



**FAMILY DIVERSITY  
and the struggle for EQUALITY**

**Documentation on the  
situations of Rainbow Families  
in Romania**

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ACCEPT ASSOCIATION  
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## Table of Contents

I.	Context.....	4
II.	Legal protection standards for Rainbow Families.....	6
	General framework.....	6
	The right to private life; rights linked to family life.....	6
	Family definition in international and EU law.....	6
	The ‘family’ definition and the right to marry.....	7
	International and European instruments.....	7
	Legal protection standards for Rainbow Families in Europe.....	9
	The evolution of European Court of Human Rights jurisprudence regarding Rainbow Families.....	10
	Family in Romania: legal definition; interpretation. The situation and (un)availability of legal protection for Rainbow Families.....	12
	Cohabitation and civil unions.....	14
	Challenges.....	14
	Surrogacy.....	15
III.	Main institutional actors in the struggle for ensuring the protection and recognition of rainbow families in Romania.....	16
	The Constitutional Court of Romania.....	16
	The National Council for Combating Discrimination.....	17
	The Romanian Parliament.....	18
	The Romanian Government.....	18
IV.	Initiatives against Rainbow Families - restricting the definition of family in the Romanian Constitution....	19
V.	Family equality through the lens of freedom of movement – a step forward to the recognition and legal protection of Rainbow Families.....	24
VI.	Documentation on the situation of RAINBOW families in Romania.....	27

Survey - data analysis.....	27
Interviews and focus groups with Rainbow Families .....	40
VII. Conclusions .....	43
ANNEXES .....	44
1. Coman case Timeline .....	44
2. The preliminary reference to the CJUE .....	46
3. Current legislative provisions pertaining to freedom of movement and same-sex family recognition .....	47
The Romanian Constitution .....	47
The Romanian Civil Code .....	47
The EU directive on freedom of movement - Directive 2004/38/EC.....	48
Charter of Fundamental Rights of the European Union .....	51

## I. Context

This Report was prepared in the context of the Project “*Family diversity and the struggle for equality - Documentation on the situations of Rainbow Families in Romania*”, implemented between March 2016 and May 2017 by ACCEPT Association in Romania, with the support of ILGA Europe. The idea behind this Project was fueled by the social and legislative realities in Romania: Rainbow families are not recognized by the State. Same-sex couples cannot register their partnership remain at a disadvantage compared to married couples from a rights-based perspective. Adoption, second-parent adoption and medically assisted insemination are rights that LGBTI people cannot access. In terms of children’s and parental rights, same-sex couples are heavily discriminated against, and may remain unprotected on issues of child support, custody, succession and the right to personal contact after a separation.

In this context, the current Report aims to provide an overview of the legal framework in place, with a view to highlight the lack of recognition and protection when it comes to the rights of Rainbow Families.

Historically speaking, Romania as a society displayed hostile attitudes towards LGBTI persons, by employing a plethora of appellatives directed at members of the community and criminalizing homosexual relations for more than a century. Despite legislative changes decriminalizing homosexual behaviour (2001) and instituting anti-discrimination provisions (2000), Romanians do not accept and treat LGBTI persons as equals. Furthermore, strong advocacy efforts on behalf of those opposing LGBTI rights, sexual and reproductive rights and who have, to a certain degree, a ultranationalist and anti-European stance, led to an explicit ban on same-sex marriage in the 2007 Civil Code – a ban which was positively received by an extremely wide audience, a predictable situation in a country where 97%<sup>1</sup> of its citizens identify as affiliated to a Christian denomination. On average, only 74% of Europeans declare their affiliation for a cult, making Romania, alongside other Eastern Orthodox countries (Greece, Cyprus, Bulgaria - all displaying similar affiliation rates), an extremely permeable propaganda space for those promoting traditional values. These 2012 special Eurobarometer survey results are even more concerning, when compared to a study<sup>2</sup> on religion in the EU (2005) showing only 94 percent of Romanians declaring an affiliation. While most European states see a decrease in religious affiliation, often on the grounds that religious values may aim to

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<sup>1</sup> Special Eurobarometer “Discrimination in the EU in 2012”, p 393  
[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_393\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf) T98

<sup>2</sup> Special Eurobarometer “Social values, Science and Technology,” p 9  
[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_225\\_report\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf)

restrict other freedoms<sup>3</sup>, Romania is not one of these countries. While survey data and legislative progression show a growing foothold for those advocating traditional values, the situation did not improve in recent years for LGBTI people – in fact, surveys commissioned by the National Council for Combating Discrimination (NCCD) show growing intolerance. Concerning data arises when comparing the first NCCD survey results compiled in 2004, with the most recent one. While in 2004 54% of Romanians would have been bothered to have a LGBTI family member, in 2013 60% of Romanians do not wish to be related to members of the community. In 2004, 45% of Romanians would rather not have LGBTI friends – while 58% of Romanians expressed this adversity in 2013. The same trend can be noticed concerning professional relations: in 2004, 33% of Romanians would rather not share their workplace with members of the community, while 51% said in 2013 that they would rather not have LGBTI colleagues<sup>4</sup>. As such, one cannot ignore the blatant discrepancy between 2004 results and the most recent data, and, hence, cannot ignore the worsening situation for LGBTIs in Romania.

In this hostile environment, it is of utmost importance to showcase the absence of protection that Rainbow Families are facing. We trust that this brief report will provide an overview in that regard.

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<sup>3</sup> BBC News, “Viewpoints: Why is faith falling in the US?” <http://www.bbc.com/news/magazine-19262884>

<sup>4</sup> While one must acknowledge methodological inconsistencies and a relative differences between the content on the questionnaire, the overall sampling methods and representative sampling of the NCCD study is consistent over the years.

## II. Legal protection standards for Rainbow Families

### General framework

The development of human personality and dignity, values enshrined in Article 1 of the Romanian Constitution, cannot exist without ensuring due respect and protection of family and private life. Nevertheless, in 2017, Romania still lags in this regard, compared to most of the EU member states. Aspects such as (civil) partnership, marriage equality, or surrogacy, remain unregulated. The legal nature of 'family' is at the centre of a heated and complex debate, linked to the establishment restrictive requirements to ensure access to such status. And, unfortunately, ensuring adequate protection of families, or establishing mutual as well as enforceable rights and duties of family members, are issues that remain unaddressed by policymakers.

So, what does the protection of family in Romania entail, and how does it apply – if at all – to Rainbow Families?

### The right to private life; rights linked to family life

The right to respect and protection of ones married, family and private life is one of fundamental rights and freedoms envisaged at international, European and national, with a complex content.

The right to family life is the right of all individuals to have their established family life respected, and to have and maintain family relationships. This right is recognised in a variety of international human rights instruments, including Article 16 of the Universal Declaration of Human Rights, Article 23 of the International Covenant on Civil and Political Rights, and Article 8 of the European Convention on Human Rights.

#### ***Family definition in international and EU law***

The evolving concept of 'family' implies a rather subjective definition of what family entails: relationships between spouses, unmarried partners, parents and children, siblings etc., all represent 'family' as it should be understood under the right to 'family life'.

