or constitutional rights. The applicants also criticize Article 6 of the IPRG for being vague, creating legal uncertainty, and giving Courts too much discretion. This lack of clarity can lead to inconsistent rulings and potential discrimination, especially in sensitive areas like adoption and same-sex marriage.

They argue that clearer legal guidelines are needed to prevent the application of foreign laws that may conflict with Austrian constitutional values. The applicants call for legal standards that are as clearly defined as those for marriage laws under Austrian law. Furthermore, they express concerns that the current legal framework could result in constitutional and human rights violations. They believe that the provisions in question do not adequately protect against discrimination, particularly concerning sexual orientation and other protected categories, in line with the standards set by the European Court of Human Rights. Overall, their response argues for the need for legal clarity and the protection of fundamental rights against the mandatory application of foreign laws by Austrian Courts.

On 18 June 2022, the Austrian Constitutional Court dismissed the applicants' application (case G 30/2022-12)¹⁷ for the annulment of Article 26, paragraph 1 of the IPRG, Federal Law Gazette 304/1978, as amended by Federal Law Gazette I58/2018, on the grounds of unconstitutionality, stating that the concerns raised regarding the constitutionality do not apply. Specifically, the Court emphasized that the principle of equality, which prohibits unjustifiable inequalities based on characteristics such as gender and sexual orientation, binds the legislature (see VfSlg. 20.225/2017).¹⁸ The Court referred to Article 6 of the IPRG, which allows the non-application of foreign laws if they contradict Austrian fundamental values – *ordre public* (public order), citing examples like discriminatory inheritance laws.

¹⁷ VfGH 18 June 2022, G 30/2022

¹⁸ VfGH 04 December 2017, G 258/2017

It agreed with the Austrian Supreme Court's view that the *ordre public* clause should be used sparingly but affirmed that fundamental rights and constitutional principles (see, OGH 10.7.1986, 7 Ob 600/86),¹⁹ such as equality and the welfare of the child, play a crucial role in its application. The Court further stated that the welfare of the child does not justify excluding same-sex registered partners from adopting and doing so would violate Austrian values and potentially the European Convention on Human Rights (ECHR). Consequently, the Court found no constitutional violation in Article 26, paragraph 1 of the IPRG, ruling that Austrian Courts could disregard foreign laws that conflict with Austrian constitutional principles.

Subsequently, since the appeal decision on the abolition of Article 26, paragraph 1 of the IPRG, the same-sex couple was pending the outcome of the appeal against the decision of the District Court of Inner City Vienna. On 28 October 2022, the judgment of the Regional Court for Civil Matters Vienna was notified, acting as the Court of Appeal, overturned the lower Court's decision, which had denied the adoption based on Czech law that prohibits adoption by same-sex registered partners. The appellate Court criticized the initial ruling for not considering Austrian constitutional values, particularly the principle of equality and the welfare of the child. It emphasized that Austrian law, under Article 6 of the IPRG, should take precedence when foreign law contradicts the fundamental values of the Austrian legal system. Given the strong domestic connection of the case, with both the minor and adoptive parents residing in Austria, the Court ordered the lower Court to apply Austrian law, which does not prohibit adoption by same-sex couples, and to reexamine the adoption requirements accordingly.

The decision by the Regional Court for Civil Matters Vienna is a profound affirmation of the Austrian legal system's commitment to equality, non-discrimination, and the welfare of children. By refusing to apply Czech law, which prohibits adoption by same-sex couples, the Court not only upheld the fundamental values enshrined in the Austrian Constitution but also reinforced the broader principles of human rights as protected under the ECHR. This ruling highlights that discriminatory practices, even those embedded in foreign legal systems, have no place in Austrian jurisprudence when they conflict with the nation's core values. The Court's decision is particularly significant in

¹⁹ OGH 10 July 1986, 7Ob600/86

its emphasis on the welfare of the child, which was prioritized over rigid adherence to foreign legal norms.

By recognizing that the minor in question had formed a beneficial parent-child relationship with the adoptive parents, the Court demonstrated a commitment to ensuring that legal decisions serve the best interests of the child above all else. This approach reflects a progressive, human-centered perspective that respects the evolving nature of society and the importance of protecting the rights and dignity of all individuals, regardless of their sexual orientation. The ruling sends a clear message that Austria's legal system is not only aligned with modern principles of equality and justice but is also willing to challenge and disregard foreign laws that conflict with these values.

The case has been referred to the District Court of Inner City Vienna, which on 17 January 2023 requested legal information from both the Ministry of Justice of the Czech Republic and the Ministry of Justice of the Slovak Republic regarding adoption laws in their respective countries. This request was made under Article 1, paragraph 1 of the European Convention on Information on Foreign Law,²⁰ as part of the adoption case. The Court asked the Czech Ministry for details about whether a confidential adoption (where the identities of adoptive parents are kept secret) is allowed under Czech law, what legal steps and health evaluations are required for such an adoption, and which authorities are responsible. Similarly, the Court asked the Slovak Ministry for information on the legality of confidential adoptions under Slovak law, the nature of required medical examinations, and a copy of relevant legal provisions regarding the prerequisites and legality of adoptions in Slovakia. Both requests emphasize that the Austrian Constitutional Court had ruled that a blanket ban on adoptions by same-sex couples is incompatible with the fundamental values of the Austrian legal system, and thus, any foreign legal prohibitions should not be considered in Austria.

The District Court of Inner City Vienna's request for legal information from the Czech and Slovak Ministries of Justice seems to be a thorough and necessary step in ensuring that the adoption process is conducted in full compliance with all relevant legal frameworks. Given the complexities involved in international adoption cases,

²⁰ European Convention on Information on Foreign Law, art 1, para 1

especially when they intersect with different national laws regarding same-sex adoption, this request for clarification was likely essential. By seeking detailed information on the laws in both the Czech Republic and Slovakia, the Court aimed to navigate the potential legal conflicts that could arise due to the differing adoption laws in Austria, the Czech Republic, and Slovakia. Since the adoptive parents are from these two countries, and the adoption took place in Austria, it was crucial for the Court to understand how the laws of all involved countries might impact the adoption's legality and enforceability. This step reflects the Court's commitment to ensuring that the adoption is valid not only under Austrian law but also considering the legal standards of the parents' home countries. It also demonstrates a careful approach to safeguarding the rights and interests of all parties involved, particularly the child. In such sensitive and legally intricate cases, taking the time to gather comprehensive legal information is not just necessary but also prudent to avoid future legal challenges or complications (see *X and Others v. Austria*).²¹

The culmination of this long and arduous journey arrived with the District Court of Inner City Vienna's final ruling on 21 December 2023, which approved the adoption, applying both Slovak and Czech law in accordance with Austria's IPRG. The Child and Youth Services Vienna (WKJH) was appointed as the child's curator and guardian as per Slovak and Czech legal provisions (Article 102, paragraph 3 of the Slovak Family Act²² and Article 807, paragraph 1 of the Czech Civil Code).²³ The Court acknowledged the adoption agreement, which was signed on 24 September 2021, and declared the adoption effective under Article 192, paragraph 1 of the Austrian General Civil Code.²⁴ Despite legal provisions in Slovak and Czech law requiring adoptive parents to be married, the Court disregarded these requirements based on Austria's *ordre public*, which prohibits discrimination against same-sex couples (VfGH 18.06.2022).²⁵ All other adoption requirements under Slovak and Czech law, including the child's best interest and the necessary consent, were met. Therefore, the adoption was officially

²¹ *X and Others v Austria* App no 19010/07 (ECtHR, 19 February 2013)

²² Act on the Family and on Amendments to Certain Acts (*Zákon o rodine a o zmene a doplnení niektorých zákonov*) (SK) Zákon č. 36/2005 Z. z. art 102, para 3

²³ Civil Code Act (*Zákon občanský zákoník*) (CZ) Zákon č. 89/2012 Sb. art 807, para 1

²⁴ Civil Code (*Allgemeines bürgerliches Gesetzbuch*) (AT) art 192, para 1

²⁵ See (n 17)

approved retroactively to 24 September 2021, ensuring the same rights as biological parentage under Austrian law.

1.2 Examination of Legal obstacles and challenges

This subchapter delves into the legal complexities and challenges encountered in the context of intercountry adoption by a same-sex couple, as illustrated in the case study at the heart of this thesis. It will critically analyze the legal barriers that emerged due to the conflicting provisions of Austrian, Czech, and Slovak law, particularly the prohibition of adoption by same-sex couples in foreign legal systems. Despite Austria's progressive legal stance, the imposition of foreign statutes presented significant obstacles, highlighting deeper issues related to the harmonization of international law and the protection of fundamental rights. Through this subchapter, I will aim to explore how these legal conflicts were navigated, focusing on the discriminatory aspects of foreign provisions, constitutional arguments raised, and the eventual reconciliation of these challenges with Austria's commitment to equality and non-discrimination. Ultimately, it will provide an in-depth examination of the judicial process, which sought to align international legal requirements with the paramount importance of human rights in the Austrian legal order.

A key aspect of this case involves the tension between domestic constitutional principles (equality, non-discrimination, and the welfare of children) and the mandatory application of foreign laws in Austrian Courts, as required by Article 26, paragraph 1 IPRG. The obligation to apply the personal laws of the adopters, which in this case were Czech and Slovak, placed the couple at a legal disadvantage due to restrictive provisions in those jurisdictions. Specifically, the Czech Registered Partnership Act²⁶ outright prohibits adoption by individuals in registered same-sex partnerships, and under the Slovak Family Act (Act No. 36/2005 Coll. on Family).²⁷ This legal conflict illustrates the inherent difficulties in transnational adoption cases, where divergent national laws on family structure and adoption practices may not align with the more progressive stances of countries like Austria. Such obstacles raise critical questions about the role of private international law in balancing respect for foreign legal systems

²⁶ See (n 7)

²⁷ See (n 22)

while ensuring the protection of fundamental rights under Austrian and European Union law.

The District Court of Inner City Vienna should not have applied Article 26, paragraph 1 of the IPRG, because Article 6 IPRG explicitly stipulates that the Court must apply domestic law when foreign law conflicts with the principles of domestic law, particularly when it infringes on fundamental rights and constitutional values, such as the principle of equal treatment and the prohibition of discrimination based on sexual orientation, and the rights of children. The application of Article 26, paragraph 1 IPRG places Austria against its obligations on fundamental rights such as the right to family life (including same-sex couples) and protection from discrimination under the ECHR. This barrier has been effectively surmounted, when the Austrian Court implemented the *ordre public* clause to dismiss the application of Czech and Slovak law, which reflects a broader legal principle within European human rights jurisprudence. Under Austrian law, the *ordre public* clause allows the Court to set aside foreign legal provisions that are incompatible with domestic constitutional values, such as the prohibition against discrimination based on sexual orientation.

This approach, grounded in the principles of equality enshrined in the Austrian Constitution and reinforced by the ECHR, underscores the importance of prioritizing human rights over rigid legal formalism, which is illustrated by the first decision of the District Court of Inner City Vienna, accentuating the strict application of Article 26, paragraph 1 IPRG, at the expense of applicants' right to adoption. By invoking this clause, the Court emphasized the need to protect the welfare of the child and the rights of the adoptive parents, ultimately affirming that Austrian legal standards should prevail when they are in conflict with discriminatory foreign laws.

In addition to the legal complexities surrounding the application of foreign laws, this case also highlighted procedural issues within the Austrian judicial system, particularly the length of time involved in resolving the couple's appeal. The appeals process, including the petition to the Constitutional Court to review the constitutionality of Article 26, paragraph 1 IPRG, illustrates the existing challenges that same-sex couples often face in seeking legal recognition of their relationships and legal protection of their family rights. The delays and legal uncertainties that characterized this case reflect the difficult role of the national Courts, which are called upon to investigate the application

of multiple legal systems (Austrian, Czech and Slovak), each with distinct provisions on the right to adoption and the family. These procedural delays not only impact the adoptive parents but also have significant implications for the child's well-being, as prolonged legal disputes can create uncertainty regarding the child's legal status and parental rights.

1.3 Analysis of Courts' decisions and legal proceedings

This case presents a complex interplay of international private law, domestic legal principles, and human rights considerations. The judicial process required not only the application of foreign laws but also a careful assessment of how these laws aligned with Austria's fundamental values, particularly regarding non-discrimination due to sexual orientation and child welfare. The case could be a reference point in the public consultation on family law reform in EU Member States. There has been an unequal treatment among European countries over the years with regard to same-sex adoption and LGBTQI+ rights in general, making the evolution of their legal frameworks gradual. The final judicial approach in this case — emphasizing non-discrimination, equality, and the welfare of the child — serves as a significant benchmark for progressive legal systems, as it constitutes a case law.

By prioritizing the values set out in the Austrian Constitution and safeguarding human rights, the Austrian Courts are setting a strong precedent for future cases, not only in domestic level but also across Europe, as this is only the second case involving foreign same-sex parents to be heard by a Court in a European country. The final decision of the Court of Appeal could potentially influence the legislative authorities of other EU Member States, to the extent that it could lead to a review of their national laws, particularly where the legal provisions of domestic legislation conflict with European human rights standards.

The District Court of Inner City Vienna initially dismissed the same-sex couple's application for adoption, applying the Article 26, paragraph 1 IPRG. This provision mandates that adoption must comply with the adopters' and child's national law, which, in this case, were Czech and Slovak laws that prohibit same-sex couples in registered partnerships from adopting. The Court's decision was grounded in legal formalism,

adhering strictly to the letter of the law, but this raised significant issues regarding fundamental rights and Austria's commitment to equality. In their appeal, the couple argued that the Court's decision violated their constitutionally protected rights, notably the right to privacy and family life (Article 8 ECHR), and the right to non-discrimination (Article 14 ECHR, Article 21 of the Charter of Fundamental Rights of the EU). The appeal emphasized that Austrian Courts should prioritize the welfare and best interests of the child and the rights of the parents over the rigid application of foreign laws. They invoked the principle of *ordre public*, allowing Austrian Courts to disregard foreign laws if they conflict with domestic values by exercising discriminatory provisions. The couple argued that prohibiting adoption based on sexual orientation conflicted with Austrian principles of equality and non-discrimination set out in its Constitution, and that the foreign laws should be set aside.

A significant juncture was reached with the appellate Court's ruling, which overturned the District Court's decision. The appellate Court criticized the lower Court for failing to consider Austria's constitutional values, particularly the principle of equality and the welfare of the child. By rejecting the application of Czech and Slovak laws, the appellate Court underscored that Austria's commitment to non-discrimination, enshrined in both its Constitution and the European Convention on Human Rights, should take precedence. The Court emphasized that foreign laws prohibiting same-sex adoption could not override the paramount concern for the child's well-being. The focus on the child's welfare was crucial throughout the proceedings. The Court of Appeal recognized that the adoptive parents had formed a stable and nurturing parental relationship with the child, comparable to a biological parent-child bond. This focus on the child's best interests aligns with international standards, including the United Nations Convention on the Rights of the Child (UNCRC).

The ruling of the Court has significant implications for future adoption cases involving same-sex couples and international legal conflicts, establishing a case law as mentioned before. It reflects Austria's willingness to challenge foreign laws that conflict with its own constitutional values, particularly in matters of equality and human rights. The Court of Appeal's reliance on the *ordre public* clause signals a shift towards a more rights-based approach in Austrian jurisprudence, ensuring that foreign laws are not applied when they violate the nation's core principles. Moreover, the case illustrates

the complexity between the way the law is interpreted through legal formalism – creating an obsessive relationship of typolatry – with judges ruling on a case solely on the basis of the written law, uninfluenced by external factors, a demagogy to the detriment of the substance upheld through legal realism – where judicial interpretation loses its neutrality due to the influence of factors or the personal judgment of judges in reaching a verdict.

While the initial ruling of the District Court applied a strict interpretation of international private law, the appellate Court's decision reflects a broader understanding of justice – one that takes into account not only the legal texts but also the real-life implications of those laws on individuals. This contrast between strict adherence to the law and flexibility through moral and political inconsistencies in judicial decision making demonstrates the evolution of a strict application of the law to a more adaptive approach linked to social circumstances, with judges increasingly called upon to interpret laws in the light of contemporary social values and human rights protection. In this case, the more expansive and rights-centred interpretation of the Court of Appeal has helped to ensure that the law serves people rather than rigidly imposing outdated norms.

Additionally, this case highlights the importance of European human rights rules, which have a direct impact on the legal decisions of the Austrian Courts. The applicants, invoking the European Convention on Human Rights and the Charter of Fundamental Rights of the EU, demonstrated the violations resulting from the first decision of the Austrian Court refusing to approve the adoption of the foreign same-sex couple, signaling the urgent need to harmonize national Court decisions with European standards in the areas of justice and equality. Correspondingly, the decision of the Court of Appeal indicates the responsibility of the Austrian Courts to fulfil their role with regard to the protection of human rights against discriminatory practices through the assurance that their decisions can provide, which must be in line with Austrian values against discrimination and in favour of respect for human dignity. Despite this, the willingness of Austrian Courts to interpret national law in line with ECHR standards reinforces the notion that domestic Courts must not only adhere to national constitutions but also be responsive to the broader human rights framework established at the European level.

Furthermore, the Court of Appeal's reliance on the *ordre public* clause is a powerful legal tool in mitigating the harsh effects of foreign laws that are deemed incompatible with the Austrian Constitution. However, there are concerns about the balance between respecting the sovereignty of foreign legal systems and upholding domestic law. In this case, the Court's decision to disregard Czech and Slovak laws based on Austria's *ordre public* highlights the judiciary's responsibility in ensuring that international cooperation in legal matters does not compromise fundamental rights. This decision signals the clear stance of the Austrian Courts not to limit the Austrian legal system by foreign laws that conflict with the legal provisions guaranteeing equality to all citizens of the country, especially when it comes to issues affecting sexual orientation and family rights.

1.4 Implications for children's rights to nationality

The legal process to secure intercountry adoption extended over a period of approximately two and a half years, ultimately culminating in a favorable outcome for the same-sex couple. However, this case raises a significant new issue with direct implications for the adopted child's nationality. The biological mother, a Slovak national, just three days after the child's birth, entered into an agreement granting full parental custody to Wiener Kinder- und Jugendhilfe, losing the ability to give her nationality to the child. Following the positive ruling by the Court of Appeal, the legal recognition of the adoptive parents supersedes that of the biological mother, meaning that the child can no longer claim Slovak nationality. Nevertheless, despite residing and being raised by her adoptive parents in Austria, neither adoptive parent holds Austrian nationality. This situation presents a legal obstacle concerning the child's nationality – although she is being raised in Vienna, she is currently unable to obtain Austrian citizenship. How can the adoptive parents address this new challenge concerning their adopted daughter's right to citizenship, and what actions have they taken thus far? These are the questions that will be attempted to be answered in this section.

Austrian citizenship can be acquired through several key pathways, each with its own set of legal requirements and conditions. The primary law governing citizenship in Austria is the Austrian Citizenship Act of 1985. The law has undergone several

amendments and can be found in BGBl. Nr. 311/1985 (Federal Law Gazette).²⁸ According to Section II – Acquisition of citizenship, Article 6, citizenship is acquired through ancestry defined by Articles 7, 7a, and 8 (BGBl. Nr. 202/1985, Article I Z 2),²⁹ naturalization (acquisition by award) defined by Articles 10 to 24, and acquisition of citizenship by notification defined by Articles 57, 58c, and 59. The method of descent follows the principle of *jus sanguinis*³⁰ (right of blood) – a common method across Europe, Asia, and other regions – thus a child inherits the nationality of their parents, regardless of where they are born. In Austria, children born to at least one Austrian parent automatically receive citizenship. However, if the parents are unmarried and only the father holds Austrian citizenship, the child must be formally recognized by the father within eight weeks of birth to acquire Austrian nationality. Dual citizenship is generally restricted in Austria, but exceptions exist, particularly when the other parent’s nationality also follows the principle of descent.

Naturalization is another pathway for foreign nationals, requiring at least 10 years of continuous legal residence in Austria, although this period can be reduced to six years in cases where the applicant has demonstrated strong integration into Austrian society, holds the nationality of another European Economic Area (EEA) country, holds a stateless status, or is under humanitarian grounds. To be eligible for naturalization, individuals must also prove sufficient financial stability, proficiency in the German language, and knowledge of Austrian democratic institutions and history, where this is examined through a “citizenship test”. A significant legal hurdle is the requirement to renounce previous nationalities, as Austria generally does not permit dual citizenship unless under specific circumstances.

Nevertheless, the acquisition of citizenship by notification for foreign nationals and their descendants enables individuals who have been mistakenly recognized as citizens for at least fifteen years to obtain citizenship retroactively upon proper notification to authorities. In addition, this legislation facilitates citizenship for those who left Austria due to persecution during the Nazi regime, including their direct descendants and adopted children, with a focus on protecting their rights through a straightforward

²⁸ Citizenship Act 1985 (*Staatsbürgerschaftsgesetz 1985*) (AT) BGBl. Nr. 311/1985

²⁹ *ibid* BGBl. Nr. 202/1985, art I Z 2

³⁰ Oxford Reference

<<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100027515>>

application process. This legislation permits individuals who were believed to be citizens by descent but later found not to be, due to paternity determinations, to retroactively gain citizenship unless obtained fraudulently. All procedures are free of charge, ensuring accessibility for those seeking to rectify their citizenship status.

In cases of international adoption, where adoptive parents are non-Austrian nationals, the child does not automatically gain Austrian citizenship. For adopted children to acquire Austrian nationality, they would need to fulfil naturalization requirements similar to other foreign nationals. The child may need to reside in Austria for several years, and in many cases, might be required to renounce their birth nationality, depending on the laws of the child's birth country and Austria's restrictive stance on dual nationality. Concerning Article 14, paragraph 1.1 BGBl. Nr. 311/1985³¹ citizenship is also granted to a foreign person if she or he was born in the territory of Austria and is stateless by birth, while under paragraph 1.2,³² a foreign person must have had her or his principal residence in the territory of Austria for a total of at least ten years with at least five consecutive years immediately before citizenship is granted. Moreover, Article 19, paragraph 1³³ indicates that applications for the granting and extension of citizenship must be submitted to the authority in person. If the applicant is not capable of acting on her or his own behalf, her or his legal representative must submit the application. These two articles may illustrate how the adoptive daughter of the same-sex couple can obtain Austrian citizenship.

Furthermore, since the child is stateless, she may qualify under Austria's special provisions for stateless individuals. Austrian nationality law can provide for easier naturalization in cases of statelessness, potentially lowering the required residency period to six years. The parents would need to apply for this status and initiate a naturalization process. As it was mentioned previously, Austrian law typically requires applicants for naturalization to demonstrate language proficiency (usually at least an A2 level in German) and a degree of integration into Austrian society. For a child, these requirements may be adjusted, but proof of schooling, community involvement, and integration would still be essential. If the child is stateless, the issue of dual nationality doesn't arise. Nevertheless, if the child were to acquire another nationality in the future,

³¹ See (n 28), art 14, para 1.1

³² *ibid* art 14, para 1.2

³³ *ibid* art 19, para 1

Austria's restrictive approach to dual nationality would need to be considered. The parents should ensure that any future nationality does not interfere with the process of obtaining Austrian citizenship. Eventually, if the parents can demonstrate that the child's stateless status significantly affects her rights, such as access to education or healthcare, the authorities may consider humanitarian reasons for granting citizenship under a shortened procedure.

However, the issue of concern to the parents is the stateless status of their daughter until she meets the prerequisites to obtain Austrian citizenship (e.g., until the child turns six years old). As is already known, the parents are not Austrian nationals independently if they live and work in Austria, and therefore they are not entitled to make use of Article 11b, paragraph 1³⁴ concerning the right to grant citizenship to a child residing in the Austrian territory who has not yet completed the age of fourteen and does not possess Austrian citizenship upon application under the conditions of Article 10, paragraph 1, items 5 and 6³⁵ if she or he has been adopted by a citizen. Since, at the moment, their daughter is a child with stateless status, she may face several challenges when accessing essential services like healthcare, education, and other social benefits, at the same time, emergency medical care and primary education are accessible to stateless children.³⁶

While Austria generally provides basic services to all residents, including stateless individuals, navigating the system can be more complicated without clear nationality. Stateless children may struggle to access certain rights or benefits tied to citizenship, such as full social security rights or government financial support. Additionally, statelessness can complicate travel, legal processes, and long-term residency status. One of the concerns I have personally addressed with her parents is the challenge of traveling abroad as a family, given the likelihood of being asked for the child's personal documentation, such as identification, which the child currently lacks. In my view, obtaining Austrian citizenship for the child would be a relatively straightforward process if one of the parents were to pursue citizenship themselves. Naturally, this is a choice the couple could consider if they so desire.