What raises challenges are the 'modern forms of family relationships, which have developed without the law explicitly recognizing and regulating them. The European Court of Human Rights, for

instance, clearly stated that when assessing what constitutes family relationships the Court “must necessarily take into account developments in society and changes in the perception of social, civil-status and relational issues, including the fact that there is not just one way or one choice in the sphere of leading and living one’s family or private life”<sup>5</sup>.

### ***The ‘family’ definition and the right to marry***

The right to marry is related to the right to family life, but the two need not necessarily overlap and should not be identical. The right to marry is explicitly provided for in all human rights instruments, essentially providing that all people have the right to marry and found a family. The right to family life predominantly refers to an individual's right to create and maintain their family relationships.

### ***International and European instruments***

Both Article 16 of the Universal Declaration of Human Rights and Article 23 of the International Covenant on Civil and Political Rights provide basis for the right to family life as a fundamental human right.

#### **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly on 10 December 1948, clarifying universal rights held by all individuals. The UDHR now represents customary international law, and as such has legally binding force over States. The relevant provision relating to the right to family lies in Article 16(3) of the UDHR:

*3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

#### **The International Covenant on Civil and Political Rights<sup>6</sup>**

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly on the 16 December 1966, and came into force on the 23 March 1976. As at May 2016 there are 168 State parties to the ICCPR, giving effect to the civil and political rights of individuals within their borders. Articles 17 and 23(1) ICCPR refer to the right to family:

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<sup>5</sup> *Villianatos and Others v Greece* (29381/09 & 32684/09) [2013] ECHR (7 November 2013), at para. [84].

<sup>6</sup> International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

*Article 17:*

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

*Article 23(1):*

- 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

*The Human Rights Committee has noted that the protection of the family and its members is also directly and indirectly guaranteed by other Articles within the Covenant in addition to Articles 17 and 23, such as protection of the child under Article 24.*

### **The International Covenant on Economic, Social and Cultural Rights<sup>7</sup>**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was also adopted by the General Assembly on 16 December 1966, however it did not enter into force till nine years after it opened for signature on 3 January 1976.] Article 10(1) provides for the right to family:

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependant children.*

### **The European Convention on Human Rights**

Article 8 of the European Convention on Human Rights (ECHR) states:

- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The Article imposes both positive and negative obligations on States: they are required to protect its constituents from arbitrary interference in family life by public authorities, while also ensuring national systems of safeguards that allow the development of a “family life”. It is clear that Article 8 applies to all types of families, since there is qualification in this regard within the Convention.

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<sup>7</sup> International Covenant on Economic, Social and Cultural Rights,  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

## **The European Social Charter**

The European Social Charter (the Charter) is the counterpart to the European Convention on Human Rights, providing for fundamental social and economic rights under a Council of Europe treaty. The Charter also provides for the right to family under Article 16, reaffirming European parties commitment to the right:

*With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.*

## ***Legal protection standards for Rainbow Families in Europe***

As noted, Rainbow families have different rights and are granted different legal statuses across Europe, and particularly across the European Union. EU member states retain full autonomy regarding their individual family law provisions, specifically the way they regulate marriage, civil partnership and adoption, considering this area of law a matter of exclusive competence. However, a number of rights associated with the social and legal recognition of being the member of a family, being a spouse or a parent may impact upon the recognition and enforcement of rights pertaining to EU citizenship, particularly in the area of freedom of movement, healthcare or social rights.

Currently, while the vast majority of member states enable national citizens to obtain recognition and transpose civil status documents relating to a heterosexual marriage legally entered upon in another member state, the situation is quite different for Rainbow Families. Currently, same-sex marriage is legal in 11 out of 28-member states, respectively Belgium, Denmark, Finland, France, Ireland, Luxembourg, the Netherlands, Portugal, Spain, Sweden and United Kingdom. Another 11-member states of the European Union decided to confer another legal possibility on their territory for same sex couples, inferior in standing to marriage, but granting, to different extent on a case by case basis, similar rights in terms of property, maintenances, healthcare or legal representation. These countries are Austria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Hungary, Italy, Malta and Slovenia. Civil unions or registered partnerships have, from one-member state to another, quite different provisions regarding the adoption of children by same sex couples and/rearing existing children with a same sex partner. Out of the member states mentioned above, Croatia and Hungary reserve marriage to heterosexual couples, a provision enshrined both in their Constitution and in secondary legislation. However, both countries firmly recognize the fact that

families are diverse and they are not only established through marriage, but rather represent a wide form of organizing your personal life, both from a societal and individual perspective.

The recognition and legal protection of Rainbow Families has evolved favorably in the EU during the past two decades, an evolution marked by a change in legal standards brought about through litigation and the jurisprudence of the European Court of Human Rights, but also by a change in societal attitudes and perceptions regarding same sex couples. However, a number of landmark cases at the European Court of Human Rights (ECHR) create a firm standard of protection for Rainbow Families, which firmly enshrines life in a sex-same couples as constituting family life under the protection of the European Convention on Human Rights.

### **The evolution of European Court of Human Rights jurisprudence regarding Rainbow Families**

Article 8 of the European Convention on Human Rights protects the family and the European Court of Human Rights has consistently held that the legal definition of the family must not be discriminatory or unjustifiably restrictive. In Case X, Y and Z v. The United Kingdom, the Court ruled that "the notion of" family life "in Article 8 is not limited to married families and includes other de facto relationships. The case of Karner v. Austria, the Court has shown that discrimination against same-sex couples is a violation of the European Convention; In that case, Austria's domestic legislation protecting families housing dwellings did not extend its protection to same-sex couples, which, in the Court's view, constitutes discrimination.

In Schalk and Kopf v. Austria, the ECHR rejected the petition requesting the recognition of the right to same-sex marriage, showing that it remains an option for the signatory States but expressly stated that life in a same-sex couple constitute family life and enjoys guaranteed protection under Article 8 of the Convention. The Court ruled in another case against Austria, clarifying this time in P.B. and J.S. v. Austria that same-sex partnerships represents family life. The Court has held that the differential treatment at that time in Austria of cover for sickness insurance violated Article 14 of the ECHR (prohibition of discrimination) in conjunction with Article 8 (right to private and family life). In fact, the two plaintiffs, a homosexual couple, criticized the impossibility of using the health insurance of one of the partners, a civil servant, in the case of the other partner.

The position of the Court in Strasbourg is even more apparent in O'Donoghue and Others v. The United Kingdom, a judgment from 2010 which states:

*"The Convention institutions have accepted that limitations on the right to marry laid down in the national laws may comprise formal rules concerning such matters as publicity and the solemnisation of marriage. They may also include substantive provisions based on generally recognised considerations of public interest, in particular concerning capacity, consent,*

*prohibited degrees of affinity or the prevention of bigamy. In the context of immigration laws and for justified reasons, the States may be entitled to prevent marriages of convenience, entered solely for the purpose of securing an immigration advantage. However, the relevant laws – which must also meet the standards of accessibility and clarity required by the Convention – may not otherwise deprive a person or a category of persons of full legal capacity of the right to marry with the partners of their choice.”<sup>8</sup>*

In the case of *Vallianatos and Others v. Greece* in 2013, the Court ruled that when national authorities establish legal mechanisms to recognize a civil union between persons of different sex, same-sex couples can not be discriminated against and the absence of similar recognition for same-sex couples constitutes an infringement of Article 14 (prohibition of discrimination) along with Article 8 (right to privacy).<sup>9</sup> In 2015 in *Oliari and Others v. Italy*, the Strasbourg Court analyzed recent developments in relation to same-sex cohabitation in Italy and found that, in fact, same-sex cohabitation constitutes family life in Within the meaning of Article 8 of the ECHR, and must be protected as such, with national authorities having a positive obligation to do so.<sup>10</sup>

Most recently, and of particular relevance to this Court’s determination of the present case, in *Taddeucci and McCall v. Italy*, the European Court of Human Rights considered the refusal by the Italian authorities to issue a residence permit to the second applicant in the case. The refusal had been predicated on the basis that Italy’s domestic legislation’s did not recognize unmarried same-sex partners as capable of being entitled to a residence permit on family grounds. The Court found that the refusal to grant the applicants a residence permit on family grounds was unjustified discrimination and held that there had been a violation of Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life). In particular, the Court found that the circumstances of the applicants, an unmarried same-sex couple, could not be considered as comparable to that of an unmarried heterosexual couple. Since the applicants could neither marry nor – at the time of their complaint -- otherwise obtain any other form of legal recognition of their situation in Italy, they could not qualify as “spouses” under domestic law. The Italian authorities’ restrictive interpretation of “family member” had thus constituted, for same-sex couples, an insurmountable obstacle to obtaining a residence permit on family grounds. The Italian authorities had not adequately taken into account the applicants’ personal circumstances, including, in particular, their inability to obtain any form of legal recognition of their relationship in Italy. In light of this, the European Court of Human Rights concluded that, by treating same-sex

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<sup>8</sup> CtEDO, *O’Donoghue and Others v the United Kingdom*, 2010.

<sup>9</sup> CtEDO, *Vallianatos și alții c. Greciei* [GC], nos. [29381/09](#) and [32684/09](#), ECHR 2013 din 7 noiembrie 2013 disponibil la <http://hudoc.echr.coe.int/eng?i=001-128294>.

<sup>10</sup> CtEDO, *Oliari și alții c. Italiei*, 21 iulie 2015, disponibil la <http://hudoc.echr.coe.int/eng?i=001-156265&sa=X&ved=0CDUQ9QEwD2oVChMIwIcR1bn2xgIVI75yCh186Qh-#%22itemid%22:%22001-156265%22>].

couples in the same way as unmarried heterosexual couples, the Italian authorities had violated the applicants' right not to be subjected to discrimination based on sexual orientation in the enjoyment of their rights under Article 8 of the Convention.<sup>11</sup>

In addition to the above-mentioned instruments and case-law, it should be noted that there are currently only six countries who are member states of the European Union and who still do not provide for any type of legal protection and recognition for same sex couples. These are: Bulgaria, Latvia, Lithuania, Poland, Romania and Slovakia. Romania is currently the only country on the list above who does not ban same sex marriage in its Constitution – however, a group of conservative organizations are aiming to modify the constitution to regulate family as a union based solely upon the marriage between a man and a woman.

## **Family in Romania: legal definition; interpretation. The situation and (un)availability of legal protection for Rainbow Families**

The link between marriage and family remains at the core of the protection system. The Romanian Constitution<sup>12</sup> currently<sup>13</sup> refers to family as being:

*“... founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children”.*<sup>14</sup>

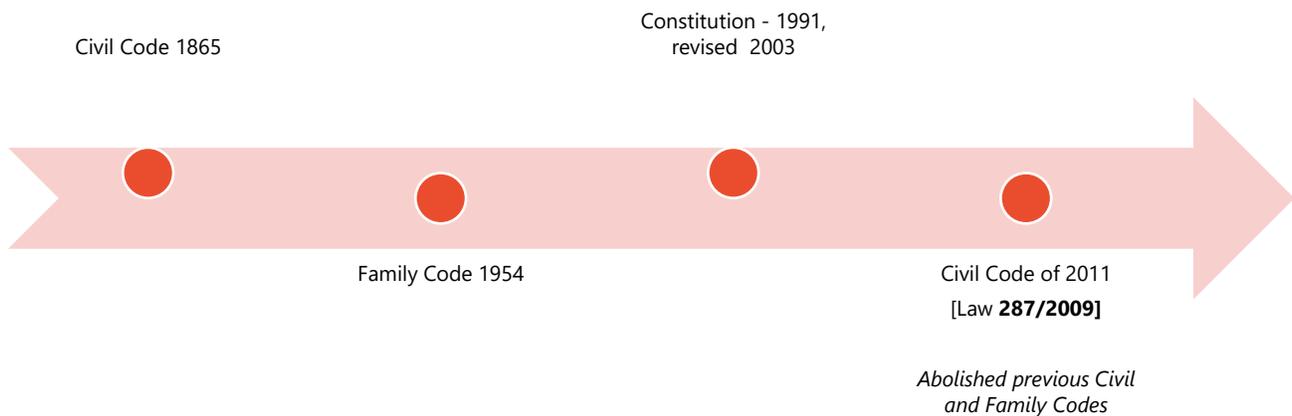
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<sup>11</sup> Written Supplementary Submissions on behalf of the AIRE Centre (Advice on Individual Rights in Europe), the European Commission on Sexual Orientation Law (ECSOL), FIDH (Fédération Internationale des Ligues des Droits de l'Homme), ILGA-EUROPE (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) and the International Commission of Jurists (ICJ) in *Coman Relu Adrian, Hamilton Robert Clabourn and Association Accept v. General Inspectorate for Immigration and Ministry of Home Affairs* before the Constitutional Court of Romania, July 2016.

<sup>12</sup> The Romanian Constitution [http://www.cdep.ro/pls/dic/site.page?den=act2\\_2&par1=2#t2c2s0sba48](http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2#t2c2s0sba48)

<sup>13</sup> At present, the Romanian Constitution defines the family as the free-willed marriage “between spouses”. However, a citizens' initiative, organized by the Coalition for Family - a group of NGOs, with the support of the Orthodox Church and other churches - gathered three million signatures in 2016 to change the Constitutional definition of family to a more restrictive wording. Although same-sex marriages are not possible or recognized in Romania, the Coalition for Family wants to amend the current constitutional provision so that it mentions that a family is the union between a man and a woman, allegedly fearing that the current article of the Constitution could be interpreted in favour of same-sex couples. .

<sup>14</sup> ARTICLE 48 para. [1] of the Romanian Constitution.