³⁴ *ibid* art 11b, para 1

³⁵ *ibid* art 10, para 1, items 5 and 6

³⁶ Statelessness index <<https://index.statelessness.eu/country/austria>>

Following their lawyer's advice, the same-sex couple opted to pursue their child's citizenship individually through the domestic Courts of their respective countries of origin. Their goal is for the child to obtain either Czech, Slovak, or both citizenships, as an alternative, until she becomes eligible to apply through her parents for Austrian citizenship under Article 10, paragraph 1, items 5 and 6 of the Citizenship Act. The situation in both the Czech Republic and Slovakia presents significant legal hurdles for the same-sex couple seeking to secure their daughter's citizenship. The Czech Republic, while somewhat progressive on LGBTQI+ issues compared to other Eastern European countries, does not legally recognize same-sex adoption or parenthood. Under its Family Code, only heterosexual couples or single individuals can adopt. Same-sex couples who are legally married or in registered partnerships cannot adopt children together, either domestically or through international adoption. Furthermore, the Czech Republic follows the *jus sanguinis* principle of nationality,³⁷ one of the methods analyzed above.

Due to the fact that the Czech legal system does not acknowledge the parental rights of same-sex couples, it may be difficult for the Courts to accept the child's claim to Czech nationality through her adoptive parents, even if the Austrian Courts recognize their legal parenthood. In the event that the couple pursues Czech citizenship for the child, the Court may examine the legalities of the parental relationship and whether it aligns with the country's restrictive laws regarding same-sex parenthood. The lack of legal recognition for their parental status would likely result in the child's claim being denied – which unfortunately they expect – unless there is a legal challenge to these laws on constitutional or human rights grounds. The case could be escalated to the Constitutional Court of the Czech Republic, or the couple could appeal under European Union law or European human rights standards, arguing that the child's rights to family life and equality are being violated (Articles 8 and 14 ECHR), a time-consuming and costly procedure that does not resolve the issue of the case now.

In the same vein, Slovakia is even more conservative in its approach to LGBTQI+ rights, with the constitution explicitly defining marriage as a union between a man and a woman, which further entrenches the legal barriers faced by same-sex couples.

³⁷ Act on the State Citizenship of the Czech Republic and on Amendments to Certain Acts (*Zákon o státním občanství České republiky a o změně některých zákonů*) (CZ) Zákon č. 186/2013 Sb.

Similar to the Czech Republic, Slovakia prohibits same-sex couples from adopting children. Slovak law also operates under the *jus sanguinis* principle,³⁸ making it difficult for the child to acquire citizenship based on her parents' status as adoptive parents. In Slovakia, even if the biological mother was Slovak – such as the biological mother of the adoptive daughter – the child's legal status as a daughter of same-sex parents would likely face significant challenges. Slovakia's legal framework is less likely to recognize the child's legal relationship to the adoptive parents, and this would probably extend to citizenship rights as well. If the couple were to bring their case before a Slovak Court, the legal system might deny the request based on the prohibition against same-sex adoption and parenthood. This rigid stance would leave little room for domestic Courts to recognize the child's citizenship, particularly in light of the country's broader rejection of same-sex family structures.

If these domestic Courts do not grant citizenship, the couple may also argue that Slovakia and the Czech Republic are not fulfilling their international obligations regarding statelessness. Both countries are signatories to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness,³⁹ which obliges states to avoid rendering a child stateless. This argument could add pressure to the Courts to resolve the child's status in a manner consistent with international norms, even if domestic law is more restrictive. Additionally, Austria is a signatory to both Conventions, a fact that will be further analyzed later in the chapter on the obligations of the Austrian state.

1.5 Discrimination and inequality under domestic law, European legal framework, and International Human Rights Treaties

This case involving the same-sex couple of foreign citizens to adopt a child highlights critical tensions between domestic legal frameworks, the European legal system, and international human rights treaties. The central issue in the first instance revolves around whether restrictive foreign laws – such as those of the Czech Republic and Slovakia, which prohibit same-sex couples from adopting – should be enforced in

³⁸ Act of the Slovak National Council on the acquisition and loss of citizenship of the Slovak Socialist Republic (*Zákon Slovenské národnej rady o nabytí a pozbytí štátneho občianstva Slovenskej socialistickej republiky*) (SK) Zákon č. 206/1968 Sb.

³⁹ UN Conventions on Statelessness <<https://www.unhcr.org/what-we-do/protect-human-rights/ending-statelessness/un-conventions-statelessness>>

Austria, a country where the legal recognition of same-sex couples and their rights has progressed significantly, while to a second stage it pivots around the same-sex couple's child's right to acquire citizenship. This subchapter will analyze the discriminatory impact of such laws, drawing on comparative examples and broader human rights principles to assess how domestic, European, and international law interact in the protection of equal rights for LGBTQI+ families.

The legalization of joint adoption by same-sex couples in Austria went through significant legal reforms until the legislation came into force on 1 January 2016. Until then, the Austrian State limited its legal framework regarding the right of adoption for same-sex couples only to cases where a person could adopt the biological child of his or her partner, the so-called second-parent adoption. The right to second-parent adoption was brought about when in 2013, through the landmark case of *X and others v. Austria*,⁴⁰ the European Court of Human Rights (ECHR) issued a ruling that marked a significant moment for LGBTQI+ rights in Austria. The case involved a same-sex couple, resident in Austria, where one partner sought to adopt his partner's biological child.

The applicants' support was based on clear discrimination on the grounds of their sexual orientation, violating their rights under Article 8 – right to respect for private life, in conjunction with Article 14 – prohibition of discrimination of the European Convention on Human Rights. The ECtHR ruled in favor of the applicants, finding that Austria's exclusion of same-sex couples from stepchild adoption amounted to unjustified discrimination. This decision marked a milestone for LGBTQI+ rights, as the ECtHR for the first time recognized the right of same-sex couples to adopt on equal terms with heterosexual couples.

In response to the ECtHR ruling, on 4 July 2013, Austria's Parliament approved a legislative proposal that permitted same-sex couples to adopt their partner's biological children (stepchild adoption). This law officially came into effect on 1 August 2013.⁴¹

⁴⁰ See (n 21)

⁴¹ ILGA-Europe, 'Austria becomes the 14th European country to allow same-sex second-parent adoption' (1 August 2013) <<https://new.ilga-europe.org/resources/news/latest-news/austria-becomes-14th-european-country-allow-same-sex-second-parent>> accessed 3 May 2024

In January 2015, the Constitutional Court declared the current adoption laws unconstitutional and mandated their revision by 31 December 2015, to permit joint adoption for same-sex couples.⁴² Subsequently, on 30 October 2015, the Justice Minister announced that the ban on joint adoption would no longer be enforced from 1 January 2016, effectively implementing the Court's ruling and removing the prohibition on joint adoption.⁴³

From that point forward, same-sex couples in registered partnerships or marriages could adopt children jointly, making Austria one of the more progressive countries in the region concerning LGBTQI+ rights, such as the Netherlands, Denmark, Germany, Spain, Sweden, Finland, France, etc. The Austrian Constitutional Court examined a case involving adoption disputes arising after the dissolution of a relationship. The Court ruled that same-sex couples must receive equal treatment to heterosexual couples. It determined that the non-biological mother should be fully acknowledged as a parent through adoption and granted the same rights, responsibilities, and legal recognition as a heterosexual father, regardless of whether the couple remained together. The children's best interest must be taken and guaranteed in every adoption process, the Court ruled.⁴⁴

One of the most significant developments in recent Austrian adoption law is the recognition of adoption rights for foreign same-sex couples, the case examined in this thesis. The legal proceedings in this case faced significant challenges, culminating in the discriminatory ruling from the District Court of Inner City Vienna, which denied the same-sex couple's adoption petition. The Court applied Austrian International Private Law, referencing Article 26, paragraph 1, which mandates that adoption must conform to the personal legal frameworks of both the adopters and the child. In this instance, Czech and Slovak laws were applicable, both of which prohibit adoption by same-sex couples. This position is at odds with Austria's legal principles, which uphold

⁴² Vienna Online, 'Adoption ban for homosexual partners lifted', (*Vienna.at*, 14 January 2015) <<https://www.vienna.at/adoptionsverbot-fuer-homosexuelle-partner-aufgehoben/4202709>> accessed 4 May 2024

⁴³ Irene Brickner, 'Homosexuals will be allowed to adopt in the future – without any amendment to the law' (*Der Standard*, 30 October 2015) <<https://web.archive.org/web/20170630154241/http://derstandard.at/2000024807861/Homosexuelle-duerfen-kuenftig-adoptieren-ohne-Gesetzesnovelle>> accessed 4 May 2024

⁴⁴ Queer.de, 'Austria: Lesbian allowed to adopt ex's child' (25 October 2018) <https://www.queer.de/detail.php?article_id=32205> accessed 4 May 2024

equal access to adoption for all citizens, irrespective of sexual orientation, and are reinforced by strong anti-discrimination legislation.

The case proceeded to the Court of Appeal, which ruled in favor of the same-sex couple's adoption petition. This landmark decision, now a part of case law, broadens adoption rights for foreign citizens in same-sex relationships, whether in a registered partnership or marriage. Notably, it permits non-Austrian same-sex couples residing in Austria to adopt children, even when their countries of origin maintain prohibitions against same-sex adoption. However, as with all international adoption cases, legal complexities may arise, particularly concerning nationality and the child's status in the parents' home country. Moreover, the decision marks Austria as one of the few countries where foreign LGBTQI+ individuals in civil unions or marriages can adopt, on account of this progressive stance contrasts with the legal frameworks of many European countries where adoption rights for same-sex couples are either limited or entirely restricted (see Poland, Romania, Bulgaria, etc). Undoubtedly, Austria's adoption legal framework serves as a progressive model for other countries in Europe that are navigating similar debates over family rights and equality.

At the European Union level, the lack of a uniform standard for adoption by same-sex couples remains evident. While the Charter of Fundamental Rights of the EU prohibits discrimination based on sexual orientation under Article 21, adoption laws are still primarily governed by national legislation. This creates an uneven legal landscape across Europe, with Austria, alongside other progressive nations like Spain, the Netherlands, and Sweden, offering comprehensive adoption rights to same-sex couples, including foreign citizens. In contrast, countries such as Poland and Hungary maintain prohibitive stances, with Hungary, for example, having constitutionally defined marriage as a union between a man and a woman, effectively barring same-sex couples from adopting. This disparity in national laws across Europe means that Austria's recent legal advancements, though significant, do not necessarily set binding precedent for other EU countries. Instead, Austria joins a minority of EU member states that have moved toward equal adoption rights, illustrating a broader European divide on the issue (as it has already been mentioned). The ruling in Austria opens the door to greater inclusivity in family law, particularly for foreign same-sex couples in civil partnerships

or marriages, but it also highlights the limitations imposed by the lack of an EU-wide adoption framework.

Furthermore, the European Court of Human Rights (ECtHR) has been instrumental in advancing LGBTQI+ rights (see *E.B. v. France*;⁴⁵ *Fretté v. France*;⁴⁶ *Gas and Dubois v. France*;⁴⁷ *Oliari and Others v. Italy*),⁴⁸ while the ECtHR's rulings have nudged many countries toward more inclusive laws, the Court also grants a margin of appreciation to member states, allowing them to regulate adoption according to their national contexts. This creates a situation in which countries with more conservative stances on LGBTQI+ rights, such as Poland or Romania, are not immediately obligated to reform their adoption laws unless specific cases challenge their regulations as human rights violations. Austria's recent decision on same-sex adoption by foreign citizens, therefore, sets a progressive example that could inspire legal challenges in the ECtHR or even the European Court of Justice (ECJ) in the future.

However, these national developments, while influential, do not automatically translate into broader European standards. Plaintiffs in other EU countries may reference the Austrian ruling in similar cases, but the legal autonomy retained by EU member states means that adoption rights for same-sex couples will continue to vary widely across Europe for the foreseeable future. This happens precisely because the ECtHR's judgments are binding on any member state convicted of human rights violations,⁴⁹ compelling those countries to respect and implement the Court's decision by reforming their domestic legal framework accordingly. Despite the fact that Member States of the Council of Europe that have ratified the ECHR but have not been found guilty of such violations are not required to modify their legal remedies or frameworks, there is no enforcement mechanism requiring them to do so. These states are not obligated to change their laws unless a specific ruling or violation is identified, allowing them to retain their domestic legal autonomy in areas where no breach has been established. It is reasonable to ask whether cases such as the one examined in this thesis may mark an

⁴⁵ *E.B. v France* App no 43546/02 (ECtHR, 22 January 2008)

⁴⁶ *Fretté v France* App no 36515/97 (ECtHR, 26 February 2002)

⁴⁷ *Gas and Dubois v France* App no 25951/07 (ECtHR, 15 March 2012)

⁴⁸ *Oliari and Others v Italy* Apps nos 18766/11 and 36030/11 (ECtHR, 21 October 2015)

⁴⁹ Basic Guide for applicants taking their case to the European Court of Human Rights 3
<<https://www.ihrec.ie/download/pdf/europeanctguidefinal.pdf>>

important role in achieving uniformity in family law across Europe. Such a progression would signify a landmark era for LGBTQI+ rights.

In a global context, the international legal framework for same-sex adoption reveals significant gaps, especially for foreign couples seeking to adopt. The 1993 Hague Convention on Intercountry Adoption⁵⁰ governs international adoption processes but leaves the determination of adoptive parents' eligibility, including same-sex couples, to the discretion of individual countries. As a result, while Austria allows foreign same-sex couples to adopt, this decision is not universally recognized. For instance, if a couple from a country with strict anti-LGBTQI+ laws, such as Russia, adopts under Austrian law, their parental status might not be acknowledged in their home country. This inconsistency can create complex legal conflicts, particularly concerning international travel and residency, as the child's familial status could be invalidated abroad.

Nevertheless, countries like India and many African nations either do not recognize or actively prohibit same-sex adoption – and in certain extreme instances, being a homosexual person is criminalized (see Uganda's Anti-Homosexuality Act,⁵¹ Nigeria's Same-Sex Marriage (Prohibition) Act)⁵² – which can pose substantial challenges for LGBTQ+ families. The lack of a consistent international legal framework not only complicates the adoption process but also threatens the best interests of the child, a principle central to international human rights instruments such as the Convention on the Rights of the Child (CRC). Although the CRC emphasizes the child's best interests and non-discrimination, it remains largely silent on issues specific to LGBTQI+ adoption, leaving room for interpretation and inconsistency.

Across the international legal landscape, no binding treaty explicitly mandates adoption rights for same-sex couples. Although international human rights law, including treaties like the International Covenant on Civil and Political Rights (ICCPR) and the CRC,

⁵⁰ Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

⁵¹ Amnesty International, 'Uganda – Submission to the African Commission on Human and People's Rights 77th Ordinary Session' (2023) <<https://www.amnesty.org/en/wp-content/uploads/2023/10/AFR5973442023ENGLISH.pdf>> accessed 5 May 2024

⁵² Amnesty International USA, 'ACT NOW: Take Action to Fight Back Against Nigeria's Anti-LGBT Law' (2014) <<https://www.amnestyusa.org/blog/act-now-take-action-to-support-nigerias-lgbt-community/>> accessed 5 May 2024

stresses family life and non-discrimination, protections for LGBTQI+ families remain implied rather than explicit. The Hague Convention on Intercountry Adoption ensures that adoptions are conducted with the child's best interests in mind but allows individual states to regulate eligibility. Thus, while Austria's laws may recognize same-sex couples, other nations are not required to do so. UN Committees, such as the Committee on the Rights of the Child, advocate for non-discrimination in adoption but typically avoid direct references to same-sex adoption. Consequently, the issue remains largely unaddressed at the international level, leaving children of same-sex couples vulnerable to legal uncertainties across different jurisdictions.

Following an examination of the deficiencies and the ambiguous legal framework concerning the right to adoption by foreign same-sex couples at domestic, European, and international levels, an attempt will be made to analyze the specific challenges that a child confronts when navigating the process of acquiring nationality. In a previous module, the implications for children's rights to nationality were highlighted, with an emphasis on the Austrian legal framework that determines the procedures and modalities for acquiring citizenship. It has already been mentioned that in Austria, a child adopted by foreign citizens typically has the right to acquiring Austrian nationality, but the rules vary depending on the circumstances of the adoption. Under Austrian law, a child can acquire nationality if they are adopted by at least one Austrian national or under certain conditions if the adoption is legally recognized in Austria. However, in the case of foreign nationals adopting, the acquisition of nationality depends on whether the adoptive parents' country of origin recognizes the child's adoption. This can complicate the situation for same-sex couples, as many countries do not have reciprocal agreements for recognizing adoptions by LGBTQI+ individuals, in this particular case, Czech and Slovak law prohibits same-sex adoption.

If the parents seek to claim dual nationality for their child, such as Czech and Austrian or Slovak and Austrian, the process would need to comply with the legal frameworks of both countries involved. Austria, in principle, under Article 28 of the Citizenship Act,⁵³ does not allow for dual citizenship, except in specific cases. One such exception is when children automatically acquire two nationalities at birth, such as when one

⁵³ See (n 28), art 28

parent is Austrian, and the other parent holds a foreign nationality. In this case, the child may acquire both Austrian citizenship and the citizenship of the other parent's country. Another exception is when a child can inherit nationality from both their biological and adoptive parents. For instance, if a child is adopted by a couple from a country like Spain, which recognizes same-sex adoption, the child may be able to acquire dual nationality – Austrian by virtue of their adoption in Austria, and Spanish through the adoptive parents. However, in our case, Czech Republic and Slovakia, where same-sex marriage or adoption is not legally acknowledged, the child may face legal complications when trying to acquire nationality from the adoptive parents.

Across Europe and internationally, the issue of nationality for children adopted by same-sex couples remains legally complex due to the fragmented nature of family law across jurisdictions, which in the majority results in a prohibition on granting nationality. This intricacy stems from the sovereign right of each state to determine its nationals,⁵⁴ and consequently states are obliged to respect the sovereignty of other states while avoiding infringing their sovereignty.⁵⁵ At European level, the EU lacks a harmonized framework on nationality or family law, meaning that the recognition of nationality for a child adopted by foreign nationals largely depends on national laws. Countries like France, Spain, and Belgium, which have progressive adoption laws for same-sex couples, facilitate smoother transitions for children to acquire nationality when adopted by foreign nationals. However, countries that prohibit same-sex marriage and adoption, including foreign citizens, such as Poland and Hungary, pose the acquisition of nationality as unfeasible.

In the international sphere, the child's right to acquire nationality under international law is enshrined in the CRC, to which Austria is a party, and is outlined through Article 7, paragraph 1, which explicitly states that 'the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and as far as possible, the right to know and be cared for by his or her parents.' Moreover, Article 8 emphasizes the obligation to preserve a child's identity, including their nationality, name, and family relations.⁵⁶ In adoption cases involving foreign

⁵⁴ Convention on Certain Questions Relating to the Conflict of Nationality Laws, art 1

⁵⁵ *Okonkwo v Austria* App no 35117/97 (ECtHR, 22 May 2001); UN Charter, art 2, para 1 and 4

⁵⁶ Convention on the Rights of the Child, arts. 7, para 1, and 8

nationals, these provisions become highly relevant as they protect the child from statelessness and ensure that the adoption process safeguards their legal rights. Statelessness entails a situation of violation of important values, in particular human rights. Recognition as a person before the law is a fundamental right of an individual,⁵⁷ particularly when it is raised in the case of a child,⁵⁸ since possession of nationality is a prerequisite for the exercise of both civil and human rights⁵⁹ – access to healthcare, education, social security, etc. – aimed at protecting an individual, such as diplomatic protection.⁶⁰

Furthermore, in addition to Human Rights Treaties, it is worth noting that the right to nationality is explicitly outlined in Article 15 of the Universal Declaration of Human Rights⁶¹ – a non-binding international instrument, which it falls into the category of "soft law" – and acknowledged in various other global and regional human rights agreements (see A/HRC/13/34, paragraphs 3-18).⁶² The core importance of nationality, along with the ban on arbitrary deprivation of it (see *ibid.* paragraph 23), has been reiterated by the United Nations General Assembly (UNGA) in Resolution 50/152⁶³ and the Human Rights Council through Resolutions 7/10,⁶⁴ 10/13,⁶⁵ 13/2,⁶⁶ 20/5,⁶⁷ and 26/14.⁶⁸ Governments are required to implement legislation concerning the acquisition, renunciation, and loss of nationality in line with their international commitments, particularly in the realm of human rights. Specifically, they have a duty to prevent and

⁵⁷ Universal Declaration of Human Rights, art 6

⁵⁸ See (n 56), arts 7-8

⁵⁹ Human Rights Council, 'Impact of the Arbitrary Deprivation of Nationality on the Enjoyment of the Rights of Children Concerned, and Existing Laws and Practices on Accessibility for Children to Acquire Nationality, Inter Alia, of the Country in Which They Are Born, if They Otherwise Would Be Stateless' (16 December 2015) UN Doc A/HRC/31/29

⁶⁰ International Law Commission, Diplomatic Protection with commentaries (A/61/10) art 1, 24

⁶¹ See (n 57), art 15

⁶² Human Rights Council, 'Human Rights and Arbitrary Deprivation of Nationality – Report of the Secretary-General' (14 December 2009) UN Doc A/HRC/13/34

⁶³ United Nations General Assembly, Resolution A/RES/50/152, 'The Right to Development' (9 February 1996) UN Doc A/RES/50/152

⁶⁴ Human Rights Council, Resolution A/HRC/RES/7/10, 'Human Rights and Arbitrary Deprivation of Nationality' (27 March 2008) UN Doc A/HRC/RES/7/10

⁶⁵ Human Rights Council, Resolution A/HRC/RES/10/13, 'Human Rights and Arbitrary Deprivation of Nationality' (26 March 2009) UN Doc A/HRC/RES/10/13

⁶⁶ Human Rights Council, Resolution A/HRC/RES/13/2, 'Human Rights and Arbitrary Deprivation of Nationality' (14 April 2010) UN Doc A/HRC/RES/13/2

⁶⁷ Human Rights Council, Resolution A/HRC/RES/20/5, 'Human Rights and Arbitrary Deprivation of Nationality' (16 July 2012) UN Doc A/HRC/RES/20/5

⁶⁸ Human Rights Council, Resolution A/HRC/RES/26/14, 'Human Rights and Arbitrary Deprivation of Nationality' (11 July 2014) UN Doc A/HRC/RES/26/14

address statelessness, working with the international community as emphasized in UNGA Resolution 61/137⁶⁹ and Human Rights Council Resolution 26/14.

The defence of nationality acquisition is reinforced by the implementation of specific legislations, for example, many countries automatically grant nationality to children born on their soil who would otherwise be stateless. This approach ensures that a child's right to a nationality is upheld from birth, in alignment with the principle of prioritizing the child's best interests.⁷⁰ The Human Rights Committee (HRC) has emphasized that being born within a specific territory plays a crucial role in determining whether an individual has a sufficient connection to claim the right to return to that territory under the provisions of the ICCPR.⁷¹ This interpretation suggests that being stateless at birth presents significant legal and social challenges, if not outright contradictions to international human rights norms. The association between an individual's place of birth and their claim to nationality is deemed critical, often second in importance only to parentage. In essence, the right to a nationality and its implications for one's connection to a state can be strongly linked to where they were born, as this territorial link helps justify claims of belonging. Therefore, the Austrian state, upon accepting the adoption of a child by a foreign same-sex couple residing with their adopted daughter in its territory – and the daughter was equally born in its territory – is obliged to grant her Austrian nationality immediately.