The legal regime and protection afforded to families in Romania did not significantly change or evolve since the Civil Code of 1865. The previous Civil Code had a strong Napoleonic influence and remains one of the most important pieces of legislation that governed private life in Romania – although recently replaced with the New Civil Code of 2011. The (socialist) Family Code adopted in 1954 modified only several chapters of the previous code, but these differences were important: the patriarchal position of the husband was replaced with full equality between wife and husband, and marriages were to be based on freely expressed consent. Thus, family relations were democratised. The protection granted by the state to marriage and family would be used as the point of departure for various interventionist measures in the private life of the family; notably the introduction, after 1966, of brutal pro-natalist measures prohibiting abortion, instituting a celibacy tax, penalties for childless couples, and disincentives for divorce. After 1990 these measures were abruptly abandoned and were replaced with new measures, including entitlement to childcare leave and the introduction of child allowance as a universal benefit<sup>15</sup>.

Under the provisions of the Family Code (with all of its modifications and amendments), marriage had two meanings: that of a legal document confirming the marriage of two future spouses which covers the substantive and formal issues addressed by the law; and that of the legal situation which arises following the act of marriage. In addition, marriage is also seen in a third sense, namely that of a legal institution. Without offering a clear definition of marriage, the provisions of the Family Code used to state that marriage is a union of a man and a woman which they freely conclude in compliance with the legal provisions, and with the aim of creating a family. A marriage is valid and

<sup>15</sup> In 1993 the child allowance became the only universal benefit, while most of the other family benefits were means-tested. While the scope of benefits for families increased up to 2010, the economic downturn meant that some of these measures (such as those providing supplies and allowances for new-borns) had to be scaled down, while others had to be restructured. In addition, the eligibility criteria for receiving allowances were tightened.

socially recognised only if two categories of conditions are met: substantive and formal. The substantive conditions are the mutual consent of the partners, their ages, and their health status. A formal condition—namely, that of gender difference— was not explicitly mentioned, but was inferred from the regulations concerning family relations.

Under current Romanian law (Civil Code 2011), a marriage remains valid and socially recognised only if the same two categories of conditions are met: substantive and formal. The substantive issues are the mutual consent of the partners, their ages, and their health status. Gender difference is now specifically mentioned, however, and same-sex unions/marriages are not recognised, even if the union was legally registered in another country that permits same-sex marriage.

### **Cohabitation and civil unions**

In Romania, cohabitation (or a free union) means that a man and a woman live together for a period of time. As a social reality, the cohabitation is not considered illicit. Romanian law does not forbid cohabitation, but it does not provide cohabiting couples with the same protections as married couples. The law does not acknowledge any legal effects of cohabitation.

As in marriage, the goods acquired by the partners during cohabitation are common property which are co-owned in percentage shares, assuming they were acquired while respecting the common law. For cohabiting couples, there is no assumption regarding the community of the partners' goods and of tacit trust between the partners. Children born to cohabiting couples (i.e., after the father recognises the child), have the same legal situation as the children of a married couple. Child benefits are granted to all children, regardless of their legal situation.

### **Under present law, cohabiting partners cannot adopt a child together.**

The legal literature in this area, especially after 1990, has noted the delicacy of the issues this social reality (cohabitation) raises. In recognition of this reality, some social protection laws have allowed families based on consensual unions and cohabitation to access some social benefits (for example, social aid or the family allowance). Moreover, to help protect cohabiting partners from domestic violence, some provisions related to cohabitation were introduced to the Penal Code. These measures have also helped to protect children born outside of marriage from abuse and neglect.

In sum, if cohabiting partners have a relationship similar to marriage, the legal relations between parents and children are similar to those of a family in which the parents are married.

### **Challenges**

Aside from the evolving definition of “family”, one area of conflict arises between the ability of State to control entry and residence within its borders and the impact this control has over an individual’s right to family life. Within international law, the general principle holds that a State has the right to regulate entry and residence within its own territory. When this power of control results in the deportation of an individual, this may cause a breach of an individual's right to stay with their family. This conflict occurs where the immigrant is the spouse, parent or relative of a State's citizen, and the State wishes to remove or refuse entry to the immigrant. When a challenge is brought forward to the Courts or monitoring bodies, a balance must be struck between the rights of the State to enforce immigration laws and maintain public order, and the impact the enforcement of said laws will have on an individual's right to family life.

In the context of the EU acquis (detailed in the following sections), this challenge becomes even more evident. Furthermore, civil unions and registered partnerships are considered equivalent or comparable to marriage in some EU countries. In countries which do not allow same-sex marriages but which have introduced some form of registered partnership, a same-sex marriage abroad generally gives you the same rights as a registered partnership.

However, the laws of these EU countries **do not** provide for registered partnerships:

- Bulgaria
- Latvia
- Lithuania
- Poland
- Romania
- Slovakia

### **Surrogacy**

Surrogacy is not dealt with in Romanian legislation. Currently, the Civil Code (art. 441-447) only addresses medically-assisted human reproduction with a male donor (‘reproducerea umana asistată medical cu un terț donator’) and cover in-vitro fertilization techniques. The Civil Code establishes, under art. 441, that the use of such technologies does not determine filiation between the child and the donor – which also implies that the donor (a third party to the couple benefiting from medically-assisted human reproduction) would not have parental rights or claims over the child. The Civil Code also implies that AHR with a donor is only performed by married couples, thus excluding any other type of contemporary family.

### **III. Main institutional actors in the struggle for ensuring the protection and recognition of rainbow families in Romania**

In addition to the lack of recognition and protection, in recent years, the Romanian LGBTI community and Rainbow Families in particular have been facing concomitant threats and opportunities, in terms of ensuring the legal recognition and protection of same-sex couples as family entities. Concretely, a *Citizens' Initiative* aiming to redefine family as a concept in the Constitution as being solely based on a heterosexual marriage with a reproductive purpose.

At the same time, the Romanian Parliament has been analyzing a legislative proposal aiming to regulate civil partnership, a new civil status institution open to both homosexual and heterosexual couples. In parallel, a legal case contesting the violation of the right to freedom of movement attached to EU citizenship for a Romanian national who qualifies as an EU citizen and his same sex spouse reached the level of the Constitutional Court of Romania. In November 2016 the landmark case was referred to the Court of Justice of the European Union, in the first preliminary reference procedure initiated by a Constitutional Court in a „new” member state and, consequently, the first for Romania. A decision is still pending.

In order to fully understand the context in which rainbow families live, we list the main institutional, political and civil society actors relevant in the struggle for ensuring the protection and recognition of rainbow families in Romania, or challenging it.

#### **The Constitutional Court of Romania**

The Constitutional Court is the sole authority of constitutional jurisdiction in Romania, and it is independent of any other public authority. At the level of provisions enshrined by the Basic Law, regulations on the Constitutional Court are to be found under the six Articles in Title V (Articles 142-147), which are further complemented by Law No. 47/1992 on the Organization and Operation of the Constitutional Court, republished.

To fulfil its functions as the "guarantor for the supremacy of the Constitution", the Court discharges the following powers prescribed by Article 146 of the Basic Law.

Relevant to rainbow families are three particular tasks – among others - which are part of the mandate of the court:

1. reviewing the compliance with the conditions for the exercise of a legislative initiative by citizens;
2. adjudicating the constitutionality of laws, before promulgation, ex officio, on the initiative to revise the Constitution;
3. deciding on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or of commercial arbitration;

On July 20<sup>th</sup> 2016, the Constitutional Court fulfilled the first two tasks in relation to the citizen initiative aiming to ban same-sex marriage in the Romanian Constitution. On the same day, the Court held the first hearing in the *Coman Case*, aiming to decide if Civil Code provisions banning the recognition of same-sex marriage concluded abroad, with no infringement upon freedom of movement provisions, are constitutional in relation to article 26 of the Constitution, guaranteeing the respect for private and family life for all Romanian citizens. The decisions in both cases will be further analyzed below.

### **The National Council for Combating Discrimination**

The National Council for Combating Discrimination (NCCD) is the autonomous state authority, under parliamentary control, which performs its activity in the field of discrimination.

The National Council for Combating Discrimination was established pursuant to the adoption of Government Ordinance no. 137/2000 and Government Decision no. 1194/2001 on organization and function of NCCD. These legal acts represented the transposition of the community legislation in the field at national level. At European level there are institutions assigned to human rights protection and combating discrimination but NCCD is unique, its activity combining 14 discrimination criteria – sexual orientation included - no other institution having such a vast sphere of action, including sanctioning.

The National Council for Combating Discrimination is a party cited by law in the *Coman Case*, and the only Romanian authority taking a firm stance in requesting the courts and the legislative to enshrine the protection of families based on same sex couples in secondary legislation. NCCD President Csaba Asztalos had a statement in front of the Constitutional Judges, arguing in favor of the *Coman-Hamilton* family and requesting that articles banning the recognition of same-sex marriages and civil partnerships conducted abroad be declared unconstitutional, in light of the respect for human dignity.

### **The Romanian Parliament**

The Romanian Parliament, regardless of its membership in terms of political parties or political families, has consistently rejected the recurrent civil partnership bills it reviewed. Currently, all major political parties, with the exception of the Save Romania Union and the Democratic Union of Hungarians in Romania, have signed agreements with the Coalition for Family to support their citizen initiative to redefine family in the Romanian Constitution. However, recently, the steering committee of the Save Romania Union voted to oppose in Parliament the citizen initiative, which led the party president Nicusor Dan to resign from his position, as a conservative leader. Moreover, all political parties have a number of politicians who understand and support the plight of rainbow families, but they represent a very small minority of their respective parties. Until the time this report was drafted, the Chamber of Deputies had approved, with a vast majority, the citizen initiative, and it is pending a hearing in the Senate.

### **The Romanian Government**

The Government, regardless of their political affiliation, has constantly been against the establishment of civil partnership in secondary legislation. Moreover, at the Constitutional Court during the Coman Case the government took a strident, negative stance, claiming the recognition of same sex marriages concluded abroad would go against public order, while not contributing to the sustainability and economic development of Romanian families.

## **IV. Initiatives against Rainbow Families - restricting the definition of family in the Romanian Constitution**

On 25 November 2015, a group of citizens published their initiative, stating they want to revise the Romanian Constitution in order to clarify art. 48. And replace the term spouses with a man and a woman in paragraph 1: „family is established on the freely agreed upon marriage between spouses, on their equality and their right and duty to rear, educate and rear children.”

There are several stages to this initiative and almost all of them have been completed at national level, as follows:

Phase 1: Legislative Council’s favorable ‘vote’ – stage: complete

- The initiative for constitutional revision already acquired the positive ‘notice’ (favorable opinion) of the Legislative Council. Please note that on the same date

Phase 2: Collecting signatures in support of the initiative – stage: complete

- The citizen initiative group collected over 3 million signatures, with the massive involvement of the Romanian Orthodox Church, as news reports underline. Irregularities have been reported to ACCEPT, among which we mention school collection, the collection under false pretense (those collecting signatures were claiming they were conducting an opinion pools), relatives used personal data from family members and signed without their consent (including relatives of LGBTI individuals).
- A major gap in current legislation is the lack of transparency and checks and balances in the citizen initiative process. According to the law, citizens who believe they might be on a specific list abusively, should go to the municipality that issued their ID and check the lists 15 days after they were submitted for official verification. However, municipalities did not published they were checking signature lists, and, as a result, those doubting the validity of the list were unable to verify them. The formal validation is a simple stamp, put on the corner of the piece of paper listing the signatures, and we have no means of evaluating the process. Authorities have refused to publish the list, so that anyone can check them.
- Before a major legislative modification in 2012, called the Black Tuesday, when a number of Penal Code provisions were eliminated to protect those who were corrupt in the Parliament, the law on organizing referenda provided for integrity checks, financial transparency and accountability of the initiators. All those provisions were removed, including fines for coercing people into signing or not informing them properly on the topic at hand.

Phase 3: Review for compliance with Constitutional provisions – performed by Constitutional Court

- After the process of gathering signatures is finalized, the initiative, together with the lists of signatories and the positive notice of the Legislative Council, is submitted to the Constitutional Court.
- The Constitutional Court has 10 days at its disposal to make a decision with regard to the compliance with the “constitutional provisions regarding revision”
- The decision of the CC is taken in the Plenary, by at least 2/3 of the number of judges (6 out of 9 have to be for / against for the decision to be valid)

*Limitations of Constitutional revision:*

- The provisions with regard to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, territorial integrity, and independence of justice, political pluralism and official language shall not be subject to revision
- *No revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof.*
- The Constitution shall not be revised during a state of siege or emergency, or in wartime. After the Constitutional Court analyzes the initiative for compliance with the conditions for Constitutional revision, the initiative is submitted to Parliament for voting.

Some 24 NGOs in Romania and 4 international human rights organizations have asked the Constitutional Court of Romania (CCR) reject the initiative which aims to restrict the definition of family, by amending Article 48 (1) of the Romanian Constitution. The signatory organizations considered the initiative illegal in relation to the constitutional provisions and international law standards, standards that Romania has undertaken to respect. The initiative to redefine the family in the Constitution from a religious perspective belongs to the Coalition for Family and aims to restrict the right to privacy and family of all those who are single parents or families based on heterosexual couples who are not married, and families based on same sex couples, thereby infringing the principle of equality and non-discrimination.

Amnesty International, International Commission of Jurists, ILGA-Europe, the European Commission on Sexual Orientation Law also support the position of the NGOs in Romania, by submitting a separate legal opinion to the Court.

Through our intervention, we asked the Constitutional Court, the institution invested as the guarantor of the Constitution supremacy, to reject this initiative ending a pointless manipulative exercise which generates hatred in our society. This Coalition for Family initiative is an abuse of law. It proposes a restrictive definition for the family as exclusively based on marriage between man and woman for the purpose of procreation. Therefore, the initiative is prohibited under the rules governing constitutional revisions, because the result will be the suppression of fundamental rights

and freedoms of lesbian, gay, bisexual and transgender individuals. ACCEPT sent CCR an amicus curie that presents arguments of European law and comparative constitutional law, showing how family and marriage have evolved in the European Court of Human Rights (ECHR) jurisprudence.