⁶⁹ United Nations General Assembly, Resolution A/RES/61/137, 'The Right to Peace' (19 December 2006) UN Doc A/RES/61/137

⁷⁰ *ibid*

⁷¹ Human Rights Committee, CCPR General Comment No. 17: Article 24 (Rights of the Child) (7 April 1989) UN Doc CCPR/C/21/Rev.1/Add.10

2 Obligations of the Austrian state

2.1 Compliance with International Human Rights Law

The Austrian state has ratified and acceded to numerous international treaties and conventions, binding it to observe its human rights obligations, particularly in relation to family law, adoption, and children's rights to citizenship. At the European level, the European Convention on Human Rights (ECHR) has been a significant influence on policies concerning family law in Austria, especially with regard to same-sex couples and their right to adoption. The right to family and private life is guaranteed through Article 8 of the ECHR, which has been interpreted several times by the European Court of Human Rights (ECtHR) in order to protect same-sex couples and their rights. One of the landmark cases in which the ECtHR recognized that same-sex couples can constitute a family under Article 8 ECHR is *Schalk and Kopf v. Austria* (2010),⁷² with the decision setting an important precedent. This ruling has been a strong asset in the quiver of LGBTIQ+ rights activism in Austria for same-sex couples, claiming equal rights to family life and legal protection, including same-sex adoption.

The article often invoked alongside Article 8 is Article 14 ECHR, which prohibits discrimination, particularly in cases involving differential treatment – one type is systemic homophobia, where the state deliberately chooses to maintain anti-LGBTIQ+ laws that result in discrimination. A case already cited in this thesis is *X and Others v. Austria*,⁷³ where the ECtHR judgment held that Austria violated both Articles 8 and 14 by denying a person in a same-sex relationship the right to adopt the biological child of his partner, a right already enjoyed by unmarried heterosexual couples. The Austrian conviction forced legal reforms, requiring the state to eliminate unequal treatment of same-sex couples in adoption, which constituted arbitrary discrimination, placing Austria faced with having to comply with obligations under the ECHR.

Although Austria has not expressed reservations about these Articles (8 and 14 ECHR), indicating a commitment to its obligations, the legal reforms that followed the convictions through ECtHR rulings have noted tensions between progressive human

⁷² *Schalk and Kopf v Austria* App no 30141/04 (ECtHR, 22 November 2010)

⁷³ See (n 21)

rights voices and conservative social views. The influence of the Catholic Church through traditional social norms in Austria has resulted in the delayed implementation of legislation that promotes human rights through anti-discrimination laws, creating challenges for the Austrian state in bridging its international obligations with domestic legislation. The prevalence of regressive views that are potentially a counterweight to changing laws can only be recognized as a danger to democracy.

In addition to the ECHR, Austria is also a party to the International Covenant on Civil and Political Rights (ICCPR). The right to family life, including for same-sex couples, is guaranteed by Article 17 ICCPR,⁷⁴ which mirrors the protection of Article 8 ECHR. This guarantee is reinforced by the Human Rights Committee (HRC), which is responsible for monitoring compliance with the ICCPR, as it has consistently called for equality in family law for every state party,⁷⁵ and has confirmed that the right to privacy extends to non-traditional families, underlining the importance of equal protection for same-sex couples under the ICCPR.⁷⁶ Specifically, Article 23 ICCPR⁷⁷ requires states to ensure non-discrimination in family law matters, thereby enhancing legal equality in the right to adoption for same-sex couples, though it does not explicitly refer to same-sex families. Furthermore, according to the HRC in General Comment No. 18 on Article 26 ICCPR (non-discrimination),⁷⁸ interpreting Article 23 in conjunction with Article 26,⁷⁹ States Parties must take appropriate measures with a view to ensuring equality to all family types. Therefore, Austria is obliged to ensure that its laws treat all family structures equally, particularly in areas such as adoption.

Austria's obligations to protect children's rights, such as the acquisition of their nationality and protection from statelessness, are subject to the Convention on the Rights of the Child (CRC). The child's right to nationality lies in Article 7. The CRC Committee has emphasized that it is an obligation of states to ensure that children

⁷⁴ International Covenant on Civil and Political Rights, art 17

⁷⁵ Human Rights Committee, CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses (27 July 1990) UN Doc CCPR/C/21/Rev.1/Add.11

⁷⁶ Human Rights Committee, CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (8 April 1988) UN Doc CCPR/C/21/Rev.1/Add.8

⁷⁷ See (n 74), art 23

⁷⁸ Human Rights Committee, CCPR General Comment No. 18: Non-Discrimination (10 November 1989) UN Doc CCPR/C/21/Rev.1/Add.1

⁷⁹ See (n 74), art 26

acquire nationality without facing obstacles,⁸⁰ which means that it also applies to children of same-sex couples. This obliges Austria to ensure that children adopted by same-sex parents are not disadvantaged in terms of acquiring Austrian nationality. Additionally, Article 3 CRC⁸¹ requires that the best interests of the child must be a primary consideration in all legal and administrative decisions. This article is reinforced by General Comment No. 14 of the CRC, which stresses that decisions concerning children, such as adoption or nationality, must ensure equality and non-discrimination, which also includes children of same-sex parents.⁸² Children should not face legal obstacles due to their family structure, in line with the principle of non-discrimination to protect their rights.⁸³

Apart from Austria's obligations through the international conventions it has signed and ratified, the state is also bound by customary international law, which includes fundamental principles such as the protection of family life and non-discrimination.⁸⁴ Customary International Law is formed through the repeated practices of states, combined with their belief that these practices reflect legally binding obligations. It does not rely on formal written rules but on states' consistent behavior and recognition that they are adhering to a binding norm.⁸⁵ These norms, though not codified in any particular treaty, form part of the broader international legal framework that a state must adhere to, in this case Austria. In many cases, Austrian Courts have referred to the principles of customary international law in interpreting national legislation (see *OGH 5 Ob 152/04w*).⁸⁶

Austria's compliance with its obligations under international human rights law constitutes a challenge in terms of the application of international norms in the Austrian

⁸⁰ Committee on the Rights of the Child, General Comment No. 7 (2005) on Implementing Child Rights in Early Childhood (20 November 2006) UN Doc CRC/C/GC/7/Rev.1

⁸¹ See (n 56), art 3

⁸² Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1) (29 May 2013) UN Doc CRC/C/GC/14, paras 1-6, 3-4

⁸³ *ibid* paras 55-60, 13-14

⁸⁴ Human Rights Council, Protection of the Family: Contribution of the Family to the Realization of the Right to an Adequate Standard of Living for Its Members, Particularly Through Its Role in Poverty Eradication and Achieving Sustainable Development (A/HRC/31/37), 15 January 2016

⁸⁵ European Center for Constitutional and Human Rights, 'Customary International Law' <<https://www.ecchr.eu/en/glossary/customary-international-law>> accessed 9 May 2024

⁸⁶ OGH 09 November 2004, 5Ob152/04w

legal system. According to Article 9, paragraph 1 of the Austrian Federal Constitutional Act (B-VG),⁸⁷ generally accepted rules of international law, including both customary international law and legal principles, are recognized as an integral part of Austrian law. This provision reflects a dualistic approach, meaning that while these rules are recognized, they often lack the specificity required for direct application and therefore require further legislative acts for their incorporation into domestic law. Consequently, Article 9 is often interpreted as programmatic, although it mandates that customary international law and principles be integrated dynamically, based on their latest interpretations within the international legal framework.⁸⁸

In conclusion, Austria, as a State Member of international conventions, is subject to regular reviews by international bodies such as the CRC Committee and the Human Rights Committee, which often highlight areas where the country falls short of its international obligations.⁸⁹ These reviews can create additional pressure on Austria to update its laws to comply with international human rights standards – something it has been forced to do in the past, particularly following ECtHR convictions – but they also expose the difficulties of balancing international obligations with domestic political conditions.

2.2 Evaluation of the Austrian state's legal obligations

Austria's legal obligations towards same-sex couples and the prevention of statelessness in adoption cases are complex and rooted in multiple layers of international and domestic law. The international treaties that bind Austria to these duties are the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC). Through these treaties, Austria is committed to upholding principles of non-discrimination and to ensuring that children's best interests are prioritized, including their right to acquire a nationality. The case of *X and Others v. Austria*⁹⁰ was

⁸⁷ See (n 8), art 9, para 1

⁸⁸ Universität Wien, 'A Concise Overview of the Austrian Legal System' 9

⁸⁹ Human Rights Committee, 'Concluding Observations on the Fifth Periodic Report of Austria' (3 December 2015) UN Doc CCPR/C/AUT/CO/5; Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Austria' (6 March 2020) UN Doc CRC/C/AUT/CO/5-6

⁹⁰ See (n 21)

a significant factor in the equal treatment of same-sex couples in adoption, an ECtHR decision that influenced Austria's legal framework. Prior to this judgment, Austrian adoption law allowed unmarried heterosexual couples to adopt the biological child of their partner, while excluding same-sex couples from joint adoption, an act which was discriminatory towards same-sex couples. The ECtHR ruled that this differential treatment violated both Article 8 and Article 14 of the ECHR, prompting Austria to reform its legislation.⁹¹

By amending its national legislation, Austria has ensured that same-sex couples can adopt children on equal terms with different-sex couples. The legislative reform process included adjustments to the Austrian Civil Code and other family law statutes to ensure Austria's compliance with the ECtHR ruling. However, challenges remain, particularly concerning the recognition of intercountry adoptions and the nationality status of children adopted by same-sex couples. In some cases, where prospective parents in international adoptions come from states with different legal systems from their countries of residence, this can create conflicts, particularly in circumstances where the adoption involves same-sex couples, the child is likely to face obstacles to acquiring nationality, placing him or her in the predicament of statelessness. The failure to resolve the child's statelessness status is a violation of both the CRC and the European Convention on Nationality, which require states to take all necessary measures to prevent children from being left stateless.⁹²

As already mentioned in a previous section, under Article 7 of the CRC, Austria is obliged to ensure that every child born on its territory or adopted by its nationals has the right to acquire nationality. This obligation aims to prevent statelessness, particularly in cases such as the one considered in this thesis, where nationality laws conflict with the foreign laws of the same-sex couple's home countries, due to the prohibition of adoption by same-sex couples under Czech and Slovak adoption laws. So, Austria is responsible for ensuring that its national laws are strong enough to grant citizenship to the child and prevent it from becoming stateless. This automatically raises

⁹¹ *ibid*

⁹² Institute on Statelessness and Inclusion, 'Statelessness and Human Rights' <<https://files.institutesi.org/statelessness-and-CRC.pdf>> accessed 10 May 2024; Council of Europe, 'European Convention on Nationality' (6 November 1997) ETS No 166

the question whether Austria could shape its legal framework with regard to the granting of citizenship to children by removing the 6 to 10 years requirement for the right to apply for citizenship from the Austrian state, and grant Austrian citizenship in immediate time from the birth of a child on its territory, even if the child's parents are foreigners. The reservation to such a legislative reform could stem from the complexity that such a jurisprudence could bring about both in Austrian family law and other aspects of the Austrian Civil Code.

2.3 Assessment of measures to prevent inequalities in adoption proceedings

Austrian family law, through the Austrian Civil Code enacted in 1811,⁹³ has undergone various reforms, such as the one in 1960 regarding adoption,⁹⁴ where before this reform, adoption was considered the transfer of name and wealth for future generations, which primarily involved adult adoptions. Since the 1960s, the concept of adoption has focused on children, with the aim of optimizing their well-being through the acquisition of a new family or as a means to formally recognize children born outside of marriage.⁹⁵ The next reform of Austrian adoption law (*Adoptionsrechtsgesetz*) came in 1977, under the Adoption Rights Amendment Act (*Adoptionsrechts-Änderungsgesetz*), which aimed to streamline the adoption process and establish clearer guidelines regarding the rights and duties of adoptive parents, i.e. a regulation of the legal relationship between parents and their legitimate children.⁹⁶ Since, at the time, the legal framework in terms of LGBTIQ+ rights was limited only to the legalization of consensual sexual activity between persons of the same-sex – it is obvious that the inclusion of same-sex couples in adoption seemed like a science fiction scenario – under the 1971 amendment to the Penal Code introducing a new provision (Section 209), which has now been repealed following the Constitutional Court's ruling on its unconstitutionality and unenforceability.⁹⁷

In the following year, 1978, the Austrian National Council decided to ratify the European Convention on the Adoption of Children, marking an important step in

⁹³ Civil Code (*Allgemeines bürgerliches Gesetzbuch*) (AT) JGS Nr. 946/1811

⁹⁴ Erwin Bernat, 'Austria: The Final Stages of Three Decades' Family Law Reform' [1990] 285

⁹⁵ Center of Adoption Policy, 'Overview of Austrian Adoption Law'
<<http://www.adoptionpolicy.org/pdf/eu-austria.pdf>>

⁹⁶ Civil Code (*Allgemeines bürgerliches Gesetzbuch*) (AT) BGBl. Nr. 403/1977

⁹⁷ VfGH 21 June 2022, G 6/02

bringing Austrian adoption law into line with European standards. This convention commits Austria to standardizing adoption practices to promote the welfare of children, while promoting the support of uniform adoption regulations in all Member States.⁹⁸ In 1999, Austria ratified the Hague Convention on Protection of Children and Cooperation in respect of intercountry adoption, commonly known as the Hague Adoption Convention. This treaty, originally adopted in 1993, sets standards for intercountry adoption with a view to protecting children and promoting cooperation between countries in adoption procedures. By incorporating the Hague Convention into the Austrian domestic legal system, it ensures that intercountry adoptions taking place within Austria or involving Austria comply with the guarantees of the Convention.⁹⁹

Subsequently, Austria implemented two amendments to its legislation concerning child welfare and legal jurisdiction, which took place in 2001. In particular, the first amendment describes Austria's adaptations to civil procedural law for the handling of cases concerning family law, specifically intercountry adoption. This amendment enhances the protection of children and adoption by the Austrian state required to comply with international standards, creating a more appropriate procedural framework for better handling of intercountry cases.¹⁰⁰ The second amendment mainly concerns procedural guidelines and jurisdictional adjustments in the Austrian legal system with regard to child protection. It includes provisions that update the jurisdictional competences to improve cross-border cooperation in cases involving children, aligning Austrian law with EU standards.¹⁰¹

Five years later, in 2006, Austria took the decision to ratify the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children. Through this ratification, the Austrian state commits itself to aligning its child protection legislation and procedures relating to parental responsibility and custody with the international standards resulting from this Convention. Under the terms of the Convention, Austria is required to ensure that its national Courts cooperate with foreign jurisdictions in

⁹⁸ See (n 96), BGBl. Nr. 581/1978

⁹⁹ *ibid* BGBl. III Nr. 145/1999

¹⁰⁰ *ibid* BGBl. III Nr. 163/2001

¹⁰¹ *ibid* BGBl. III Nr. 165/2001

implementing child protection measures.¹⁰² From 2006 to 2011, with the final ratification and entry into force of the Convention, Austria notified two announcements on the scope of the Convention in 2007 and 2009, respectively.¹⁰³

In 2018, another document on the scope of the same Convention introduced new provisions to improve the framework for international adoption in Austria by setting standards for intercountry adoption procedures. This includes measures to ensure that international adoptions are carried out in the best interests of the child. In particular, it establishes legal requirements and mechanisms for cooperation with other countries to regulate the adoption process and ensure the welfare of adopted children.¹⁰⁴ The last announcement took place in 2022 on exactly the same issue, extending the scope of the Convention.¹⁰⁵

However, in Austria, various legislative reforms of family law have followed, which have had a direct impact on adoption issues, with a more inclusive approach gradually removing the inequalities arising from the long-standing Austrian approach to traditional family structures. This important development of changing the Austrian legal framework and bringing it into compliance with European standards was contributed to by the landmark 2013 ECtHR decision in *X and Others v. Austria*.¹⁰⁶ Through this decision, Austria amended its adoption legislation to allow same-sex partners in a registered partnership to adopt their partner's biological child (second-parent adoption).

Since 2016, Austria lifted the ban on joint adoption for registered same-sex partners and unmarried same-sex couples. The Justice Ministry in Vienna confirmed that no legislative amendment was required for this change; instead, the ban in the Civil Code and the Registered Partnership Act (EPG) was automatically removed following a ruling from the Constitutional Court in 2014.¹⁰⁷ The Court had deemed the ban unconstitutional, finding that treating same-sex couples differently in adoption cases violated anti-discrimination protections and the child's best interests, as there was no

¹⁰² *ibid* BGBl. III Nr. 166/2006

¹⁰³ *ibid* BGBl. III Nr. 23/2007 and BGBl. III Nr. 125/2009

¹⁰⁴ *ibid* BGBl. III Nr. 13/2018

¹⁰⁵ *ibid* BGBl. III Nr. 32/2022

¹⁰⁶ See (n 21)

¹⁰⁷ Queer.de, 'Österreich hebt Adoptionsverbot für Homo-Paare auf' (30 October 2015) <https://www.queer.de/detail.php?article_id=24933> accessed 4 July 2024

objective justification for such unequal treatment. It set 31 December 2015, as the deadline for implementing the decision, and its entry into force from 1 January 2016.¹⁰⁸

The recent legislative evolution that has come to affect the adoption system in Austria is the result of the appellate Court case examined in this thesis. From 21 December 2023, with the decision of the Court of Appeal to recognize the intercountry adoption of the foreign same-sex couple resident in Vienna, a legal precedent and a legal basis has been established, leading to the removal of discrimination in adoption cases by foreign same-sex couples. Through this ruling, it becomes clear that when a foreign law contradicts or conflicts with the domestic legal framework, domestic Courts must apply Article 6 IPRG by following Austrian law, especially in cases involving children's rights, they must decide in the best interests of the child and comply with Austrian standards of child welfare.

Prior to this Court decision, which brought about this important legislative change in Austria's legal framework on adoption, intercountry adoption procedures in cases where one parent is Austrian and the other is a foreigner were governed by the provisions of national law, which are inextricably linked to international conventions such as the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. Due to the fact that one of the prospective parents is a foreigner, the Austrian authorities (Courts) require additional legal approvals from the partner's country of origin if required by their national legislation, a procedure implemented by the Court of Appeal in our case, where it requested legal information from the Czech and Slovak Ministries of Justice on the adoption law of these states (see subchapter 1.1.) in order to approve the adoption of the minor by the same-sex couple.

However, in cases where the Austrian authorities have received the information requested by the respective State of origin of the foreign prospective parent, and the legal framework of that country prohibits or has not ensured the existence of a legal provision allowing adoption by same-sex couples, Austria, as a democratic State governed by the rule of law, must protect both the right of a foreign citizen to acquire a child through adoption proceedings and the right of the child to join a family that will raise him or her as if he or she were their biological child. Austria's obligations to

¹⁰⁸ VfGH 11 December 2014, G 119-120/2014

safeguard these rights are covered by Article 1 of the Federal Constitutional Law on Racial Discrimination and Article 1 of the Federal Constitutional Law on the Rights of Children.

2.4 Protection of children's rights to nationality

Statelessness is a global phenomenon with a huge impact on the lives of millions of people. Unfortunately, it is an issue that has not been adequately explored by the international community. As a result, this places stateless persons in a state of vulnerability, having to face serious barriers to accessing their fundamental rights and services, which can lead to systemic inequalities, discrimination, and human rights violations. Particularly when the situation of statelessness involves a child, affecting both him or her and his or her parents, the impact can be even greater. Austria, as a state party to the 1961 Convention on the Reduction of Statelessness, has had to amend its legislative framework with regard to nationality by facilitating the means of acquiring it for children born stateless or who lose their nationality on its territory or to Austrian parents residing abroad.

Concretely, some of the provisions contained in the Austrian Nationality Act (Staatsbürgerschaftsgesetz) relate to the granting of citizenship to children of Austrian nationals residing abroad, ensuring that children do not become stateless due to cross-border complications.¹⁰⁹ However, the guarantees provided by the law for children of Austrian nationals born through surrogacy or to same-sex couples in jurisdictions where parental responsibility may not be recognized are limited. One optimistic note that may in the future positively influence cases involving the acquisition of citizenship by foreign same-sex couples in Austrian territory is the Court of Appeal decision in our case, which approved adoption, a legal precedent that may set a public debate regarding the rights of children whose parents' nationality corresponds to a foreign nationality as in this case.

Nevertheless, while Austrian citizenship law appears to be comprehensive at a satisfactory level, it is still considered a tough challenge in terms of recognizing children through the granting of citizenship in cases born through non-traditional means

¹⁰⁹ See (n 28), art 7

(traditional family structures), such as surrogacy or adoption by same-sex couples in foreign jurisdictions where parenthood is not equally recognized. Austrian legislation does not automatically grant citizenship in cases where children are born or acquired by same-sex couples in a foreign territory. As a result, obstacles often arise in administrative procedures, which may delay or cause the denial of citizenship, leaving children in a vulnerable situation, since it usually leads to the risk of statelessness.

An example that will help us to understand this phenomenon is cases such as an Austrian parent who is not biologically related to the child – such as a non-biological parent in a same-sex relationship – very often suffers an additional legal obstacle in terms of establishing the nationality of the non-biological parent, which reflects the paramount need for a clearer legal framework and legal safeguards to avoid statelessness of children in the best interests of the child and the child's well-being. In conclusion, it demonstrates the now 'outdated' application of the 1961 Convention, which seems to be limited by the influence of traditional interpretations of family structures, an act that is dangerous for the assurance of human rights, since human rights violations may occur, which, as previously mentioned, mark acts of discrimination and inequality.

It is a fact that domestic case law on the acquisition of citizenship for children born in Austria who remain stateless is limited, particularly in cases of same-sex couples. This raises the need to rationalize the legislative framework to provide consistent protection to all children without discrimination on the basis of sexual orientation or the nationality of their parents. This could be achieved by extending Austrian nationality law to recognize children adopted from foreign same-sex couples residing in Austria and affected by domestic law. This reform could be based on a legislative clarification that would include non-biological children acquired by non-Austrian citizens as eligible for citizenship, aligning Austrian law with the anti-discrimination principles outlined by the ECtHR¹¹⁰ and the Charter of Fundamental Rights of the European Union.

To date, children born or acquired by Austrian same-sex couples in foreign jurisdictions or foreign same-sex couples residing on Austrian territory, where either one (non-biological) or both parents (both non-biological) while they may be legally recognized,

¹¹⁰ See case decision *Mennesson v France* App no 65192/11 (ECtHR, 26 June 2014)

are not entitled to confer citizenship on their child. Austria's legal system does not easily grant citizenship to these children even under certain circumstances because the administrative and legal procedures are complex and time-consuming. This highlights the potential unintentional discrimination projected through the current citizenship legal framework that is largely delineated under specific family structures, as heterosexual couples do not face similar challenges in securing citizenship for their children. Therefore, Austria, as an EU Member State and a party to European and international conventions on intercountry adoptions and child protection and welfare, must fortify with strong guarantees its jurisprudence regarding the acquisition of citizenship for any child who either resides in Austria and one or both parents are foreigners but also resident in the country, or in cases where the parents are Austrian citizens and reside with their child abroad.

Consequently, the Austrian state must reform its citizenship laws as it is obliged to do because of its obligation to apply and implement the international standards of the treaties it has ratified in order to ensure that children do not become stateless. However, Austria maintains various reservations to these treaties, thus reserving the right to derogate from certain international standards, as in the European Convention on Nationality (ECN) in 1998 with 11 reservations.¹¹¹ This fact creates a legislative gap in Austria's nationality legislation since there is no specific provision in the law defining statelessness, as the recognition of statelessness is not provided for by any legal procedure. In this way, the question of statelessness appears to be an issue that cannot be resolved as long as the law remains the same.

The Austrian state deals with statelessness through the immigration and asylum authorities, which apply different standards from those that Austria is obliged to implement, with the result that stateless children are treated in an ineffective manner.¹¹² Therefore, the establishment of a formal procedure to define the legal framework on statelessness in compliance with international standards is of utmost importance.¹¹³ The lack of such a procedure may result in human rights violations, since a stateless child may face obstacles in accessing a residence permit, social security, or health insurance

¹¹¹ Council of Europe, Reservations and Declarations for Treaty No. 166 – European Convention on Nationality

¹¹² UNHCR, Mapping Statelessness in Austria 45

¹¹³ UNHCR, Handbook on Protection of Stateless Persons (30 June 2014) 27

that may be limited to public health only. The Austrian state through its citizenship legislation allows stateless children to reside on its territory as well as access to primary health care services, but again the legislation is not fully aligned with international standards. To avoid all these issues, Austria could follow the recommendations mentioned in this section.