The Family Coalition has in turn been supported with Amicus Curie briefs from three international organizations, including the Liberty Council and the European branches of the Alliance Defending Freedom and the American Centre for Law and Justice. For us, it is highly problematic to see American organizations with a clear agenda to spread hate and inequality around the world intervene with such force. According to their clear objective, these organizations are currently involved in an attempt to exclude same sex families from constitutional protection around the world, because they have failed to do so in the US. The Southern Poverty Law Centre labels the Liberty Council as a hate group. Details here: <https://www.splcenter.org/fighting-hate/extremist-files/group/liberty-counsel>

**The Court ruled on July 20th that the Citizen Initiative is admissible, and the decision has been drafted. There is only one reference beneficial to Rainbow Families:**

*40. Further analyzing the conformity of the proposed modification with the provisions of paragraph (2) art.152 of the Fundamental Law, regarding the interdiction of suppressing the fundamental rights and liberties or their guarantees, the Court notes that, firstly, the text proposed to be modified bears the marginal name of Family, and its content establishes a series of guarantees and principles regarding marriage. Bearing in mind the content of the regulation, the Court holds that art.48 of the Constitution enshrines and protects the right to marry and the family relationships result from marriage, distinctly from the right to a familial life/respect and protection of the familial life, with a much more larger legal content, enshrined and protected by art.26 of the Constitution, according to which “(1) The public authorities shall respect and protect the intimate, family and private life. (2) Any natural person has the right to freely dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals.” The notion of family life is complex, containing also the family relations, distinctly from the family relations resulting from marriage, whose importance entitled the legislator to point out distinctly, in art.48, the importance of the family relationships resulting from marriage and from the connection between parents and children. (page 16)*

Phase 4: Vote by Parliament + referendum – the current stage

- The draft or proposal of revision must be adopted by the Chamber of Deputies and the Senate, by a majority of at least two thirds of the members of each Chamber. Both need to vote on it, subsequently.
- The decision of the Constitutional Court has to be taken into consideration by the Parliament. If one chamber votes in favour and one against, then a reconciliation procedure begins, and

the plenary is called to vote and a majority of at least three quarters of the number of Deputies and Senators is required to pass the proposal.

- Within 5 days after the vote in Parliament, the Constitutional Court will express its opinion, ex officio, on the compliance of the constitutional revision law with the decision of the Court and the applicable conditions / limitations.

There is no deadline stipulated for this step. Legislative processes in Parliament can take from 2 weeks to several months, depending basically on the urgency and political will to accelerate the adoption of a specific type of legislation or not.

In May 2016, the initiative group submitted the initiative bill to the Senate instead of the Chamber of Deputies. While filing the documents in time, the initiative group and the Senate were wrong in identifying the responsible institution. This was contrary to the procedure provided in Art. 151 of the Constitution which indicates as order of the responsible chambers first the Chamber of Deputies and second the Senate. In November 2016, we had a formal meeting in which we presented our arguments to the Senate Commission on Constitutionality, however they voted unanimously to support the proposal.

Following the favorable report from the Constitutionality Commission, the citizen initiative bill has been on the agenda of the Senate plenary, but the politicians did not put it to a vote. Instead, the process was frozen during the electoral campaign, following a vocal request by 90 civil society organizations, led by ACCEPT.

The discussion started again at the end of January - beginning of February 2017, when the new Senate was of the opinion that they are not the appropriate chamber to discuss the initiative, since this is not an ordinary, but a constitutional revision proposal. As a result, On February 7th 2017 the Senate plenary voted to have the initiative transferred to the Chamber of Deputies without a final vote.

Following this vote, ACCEPT expressed its opposition to the current procedure, focusing on the fact that a number of cumulative conditions needed to be satisfied, in order to consider the initiative legal, such as a 6 month deadline to submit the proposal to the appropriate Chamber of Parliament, after the publication of the citizen initiative in the Official Journal (deadline met on 25 May 2016).

The Chamber of Deputies started discussing the initiative on February 13, where it gained favorable opinions and reports from all the responsible Parliamentary Committees. Procedural matters were raised time and again, during the meetings of the Legal Committee, by ACCEPT and by a number of politicians.

On March 28th, the citizen initiative was put on the agenda of the Plenary session of the Chamber of deputies, that discussed and voted on a number of amendments. One of them focused on separating the notion of family and marriage using the wording of Art. 12 of the ECHR, thus recognizing the differentiation between the two civil law notions and offering inclusive protection to diverse families. The amendment was rejected, and the proposal that should have been submitted for a final vote the following day was the initial definition of the initiative committee - family based upon the marriage of a man and a woman. On March 28th, the Chamber of Deputies plenary refused to vote on the final proposal, arguing that after further thought, the Chamber of Deputies is not the competent chamber to discuss the citizen initiative first. The plenary voted with a large majority to send back the citizen initiative to the Joint meeting of the Permanent Bureaus of the Chambers and the Senate, to establish the rules of constitutional revision and clarify chamber competence.

As a result, as of today the citizen initiative seems to be in a policial limbo. However, this moment seems to be adequate to request an official opinion from the Venice Commission on Democracy through Law, regarding the constitutional revision process, the democratic guarantees of the citizen initiative legislation and the accountability of the initiative committee, as well as the very content of the proposal as well. The Venice Commission has repeatedly stated that a constitution needs to have an inclusive family definition, not restricted to marriage, but protecting all diverse families in society.

If the citizen initiative will be adopted by the Parliament, then the proposal will be submitted to a national referendum, following another round of revision by the constitutional court.

Referendum: The revision is only final after the approval by a referendum held within 30 days of the date of passing the draft or proposal of revision. The current threshold is 30% participation with 25% valid votes, and a 50%+1 majority. However, there are opinions from the Venice commission that such a threshold is too small for a constitutional reform, saying that the participation threshold with which a constitution is modified should be similar to the participation threshold with which it was adopted.

The role of the President in this procedure is limited. First, please note this is the first and only citizen initiative that is going this far in regards to a constitutional amendment. As a result, some legal provisions are unclear or subject to interpretation. If the Parliament approves the initiative, the President will have to promulgate the law on the organization of the actual referendum - setting the question and the date. It is unclear if the president could refuse to promulgate the law, or ask for its reexamination as in case of ordinary legislation, and even more uncertain if he would take such a risk. The president had, so far, statements saying that he does not encourage religious fanaticism, but would rather uphold the protection of minorities.

## **V. Family equality through the lens of freedom of movement – a step forward to the recognition and legal protection of Rainbow Families**

One of the most interesting recent cases that raises the issue of the unavailability or legal protection for Rainbow Families is that of Relu Adrian Coman, and his husband, American citizen Robert Clabourn Hamilton. The couple have sued the Romanian state for refusing to recognize their marriage, which took place in 2010 in Brussels. Not only that, but the Romanian authorities are also adamant in refusing to accept that the gay couple are indeed forming a family. Without this formal recognition, the couple cannot live together in Romania, as residency rights are only granted to family members. Currently, Clai Hamilton cannot legally live in Romania for periods longer than 3 months, although he is married to a Romanian citizen. Despite their marriage being legal, it is not acknowledged by the Romanian state. Should Adrian Coman have married a woman, and not a man, these problems would never have existed.

ACCEPT and the Anti-Discrimination Coalition are supporting the couple in their efforts to protect their right to family life as well as the right to free movement. Human rights lawyer Iustina Ionescu has been representing the two in front of the Court since 2013.

In this case, the Romanian Constitutional Court will rule on lawfulness of Art 227, points 2 and 4 of the Civil Code, particularly as they apply to the Coman-Hamilton case. The first RCC hearing took place on Wednesday, 20 July 2016, the same day when the Romanian Court decided on the legality of the initiative of the Coalition for Family, which is looking to redefine the family as a civil institution in the Romanian Constitution, doing so from a religious perspective. The Romanian state, represented by the Immigration Office as well as by the Internal Affairs Ministry, is using the Romanian Civil Code as grounds for refusing to recognize the effects of a marriage between two men, although this has legally taken place in Belgium and has effectively and legally created a family. However, irrespective of these policies, the Civil Code states that the right to family, even a same-sex one, needs to be respected in the context of asserting one's right to free movement on the territory of the European Union.

The Romanian Civil Code, vague and contradictory, is preventing the Coman-Hamilton couple to exercise their right to family life in Romania. This right is, however, guaranteed in Art. 26 of the Romanian Constitution and Art 8 of the European Convention on Human Rights.

Recent jurisprudence from the European Court of Human Rights has decided in similar cases against Italy and Croatia that the states have an obligation to recognize same-sex couples who have been legally married or created a civil partnership abroad, or who are in de facto unions. This obligation is crucial, particularly in the Romanian legislative context, under which these couples have no means of making their relationship legal, nor do they have any legal protection. The Romanian Constitutional Court must now rule on whether these restrictions on recognizing same-sex couples in the Civil Code are constitutional and uphold the human rights standards Romania has committed to.

During another RCC hearing held on 27th October 2016, lawyer Iustina Ionescu raised the issue of submitting a request for a preliminary ruling on the way Romania applies freedom of movement principles, in conjunction of fundamental rights regarding private and family life for same sex spouses. The Court ruled on November 29<sup>th</sup> that, for the first time in its history, will request a preliminary ruling. ACCEPT welcomes the decision of the Romanian Constitutional Court to consult the Court of Justice of the European Union (CJEU), regarding the interpretation of community law on the application of the right to free movement of European citizens in same-sex families. The decision is historical, being the first time when the RCC sends preliminary questions to the Luxembourg-based Court. Also for the first time, the CJEU is asked about the meaning of the term „spouse” in the EU Directive on the right to free movement, in order to clarify whether it includes same-sex spouses. Through this decision, the RCC shows that Romania belongs to a space of European values, from which our country cannot be separated nor isolated.

The RCC decision is encouraging, as it is an important step for a unitary interpretation of community law, regarding the application of the right to free movement of EU citizens. CJEU will decide regarding mutual recognition of the family status for same-sex couples, by interpreting and clarifying the term „spouse.” This basic principle of community law allows Romanians to move freely to other EU Member States to live, work or study; EU citizens’ rights also need to be respected when they move to Romania<sup>16</sup>.

The case timeline, legal provisions under scrutiny, as well as the preliminary questions referred to the CJUE, can be followed in the Annex to this Report, concerning “Current legislative provisions pertaining to freedom of movement and same-sex family recognition”, and “Case timeline”.

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**To conclude, in Romania, Rainbow Families are not recognized by the State. Same-sex couples cannot register their partnership and remain at a disadvantage compared to married couples from a rights-based perspective. Adoption, second-parent adoption and medically assisted insemination**

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<sup>16</sup> An annex compiling the main legal provisions in the area is available for consultation at the end of the Report.

are rights that LGBTI people cannot access. In terms of children's and parental rights, same-sex couples are thus heavily discriminated against. Their children are hit particularly hard by this discrimination, because they are unprotected on issues of child support, custody, succession and the right to personal contact after a separation.

In the following section of this Report, we will explore how Rainbow Families are affected by the unavailability of legal protection and recognition in 2017 Romania.

## **VI. Documentation on the situation of RAINBOW families in Romania**

In May 2017, ACCEPT conducted documentation work with regard to the concrete situation of Rainbow Families in Romania, aiming to examine the circumstances and capture the multitude of experiences and needs of LGBTI couples, LGBTI children living with their families, and LGBTI parents and those planning parenthood.

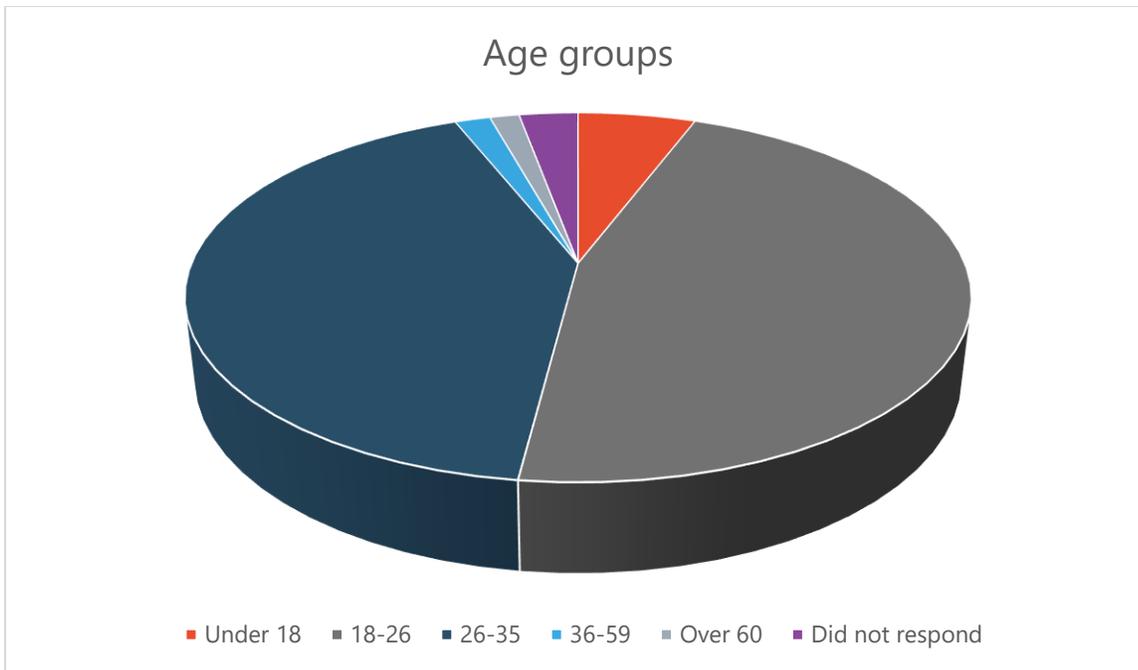
Through an online survey and focus group, as well as individual interviews, ACCEPT managed to collect data regarding the needs and issues arising from discrimination, lack of recognition, limitations of rights access to social rights etc. This has allowed to examine specific needs of different Rainbow Families, as well as identify policy gaps and gaps in services for Rainbow Families.