3 Legal Models and Case Law of same-sex families' rights

3.1 Rainbow families' rights in Europe

Until recently, the main family structure that was legally recognized and socially accepted was the so-called 'nuclear family', consisting of people of different sexes in a marital relationship and their biological and/or legal children. However, what we now call 'family' has been shaped by the various forms that exist both socially and legally. Some of these family forms consist of single-parent families, cohabitants who live together but are unmarried, parents with their stepchildren, and same-sex parents with their children.¹¹⁴ In the literature, these families are called alternative,¹¹⁵ and in many cases, they are subject to indescribable discrimination stemming from entrenched social stereotypes regarding the form of family that society itself accepts, often influenced by religious doctrines, which may be inextricably linked to the state itself and its institutions (cf. Greece), especially in theocratic states where deviation from the family structure allowed by religious laws is considered a punishable act and is prosecuted by law if any other relationship than that of persons of the opposite sex is prohibited.

In addition to the social extension of discrimination to these families, systemic discrimination is more often than not discernible, since the states themselves deliberately do not reform their laws to protect these families. This means that there is an urgent need for a legislative framework through reform of family law that recognizes these alternative families, including their protection at the socio-political level, as well as the creation of a framework that responds to the needs of these families. In the case of same-sex couples who wish to have their own family, it is common knowledge that they cannot have children where both parents are biologically related, but only with one parent and in some cases with neither. However, there are many ways in which a same-sex couple can create their own family and be recognized by law, such as through assisted reproduction, in particular, the in vitro fertilization (IVF) procedure from a donor, surrogacy with legislation in most countries being quite strict with very specific criteria (exclusion of people living with HIV or diagnosed with hepatitis B and C, etc.),

¹¹⁴ Alina Tryfonidou, *Rainbow Families and EU Free Movement Law* [2019] 76

¹¹⁵ Sarah Garret, 'What Is an Alternative Family?', (*HuffPost*, 19 August 2016) <https://www.huffingtonpost.co.uk/sarah-garrett/what-is-an-alternative-family_b_11564254.html> accessed on 10 January 2025

having a child from a previous opposite-sex relationship, fostering where the parents have custody of the child until the child reaches the age of eighteen, or joint adoption.

At the global level, only thirty-nine countries have legal joint adoption by same-sex couples,¹¹⁶ which is mainly allowed for couples who are married, while two European countries, Italy and San Marino, through their legislation allow adoption by the second parent only (non-biological), and forty-four countries worldwide prohibit the adoption of a child by same-sex couples.¹¹⁷ Most of these countries are in Asia and Africa, which demonstrates the influence of their political regimes in terms of human rights.¹¹⁸ Within the EU, the lack of specific competence regarding the protection of rainbow families is noticeable, resulting in a lack of monitoring and guidance on the rights of these families in the countries where they reside with regard to parental care, where domestic legislation in each EU Member State differs, leading to significant inequalities.

Based on the recent edition of ILGA Europe's Rainbow Map¹¹⁹, only twenty-one countries in Europe offer marriage equality,¹²⁰ nineteen countries have constitutional restrictions on marriage,¹²¹ seventeen countries allow assisted reproductive fertility treatments to couples regardless of sexual orientation or gender identity,¹²² eighteen countries offer no legal protection and recognition of same-sex relationships,¹²³ while twenty-three countries through their legal framework allow same-sex couples to apply

¹¹⁶ Andorra, Argentina, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Croatia, Cuba, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Liechtenstein, Luxembourg, Malta, Namibia, Netherlands, New Zealand, Norway, Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, United Kingdom, United States and Uruguay

¹¹⁷ Afghanistan, Azerbaijan, Bahrain, Bangladesh, Belarus, Bosnia and Herzegovina, Brunei, Cameroon, Djibouti, Egypt, Ethiopia, Fiji, Hungary, Iran, Iraq, Jordan, Kazakhstan, Kenya, Lesotho, Libya, Mauritania, Monaco, Montenegro, Morocco, Niger, North Korea, Oman, Pakistan, Panama, Paraguay, Qatar, Rwanda, Serbia, South Korea, Sri Lanka, Tajikistan, Tanzania, Thailand, Tonga, Uganda, United Arab Emirates, Uzbekistan, Yemen and Zambia

¹¹⁸ Equaldex, Same-sex adoption <<https://www.equaldex.com/issue/adoption>>

¹¹⁹ ILGA-Europe, 'ILGA-Europe's Rainbow Map, Family 2024 Main Findings' <<https://rainbowmap.ilga-europe.org/categories/family>> accessed 20 January 2025

¹²⁰ Andorra, Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland and United Kingdom

¹²¹ Armenia, Azerbaijan, Belarus, Bulgaria, Croatia, Georgia, Hungary, Italy, Latvia, Lithuania, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Turkey and Ukraine

¹²² Austria, Belgium, Denmark, Estonia, Finland, France, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom

¹²³ Andorra, Austria, Belgium, Croatia, Czechia, Cyprus, Estonia, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malta, Montenegro, the Netherlands, Portugal, San Marino and United Kingdom

for joint adoption.¹²⁴ These figures demonstrate the lack of equality across all Europe with regard to the right of same-sex couples to marry and/or to have their relationship legally recognized and to create their own family through the acquisition and recognition of their child. Among EU Member States, only sixteen countries provide the possibility of same-sex couples to get married,¹²⁵ twenty-two countries recognize same-sex couples including civil/registered partnership,¹²⁶ seventeen countries allow joint adoption by same-sex couples,¹²⁷ and eighteen countries allow step adoption by same-sex couples.¹²⁸

The right of same-sex couples to have their own family does not only concern them, but also the children who will grow up in such a family. At EU level, a range of problems that children of same-sex couples may face are highlighted, which EU law does not provide for addressing. Member States that do not recognize same-sex couples as parents, and therefore their children, restrict their freedom of movement rights under Article 21 of the Treaty on the Functioning of the EU (TFEU), Article 45 of the Charter of Fundamental Rights of the EU (EUCFR), and Free Movement Directive 2004/38/EC,¹²⁹ ignoring the legal ties (civil partnership, marriage, joint adoption, etc.) established by other EU Member States. This creates a lack of uniformity in the legal recognition of their rights, with the result that they experience this discrimination. A hypothetical case could be a same-sex couple in which the parents have different nationalities, one parent from Spain and the other from Hungary. They live together in Spain, get married there, and have their own child. The child's birth certificate indicates both of them as mothers, since Spain provides legislation that allows a same-sex couple to acquire a child. When the family visits the country of the Hungarian mother, under

¹²⁴ Andorra, Austria, Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland and United Kingdom

¹²⁵ Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden

¹²⁶ Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Hungary, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden

¹²⁷ Austria, Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden

¹²⁸ Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden

¹²⁹ Commission, Guidance on the right of free movement of EU citizens and their families (Notice) [2023] OJ C/2023/1932

the country's legal framework, only the biological mother (of Hungarian nationality) is recognized, while the Spanish mother is legally completely cut off.

This situation creates significant practical problems, such as the inability of the parent to consent to medical treatment for the child, to open a bank account, or to have a say in the care of the child in the event of the death of the other parent. Therefore, not only are the rights of parents to be recognized as parents in an EU Member State that does not recognize their legal relationship being infringed, but the rights of children to enjoy on an equal basis what their parents can offer them are also being infringed due to the lack of legal provisions. A landmark case demonstrating the lack of EU law on the right of rainbow families to freedom of movement – similar to the hypothetical case above – is the case of Eleni Maravelia, a Greek-origin married to a woman from England and gave birth to a child in 2014. This case reached the European Parliament (EP) through a petition to the Committee of Petitions (PETI).¹³⁰

However, in the context of the European Union, the existence of the ECHR – which has been signed and ratified by all Member States of the Union – signals the obligations of each state to ensure that through its actions or omissions it does not infringe the rights of its citizens by violating the ECHR's provisions. Consequently, states must comply with its obligations under the ECHR, even if they have not implemented its provisions in domestic law. The non-recognition of a right recognized in one EU Member State, but at the same time not recognized in another Member State due to a failure to legislate, is a fundamental violation of the ECHR, where a citizen can denounce the state violating his rights through an appeal to the ECtHR, once the person has exhausted all domestic remedies.¹³¹ The same applies to violations involving rainbow families, and the non-recognition of their rights – both parents' and children's – with a plethora of cases being heard by the ECtHR and ECJ, with further analysis of some of these in the following subsections.

Another milestone case, which had a significant role in defining the rights of rainbow families in Europe and EU Member States in general, was *Schalk and Kopf v. Austria*,

¹³⁰ European Parliament, Petition No 0513/2016 to the Committee on Petitions on the non-recognition of LGBT families in the European Union (4 October 2016)

¹³¹ See (n 9), art 31, para 1; The European Court of Human Rights – Questions and Answers for Lawyers, para 2, 4 <https://www.echr.coe.int/documents/d/echr/guide_echr_lawyers_eng>

which confronted the ECtHR for the first time to question the obligation of states that have signed and ratified the ECHR to extend the right to marriage to same-sex couples under ECHR provisions such as Articles 8 (right to respect for private and family life), 14 (prohibition of discrimination), and 12 (right to marry). The case was brought before the authorities by a same-sex couple from Austria who were seeking to marry in the country. At the time, Austria did not offer the possibility of legalizing the relationship for same-sex couples. However, until the ECtHR ruling, it had introduced legal recognition of registered partnerships for these couples. For the first time, the ECtHR has issued a judgment recognizing marriage equality, signalling that a same-sex couple can, together, enjoy family life within the meaning of Article 8 ECHR.¹³² This was a particularly important symbolic milestone, as it broadened the concept of "family" to embrace non-traditional forms of relationships. Moreover, it gave the Court the opportunity to formally recognize and validate same-sex relationships.

Cases of same-sex couples regarding the right to recognition of their relationship and the rights underpinned by this act have knocked on the door of the European Court of Justice (ECJ) or Court of Justice of the European Union (CJEU), and one of the cases that equally determined the right of same-sex couples to family and freedom of movement and family reunification is the case of Mr. Coman (dual Romanian-US citizen) and his husband Mr. Hamilton (US citizen), who married in Brussels and applied to settle together in Romania.¹³³ The Romanian authorities refused to recognize their marriage, citing the legal ban on marriage between same-sex couples.¹³⁴ The couple, together with Asociația Accept, took legal action, arguing that Romania's refusal violates their rights to freedom of movement and leads to discrimination on the basis of sexual orientation. Interpreting Directive 2004/38, the Court of Justice of the EU concluded that the term "spouse" is gender-neutral¹³⁵ and that Member States are obliged to recognize marriages of same-sex couples contracted in other Member States solely for the purpose of granting the right of residence.¹³⁶

¹³² See (n 72), para 101

¹³³ C-673/16 *Coman, Hamilton and Asociația Accept v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* (ECJ, 5 June 2018)

¹³⁴ Civil Code (*Codul Civi al României*) (RO) art 277, para 1

¹³⁵ *Coman*, AG Opinion, paras 44-50; See (n 133), para 35

¹³⁶ See (n 133), para 40

The ruling underlined that, although Member States retain the right to determine whether to allow same-sex marriages in their domestic law, refusing recognition on the grounds of family reunification violates the right to free movement of EU citizens.¹³⁷ The Court pointed out that this decision does not affect national identity¹³⁸ or the institution of marriage and is in line with the principles of respect for private and family life as enshrined in the Charter of Fundamental Rights of the EU.¹³⁹ As in this case, but also in other cases involving either rainbow families or the recognition of same-sex couple relationships in general, very often we see in the position of the applicant civil society organizations or more specifically LGBTQI+ NGOs defending the rights of the LGBTQI+ community either at the domestic level or more regionally such as within the EU or even at the international level.

The role of NGOs as advocates for same-sex couples in their struggle to redress the unjust and unequal decisions of domestic courts regarding vital issues that define the relationship of these couples, such as the recognition of their relationships and their families, has proven to be very necessary and in some cases perhaps even an inevitable path. A landmark case establishing that the exclusion of same-sex couples from legal recognition, without objective justification, constitutes discrimination under the ECHR, and an NGO was included in the applicant's witness stand, is the case of *Vallianatos and Others v. Greece*,¹⁴⁰ with two applications. The first case was initiated by two Greek citizens, Mr. Grigoris Vallianatos and Mr. Nikolaos Mylonas, while the second was brought forward by six Greek citizens and by the organization Synthesi – Information, Awareness-raising and Research, dedicated to offering psychological and moral support to the LGBTQI+ community.¹⁴¹

In 2008, Greek Law No. 3719/2008,¹⁴² titled “Reforms concerning the family, children, and society,” came into effect. This law established a formalized partnership arrangement for unmarried couples, referred to as a “civil union.”¹⁴³ However, its provisions were limited exclusively to heterosexual couples, explicitly excluding same-

¹³⁷ *ibid* para 45

¹³⁸ *ibid* para 46

¹³⁹ *ibid* para 47

¹⁴⁰ *Vallianatos and Others v Greece* Apps nos 29381/09 and 32684/09 (ECtHR, 7 November 2013)

¹⁴¹ *ibid* para 1

¹⁴² Civil Union Law (*Αστικός Κώδικας Νόμος αρ. 3719/2008*) (GR)

¹⁴³ See (n 140), para 9

sex couples from eligibility. The applicants raised their complaint under Article 14 ECHR in conjunction with Article 8 ECHR,¹⁴⁴ and the Government did not challenge the relevance of these provisions.¹⁴⁵ The Court agreed with this interpretation.¹⁴⁶ It further recognized that the applicants' relationships were encompassed by the concepts of "private life" and "family life," in the same way as relationships between opposite-sex couples in similar circumstances.

Consequently, Article 14 in conjunction with Article 8 was deemed applicable.¹⁴⁷ The Court found a violation of Article 14 of the Convention (ECHR) taken in conjunction with Article 8.¹⁴⁸ In addition, international organizations provided comments as third-parties, from the Centre for Advice on Individual Rights in Europe (AIRE), the International Commission of Jurists (ICJ), the *Fédération internationale des Ligues des Droits de l'Homme* (FIDH) and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), which had been granted permission by the Court's President to participate in the written proceedings (Article 36, paragraph 2 of the Convention and Rule 44, paragraph 3).¹⁴⁹

It can be understood that the contribution of NGOs in these cases is characterized as of utmost importance because it supports the legal claims of the applicants by providing expertise, legal representation, and financial resources. As part of their institutional role, they seek to raise awareness and empathy through advocacy campaigns and media attention, framing the cases as fundamental rights issues that concern all people regardless of their sexual orientation, gender identity, or gender characteristics. Finally, strengthening the arguments of the applicants through third-party submissions that highlighted international standards and comparative legal developments.¹⁵⁰

At the institutional level, and primarily in the context of the European Union (EU), European Institutional Bodies perform an equally important role in protecting and promoting the rights of same-sex couples and their families by shaping and implementing EU law (primary, secondary, and case law). The executive body of the

¹⁴⁴ *ibid* para 3

¹⁴⁵ *ibid* para 41

¹⁴⁶ *ibid* paras 70-74

¹⁴⁷ *ibid*

¹⁴⁸ *Vallianatos*, JCI Opinion, para 1

¹⁴⁹ *ibid* para 6

¹⁵⁰ See (n 48), para 6

EU that draws up and submits proposals for new legislative acts and policies, as well as monitoring their implementation, is the European Commission (EC), having a role as an orchestrator of a European package of legislation since the European Parliament (EP) and the Council of the EU through their decisions adopt the Commission's proposals, forming EU law.

The European Commission, in the context of the "List of Actions to Advance LGBTI Equality"¹⁵¹ presented in 2015 as the first policy framework specifically to combat discrimination against LGBTI people, has carried out a series of surveys through the European Union's Fundamental Rights Agency (FRA), recording the experiences of LGBTIQ people in a variety of areas, such as whether they feel open to talking about their sexual orientation, gender identity, or gender characteristics in their social environment, reporting incidents of hate-motivated harassment, and incidents of sexual assault. Following the slightly worrying results of the surveys, in particular due to the rise in incidents of harassment and sexual assault, the Commission decided to adopt on 12 November 2020 the LGBTIQ Equality Strategy 2020-2025,¹⁵² translated into all languages recognized in the EU.

This initiative marks the Commission's first LGBTIQ equality strategy, with the Commission claiming that this project puts into practice its commitment to building an "Union of Equality." The strategy includes a series of initiatives aimed at strengthening actions, mainstreaming the principle of LGBTIQ equality in every policy area, and empowering the voice of LGBTIQ minorities, aiming to create a coordinated effort between Member States and stakeholders at all levels to combat anti-LGBTIQ discrimination more effectively by 2025.¹⁵³ Since then, three reports have been published to monitor progress in the implementation of the strategy (2023),¹⁵⁴ a synopsis-consultation report (2024),¹⁵⁵ and a comprehensive report (2024).¹⁵⁶

¹⁵¹ Commission, List of actions by the Commission to advance LGBTI equality

¹⁵² Commission, Union of Equality: LGBTIQ Equality Strategy 2020 – 2025, (Communication) COM (2020) 698 final

¹⁵³ *ibid*

¹⁵⁴ Progress report on the implementation of the LGBTIQ Equality Strategy 2020-2025, 12 April 2023

¹⁵⁵ Synopsis report - Consultation on the 2020-2025 LGBTIQ Equality Strategy, 25 September 2024

¹⁵⁶ Report on the Implementation of the LGBTIQ Equality Strategy 2020-2025, 25 September 2024

Although there are positive developments through the latest published report,¹⁵⁷ the different legal arrangements between EU Member States have been shown to create barriers and discrimination against LGBTQ people, as evidenced by the dozens of appeals to the ECtHR and ECJ. As already mentioned, family ties are not always recognized when rainbow families move to another Member State. According to FRA's 2023 survey,¹⁵⁸ 14% of families with LGBTQ parents experienced difficulties in legally recognizing their parenthood in another Member State.¹⁵⁹ However, in the same year, as part of the EU's initiatives for the 30th anniversary of EU citizenship rights, the Commission issued new guidelines on the right of free movement that take into account the diversity of families.¹⁶⁰

Furthermore, in December 2022, the EC proposed a regulation to harmonize private international law rules, facilitating the recognition of parental responsibility between Member States. The proposal covers all children, regardless of their mode of conception, birth, or family type, including same-sex parents.¹⁶¹ Negotiations in the Council of the EU are still ongoing, requiring unanimity among Member States for the Council to formally approve it for implementation, committing Member States to adapt their legislation in line with the regulation. The initiatives that the Commission itself, with the cooperation of other EU institutions, wishes to fulfill, keeping its commitment to a European Union that does not discriminate in the recognition of rainbow families, as well as the non-violation of their rights by any Member State, is an important factor on the road to equal treatment of these families at European level.

The European Parliament has played a key role alongside the Commission. Historically, it has demonstrated its interest in promoting the rights of LGBTQI+ people through various resolutions, such as the Resolution on sexual discrimination at the workplace in 1984,¹⁶² the Resolution on equal rights for homosexuals and lesbians in the EC in

¹⁵⁷ *ibid*

¹⁵⁸ European Union Agency for Fundamental Rights, *LGBTIQ at crossroads: progress and challenges*, EU LGBTIQ Survey III, 14 May 2024

¹⁵⁹ *ibid* 85 and 98

¹⁶⁰ See (n 129)

¹⁶¹ Commission, Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood COM (2022) 695 final

¹⁶² European Union, Resolution on sexual discrimination at the workplace [1984] OJ C104/46

1994,¹⁶³ the Resolution on equal rights for gays and lesbians in the EC in 1998,¹⁶⁴ etc., as it has had a significant role in safeguarding LGBTQI+ rights during the EU accession process of candidate countries,¹⁶⁵ even though the European Commission failed to assess all pre-accession reports of candidate countries equally, resulting in the accession of countries that did not until then or some of them still do not ensure LGBTQI+ rights in their domestic legislation.¹⁶⁶

Over the last decade, there have been many initiatives and acts by the European Parliament that have been advocating for the rights of LGBTQI+ individuals and families, including rainbow families. In 2014, the Parliament adopted the Lunacek Report,¹⁶⁷ which called for a comprehensive EU roadmap against homophobia and discrimination based on sexual orientation and gender identity. The report emphasized the need for equal recognition of same-sex partnerships and parental rights across the EU. Specifically, in section H. Citizenship, families, and freedom of movement,¹⁶⁸ it mentions the role of the European Commission, which is called upon to ensure that the free movement and family reunification directives¹⁶⁹ are implemented with respect to all legally recognized families in the Member States. At the same time, one of its responsibilities is to propose the mutual recognition of family status documents throughout the EU in order to reduce the discrimination that rainbow families experience. It is also asked to consider restrictions on the change of civil status of transgender people and the possibility of free movement. Finally, Member States with legislation on registered partnerships or same-sex marriage should recognize similar arrangements in other countries.

¹⁶³ European Union, Resolution on equal rights for homosexuals and lesbians in the EC [1994] OJ C61/40

¹⁶⁴ European Union, Resolution on equal rights for gays and lesbians in the EC [1998] OJ C313/186

¹⁶⁵ Dimitry Kochenov, 'Democracy and Human Rights - Not for Gay People?: EU Eastern Enlargement and its Impact on the Protection of the Rights of Sexual Minorities' (Texas Wesleyan Law Review, 2007) vol. 13, no 2, 459-495, 21

¹⁶⁶ *ibid* 20

¹⁶⁷ European Parliament, Report on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2013/2183(INI)) (A7-0009/2014)

¹⁶⁸ *ibid*

¹⁶⁹ See (n 119); Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [2023] OJ L251

In January 2015, there were concerns about proposed legislation in Kyrgyzstan that would discriminate against LGBTQI+ people,¹⁷⁰ leading the EP to adopt a resolution¹⁷¹ committing the Parliament to protect the rights of LGBTQI+ people and opposing discriminatory laws, and calling on the Kyrgyz Parliament to reject Bill 6-11804/14 and to respect its constitution, in particular Article 16, which prohibits the adoption of laws that restrict or negate human and civil rights. Furthermore, it is requested to ensure that Articles 31, 33, and 34, which protect freedom of expression, information, and assembly, are respected.¹⁷² Two equally important resolutions were adopted by the EP in 2017 and 2019, the first on protection and non-discrimination with regard to minorities in the EU Member States.¹⁷³ Through this non-binding resolution, the EP urges the EC to intensify efforts against LGBTI discrimination and homophobia by introducing concrete legislative measures while respecting national competences.¹⁷⁴ It emphasizes the need to monitor LGBTI rights and improve access to information on cross-border recognition of their rights.¹⁷⁵ Additionally, it calls for investment in targeted education to prevent bullying and homophobia.¹⁷⁶ The EP also insists on the proper implementation of the Free Movement Directive, ensuring that family rights are upheld, and discrimination is prohibited.¹⁷⁷

The importance of this resolution is confirmed by a spokesperson from ILGA-Europe who stated that ‘We welcome the Parliament’s resolution and call on all Member States to ensure that the rights of LGBTI people and their rainbow families to free movement across the EU are respected and upheld. We hear of too many cases where the free movement rights are restricted or denied.’¹⁷⁸ The second resolution concerned public discrimination and hate speech against LGBTI people, including LGBTI-free zones,¹⁷⁹

¹⁷⁰ Human Rights Watch, ‘Letter to the Chairman of the Supreme Council of Kyrgyzstan, Reject discriminatory anti-gay "propaganda" bill’ (2 March 2015)

¹⁷¹ European Parliament Resolution of 15 January 2015 on Kyrgyzstan, homosexual propaganda bill (2015/2505(RSP)) [2016] OJ C300/03

¹⁷² *ibid* s J, para 7

¹⁷³ Motion for a Resolution on protection and non-discrimination with regard to minorities in the EU (2017/2937(RSP)) (B8-0064/2018)

¹⁷⁴ *ibid* s Rights of LGBTI persons, para 19

¹⁷⁵ *ibid*

¹⁷⁶ *ibid* para 20

¹⁷⁷ *ibid* para 21

¹⁷⁸ ILGA-Europe, ‘ILGA-Europe welcomes European Parliament resolution on Free Movement’ <https://www.ilga-europe.org/news/ilga-europe-welcomes-european-parliament-resolution-on-free-movement/?utm_source=chatgpt.com> accessed on 5 February 2025

¹⁷⁹ European Parliament Resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones (2019/2933(RSP)) [2019] OJ C255

which emphasized the need to ensure freedom of movement for all families, including rainbow families, underlining the need for all Member States to enact legislation granting equal recognition of same-sex relationships through marriage or civil partnerships in order to fully respect the right of homosexual persons to private and family life without discrimination.¹⁸⁰

A historic moment will be recorded in the EP, when in September 2021, the resolution on LGBTQI rights in the EU was adopted with the main focus on the rights of rainbow families.¹⁸¹ Through this resolution, the Parliament aimed at strengthening the rights of LGBTQI+ families, highlighting concerns about discrimination faced by rainbow families,¹⁸² especially regarding freedom of movement within the EU.¹⁸³ It called upon Member States to ensure that the legal gender of transgender parents is recognized and to uphold the rights of LGBTQI+ families across borders.¹⁸⁴ Masen Davis, Transgender Europe (TGEU) Executive Director said that through a survey implemented by TGEU, the struggles of trans parents who fear losing legal ties to their children or facing discrimination when crossing borders are highlighted. With nearly one in five trans individuals being parents, as stressed in the Resolution, all EU residents, including trans people, have the right to travel safely, and he calls for equal rights for trans parents.¹⁸⁵ Meanwhile, Richard Köhler, TGEU Senior Policy Officer argues that while Member States regulate the legal recognition of a parent's gender identity, the European Commission must intervene when they fail to protect trans parents and their children. Ensuring their right to live and travel freely without discrimination is essential. The proposed EU directives on parenthood, partnership recognition, and freedom of movement must be inclusive to address the gaps left by national governments.¹⁸⁶

Following this resolution, on 23 November 2022, Members of the European Parliament (MEPs) urged the EC to develop a proposal that secures the cross-border rights of

¹⁸⁰ *ibid* s T para 6, 10

¹⁸¹ European Parliament Resolution of 14 September 2021 on LGBTIQ rights in the EU (2021/2679(RSP)) [2021] OJ C117

¹⁸² *ibid* s B

¹⁸³ *ibid* s E

¹⁸⁴ *ibid* s P, para 4

¹⁸⁵ TGEU, 'EU Parliament Adopts Historic Resolution on Rainbow Families', (15 September 2021)

<<https://tgeu.org/eu-parl-historic-resolution-on-rainbow-families>>accessed 9 February 2025

¹⁸⁶ *ibid*

rainbow families within EU legislation.¹⁸⁷ This resulted on 7 December 2022, the Commission introducing a proposal for a Council Regulation concerning jurisdiction, applicable law, recognition of rulings, and acceptance of official documents related to parenthood, along with the establishment of a European Certificate of Parenthood.¹⁸⁸ This proposal aims to strengthen the protection of children's rights in cross-border situations, ensuring that parenthood established in one member state is recognized across the EU. The proposal covers the recognition of parenthood for all children, irrespective of how they were conceived or born, and regardless of the type of family, as it is focused on the best interests and the rights of the child.¹⁸⁹ In support of the proposed legislation, Věra Jourová, Vice-President for Values and Transparency stated that a child's parent should be recognized across all Member States to ensure their rights, such as inheritance, support, and education, are protected. The proposal establishes clear rules for parenthood recognition, ensuring families remain legally intact when moving within the EU while also reducing legal costs and procedures.¹⁹⁰

In a statement, Didier Reynders, Commissioner for Justice, supported this legislative proposal, underlining that all children should have equal rights, regardless of their conception, birth, or family type. The proposal ensures that children's fundamental rights are protected in cross-border situations within the EU. Once parenthood is recognized in one member state, it will be upheld across all Member States, securing families' legal rights.¹⁹¹ Before this proposal for a law was proposed, there was an event that may have served as an additional reason for MEPs to lobby the European Commission. In 2021, a case in Budapest, Hungary, in which a distributor of a children's book featuring families with same-sex parents was fined.¹⁹² The fine was based on a law that prohibits unfair trade practices since domestic law restricts LGBTQI+ rights, and the Hungarian government has passed legislation that prohibits

¹⁸⁷ Ceilidh Kern, 'MEPs push for legislation on rainbow families' cross-border rights' (*Euractiv*, 24 November 2022) <https://www.euractiv.com/section/non-discrimination/news/meps-push-for-legislation-on-rainbow-families-cross-border-rights/?utm_source=chatgpt.com> accessed 9 February 2025

¹⁸⁸ Commission, 'Equality Package: Commission Proposes New Rules for the Recognition of Parenthood between Member States' COM (2022) 663 final; See (n 161)

¹⁸⁹ *ibid*

¹⁹⁰ *ibid*

¹⁹¹ *ibid*

¹⁹² Justin Spike, 'Hungary issues fine over book featuring 'rainbow families'' (*AP news*, 7 July 2021) <https://apnews.com/article/hungary-europe-entertainment-lifestyle-arts-and-entertainment-e95b24c3d8e39b7549e07dc7b13704b2?utm_source=chatgpt.com> accessed on 10 February 2025

the depiction of homosexuality or gender reassignment in minors¹⁹³ – a law that violates European Union values and has been criticized by high-ranking European officials.

European Commission President Ursula von der Leyen, in a speech to the European Parliament, called the law ‘shameful’¹⁹⁴ and warned Hungary that the EU executive will make full use of its powers to ensure compliance with European law. However, the Hungarian government argued that the law, which prohibits the presentation of homosexuality-related content to minors through media or school programs, is necessary to protect children and ensures that parents have exclusive control over their sexual education.¹⁹⁵ Almost a year later, on 21 November 2023, the European Parliament will adopt another important resolution on reducing inequalities and promoting social inclusion in times of crisis for children and their families, including rainbow families.¹⁹⁶

Through this resolution, EP wishes to clarify that all children and families must be protected from discrimination, regardless of gender, identity, social, or economic status.¹⁹⁷ However, family support policies do not always reflect the diversity of modern families, such as rainbow families or foster families. A fact that affects their access to social benefits and their resilience to crises. This is why the EU, and the Member States must ensure legal, financial, and social protection for all families.¹⁹⁸ It also stresses the need to support children in a situation of statelessness, ensuring their social inclusion and protection through qualified careers and quality accommodation facilities, aligning policies with the EU strategy on the rights of the child.¹⁹⁹

In this important role of the EP in promoting and safeguarding the rights of rainbow families, the Council of the EU is a fellow traveler, since its role is to adopt legally binding decisions, as well as to cooperate with the EP in adopting directives and

¹⁹³ Council of Europe, ‘Act LXXIX of 2021 on Taking More Severe Action Against Paedophile Offenders and Amending Certain Acts for the Protection of Children’ (23 June 2021) CDL-REF(2021)088, s 3, 2

¹⁹⁴ Ursula von der Leyen, ‘Speech at the European Parliament Plenary on the Conclusions of the European Council Meeting of 24-25 June 2021’ (2021) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_3180>

¹⁹⁵ See (n 182)

¹⁹⁶ European Parliament, ‘Reducing Inequalities and Promoting Social Inclusion in Times of Crisis for Children and Their Families’ (2023/2066(INI)) [2024] OJ C4211

¹⁹⁷ *ibid* s Q

¹⁹⁸ *ibid* s R

¹⁹⁹ *ibid* para 43

regulations, by consulting on amending EC proposals. However, in addition to the three main EU institutions - the EC, the EP and the Council of the EU - which co-shape the EU law, the European Union Agency for Fundamental Rights (FRA) - the EU's decentralized agency - has played a notable role in providing independent, evidence-based advice to the EU institutions and Member States on fundamental rights, helping to shape policies and legislation that promote and protect these rights, including rainbow families' rights. FRA has conducted a large number of scientific research and studies, collecting important information on the lives of LGBTQI+ people living in EU Member States, with findings that have influenced LGBTQI+ rights policies, as the European Commission has drawn on this information to create strategies and legislative proposals to safeguard LGBTQI+ rights and eliminate discrimination faced by LGBTQI+ people, such as rainbow families.

Concurrently, in the context of the rights of rainbow families in Europe, a non-EU institution plays a significant role in setting legal standards and advocating for equal rights across its 46 Member States, including many non-EU countries, the Council of Europe (CoE), which actively promotes the rights of rainbow families through its work on human rights, non-discrimination, and legal protections for LGBTQI+ individuals. One of its key institutions is the European Court of Human Rights (ECtHR), which ensures the implementation of the European Convention on Human Rights (ECHR) by Member States. The ECtHR has issued important judgments that strengthen the rights of same-sex couples and their children, in particular with regard to family life and non-discrimination, on the basis of Article 8 ECHR – the right to respect for private and family life, and Article 14 ECHR – prohibition of discrimination.

Alongside this, the Parliamentary Assembly of the Council of Europe (PACE), which is composed of representatives of national parliaments of Member States, has repeatedly called on governments to legally recognize same-sex couples' relationships, to establish marriage equality, and to ensure parental rights for rainbow families, with the most recent resolution on privacy and family life aiming to achieve equality regardless of sexual orientation.²⁰⁰ The resolution focuses on the need for Member States' legal systems to recognize the existence of rainbow families,²⁰¹ and states to

²⁰⁰ 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

²⁰¹ *ibid* para 2

eliminate the unjustified inequalities created precisely because of the lack of a legislative framework that regulates the protection of the rights of parents and children equally.²⁰² Furthermore, it promotes the avoidance of constitutional changes that exclude the recognition of same-sex marriages,²⁰³ as the laws of each member state must be brought into line with the case law of the ECtHR.²⁰⁴

Equally important is the work of the Sexual Orientation, Gender Identity and Expression, and Gender Characteristics (SOGIESC) Unit, which supports governments in developing inclusive policy and legal frameworks for the rights of LGBTQI+ people, including legal recognition of parenthood for homosexual individuals and same-sex couples. In addition, the CoE's legal advisory body, the Venice Commission, provides opinions on constitutional and legislative issues relating to the rights of LGBTQI+ people, contributing to Member States' legislative reforms and ensuring their compliance with European human rights standards. The resolutions, directives, and regulations, as well as the constant support to the EU Member States to reform their legislation regarding the safeguarding of LGBTQI+ rights, by EU institutions as well as international organizations, demonstrates a policy of prioritizing and redefining human rights within the EU.

This demonstrates that the need for harmonization of legal frameworks across Europe regarding the rights of rainbow families is urgent. Ursula von der Leyen in her statement on the European Commission's Communication on the LGBTIQ Equality Strategy 2020-2025 to four EU institutions²⁰⁵ stated that in the EU, equality and non-discrimination are fundamental principles protected by the Treaties and the Charter of Fundamental Rights of the EU. The statement highlights that rainbow families still face legal challenges when moving between Member States, as their parental status is not recognized everywhere, creating a risk of children being separated from their LGBTQI+ parents.²⁰⁶ Furthermore, the President's intervention shows the European Commission's promotion of mutual recognition of family relationships, arguing that

²⁰² *ibid* para 4.1

²⁰³ *ibid* para 4.2

²⁰⁴ *ibid* para 4.3

²⁰⁵ Commission, Union of Equality: LGBTIQ Equality Strategy 2020-2025 (Communication) COM (2020) 698 final

²⁰⁶ *ibid* pt 3.2

parental status recognized in one member state should be valid throughout the EU.²⁰⁷ Concurrently, the President refers to the Commission's commitment to consider further measures to recognize the rights of same-sex spouses and partners in cross-border situations, ensuring that Member States respect their obligations to protect the rights of these families.²⁰⁸

Moreover, in the context of the EU, human rights - including LGBTQI+ rights - are not only protected by the EU institutions, but also through the application of primary and productive EU law, i.e., legal rules that serve this purpose. One of the most important foundations of the European legal system is the Charter of Fundamental Rights of the EU, which enshrines rights such as human dignity, freedom, equality, and solidarity and has a legally binding force for the EU institutions and Member States when they apply EU law. Several articles of the Charter protect the rights of LGBTQI+ parents and their children, including private and family life, marriage and family rights, equality before the law, non-discrimination, children's rights, and freedom of movement and of residence (Articles 7, 9, 20, 21, 24, 45).²⁰⁹

Under primary EU law, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) include provisions on respect for human rights (Article 2 TEU)²¹⁰ as well as on anti-discrimination and the promotion of fundamental rights (Articles 10 and 19 TFEU),²¹¹ including sexual orientation. Meanwhile, in EU productive law, the regulations and directives mentioned in this section have been added to the legal quiver that members of rainbow families can invoke in the event of a violation of their rights by the legislation of their own state, since the regulations are binding in nature and states are required to implement them directly, and the directives, although binding, do not restrict a Member State regarding their implementation, as it is up to the state to choose how it will. The case law of the Court of Justice of the European Union (CJEU) plays an equally important role, contributing to the interpretation and application of human rights in the context of EU law, ensuring compliance by Member States where the Court's judgments are binding.

²⁰⁷ *ibid*

²⁰⁸ *ibid*

²⁰⁹ Charter of Fundamental Rights of the European Union [2000] OJ C364/01

²¹⁰ Consolidated Version of the Treaty on European Union [2012] OJ C 326/1

²¹¹ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/1

Evidence of the effectiveness of these jurisprudence in the context of infringements of the rights of same-sex couples is the *Coman* case law,²¹² that has been extensively reported in this section.

Ultimately, the CoE's legal instrument to which all EU Member States are parties, the ECHR, safeguards the rights of rainbow families through the protection of private and family life (Article 8) and the principle of non-discrimination (Article 14). The jurisprudence of the ECtHR has contributed to the recognition and legal protection of LGBTQI+ families in CoE Member States by applying and interpreting the provisions of the ECHR. EU law and the ECHR provide a shield against unfair and unequal treatment towards LGBTQI+ citizens of EU Member States and the CoE, reflecting a strong legal framework for rainbow families. However, there remains a general lack of competence in family law matters within the EU, with the need for more explicit provisions including sexual orientation and gender identity more urgent than ever.²¹³

European Union countries that set exemplary standards due to their legal models regarding the rights of rainbow families include Belgium, Sweden, and Malta. These three countries have established comprehensive legal frameworks to protect the rights of rainbow families, which include same-sex marriage, adoption rights, including for foreign nationals, and parental recognition. Belgium legalized same-sex marriage in 2003, becoming the second country in the world to do so.²¹⁴ Initially, this law applied to Belgians or foreign nationals whose national law allowed them to enter into such a marital relationship.²¹⁵ According to a circular of 23 January 2004, the prohibition of same-sex marriage by foreign laws was considered discriminatory and contrary to Belgian public policy and therefore should not be applied. If at least one of the partners was a Belgian citizen or permanent resident of Belgium, then Belgian law applied.²¹⁶ The provisions defining this law were Articles 44 and 46 of the Belgian Code of Private International Law.²¹⁷ Jules de Burlet pointed out that a foreigner could marry in

²¹² See (n 133)

²¹³ Lenka Krickova, 'Same-sex families' rights and the European Union: incompatible or promising relationship?' (Oxford University Press, 2023) vol 37, no 1, para 1, 1

²¹⁴ Civil Code (*Code Civil Belge*) (BE) art 143, as amended by law of 13 February 2003

²¹⁵ Paul Borghs, "Formalisation of legal family formats in Belgium", In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED [2017] 20

²¹⁶ *ibid*

²¹⁷ Private International Law Code (*Code de droit international privé*) (BE) art 44 and 46; Private International Law Code (*Code de droit international privé*) (BE) art 46 al. 2

Belgium if he or she was domiciled in the country under Article 102 of the Civil Code.²¹⁸

Since 2006, the country has been reforming Article 343, paragraph 1 of the Belgian Civil Code by removing restrictions on second-parent (non-biological) adoption and joint adoption by same-sex couples - regardless of nationality – by ratifying this right.²¹⁹ The law applies to same-sex couples who have entered into either marriage, civil partnership, or cohabitation, with the only condition in cases of cohabitation being that at least 3 years have passed since the cohabitation.²²⁰ The legislation does not impose any residency requirements, allowing foreign same-sex couples to adopt under the same conditions as Belgian citizens. However, among heterosexual couples, under Article 315 of the Belgian Civil Code, when a child is born within a marriage, the mother's husband is automatically recognized as the legal father.²²¹ This was not the case for same-sex unions, which meant that the mother's spouse did not enjoy the same legal recognition, causing a legal inequality.

In 2014, the adoption of the law that came into force on 1 January 2015, brought legislative changes that ensured that a co-mother married to the biological mother is automatically recognized as a parent, eliminating the need for adoption proceedings.²²² This legislative initiative received support from two parties in the Belgian parliament by tabling bills on this issue, with CD&V MP Sonja Becq stating that 'At the moment, there are already several lesbian couples who have children. They are finding it difficult to go through a whole adoption process before they can recognize the child they wanted together and actually act as parents'.²²³ Nevertheless, it remains an open issue for male same-sex couples to resolve this issue, as there is intense controversy surrounding surrogacy. In addition, although there are no specific references in the legislation to gender identity recognition for trans parents, the 2017 amendment to the Legal Gender

²¹⁸ Collienne Fleur, 'Wautelet Patrick and Pfeiff Silvia, Actualités du droit familial international, n Pire', (Didier (Ed.) Droit des Familles 2007), footnote 90, 25

²¹⁹ See (n 214), art 343, para 1, as amended by Law of 18 May 2006

²²⁰ Paul Borghs, "Parenting and legal family formats in Belgium", In: K. Waaldijk et al. (eds.), The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples, Paris: INED [2017] 19 and 21

²²¹ See (n 214), art 315

²²² *ibid* as amended by Law of 08 March 2014

²²³ Dominique Fiers, 'Dra een oplossing voor lesbische meemoeders?' (*Vrtnews*, 04 January 2014) <https://www.vrt.be/vrtnews/nl/2014/01/04/dra_eeen_oplossingvoorlesbische-meemoeders-1-1823193> accessed 13 February 2025

Recognition bill of 2007,²²⁴ which removed the prerequisites for gender reassignment of trans people from certain medical procedures, enables trans parents to be legally recognized according to the gender officially recorded on their documents.

Simultaneously, Sweden is the second Nordic country – with Norway being the first on 1 January 2009 – to legalize marriage for same-sex couples with gender-neutral registration. The amendment to the Marriage Code with the gender-neutral marriage concept was adopted on 1 April 2009 and has been in force since 1 May 2009.²²⁵ Already, since 1994 the Swedish Parliament has approved registered partnerships for same-sex couples, with Sweden becoming the third country in the world to legally recognize same-sex couples' relationships, after Denmark and Norway.²²⁶ The law came into force on 1 January 1995 and applied only to same-sex couples, providing benefits equal to those of marriage, including adoption.²²⁷ Registered domestic partners only gained the right to joint and second-parent adoption in 2003,²²⁸ and in 2005 female couples gained access to in vitro fertilization (IVF) procedures.²²⁹

Based on the 2015 national report for Sweden within the Commission on European Family Law, it is stated that in Sweden, cohabiting couples have the right to access assisted reproductive treatments through the public health system, under the same conditions as couples in a formally recognized relationship. In a lesbian relationship, the partner of the biological mother (regardless of whether they are married, in a registered partnership, or just living together) must recognize her legal relationship with the child born through this procedure. Under Swedish law, only couples who are married or in a registered partnership have the right to proceed with a joint adoption of a child.²³⁰ However, foreign same-sex couples legally residing in Sweden have been entitled to enter into a registered partnership since 2000 and thus to adopt jointly.²³¹

²²⁴ See (n 221), paras 1-2, as amended by Law of 15 June 2017

²²⁵ Marriage Code (*Äktenskapsbalk*) (SE) (SFS) 1987:230 ch 1, art 1, para 2, as amended by Law (SFS) 2009:253

²²⁶ Registered Partnership Act (*Lag om registrerat partnerskap*) (SE) (SFS) 1994:1117 ch 1, art 1

²²⁷ *ibid* ch 3, art 1

²²⁸ *ibid* ch 3, art 2, as amended by Law (SFS) 2002:603

²²⁹ *ibid* ch 3, arts 1-2, as amended by Law (SFS) 2005:447

²³⁰ Prof. Maarit Jänterä-Jareborg, Prof. Margareta Brattström, and LisaMarie Eriksson, 'National Report: Sweden, Commission on European Family Law' (May 2015), para 2, 10

²³¹ See (n 226), ch 1, arts 1-2

With amendments to the Law (1904:26) on certain international legal relations concerning marriage and guardianship in 2004 and 2009, two non-Swedish citizens residing in Swedish territory have the right to marry.²³² It should be noted that in 2009, with the revision of the Marriage Code, it is no longer possible to enter into a registered partnership in Sweden,²³³ without this meaning that those persons already in a registered partnership lose this legal recognition. Sweden, since 2018, is the first European country²³⁴ and one of only six countries²³⁵ to have adopted legislation recognizing transgender parenthood. Enforced legislation, from 1 January 2019, provides that a trans person is registered as a "father" or "mother" according to their legal gender when they give birth to a child, allowing trans parents to be legally recognized according to their gender identity on their children's birth certificates.²³⁶

Malta has a legal framework similar to the Swedish one, recognizing same-sex couples and supporting their right to form their own families. The first legislation for the recognition of same-sex couples came in April 2014, with the adoption of the Civil Union Act²³⁷ by the Maltese Parliament, and the ratification of the President of Malta Marie-Louise Coleiro Preca.²³⁸ The Act not only recognizes same-sex relationships, but also grants the right to joint and second-parent adoption,²³⁹ as long as couples can enjoy exactly the same rights as those of people who have entered into a civil marriage.²⁴⁰ In 2017, a bill to amend the marriage legislation – to include same-sex marriage²⁴¹ – was presented to the Maltese Parliament by the governing Labour Party, with Parliament

²³² Certain International Legal Conditions regarding Marriage and Guardianship Act (1904:26 p 1) (*Lagen om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*) (SE) ch 1, art 1, as amended by law (SFS 2004:144) and (SFS 2009:256)

²³³ *ibid* para 2, 1

²³⁴ Daniela Alaattinoğlu and Alice Margaria, 'Trans parents and the gendered law: Critical reflections on the Swedish regulation' (Oxford University Press, April 2023) vol 21, issue 2, para 1, 604

²³⁵ Belgium, Finland, Iceland, Malta, Slovenia, and Sweden

²³⁶ Law amending the Parental Code (*Lag om ändring i föräldrabalken* (SFS 2018:1279)) (SE)

²³⁷ Civil Unions Act (*Att dwar l-Unjonijiet Ċivili*) (MT) ch 530

²³⁸ Malta Independent, 'President signs 'gay marriage' Bill' (17 April 2014)

<<https://www.independent.com.mt/articles/2014-04-17/news/president-signs-gay-marriage-bill-4664328194>> accessed 13 February 2025

²³⁹ Civil Code (*Kodiċi Ċivili*) (MT) ch 12 art 114, para 2, applicable to civil unions by virtue of Civil Unions Act (*Att dwar l-Unjonijiet Ċivili*) (MT) ch 530, art. 4, para 1

²⁴⁰ *ibid*; Kurt Sansone, 'Civil Unions law will give same sex couples same rights, duties, as married couples' (*Times of Malta*, 14 October 2013) <<https://www.timesofmalta.com/article/civil-liberties-bill-will-give-gay-couples-same-rights-duties-as.490275#.U11mWbT6oh0>>

²⁴¹ Marriage Act (*Att dwar iż-Żwieġ*) (MT) ch 255, as amended by Law ACT no XXIII of 2017

passing this bill and the President of Malta signing it into law 2 months later.²⁴² Equally, the legislation brought about the replacement of references to mother or father with the term 'parent' and to husband or wife with the term 'spouse'.²⁴³

Foreign same-sex couples residing in the territory of the country have an equal right to marry under Article 18 of the Marriage Act.²⁴⁴ Malta, as early as 2018, has had legislation in place to grant lesbian couples access to in vitro fertilization (IVF), with the law being in force from 1 October 2018.²⁴⁵ In terms of trans parenthood, there is no specific legislation addressing the parental rights of trans people. However, Malta in 2014 became the first European country to include legislation on gender identity as a protected category in its Constitution,²⁴⁶ while in 2015, the Maltese Parliament enacted a law providing for the recognition and registration of a person's gender and the regulation of the effects of such a change, as well as the recognition and protection of a person's gender characteristics.²⁴⁷ By recognizing the gender identity of trans people, and without any specific provision excluding trans people in the recognition of their parental status, trans parenthood is recognized by virtue of the recognition of the gender identity of the parents.

3.2 ECtHR advisory opinions and decisions

In the present case examined in this thesis, the child of the same-sex couple acquired through the adoption procedure is faced with the situation of statelessness, since both adoptive parents are foreigners residing on the territory of Austria, without Austrian citizenship, and therefore the child cannot acquire Austrian citizenship. According to the Austrian legislation on the acquisition of citizenship,²⁴⁸ one of the ways in which a person can obtain Austrian citizenship is through naturalization, which requires at least

²⁴² Kurt Sansone, 'Same sex couples can marry as from Friday' (*Times of Malta*, 29 August 2017) <<https://web.archive.org/web/20170829192318/https://www.timesofmalta.com/articles/view/20170829/local/same-sex-couples-can-marry-as-from-friday.656746>> accessed 13 February 2025

²⁴³ *ibid.*; See (n 241)

²⁴⁴ See (n 241), art 18

²⁴⁵ Embryo Protection Act (*Att li jemenda l-Att dwar il-Protezzjoni tal-Embrijuni*) (MT) ch 524, art 9, as amended by Law ACT no XXIV of 2018

²⁴⁶ Miriam Dalli, 'Transgender Europe applauds Malta for naming gender identity' (*MaltaToday*, 15 April 2014) <https://www.maltatoday.com.mt/news/national/38027/transgender_europe_applauds_malta_for_naming_gender_identity> accessed 13 February 2025

²⁴⁷ Gender Identity, Gender Expression and Sex Characteristics Act (*Att dwar l-Identità tal-Ġeneru, l-Espressjoni tal-Ġeneru u l-Karatteristiċi tas-Sess*) (MT) ch 540

²⁴⁸ See (n 28)

10 years of continuous legal residence in the country, although this period can be reduced to six years in certain cases, such as when a person is in a situation of statelessness.²⁴⁹

Austria is a member of the Council of Europe (CoE), which can only be bound by judgments of the European Court of Human Rights (ECtHR) that the country has been convicted of violating the provisions of the European Convention on Human Rights (ECHR), but has the power to reform its legal framework in line with the harmonization of domestic legislation with European standards such as EU law, the Treaties, and ECtHR case law. Through this tactic, Austria can succeed in avoiding human rights violations, as well as violations of children's rights, and in this case, the right of foreign children to acquire citizenship/nationality born and living on its territory.

The ECtHR has heard cases concerning child statelessness, with a common denominator being the violation of Article 8 of the ECHR on the right of children to respect their private life. A characteristic case is *Mennesson v. France* (2014),²⁵⁰ where the applicants are Dominique and Sylvie Mennesson, French nationals, and their children Valentina and Fiorella Mennesson, American nationals,²⁵¹ all living together in Maisons-Alfort, France.²⁵² The legal parent-child relationship was established between them in the United States,²⁵³ but the French authorities do not recognize that relationship because, under French law, the surrogacy agreements concluded by the Mennessons are not permitted and are therefore considered illegal, regardless of whether those agreements were legally established abroad.²⁵⁴

The applicants invoked a violation of Article 8 ECHR due to the French State's failure to recognize the relationship between the parents and their children, to the detriment of the best interests of the children.²⁵⁵ Moreover, based on the parents' legal arguments, the non-recognition of their relationship resulted in the children being unable to obtain French nationality, with the consequences of not being issued a French passport, not having a valid residence permit on French territory, and a number of other

²⁴⁹ See subchapter 1.4, para 2, 17

²⁵⁰ *Mennesson v France* App no 65192/11 (ECtHR, 26 June 2014)

²⁵¹ *ibid* para 1

²⁵² *ibid* para 6

²⁵³ *ibid* paras 8-9

²⁵⁴ *ibid* para 18

²⁵⁵ *ibid* para 43

administrative tasks for the protection of the children that required French nationality, such as social security, enrolment in the school canteen, application for financial assistance, etc.²⁵⁶

The Court recognized that nationality is an element of a person's identity and therefore falls under the interpretation of Article 8 of the ECHR, even if the Article itself does not specifically refer to the guarantee of the right to acquire nationality. Concomitantly, it acknowledges the uncertainty of recognition of French nationality under the provision of the French Civil Code, with the possible effect of creating negative consequences of the personal identity of the two children.²⁵⁷ The Court's judgment entails recognition of the violation of Article 8 ECHR with regard to the right of the children (the third and fourth applicants) to respect for their private life,²⁵⁸ making it clear that it only recognizes the violation relating to the rights of the children.

Following the French Court of Cassation's request for an Advisory Opinion of the ECtHR²⁵⁹ by submitting two questions, where the Court of Cassation asks for clarification on the compliance of the refusal to register the "intended mother" as a "legal mother" in the birth register with the European Convention on Human Rights, especially in cases of surrogacy. Furthermore, it is asked whether adoption by the intended mother can ensure compliance with Article 8 of the ECHR.²⁶⁰ The Court states in its opinion that the child's right to privacy under Article 8 ECHR requires that national law must allow the recognition of the legal parent-child relationship with the mother indicated on the foreign birth certificate. However, such recognition need not necessarily be through registration in the birth register, but may be achieved by alternative means, such as adoption, as long as the process is prompt, efficient, and ensures the best interests of the child.²⁶¹

Another case heard by the ECtHR relating to the refusal of national authorities to recognize citizenship is *Hashemi and Others v. Azerbaijan*,²⁶² which involves seven applications. The applicants in these appeals fled from Afghanistan and Pakistan to

²⁵⁶ *ibid* para 68

²⁵⁷ *ibid* para 97

²⁵⁸ *ibid* para 102

²⁵⁹ *Mennesson* AO, Req no P16-2018-001 (ECtHR, 10 April 2019)

²⁶⁰ *ibid* para 9

²⁶¹ *ibid* pt Opinion paras 1-2

²⁶² *Hashemi and Others v Azerbaijan* App no 1480/16 and 6 others (ECtHR, 13 January 2022)

Azerbaijan, where they registered with the United Nations High Commissioner for Refugees (UNHCR), which issued them with a letter of protection. Their children were born in Azerbaijan before 2014, with the domestic authorities issuing them a birth certificate.²⁶³ However, the authorities did not proceed to issue an identity card, depriving them of Azerbaijani citizenship on the grounds that their parents had different nationalities, namely Afghan or Pakistani.²⁶⁴

Under the Azerbaijani legislation in force at the time, the acquisition of Azerbaijani citizenship was provided only for persons born on the territory of the state, accordance with the principle of *jus soli*. As a consequence of that legislation, the children of the applicants were deprived of the social and economic rights that they could have claimed if they had been holders of Azerbaijani citizenship. The applicants brought actions against the refusal of the Azerbaijani authorities to issue identity cards to their children, which were rejected by both the Court of First Instance and the Court of Appeal.²⁶⁵

By their claim, the applicants sought the ECtHR to recognize as unlawful and arbitrary interference the refusal of the Azerbaijani authorities to recognize the Azerbaijani nationality of their children born in Azerbaijan, in violation of their children's right to respect for private and family life under Article 8 ECHR.²⁶⁶ They also argued that Azerbaijani law requires the absolute application of the principle of *jus soli* and therefore contested the Government's claim that children born in Azerbaijan to parents of foreign nationality do not acquire Azerbaijani citizenship.²⁶⁷

The Court, taking into account the negative consequences of the decision of the Azerbaijani authorities for the applicants' children, held that the rejection decision constituted an interference with the children's exercise of their right to private life.²⁶⁸ Moreover, the Court found that the decision lacked foundation as it concerned children born before the amendment of the national legislation in 2014. Although after that change the conditions for acquiring Azerbaijani nationality through *jus soli* were

²⁶³ *ibid* paras 4-17

²⁶⁴ *ibid* paras 18-22

²⁶⁵ *ibid*

²⁶⁶ *ibid* para 41

²⁶⁷ *ibid* para 42

²⁶⁸ *ibid* para 49

restricted, the legal framework in force at the time recognized citizenship without conditions on the basis of that principle.²⁶⁹

Additionally, the domestic courts did not provide legal reasons for their decision that the children were not citizens of Azerbaijan, nor did they take into account that they had a birth certificate issued by the Azerbaijani authorities, which, according to national legislation, is evidence of citizenship.²⁷⁰ Consequently, the ECtHR concluded that the authorities had misinterpreted domestic law without ensuring the necessary procedural safeguards for the children. As a result, the Court found the decision to be arbitrary and found that Azerbaijan had violated Article 8 ECHR.²⁷¹

The ECtHR was also required to hear a child statelessness case, *Andrei Karassev and Family v. Finland*,²⁷² where it held that the Finnish authorities had not arbitrarily exercised domestic legislation on the recognition of Finnish citizenship to an extent that could raise issues under Article 8 ECHR,²⁷³ nor in the case of a violation of Article 14, in conjunction with Article 8, holding that the Finnish authorities did not rely on the national background of the applicant's parents so as to constitute a violation of the prohibition of discrimination, in this case of ethnic/racial discrimination.²⁷⁴

In two of the three aforementioned cases heard by the ECtHR concerning the right of children to acquire the nationality of the state where they were born or where they reside with their parents, the Court found a violation of Article 8 ECHR, stressing that the provisions of the ECHR do not guarantee the right to acquire a particular nationality, although the arbitrary denial of the grant of nationality is likely to raise issues under Article 8 ECHR in relation to the private life of an individual. These ECtHR verdicts in cases of denial of citizenship to children could be an important influence in modifying Austrian citizenship acquisition legislation, even if these judgments have no binding character vis-à-vis the Austrian state.

Austria, as a state governed by the rule of law that harmonizes with EU law and the provisions of the ECHR by incorporating into its national law the directives and

²⁶⁹ *ibid* paras 53-54

²⁷⁰ *ibid* para 56

²⁷¹ *ibid* paras 57-58

²⁷² *Andrei Karassev and Family v Finland* App no 31414/96 (ECtHR, 12 January 1999)

²⁷³ *ibid* pt The Law, para 1

²⁷⁴ *ibid* pt The Law, para 2

regulations adopted by the EU institutions, and by implementing the legislative amendments it is required to make in cases where the ECHR is found to have violated the provisions of the ECHR, in order to fully safeguard the human rights of its citizens and foreign nationals legally residing on its territory, must have a legal framework that does not discriminate or create a negative impact on the private life of any of its citizens (Austrian or foreign).

With regard to the right of children of foreign residents born on Austrian territory, the legislation on the acquisition of citizenship should be more flexible and inclusive, and confer Austrian citizenship on these children even if their parents are not also granted citizenship, applying the principle of *jus soli*, as mentioned in the case against Azerbaijan.²⁷⁵ The *jus soli* principle originates from English common law and is the rule that establishes that the nationality of children is acquired at birth within the territory of a State, irrespective of the nationality of their parents.²⁷⁶ The application of this rule is intended to prevent statelessness by removing the discrimination and inequalities that stateless children face, such as access to education, health and medical services, employment, and freedom of movement within and outside a country.²⁷⁷

However, under Austrian law, stateless children have access to education²⁷⁸ and health services through their parents' insurance coverage, which is also demonstrated by the situation of the child of the same-sex couple in the case examined in this thesis, who faces no discrimination whatsoever in these rights. This does not mean, however, that in other States that do not apply the *jus soli* principle, children do not face socio-economic inequalities due to not acquiring the nationality of the State of their birth and residing with their family.

In Europe, some countries apply the principle of *jus soli* in certain circumstances. In Germany, children born on its territory to foreign parents acquire German nationality if one of the parents has been legally and habitually resident in the country for at least five years and has a permanent residence permit at the time of the children's birth.²⁷⁹ In

²⁷⁵ See (n 254)

²⁷⁶ Britannica <<https://www.britannica.com/topic/jus-soli>>

²⁷⁷ *ibid*

²⁷⁸ Compulsory School Attendance Act 1985 (*Schulpflichtgesetz*) (AT) BGBl. Nr. 76/1985; See (n 8), art 14, para 7a

²⁷⁹ Nationality Act (*Staatsangehörigkeitsgesetz*) (FRG) art 4, para 3

France, if children are born in the country to parents who are stateless or to foreign parents who are unable to transfer their citizenship to them, they are recognized as French citizens.²⁸⁰ However, if during their minority they acquire the nationality of another country through their parents, they are considered never to have had French nationality. In addition, children born in France to foreign parents can acquire French nationality if one of the parents was also born in France, without any other conditions.²⁸¹

UK law is more flexible, with children born on its territory to foreign parents acquiring British citizenship if one of the parents is resident in the country at birth.²⁸² Finally, Swedish legislation on the acquisition of citizenship by children with foreign parents stipulates that children born in Sweden who are not citizens acquire Swedish citizenship through a declaration by their guardians, provided they have a permanent residence permit and live in Sweden.²⁸³ Similarly, children who are not Swedish citizens can acquire Swedish citizenship by the same procedure, as long as they meet two basic requirements, that they have a permanent residence permit and have lived in the country for five years or, in the case of stateless persons, for at least three years.²⁸⁴

However, some states apply the so-called double *jus soli*, whereby citizenship at birth is possible in cases where children are born in a country to foreign parents, provided that at least one of them was also born in that country. In Europe, the countries where children automatically acquire citizenship through the double *jus soli* rule are France, Luxembourg, the Netherlands, Portugal, and Spain. Similarly, Belgium and Greece apply this rule, but under certain conditions.²⁸⁵ Although the application of such a rule could partially solve the problem of statelessness of children of foreign parents in Austria, where one of the parents was born in the country, Austrian citizenship law does not explicitly allow for dual or multiple citizenship,²⁸⁶ since any person who chooses

²⁸⁰ Civil Code (*Code Civil Des Français*) (FR) art 19, para 1, as amended by Law no 2003-1119

²⁸¹ *ibid* para 3, as amended by Order no 2005-759

²⁸² British Nationality Act 1981 ch 61 s 1, para 1b

²⁸³ Act on Swedish Citizenship (*Lag om svenskt medborgarskap*) (SE) (SFS) 2001:82 art 6

²⁸⁴ *ibid.* art 7

²⁸⁵ Ioannis Karagiorgas, 'Which European countries apply the right to citizenship at birth?' (*Euronews*, 29 January 2025) <https://gr.euronews.com/my-europe/2025/01/29/euroveirfy-poes-xwres-dinoun-ithagenia-sti-gennisi?utm_source=chatgpt.com> accessed 15 February 2025

²⁸⁶ Federal Ministry Republic of Austria - European and International Affairs, 'Dual Citizenship' <<https://www.bmeia.gv.at/en/travel-stay/living-abroad/citizenship-and-union-citizenship/dual-citizenship>>

to voluntarily acquire foreign citizenship automatically loses Austrian citizenship.²⁸⁷ The only way to avoid the loss of Austrian citizenship in case of a wish to acquire foreign citizenship is for the applicant to submit a written application before acquiring foreign citizenship for permission to retain Austrian citizenship.²⁸⁸

Moreover, persons wishing to apply for Austrian citizenship are required to renounce their previous citizenship.²⁸⁹ However, according to Austrian law, if at birth, in addition to Austrian citizenship, another nationality is acquired due to the origin of the foreign parent – *jus sanguinis* principle – or on the basis of the principle of the country of birth outside Austria where *jus soli* applies, Austrian citizenship is not subject to cancellation.²⁹⁰ Consequently, citizens with dual nationality residing on Austrian territory do not have to decide in favor of which nationality they wish to keep, as long as they can legally hold both.²⁹¹

In conclusion, the Austrian state could solve the problems faced by children of foreign parents legally residing on its territory by amending its citizenship legislation by adopting the principle of *jus soli*, with or without conditions, enabling foreign children born in the country to acquire Austrian citizenship, as well as adopting the double *jus soli* principle, serving the same purpose with regard to facilitating the acquisition of Austrian citizenship with or without conditions. The adoption of these rules in Austrian law will bring Austria one step closer to combating discrimination and respecting the human rights set out in the provisions of its Constitution, and to harmonizing its law with EU law and the ECHR.

3.3 ECJ case law

Proceedings for infringements of EU law by EU Member States are subject to the jurisdiction of the Court of Justice of the European Union (ECJ), as it is the EU's highest judicial body. Therefore, one way to bring a case to the ECJ is through preliminary references as defined by Article 267 of the Treaty on the Functioning of the European

²⁸⁷ *ibid*

²⁸⁸ See (n 28), art. 28

²⁸⁹ *ibid.* art 10, para 3

²⁹⁰ See (n 276)

²⁹¹ *ibid*

Union (TFEU),²⁹² with national courts submitting questions to the ECJ on the interpretation of EU law or the legality of EU acts. In the context of this procedure, there are two typical cases referred to the ECJ concerning the denial of citizenship to children of same-sex couples.

The first case, *V.M.A. v. Stolichna obshtina, rayon 'Pancharevo'*,²⁹³ examines the refusal of the Bulgarian authorities to issue a birth certificate to the daughter of a same-sex couple, the two mothers of Bulgarian and British nationality respectively.²⁹⁴ The daughter was born in Spain and holds a Spanish birth certificate with the recognition of both mothers.²⁹⁵ The Bulgarian mother applied for a Bulgarian birth certificate for her daughter, which was necessary to obtain identity documents.²⁹⁶ The Bulgarian authorities requested information about the child's biological mother,²⁹⁷ which the Bulgarian mother refused to provide.²⁹⁸ Due to the mother's refusal to share this information with the authorities, the request for the birth certificate was rejected, informing the mother that same-sex marriage is contrary to Bulgarian public policy, recognizing only parents of different sexes.²⁹⁹

The Bulgarian mother appealed against the decision of the Bulgarian authorities to reject her request to the Sofia Administrative Court.³⁰⁰ The Court challenged the Bulgarian authorities' refusal to issue a birth certificate for a child, despite her Bulgarian nationality, due to the lack of a reference to the biological mother,³⁰¹ and questioned whether this affected the child's rights under EU law and the Charter of Fundamental Rights of the EU.³⁰² The Court also questioned whether the UK's withdrawal from the EU affected the outcome and whether the registration of two parents of the same sex on a birth certificate could cause public order problems.³⁰³ Consequently, the Court

²⁹² Consolidated Version of the Treaty on the functioning of the European Union - Part six: Institutional and financial provisions - Title I: Institutional provisions - Chapter 1: The Institutions - Section 5: The Court of Justice of the European Union - Article 267 (ex Article 234 TEC) [2008] OJ C115

²⁹³ Case C-490/20 *V.M.A. v Stolichna obshtina, rayon 'Pancharevo'* [2021] (ECJ, 14 December 2021)

²⁹⁴ *ibid* para 18

²⁹⁵ *ibid* para 19

²⁹⁶ *ibid* para 20

²⁹⁷ *ibid* para 21

²⁹⁸ *ibid* para 22

²⁹⁹ *ibid*

³⁰⁰ *ibid* para 24

³⁰¹ *ibid* para 25

³⁰² *ibid* para 26

³⁰³ *ibid* para 27

decided to stay the proceedings and refer four questions to the ECJ on children's rights, national practices, and the consequences of the UK's withdrawal from the EU.³⁰⁴

The ECJ ruled that when a child who is a national of a Member State has a birth certificate from another EU country that recognizes same-sex parents, the State of nationality must issue a passport or identity card without requiring a new birth certificate to be issued by its own authorities.³⁰⁵ Furthermore, it stressed that both the Bulgarian authorities and the other Member States should recognize the parent-child relationship as established by the Spanish authorities.³⁰⁶ This ensures the child's right to move and reside freely in the EU (Article 21, paragraph 1 TFEU) and to hold the necessary travel documents (Article 4, paragraph 3 of Directive 2004/38/EC).³⁰⁷

Moreover, in its decision, it states that even if the child did not have Bulgarian nationality, she would continue to enjoy EU rights as a descendant of an EU citizen.³⁰⁸ The British mother should have the same rights as her Bulgarian wife.³⁰⁹ Where the child is a minor and her nationality has not been fully established, but the birth certificate mentions an EU citizen as the parent, this relationship should be recognized and respected by all Member States in accordance with Directive 2004/38.³¹⁰ On the basis of the Court's judgment, the Bulgarian authorities were under an obligation to provide the child with a birth certificate and identity documents in accordance with EU law.³¹¹

The second case, *Rzecznik Praw Obywatelskich v. K.S. and Others*,³¹² concerns the request of a same-sex couple, the first mother a Polish citizen and the second an Irish citizen,³¹³ to transfer the birth certificate of their daughter to the Polish civil status register.³¹⁴ As in the above-mentioned case, the daughter of the same-sex couple holds a Spanish birth certificate, since she was born in Spain.³¹⁵ The Polish authorities

³⁰⁴ *ibid* para 32

³⁰⁵ *ibid* para 45

³⁰⁶ *ibid* para 49

³⁰⁷ *ibid* para 48

³⁰⁸ *ibid* para 64

³⁰⁹ *ibid* para 66

³¹⁰ *ibid* para 68

³¹¹ *ibid* para 69

³¹² Case C-2/21 *Rzecznik Praw Obywatelskich v K.S. and Others* [2022] (ECJ, 24 June 2022)

³¹³ *ibid* para 15

³¹⁴ *ibid* para 17

³¹⁵ *ibid* para 16

rejected the same-sex couple's request on the grounds that it was contrary to the fundamental principles of Polish law.³¹⁶ The authorities' refusal resulted in the denial of a passport for the same-sex couple's daughter because her birth certificate had not been transcribed in the register.

The Polish mother requested the assistance of the Polish Commissioner for Human Rights, informing him of the treatment of the Polish authorities.³¹⁷ The Commissioner brought an action on behalf of the same-sex couple before the Krakow Regional Administrative Court against the decision of the Polish authorities.³¹⁸ Coincidentally, the same-sex couple applied for an identity card for their daughter, but the primary administrative authority rejected the application, citing Polish law, according to which a child can have only one man and one woman as parents.³¹⁹

The Court ruled that the existing provisions do not guarantee the right of free movement for children like this child, born to same-sex parents, because of the impossibility of obtaining a passport.³²⁰ Furthermore, it said that if a violation of the provisions of the TFEU and the Charter of Fundamental Rights of the EU were found, the court could order the transcription of the birth certificate, allowing for the issuance of an identity document.³²¹ The Court decided to stay the proceedings and refer the matter to the ECJ. The question referred to the ECJ concerned the interpretation of Articles 20, paragraph 2a and 21, paragraph 1 TFEU, in conjunction with Articles 7, 21, paragraph 1 and 24, paragraph 2 of the Charter, as to whether the competent authorities are obliged to transcribe the birth certificate of a minor child, a citizen of the Union, when it has been issued by parents of the same sex, in order to enable the child to obtain an identity document.³²²

The ECJ pointed out that Article 21(1) TFEU guarantees the right to free movement to every EU citizen – as it has held in previous case law,³²³ including minor children, and that the Polish authorities are obliged to issue an identity card or passport for the

³¹⁶ *ibid* para 18

³¹⁷ *ibid* para 19

³¹⁸ *ibid* para 20

³¹⁹ *ibid* para 21

³²⁰ *ibid* para 22

³²¹ *ibid* para 24

³²² *ibid* para 25

³²³ *ibid* paras 35-37

daughter of the same-sex couple, regardless of the transcription of the birth certificate.³²⁴ The ECJ stressed that Member States cannot rely on national legislation to refuse to issue such documents, as the child's right to move and reside freely must be protected.³²⁵ Moreover, the parent-child relationship, as stated on the birth certificate, must be respected, in line with the Charter of Fundamental Rights of the EU³²⁶ and the UN Convention on the Rights of the Child.³²⁷ The ECJ concluded that the Polish authorities are obliged to issue an identity document or passport without requiring the transcription of the birth certificate in another Member State in order for the child to exercise his or her rights within the EU.³²⁸

These two cases make it clear that EU Member States cannot refuse to issue identity documents or passports to minor children whose birth certificate was issued by a Member State, even if the child's parents are of the same sex. The competent authorities of each EU Member State must respect the rights of free movement and residence within the EU guaranteed by Articles 20 and 21 TFEU, as well as the rights to family and private life as provided for in the Charter of Fundamental Rights of the EU, the ECHR, and international conventions such as the UN Convention on the Rights of the Child.

Similarly, the competent authorities of the Czech and Slovak Republics are obliged to recognize the Austrian birth certificate of the child of the same-sex couple in the case of the present thesis, and therefore to issue her with an identity card or passport, thus granting her Czech and Slovak citizenship, even by issuing a new birth certificate recognizing in each case the father as a national of each country. This would solve the child's statelessness and its consequences, since, as already mentioned in a previous section, the child, despite having access to education, health services, and insurance coverage, cannot exercise her right to free movement within and outside the Austrian state due to the lack of an identity card and passport.

³²⁴ *ibid* paras 38-39

³²⁵ *ibid* para 40

³²⁶ *ibid* paras 46-48

³²⁷ *ibid* paras 49-51

³²⁸ *ibid* para 52

Appendix

In the course of the study of this case and the writing of this thesis, some new information has come to light regarding the acquisition of Czech citizenship by the daughter of the same-sex couple, with the issuance of the Czech birth certificate being in the process of implementation. On 1 March 2024, the same-sex couple applied to the Bratislava District Court (Krajský súd v Bratislava) for recognition of the adoption for the purpose of acquiring Slovak citizenship of their daughter, which was rejected. The Court held that the foreign (Austrian) decision to recognize the adoption by the same-sex couple did not meet the conditions set out in Act No. 97/1963 Coll. (Slovak Private International Law Act).³²⁹ Therefore, the Court did not accept the application for adoption in lieu of a child, thus the Slovak parent cannot be recognized, and the adopted daughter of the same-sex couple cannot acquire Slovak citizenship.

However, the same-sex couple reapplied for adoption recognition, this time at the Brno-Venkov District Court. In this case, the Court recognized the foreign adoption in accordance with the provisions of Article 63, paragraph 1 of the Czech Private International Law Act.³³⁰ The recognition of the adoption in the Czech Republic applied exclusively to one of the adoptive parents – the Czech citizen-parent - while the Slovak citizen-parent was not recognized by the Court. The same-sex couple proceeded with a request for a new birth certificate from the Czech Republic on 20 November 2024, which will include only the legally recognized parent. The Czech birth certificate has already been issued, along with the Czech passport, allowing the same-sex couple's daughter to exercise her right to free movement both within the Czech Republic and across Europe.

Despite these legal advancements, the child has yet to obtain Austrian citizenship, a situation that appears paradoxical given her residence with her adoptive parents in Austria. The recognition of the adoption in the Czech Republic – and, by extension, the legal acknowledgment of one adoptive parent – formally establishes the parent-child relationship. As a result, the child is conferred EU citizenship, ensuring the protection

³²⁹ See (n 6)

³³⁰ See (n 5), art 63, para 1

of her rights under EU law. A primary objective for the adoptive parents moving forward is to facilitate the acquisition of Austrian citizenship for their daughter and to ensure the inclusion of both adoptive parents' surnames in her official documentation.

Conclusion

The legal journey surrounding adoption by a foreign same-sex couple in Austria highlights the challenges faced by rainbow families in securing parental rights in cases where foreign laws with conflicting legal frameworks apply. The initial rejection of the adoption by the District Court of Inner Vienna, applying Czech and Slovak laws that prohibit adoption by same-sex couples, underlines the potentially discriminatory effects of applying foreign legal provisions in intercountry adoption cases. However, the subsequent decision of the Court of Appeal, which prioritized the provisions of Austrian law that ensure equality and the welfare of children, had the effect of eliminating the discrimination imposed by the application of foreign laws by recognizing intercountry adoption by the same-sex couple.

This case has underscored the need to harmonize Austrian law with European standards, but it also creates a more general need to harmonize European family law with EU Member States that recognize different family structures. It also raises crucial questions about statelessness and the right of adopted children to acquire nationality, in particular when the countries of origin of their adoptive parents do not recognize the legal parent-child relationship. In addition, it is recommended that the principle of *jus soli* should be adopted in Austrian law in order to allow children born on Austrian territory, even to foreign parents, to acquire citizenship immediately, even under certain conditions. However, Austria's *ordre public* clause had a pivotal role in setting aside foreign laws that conflicted with fundamental rights, reinforcing the need for a rights-based approach in adoption and nationality cases.

Ultimately, this thesis advocates for clearer legal protection for same-sex parents and their children, urging the Austrian state to adopt more inclusive standards by reforming its legal framework, particularly in matters of citizenship acquisition by children of foreign parents, enhancing equality and combating discrimination. The Austrian case sets a precedent for similar legal disputes, emphasizing that the best interests of the child must prevail over rigid and discriminatory interpretations of family law.

Table of Cases

Cases

Bostock v. Clayton County 17-1618 (06/15/2020)

OGH 09 November 2004, 5Ob152/04w

OGH 10 July 1986, 7Ob600/86

VfGH 04 December 2017, G 258/2017

VfGH 11 December 2014, G 119-120/2014

VfGH 18 June 2022, G 30/2022

VfGH 21 June 2022, G 6/02

ECtHR cases

Andrei Karashev and Family v Finland (App no 31414/96)

E.B. v France (App no 43546/02)

Fretté v France (App no 36515/97)

Gas and Dubois v France (App no 25951/07)

Hashemi and Others v Azerbaijan (App no 1480/16 and 6 others)

Mennesson v France (App no 65192/11)

Oliari and Others v Italy (Apps nos 18766/11 and 36030/11)

Okonkwo v Austria (App no 35117/97)

Schalk and Kopf v Austria (App no 30141/04)

Vallianatos and Others v Greece (Apps nos 29381/09 and 32684/09)

X and Others v Austria (App no 19010/07)

ECJ cases

Coman, Hamilton and Asociația Accept v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne (C-673/16)

Rzecznik Praw Obywatelskich v K.S. and Others (Case C 2/21)

V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’ (Case C-490/20)

Table of International Treaties and Conventions

Committee on the Rights of the Child, General Comment No. 7 (2005) on Implementing Child Rights in Early Childhood (20 November 2006) UN Doc CRC/C/GC/7/Rev.1

Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1) (29 May 2013) UN Doc CRC/C/GC/14

Committee on the Rights of the Child, ‘Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Austria’ (6 March 2020) UN Doc CRC/C/AUT/CO/5-6

Convention on Certain Questions Relating to the Conflict of Nationality Laws, art 1

Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

Convention on the Reduction of Statelessness

Convention on the Rights of the Child, arts 3, 7, para 1, and 8

Human Rights Committee, CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (8 April 1988) UN Doc CCPR/C/21/Rev.1/Add.8

Human Rights Committee, CCPR General Comment No. 17: Article 24 (Rights of the Child) (7 April 1989) UN Doc CCPR/C/21/Rev.1/Add.10

Human Rights Committee, CCPR General Comment No. 18: Non-Discrimination (10 November 1989) UN Doc CCPR/C/21/Rev.1/Add.1

Human Rights Committee, CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses (27 July 1990) UN Doc CCPR/C/21/Rev.1/Add.11

Human Rights Committee, ‘Concluding Observations on the Fifth Periodic Report of Austria’ (3 December 2015) UN Doc CCPR/C/AUT/CO/5

Human Rights Council, ‘Human Rights and Arbitrary Deprivation of Nationality – Report of the Secretary-General’ (14 December 2009) UN Doc A/HRC/13/34

Human Rights Council, ‘Impact of the Arbitrary Deprivation of Nationality on the Enjoyment of the Rights of Children Concerned, and Existing Laws and Practices on Accessibility for Children to Acquire Nationality, Inter Alia, of the Country in Which They Are Born, if They Otherwise Would Be Stateless’ (16 December 2015) UN Doc A/HRC/31/29

Human Rights Council, Protection of the Family: Contribution of the Family to the Realization of the Right to an Adequate Standard of Living for Its Members, Particularly Through Its Role in Poverty Eradication and Achieving Sustainable Development (A/HRC/31/37), 15 January 2016

Human Rights Council, Resolution A/HRC/RES/7/10, ‘Human Rights and Arbitrary Deprivation of Nationality’ (27 March 2008) UN Doc A/HRC/RES/7/10

Human Rights Council, Resolution A/HRC/RES/10/13, ‘Human Rights and Arbitrary Deprivation of Nationality’ (26 March 2009) UN Doc A/HRC/RES/10/13

Human Rights Council, Resolution A/HRC/RES/13/2, ‘Human Rights and Arbitrary Deprivation of Nationality’ (14 April 2010) UN Doc A/HRC/RES/13/2

Human Rights Council, Resolution A/HRC/RES/20/5, ‘Human Rights and Arbitrary Deprivation of Nationality’ (16 July 2012) UN Doc A/HRC/RES/20/5

Human Rights Council, Resolution A/HRC/RES/26/14, ‘Human Rights and Arbitrary Deprivation of Nationality’ (11 July 2014) UN Doc A/HRC/RES/26/14

International Covenant on Civil and Political Rights, arts 17, 23, and 26

International Law Commission, Diplomatic Protection with commentaries (A/61/10) art 1, 24

UN Convention relating to the Status of Stateless Persons

United Nations General Assembly, Resolution A/RES/50/152, 'The Right to Development' (9 February 1996) UN Doc A/RES/50/152

United Nations General Assembly, Resolution A/RES/61/137, 'The Right to Peace' (19 December 2006) UN Doc A/RES/61/137

Universal Declaration of Human Rights, arts 6 and 15

Table of Legislation

Bills

Act on the Family and on Amendments to Certain Acts (Zákon o rodine a o zmene a doplnení niektorých zákonov) (SK) Zákon č. 36/2005 Z. z. art 102, para 3

Act on the State Citizenship of the Czech Republic and on Amendments to Certain Acts (Zákon o státním občanství České republiky a o změně některých zákonů) (CZ) Zákon č. 186/2013 Sb.

Act of the Slovak National Council on the Acquisition and Loss of Citizenship of the Slovak Socialist Republic (Zákon Slovenské národnej rady o nabývání a pozbývání státního občanství Slovenské socialistickej republiky) (SK) Zákon č. 206/1968 Sb.

Act on Swedish Citizenship (Lag om svenskt medborgarskap) (SE) (SFS) 2001:82 arts 6-7

Certain International Legal Conditions regarding Marriage and Guardianship Act (1904:26 p 1) (Lagen om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap) (SE) ch 1, art 1, para 2

Citizenship Act 1985 (Staatsbürgerschaftsgesetz 1985) (AT) BGBl. Nr. 202/1985, art I Z 2

Citizenship Act 1985 (Staatsbürgerschaftsgesetz 1985) (AT) BGBl. Nr. 311/1985, arts 7, 10, paras 1, items 5 and 6, and 3, 11b, para 1, 14, para 1.1, para 1.2, and para 7a 19, para 1, and 28

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) art 192, para 1

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. III Nr. 13/2018

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. III Nr. 125/2009

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. III Nr. 145/1999

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. III Nr. 163/2001

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. III Nr. 165/2001

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. III Nr. 166/2006

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. III Nr. 23/2007

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. III Nr. 32/2022

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. Nr. 403/1977

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) BGBl. Nr. 581/1978

Civil Code (Allgemeines bürgerliches Gesetzbuch) (AT) JGS Nr. 946/1811

Civil Code (Code Civil Belge) (BE) arts 143, 315, and 343, para 1-2

Civil Code (Code Civil Des Français) (FR) art 19, paras 1, and 3

Civil Code (Codul Civil al României) (RO) art 277, para 1

Civil Code (Kodiċi Ċivili) (MT) ch 12 art 114, para 2, applicable to civil unions by virtue of Civil Unions Act (Att dwar l-Unjonijiet Ċivili) (MT) ch 530, art. 4, para 1

Civil Code Act (Zákon občanský zákoník) (CZ) Zákon č. 89/2012 Sb. art 807, para 1

Civil Unions Act (Att dwar l-Unjonijiet Ċivili) (MT) ch 530

Civil Union Law (Αστικός Κώδικας Νόμος αρ. 3719/2008) (GR)

Compulsory School Attendance Act 1985 (Schulpflichtgesetz) (AT) BGBl. Nr. 76/1985

Embryo Protection Act (Att li jemenda l-Att dwar il-Protezzjoni tal-Embrijuni) (MT) ch 524, art 9

Federal Constitutional Act on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (Bundesverfassungsgesetz zur Durchführung des Internationalen Übereinkommens über die Beseitigung aller Formen rassischer Diskriminierung) (AT) BGBl. Nr. 390/1973 art 1

Federal Constitutional Act on the Rights of Children (Bundesverfassungsgesetz über die Rechte von Kindern) (AT) BGBl. I Nr. 4/2011 art 1

Federal Constitutional Law (Bundesverfassungsgesetz) (AT) arts 9, para 1, 140, para 1, item 1d

Gender Identity, Gender Expression and Sex Characteristics Act (Att dwar l-Identità tal-Ġeneru, l-Espressjoni tal-Ġeneru u l-Karatteristiċi tas-Sess) (MT) ch 540

Law amending the Parental Code (Lag om ändring i föräldrabalken (SFS 2018:1279)) (SE)

Marriage Act (Att dwar iż-Żwieġ) (MT) ch 255, art 18

Marriage Code (Äktenskapsbalk) (SE) (SFS) 1987:230 ch 1, art 1, para 2

Nationality Act (Staatsangehörigkeitsgesetz) (FRG) art 4, para 3

Private International Law (IPR-Gesetz) (AT) art 6

Private International Law (IPR-Gesetz) (AT) art 26, para 1

Private International Law Act (Zákon o mezinárodním právu soukromém) (CZ) Zákon č. 91/2012 Sb. arts 61, para 1, and 63, para 1

Private International Law and Procedure Act (Zákon o medzinárodnom práve súkromnom a procesnom) (SK) Zákon č. 97/1963 Zb. art 26, para 1

Private International Law Code (Code de droit international privé) (BE) art 44 and 46, al. 2

Registered Partnership Act (Eingetragene Partnerschaft-Gesetz) (AT) BGBl. I Nr.135/2009

Registered Partnership Act (Lag om registrerat partnerskap) (SE) (SFS) 1994:1117 chs 1, art 1-2, 3, arts 1-2

Registered Partnership Act (Zákon o registrovaném partnerství) (CZ) Zákon č. 115/2006 Sb. art 13, para 2

Statutes

British Nationality Act 1981 ch 61 s 1, para 1b

EU Legislation

Charter of Fundamental Rights of the European Union [2000] OJ C364/01

Charter of Fundamental Rights of the European Union, arts 21 and 24, para 2

Consolidated Version of the Treaty on European Union [2012] OJ C326/1

Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/1

Consolidated Version of the Treaty on the Functioning of the European Union - Part six: Institutional and financial provisions - Title I: Institutional provisions - Chapter 1: The Institutions - Section 5: The Court of Justice of the European Union - Article 267 (ex Article 234 TEC) [2008] OJ C115

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [2023] OJ L251

Council of Europe, ‘Act LXXIX of 2021 on Taking More Severe Action Against Paedophile Offenders and Amending Certain Acts for the Protection of Children’ (23 June 2021) CDL-REF(2021)088, s 3

Council of Europe, ‘European Convention on Nationality’ (6 November 1997) ETS No 166

European Convention on Human Rights, arts 8, 14, and 31, para 1

European Convention on Information on Foreign Law, art 1, para 1

Bibliography

‘62016CC0673’ (*Europa.eu*2018) <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62016CC0673>> accessed 4 March 2025

‘A Concise Overview of the Austrian Legal System’
<https://ilac.univie.ac.at/fileadmin/user_upload/project_ilac/Publikationen/AustrianLegalSystem.pdf> accessed 4 March 2025

Achatz M, ‘Kinder, Wie Die Zeit Vergeht ...’ (2014) 58 merz | medien + erziehung 79 <https://www.vfgh.gv.at/downloads/VfGH_G_119-120-2014_AdoptionsV_EN_korr_4.4.17.pdf> accessed 4 March 2025

AION CS - info@aion.cz, ‘186/2013 Sb. Zákon O Státním Občanství České Republiky’ (*Zákony pro lidi*2022) <<https://www.zakonyprolidi.cz/cs/2013-186>> accessed 4 March 2025

——, ‘91/2012 Sb. Zákon O Mezinárodním Právu Soukromém’ (*Zákony pro lidi*2023) <<https://www.zakonyprolidi.cz/cs/2012-91>> accessed 4 March 2025

——, ‘115/2006 Sb. Zákon O Registrovaném Partnerství’ (*Zákony pro lidi*2025) <<https://www.zakonyprolidi.cz/cs/2006-115>> accessed 4 March 2025

——, ‘206/1968 Sb. Zákon Slovenské Národní Rady O Nabývání a Pozbývání Státního Občanství Slovenské Socialistické Repub...’ (*Zákony pro lidi*2025) <<https://www.zakonyprolidi.cz/cs/1968-206>> accessed 4 March 2025

‘Äktenskapsbalk (1987:230)’ (*Riksdagen.se*2022)
<https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/aktenskapsbalk-1987230_sfs-1987-230/> accessed 4 March 2025

Alaattinoğlu D and Margaria A, ‘Trans Parents and the Gendered Law: Critical Reflections on the Swedish Regulation’ (2023) 21 International Journal of Constitutional Law 604

Allied Newspapers Ltd, ‘Same Sex Couples Can Marry as from Friday’ (*Times of Malta*2017)

<<https://web.archive.org/web/20170829192318/https://www.timesofmalta.com/articles/view/20170829/local/same-sex-couples-can-marry-as-from-friday.656746>>
accessed 4 March 2025

‘Ausgewählte Entscheidungen - Der Österreichische Verfassungsgerichtshof’
(*Vfgh.gv.at*2025)
<https://www.vfgh.gv.at/rechtsprechung/Ausgewaehlte_Entscheidungen.de.html>
accessed 4 March 2025

‘Austria Becomes the 14th European Country to Allow Same-Sex Second-Parent Adoption | ILGA-Europe’ (*Ilga-europe.org*2019) <<https://new.ilga-europe.org/resources/news/latest-news/austria-becomes-14th-european-country-allow-same-sex-second-parent>> accessed 4 March 2025

Bernat E, *Austria: The Final Stages of Three Decades’ Family Law Reform*, vol. 29 (University of Louisville School of Law 1990) 285

Borghs P and others, ‘Formalisation of Legal Family Formats in Belgium the LawsAndFamilies Database -Aspects of Legal Family Formats for Same-Sex and Different-Sex Couples’
<<https://www.ined.fr/Xtradocs/lawsandfamilies/LawsAndFamilies-BE-Section1.pdf>>
accessed 4 March 2025

——, ‘Parenting and Legal Family Formats in Belgium the LawsAndFamilies Database -Aspects of Legal Family Formats for Same-Sex and Different-Sex Couples’ <<https://www.ined.fr/Xtradocs/lawsandfamilies/LawsAndFamilies-BE-Section3.pdf>> accessed 4 March 2025

Borne ML, ‘Code Civil, Ancien Code Civil, Code Judiciaire, Code Pénal, Etc.. & Législation Belge’ (*Droitbelge.be*2017) <<https://www.droitbelge.be/codes.asp>>
accessed 4 March 2025

Brian, ‘ILGA-Europe Welcomes European Parliament Resolution on Free Movement | #Site_titleFree Movement EU’ (*ILGA-Europe | Safety, equality and freedom for LGBTI people in Europe & Central Asia*7 February 2018) <<https://www.ilga->

europa.eu/press-room/en/infographic/eu-welcomes-parliament-resolution-on-free-movement/?utm_source=chatgpt.com> accessed 4 March 2025

Brickner I, 'Homosexuelle Dürfen Künftig Adoptieren – Ohne Gesetzesnovelle' (*derStandard.at* 30 October 2015)

<<https://web.archive.org/web/20170630154241/http://derstandard.at/2000024807861/Homosexuelle-duerfen-kuenftig-adoptieren-ohne-Gesetzesnovelle>> accessed 4 March 2025

‘Bundesgesetzblatt’ (www.bgbl.de)

<<https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F>> accessed 4 March 2025

‘Bundesverfassungsgesetz Über Die Rechte von Kindern’ <https://www.kija-sbg.at/fileadmin/_migrated/content_uploads/BV-Gesetz-KR_02.pdf> accessed 4 March 2025

‘Codul Civil’ (*Codulcivil.ro*2015) <<https://www.codulcivil.ro/>> accessed 4 March 2025

‘CONVENTION on CERTAIN QUESTIONS RELATING to the CONFLICT of
NATIONALITY LAWS the HAGUE -12 APRIL 1930’

<https://prawo.uni.wroc.pl/sites/default/files/students-resources/Convention%20on%20certain%20questions%20relating%20to%20the%20conflict%20of%20nationality%20laws%20FULL%20TEXT_0.pdf> accessed 4 March 2025

country.AUT:Österreich, ‘Allgemeines Bürgerliches Gesetzbuch (ABGB), JGS Nr. 946/1811 in Der Geltenden Fassung BGBl. I Nr. 145/2022 - Publications Office of the EU’ (*Publications Office of the EU* 16 March 2023)

<<https://op.europa.eu/de/publication-detail/-/publication/eed5c136-c4a4-11ed-a05c-01aa75ed71a1/language-de>> accessed 4 March 2025

‘CURIA - Documents’ (*Europa.eu*2018)

<<https://curia.europa.eu/juris/document/document.jsf?text=&docid=202542&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=22472254>> accessed 4 March 2025

‘CURIA - Documents’ (*Europa.eu*2021)

<<https://curia.europa.eu/juris/document/document.jsf?text=&docid=251201&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=22358958>> accessed 4 March 2025

‘CURIA - Documents’ (*Europa.eu*2022)

<<https://curia.europa.eu/juris/document/document.jsf?text=&docid=262081&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=22360575>> accessed 4 March 2025

der A, ‘Dual Citizenship’ (*Bmeia.gv.at*2024) <<https://www.bmeia.gv.at/en/travel-stay/living-abroad/citizenship-and-union-citizenship/dual-citizenship>> accessed 4 March 2025

‘Directive - 2003/86 - EN - Family Reunification Directive - EUR-Lex’

(*Europa.eu*2017) <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32003L0086>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/A/HRC/13/34>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/A/RES/50/152>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/A/HRC/RES/13/2>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/A/HRC/RES/20/5>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/A/HRC/RES/26/14>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/A/RES/61/137>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/CCPR/C/21/Rev.1/Add>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025)
<<https://docs.un.org/en/CCPR/C/21/Rev.1/Add.11>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/CRC/C/GC/7/Rev.1>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/CRC/C/GC/14>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/A/HRC/31/37>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/CCPR/C/AUT/CO/5>> accessed 4 March 2025

‘Document Viewer’ (*Un.org*2025) <<https://docs.un.org/en/CRC/C/AUT/CO/5-6>> accessed 4 March 2025

‘Dokumentvisningssida | JP Infonet’ (*Lagboken.se*2018)
<https://www.lagboken.se/Lagboken/start/familjeratt/foraldrabalk-1949381//d_3285707-sfs-2018_1279-lag-om-andring-i-foraldrabalken> accessed 4 March 2025

‘ECCHR: Customary International Law’ (*Ecchr.eu*2018)
<<https://www.ecchr.eu/en/glossary/customary-international-law>> accessed 4 March 2025

‘Equality Package: Commission Proposes New Rules for the Recognition of Parenthood between Member States’ (*European Commission - European Commission*2025)
<https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7509> accessed 4 March 2025

‘EU LGBTIQ Survey III’ (*European Union Agency for Fundamental Rights* 14 June 2024) <<https://fra.europa.eu/en/publications-and-resources/data-and-maps/2024/eu-lgbtqi-survey-iii>> accessed 4 March 2025

‘EU Parliament Adopts Historic Resolution on Rainbow Families - TGEU - Trans Europe and Central Asia’ (*TGEU - Transgender Europe* 15 September 2021) <<https://tgeu.org/eu-parl-historic-resolution-on-rainbow-families>> accessed 4 March 2025

EUR-Lex, ‘EUR-Lex - 12008E267 - EN’ [2021] Europa.eu <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E267:en:HTML>> accessed 4 March 2025

‘EUR-Lex - - EN’ [2012] Europa.eu <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT>> accessed 4 March 2025

‘EUR-Lex - 51983IP1358 - EN - EUR-Lex’ (*Europa.eu* 2025) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51983IP1358>> accessed 4 March 2025

‘EUR-Lex - 51998IP0824 - EN’ [2024] Europa.eu <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A51998IP0824>> accessed 22 April 2024

‘EUR-Lex - 52023XC01392 - EN - EUR-Lex’ (*Europa.eu* 2023) <<https://eur-lex.europa.eu/eli/C/2023/1392/oj/eng>> accessed 4 March 2025

European Commission, ‘LGBTIQ Equality Strategy 2020-2025’ (*commission.europa.eu* 2020) <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en> accessed 4 March 2025

European Convention on Information on Foreign Law, ‘European Convention on Information on Foreign Law’ (1968) <<https://rm.coe.int/1680072314>> accessed 4 March 2025

European Court of Human Rights, 'European Convention on Human Rights' (1950)
<https://www.echr.coe.int/documents/d/echr/Convention_ENG> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*6 October 2005)
<<https://hudoc.echr.coe.int/eng#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*6 October 2005)
<<https://hudoc.echr.coe.int/eng#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*6 October 2005)
<<https://hudoc.echr.coe.int/eng#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*6 October 2005)
<<https://hudoc.echr.coe.int/eng#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*6 October 2005)
<<https://hudoc.echr.coe.int/eng#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*2020)
<<https://hudoc.echr.coe.int/fre#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*2020)
<<https://hudoc.echr.coe.int/fre#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*2020)
<<https://hudoc.echr.coe.int/fre#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*2020)
<<https://hudoc.echr.coe.int/fre#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*2020)
<<https://hudoc.echr.coe.int/fre#>> accessed 4 March 2025

——, 'HUDOC - European Court of Human Rights' (*Coe.int*2020)
<<https://hudoc.echr.coe.int/fre#>>

——, ‘HUDOC - European Court of Human Rights’ (*Coe.int*2020)

<<https://hudoc.echr.coe.int/fre#>> accessed 4 March 2025

‘European Treaty Series -No. 166’ <<https://rm.coe.int/168007f2c8>> accessed 4 March 2025

European Union, ‘Charter of Fundamental Rights of the European Union ’ (Official Journal of the European Communities 2000)

<https://www.europarl.europa.eu/charter/pdf/text_en.pdf> accessed 4 March 2025

——, ‘Charter of Fundamental Rights of the European Union ’ (Official Journal of the European Communities 2000)

<https://www.europarl.europa.eu/charter/pdf/text_en.pdf> accessed 4 March 2025

——, ‘Consolidated Version of the Treaty on European Union’ (Official Journal of the European Union 2012) <[https://eur-](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

[lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

[fd71826e6da6.0023.02/DOC_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)> accessed 4 March 2025

‘Family - Rainbow Map’ (*Rainbow Map*23 July 2024) <<https://rainbowmap.ilga-europe.org/categories/family>> accessed 4 March 2025

Fleur C, ‘Wautelet Patrick and Pfeiff Silvia, Actualités Du Droit Familial International, N Pire’ [2007] *Droit des Familles*

‘Full List - Treaty Office - Wwww.coe.int’ (*Treaty Office*2014)

<<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=166>> accessed 4 March 2025

Garrett S, ‘What Is an Alternative Family?’ (*HuffPost UK*19 August 2016)

<https://www.huffingtonpost.co.uk/sarah-garrett/what-is-an-alternative-fa_b_11564254.html> accessed 4 March 2025

gov.uk, ‘British Nationality Act 1981’ (*Legislation.gov.uk*2010)

<<https://www.legislation.gov.uk/ukpga/1981/61>> accessed 4 March 2025

‘HANDBOOK on PROTECTION of STATELESS PERSONS’

<https://www.unhcr.org/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf> accessed 4 March 2025

‘HCCH | #33 - Full Text’ (www.hcch.net1995)

<<https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>> accessed 4 March 2025

‘Human Rights Council Resolution 7/10. Human Rights and Arbitrary Deprivation of Nationality’

<https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_10.pdf> accessed 4 March 2025

‘Human Rights Council Tenth Session’

<https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_13.pdf> accessed 4 March 2025

‘Human Rights Council Thirty-First Session Agenda Items 2 and 3 Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General’ (2015)

<<https://www.unhcr.org/ibelong/wp-content/uploads/Report-of-the-Secretary-General-on-Childhood-Statelessness.pdf>> accessed 4 March 2025

ihrec, ‘Basic Guide for Applicants Taking Their Case to the European Court of Human Rights’ <<https://www.ihrec.ie/download/pdf/europeanctguidefinal.pdf>> accessed 4 March 2025

‘IMMC.COM%282020%29698%20final.ENG.xhtml.1_EN_ACT_part1_v9.Docx’ (*Europa.eu*2020) <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0698>> accessed 4 March 2025

‘IMMC.COM%282020%29698%20final.ENG.xhtml.1_EN_ACT_part1_v9.Docx’ (*Europa.eu*2020) <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0698>> accessed 4 March 2025

info @aion.cz AC -, ‘89/2012 Sb. Občanský Zákoník (Nový)’ (*Zákony pro lidi*)
<<https://www.zakonyprolidi.cz/cs/2012-89>> accessed 4 March 2025

Ιωάννης Καράγιωργας, ‘Ποιες ευρωπαϊκές χώρες εφαρμόζουν το δικαίωμα ιθαγένειας στη γέννηση’; (*euronews* 29 January 2025) <https://gr.euronews.com/my-europe/2025/01/29/euroveirfy-poies-xwres-dinoun-ithagenia-sti-gennisi?utm_source=chatgpt.com> accessed 4 March 2025

‘Jus Sanguinis’ (*Oxford Reference* 2024)
<<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100027515>> accessed 4 March 2025

‘Jus Soli | Law’ (*Encyclopedia Britannica*) <<https://www.britannica.com/topic/jus-soli>> accessed 4 March 2025

‘Justel Databank’ (*Fgov.be* 2024)
<https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004071631&table_name=loi> accessed 4 March 2025

Kern C, ‘MEPs Push for Legislation on Rainbow Families’ Cross-Border Rights’ (*Euractiv* 24 November 2022) <https://www.euractiv.com/section/non-discrimination/news/meps-push-for-legislation-on-rainbow-families-cross-border-rights/?utm_source=chatgpt.com> accessed 4 March 2025

Kochenov D, ‘Democracy and Human Rights - Not for Gay People?: EU Eastern Enlargement and Its Impact on the Protection of the Rights of Sexual Minorities’ 13 *Texas Wesleyan Law Review* 459
<<https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1254&context=txwes-lr>> accessed 4 March 2025

Kříčková L, ‘Same-Sex Families’ Rights and the European Union: Incompatible or Promising Relationship?’ (2023) 37 *International Journal of Law Policy and the Family* 1

‘Lag (1904:26 S.1) Om Vissa Internationella Rättsförhållanden Rörande Äktenskap Och Förmynderskap | Lagen.nu’ (*Lagen.nu*2018) <https://lagen.nu/1904:26_s.1> accessed 4 March 2025

‘Lag (1994:1117) Om Registrerat Partnerskap’ (*Riksdagen.se*2015) <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-19941117-om-registrerat-partnerskap_sfs-1994-1117/> accessed 4 March 2025

‘Lag (2001:82) Om Svenskt Medborgarskap’ (*Riksdagen.se*2024) <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-200182-om-svenskt-medborgarskap_sfs-2001-82/> accessed 4 March 2025

Legislation Unit, ‘XXIV Tal-2018 – Att Tal-2018 Li Jemenda L-Att Dwar Il Protezzjoni Tal-Embrijuni *Gazzetta Tal-Gvern Ta’ Malta Nru. 20,013 – 21.06.2018*’ (*Legislation.mt*21 June 2018) <<https://legislation.mt/eli/act/2018/24>> accessed 4 March 2025

‘LEĠIŻLAZZJONI MALTA’ (*Legislation.mt*2015) <<https://legislation.mt/eli/cap/540>> accessed 4 March 2025

‘LEĠIŻLAZZJONI MALTA’ (*Legislation.mt*2020) <<https://legislation.mt/eli/cap/530>> accessed 4 March 2025

‘LEĠIŻLAZZJONI MALTA’ (*Legislation.mt*2020) <<https://legislation.mt/eli/cap/255>> accessed 4 March 2025

‘LEĠIŻLAZZJONI MALTA’ (*legislation.mt*) <<https://legislation.mt/eli/cap/16/eng/pdf>> accessed 4 March 2025

‘Letter to the Chairman of the Supreme Council of Kyrgyzstan’ (*Human Rights Watch*2 March 2015) <<https://www.hrw.org/news/2015/03/02/letter-chairman-supreme-council-kyrgyzstan>> accessed 4 March 2025

‘List of Actions by the Commission to Advance LGBTI Equality #EU4LGBTI Justice and Consumers’ <https://commission.europa.eu/system/files/2017-06/lgbti-actionlist-dg-just_en.pdf> accessed 4 March 2025

LUNACEK U, ‘REPORT on the EU Roadmap against Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity | A7-0009/2014 | European Parliament’ (*Europa.eu*2015)
<https://www.europarl.europa.eu/doceo/document/A-7-2014-0009_EN.html>
accessed 4 March 2025

Maarit J-J, Brattström L and Eriksson, ‘Informal Relationships -SWEDEN NATIONAL REPORT: SWEDEN’ (2015) <<https://ceflonline.net/wp-content/uploads/Sweden-IR.pdf>> accessed 4 March 2025

‘Mapping Statelessness in Austria ’ (*UNHCR*27 April 2017)
<https://www.unhcr.org/wp-content/uploads/sites/27/2017/04/AUT_Statelessness_Mapping_Austria.pdf>
accessed 4 March 2025

‘Νόμος 3719/2008 - ΦΕΚ Α 241/26.11.2008’ (*Kodiko.gr*2025)
<<https://www.kodiko.gr/nomothesia/document/141630/nomos-3719-2008>> accessed 4 March 2025

ntatschl, ‘Adoptionsverbot Für Homosexuelle Partner Aufgehoben’ (*vienna.at*14 January 2015) <<https://www.vienna.at/adoptionsverbot-fuer-homosexuelle-partner-aufgehoben/4202709>> accessed 4 March 2025

on, ‘Resolution on Equal Rights for Homosexuals and Lesbians in the EC - Publications Office of the EU’ (*Publications Office of the EU*8 February 1994)
<<https://op.europa.eu/en/publication-detail/-/publication/325d4467-375e-4388-ac94-25d846319b68/language-en>> accessed 4 March 2025

‘Österreich Hebt Adoptionsverbot Für Homo-Paare Auf’ (*queer.de*2015)
<https://www.queer.de/detail.php?article_id=24933> accessed 4 March 2025

‘Österreich: Lesbe Darf Kind Der Ex Adoptieren’ (*queer.de*2018)
<https://www.queer.de/detail.php?article_id=32205> accessed 4 March 2025

‘Overview of Austrian Adoption Law’ (*adoptionpolicy.org*)
<<http://www.adoptionpolicy.org/pdf/eu-austria.pdf>> accessed 4 March 2025

‘PACE Website’ (*Coe.int*2018) <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25166&lang=en>> accessed 4 March 2025

PEREIRA S, ‘REPORT on Reducing Inequalities and Promoting Social Inclusion in Times of Crisis for Children and Their Families | A9-0360/2023 | European Parliament’ (*www.europarl.europa.eu*)
<https://www.europarl.europa.eu/doceo/document/A-9-2023-0360_EN.html>
accessed 4 March 2025

‘Petition No 0513/2016 by Eleni Maravelia (Greek) on the Non-Recognition of LGBT Families in the European Union’ (*europarl.europa.eu*)
<<https://www.europarl.europa.eu/petitions/en/petition/content/0513%252F2016/html/Petition-No-0513%252F2016-by-Eleni-Maravelia-%2528Greek%2529-on-the-non-recognition-of-LGBT-families-in-the-European-Union>> accessed 4 March 2025

‘President Signs “Gay Marriage” Bill - the Malta Independent’
(*Independent.com.mt*2025) <<https://www.independent.com.mt/articles/2014-04-17/news/president-signs-gay-marriage-bill-4664328194>> accessed 4 March 2025

‘RDB Rechtsdatenbank’ (*Manz.at*2025)
<https://rdb.manz.at/document/ris.c.BGBL_OS_19850524_0_0202++> accessed 4 March 2025

‘RDB Rechtsdatenbank’ (*Manz.at*2025)
<https://rdb.manz.at/document/ris.vfghr.JFR_09979379_02G00006_01> accessed 4 March 2025

‘RDB Rechtsdatenbank’ (*Manz.at*2025)
<https://rdb.manz.at/document/ris.c.BGBL_OS_19990831_3_0165++> accessed 4 March 2025

‘RIS - 7Ob600/86 - Entscheidungstext - Justiz’ (*Bka.gv.at*2025)
<https://ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_19860710_OGH0002_0070OB00600_8600000_000&Suchworte=RS0016665> accessed 4 March 2025

‘RIS - Allgemeines Bürgerliches Gesetzbuch - Bundesrecht Konsolidiert, Fassung Vom 13.12.2020’ (*www.ris.bka.gv.at*)
<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622>> accessed 4 March 2025

‘RIS - Annahme an Kindesstatt Art. 4 - Bundesrecht Konsolidiert’ (*Bka.gv.at*2025)
<<https://www.ris.bka.gv.at/eli/bgbl/1978/581/A4/NOR12031261>> accessed 4 March 2025

‘RIS - BGBLA_2006_III_166 - Bundesgesetzblatt Authentisch Ab 2004’ (*Bka.gv.at*2025) <<https://www.ris.bka.gv.at/eli/bgbl/III/2006/166/20061108>> accessed 4 March 2025

‘RIS - BGBLA_2009_I_135 - Bundesgesetzblatt Authentisch Ab 2004’ (*Bka.gv.at*2025) <<https://www.ris.bka.gv.at/eli/bgbl/I/2009/135>> accessed 4 March 2025

‘RIS - BGBLA_2009_III_125 - Bundesgesetzblatt Authentisch Ab 2004’ (*Bka.gv.at*2025) <<https://ris.bka.gv.at/eli/bgbl/III/2009/125/20091124>> accessed 4 March 2025

‘RIS - BGBLA_2018_III_13 - Bundesgesetzblatt Authentisch Ab 2004’ (*Bka.gv.at*2018) <<https://www.ris.bka.gv.at/eli/bgbl/III/2018/13/20180206>> accessed 4 March 2025

‘RIS - BGBLA_2022_III_32 - Bundesgesetzblatt Authentisch Ab 2004’ (*Bka.gv.at*2022) <<https://www.ris.bka.gv.at/eli/bgbl/III/2022/32/20220310>> accessed 4 March 2025

‘RIS - Bundes-Verfassungsgesetz - Bundesrecht Konsolidiert, Fassung Vom 26.11.2020’ (*www.ris.bka.gv.at*)

<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>> accessed 4 March 2025

‘RIS - Durchführung Des Internationalen Übereinkommens Über Die Beseitigung Aller Formen Rassischer Diskriminierung § 0 - Bundesrecht Konsolidiert, Fassung Vom 03.02.2025’ (*Bka.gv.at*2025)

<<https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000533&FassungVom=2025-02-03&Artikel=&Paragraf=0&Anlage=&Uebergangsrecht=>>> accessed 4 March 2025

‘RIS - IPR-Gesetz - Bundesrecht Konsolidiert, Fassung Vom 04.03.2025’ (*Bka.gv.at*2025)

<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002426>> accessed 4 March 2025

‘RIS - Rechtssatz Und Entscheidungstext G142/88 G168/88 - Verfassungsgerichtshof (VfGH)’ (*Bka.gv.at*2015)

<https://www.ris.bka.gv.at/VfghEntscheidung.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_10109378_88G00142_00&IncludeSelf=True&ShowPrintPreview=True> accessed 4 March 2025

‘RIS - Rechtssätze Für 5Ob152/04w - Justiz’ (*Bka.gv.at*2016)

<https://www.ris.bka.gv.at/JustizEntscheidung.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20041109_OGH0002_0050OB00152_04W0000_000&IncludeSelf=False> accessed 4 March 2025

‘RIS - Schulpflichtgesetz 1985 - Bundesrecht Konsolidiert, Fassung Vom 06.02.2023’ (*www.ris.bka.gv.at*)

<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009576>> accessed 4 March 2025

‘RIS - Staatsbürgerschaftsgesetz 1985 - Bundesrecht Konsolidiert, Fassung Vom 16.06.2023’ (*www.ris.bka.gv.at*)

<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005579>> accessed 4 March 2025

‘RIS - Übereinkommen Über Den Schutz von Kindern – Internationale Adoption § 0 - Bundesrecht Konsolidiert’ (*Bka.gv.at*2019)

<<https://www.ris.bka.gv.at/eli/bgbl/iii/1999/145/P0/NOR40205756>> accessed 4 March 2025

‘RIS - Übereinkommen Über Den Schutz von Kindern – Internationale Adoption § 0 - Bundesrecht Konsolidiert, Fassung Vom 31.01.2019’ (*Bka.gv.at*2019)

<<https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20000059&FassungVom=2019-01-31&Artikel=&Paragraf=0&Anlage=&Uebergangsrecht=>>> accessed 4 March 2025

‘Same-Sex Adoption by Country’ (*Equaldex*)

<<https://www.equaldex.com/issue/adoption>> accessed 4 March 2025

Sansone K, ‘Civil Unions Law Will Give Same Sex Couples Same Rights, Duties, as Married Couples’ (*Times of Malta* 14 October 2013)

<<https://www.timesofmalta.com/article/civil-liberties-bill-will-give-gay-couples-same-rights-duties-as.490275#.U11mWbT6oh0>> accessed 4 March 2025

‘Slov-Lex’ (*Slov-lex.sk*2025) <<https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/1963/97/>> accessed 4 March 2025

‘Slov-Lex’ (*Slov-lex.sk*2025) <<https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2005/36/>> accessed 4 March 2025

‘Speech by President von Der Leyen at the European Parliament Plenary on the Conclusions of the European Council Meeting of 24-25 June 2021’ (*European Commission - European Commission*2025)

<https://ec.europa.eu/commission/presscorner/detail/en/speech_21_3526> accessed 4 March 2025

Spike J, ‘Hungary Issues Fine over Book Featuring “Rainbow Families”’ (*AP News*7

July 2021) <https://apnews.com/article/hungary-europe-entertainment-lifestyle-arts-and-entertainment-e95b24c3d8e39b7549e07dc7b13704b2?utm_source=chatgpt.com>

accessed 4 March 2025

‘StAG - Staatsangehörigkeitsgesetz’ (*www.gesetze-im-internet.de*)
<<https://www.gesetze-im-internet.de/stag/BJNR005830913.html>> accessed 4 March 2025

‘Statelessness and Human Rights’ (*Institute on Statelessness and Inclusion*)
<<https://files.institutesi.org/statelessness-and-CRC.pdf>> accessed 4 March 2025

‘StatelessnessINDEX - AustriaStatelessnessINDEX - Austria’ (*Statelessness Index* 9 December 2019) <<https://index.statelessness.eu/country/austria>> accessed 4 March 2025

Supreme Court, ‘SUPREME COURT of the UNITED STATES’ (1618)
<https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf> accessed 4 March 2025

‘Texts Adopted - Kyrgyzstan: Homosexual Propaganda Bill - Thursday, 15 January 2015’ (*Europa.eu* 2015) <https://www.europarl.europa.eu/doceo/document/TA-8-2015-0008_EN.html> accessed 4 March 2025

‘Texts Adopted - LGBTIQ Rights in the EU - Tuesday, 14 September 2021’ (*Europa.eu* 2021) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0366_EN.html> accessed 4 March 2025

‘Texts Adopted - Public Discrimination and Hate Speech against LGBTI People, Including LGBTI Free Zones - Wednesday, 18 December 2019’ (*www.europarl.europa.eu*) <https://www.europarl.europa.eu/doceo/document/TA-9-2019-0101_EN.html> accessed 4 March 2025

‘The Adoption Process’ (*oesterreich.gv.at - Österreichs digitales Amt* 2024)
<https://www.oesterreich.gv.at/en/themen/familie_und_partnerschaft/familie-und-kinderfuersorge/adoption/Seite.720003.html> accessed 4 March 2025

‘The European Court of Human Rights - Questions & Answers for Lawyers’ (*echr.coe.int* 2014)
<https://www.echr.coe.int/documents/d/echr/guide_echr_lawyers_eng> accessed 4 March 2025

‘Transgender Europe Applauds Malta for Naming Gender Identity’

(*MaltaToday.com.mt*2025)

<https://www.maltatoday.com.mt/news/national/38027/transgender_europe_applauds_malta_for_naming_gender_identity> accessed 4 March 2025

Tryfonidou A, ‘RAINBOW FAMILIES and EU FREE MOVEMENT LAW’

<https://gnosis.library.ucy.ac.cy/bitstream/handle/7/65914/rainbow_families_and_eu_free_movement_law.pdf?sequence=1&isAllowed=y> accessed 4 March 2025

‘Uganda Submission to the African Commission on Human and People’s Rights 77th Edition Ordinary Session 20 October - 9 November 2023’ (*Amnesty International*

2023) <<https://www.amnesty.org/en/wp-content/uploads/2023/10/AFR5973442023ENGLISH.pdf>> accessed 4 March 2025

‘UN Conventions on Statelessness’ (*UNHCR*) <<https://www.unhcr.org/what-we-do/protect-human-rights/ending-statelessness/un-conventions-statelessness>> accessed

4 March 2025

United Nations, ‘Universal Declaration of Human Rights’ (*United Nations*10

December 1948) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 4 March 2025

——, ‘International Covenant on Civil and Political Rights’ (1967)

<https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf> accessed 4 March 2025

——, ‘Convention on the Rights of the Child’ (*OHCHR*1989)

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 4 March 2025

‘United Nations: Report of the International Law Commission’ (1953) 47 *The American Journal of International Law* 1

Unternehmensberatung A, ‘Allgemeines Bürgerliches Gesetzbuch (ABGB) -

JUSLINE Österreich’ (*www.jusline.at*) <<https://www.jusline.at/gesetz/abgb>> accessed 4 March 2025

‘Venice Commission:: Council of Europe’ (*www.venice.coe.int*)

<[https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2021\)088-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2021)088-e)>

accessed 4 March 2025

VRT NWS, ‘Dra Een Oplossing Voor Lesbische Meemoeders?’ (*vrtnws.be* 4 January 2014)

<https://www.vrt.be/vrtnws/nl/2014/01/04/dra_een_oplossingvoorlesbische-meemoeders-1-1823193> accessed 4 March 2025

Web Webteam, ‘ACT NOW: Take Action to Fight Back against Nigeria’s Anti-LGBT Law’ (*Amnesty International USA* 7 March 2014)

<<https://www.amnestyusa.org/blog/act-now-take-action-to-support-nigerias-lgbt-community>> accessed 4 March 2025

WIKSTRÖM C, ‘MOTION for a RESOLUTION on Protection and Non-Discrimination with Regard to Minorities in the EU Member States | B8-0064/2018 | European Parliament’ (*Europa.eu* 2018)

<https://www.europarl.europa.eu/doceo/document/B-8-2018-0064_EN.html> accessed 4 March 2025

(*Europa.eu* 2022) <<https://eur-lex.europa.eu/legal-content/EL/TXT/HTML/?uri=CELEX:52022PC0695>> accessed 4 March 2025

(*Gouv.fr* 2022)

<https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/> accessed 4 March 2025