### **Survey - data analysis**

A total of 87 respondents participated in the online survey. A detailed description of their responses is illustrated below.

#### ***Age groups:***

Out of the 87 respondents, the majority (61 persons, over 70 %) were aged between 18 and 35. At the same time, 21% (19) of the respondents belonged to the age-group 36-60, and only one of the individual respondents was aged over 60 years old. 4/6% (namely four) of the respondents stated they were under 18 and 2.3% (2 individuals) did not wish to provide their age.



**Sexual orientation**

Regarding their sexual orientation, 61 of the respondents identified as gay/lesbian, 17 as bisexual, 2 as heterosexual, 1 individual self-identified as asexual and 5 as “other”, while 2 participants did not wish to respond.

Q2. How would you identify with regard to your sexual orientation?													
	Gay Or Lesbian;		Bisexual;		Heterosexual;		Asexual;		Other		Did Not Answer		Total
Responses Received	61	70.11%	17	19.54%	2	2.30%	1	1.15%	5	5.75%	2	2.30%	87

**Civil status**

As far as their civil status is concerned, only 2 of the respondents stated they were married to a same sex partner; 9 respondents indicated they were in a civil/domestic partnership of marriage with an opposite sex partner. At the same time, 39 individuals (almost 45% of respondents) indicated they were living together with a same-sex partner, 20 respondents stated they were single at the time of responding, and 16 were in a relationship with a same sex partner, but not living together.

Q4. What is your civil status/ Are you currently in a relationship?										
	I am single	I am in a relationship with a	I am in a relationship with a	I am married (same	I am divorced	I am in a recognized partnership	I am in a relationship with a	Other / Not applicable	Did not answer	Total

			same-sex partner, but not living together	same sex partner and we live together	sex partner)		with a partner of the same gender	partner/spouse of a different gender											
Responses Received	20	22.99%	16	18.39%	39	44.83%	2	2.30%	1	1.15%	0	0%	9	10.34%	0	0%	2	2.30%	87

### **Location**

Many respondents (64 out of 87) indicated that they live in an urban environment, and 20 stated they were living abroad. Only 3 of the respondents indicated they lived in a rural environment.

Q5. Where do you live ...?									
	Urban environment (city) in Romania;		Rural area (village) in Romania;		Abroad		Did not answer		Total
Responses Received	64	73.56%	3	3.45%	20	22.99%	2	2.30%	87

### **Children/family composition**

A total of 81 respondents indicated they were without children; only 4 individuals (4.6% of respondents) stated they had at least one child, while 2 persons did not respond to the question. In all cases, those who were parents were living together with their children.

Q6. Do you have children?							
	Yes		No		Did not answer		Total
Responses Received	4	4.60%	81	93.10%	2	2.30%	87

### **Q7. If you do have children, are they living with you?**

	Yes		No		Did not answer		Total
Responses Received	4	4.60%	25	28.74%	58	66.67%	87

### **Employment, education and healthcare**

Almost half of the respondents (over 47% , namely 41 respondents, were working legally, while another 20% (18 persons) were either self-employed or otherwise independently employed (as

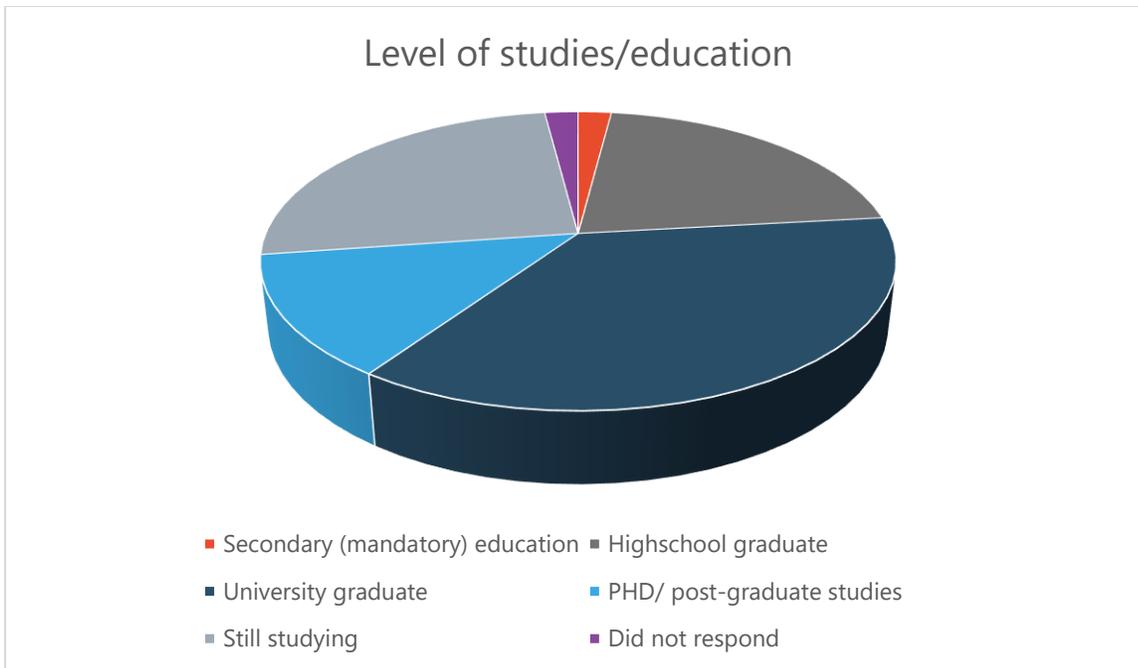
consultants, collaborators, service providers etc.). A significant percentage (31%, or 27 persons) were not at the time of the survey working in gainful employment. In close correlation with access to and effective employment, over 66% of the respondents (58 persons) indicated they had a state medical insurance and 25% (22 persons) had at least a private health insurance. A total of 16 persons did not own either type of insurance, which leaves them unprotected from the healthcare perspective. This currently constitutes a significant issue for persons in unrecognized partnership, since – compared to married individuals, who can benefit from the spouse’s healthcare insurance, persons in unrecognized partnerships cannot receive free of charge medicals services based on their partner’s medical insurance.

Q8. Are you presently working?									
	Yes, with a work contract		no;		I do not have a work contract, but I am otherwise working independently (consultancy, service provision etc.)		Did not answer		Total
Responses Received	41	47.13%	27	31.03%	18	20.69%	2	2.30%	87

Q9. Do you have a health-insurance?										
	Yes, I have a state/public medical insurance (CAS);			Yes, in the private system.		No		Did not answer		Total
Responses Received	58	66.67%		22	25.29%	16	18.39%	5	5.75%	87

*\*Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.*

With regard to their education/level of studies, most of the respondents were university graduates (36 persons, or 41.38%). At the same time, 25 persons (over 28%) were still studying, 21 persons (24%) were high school graduates and 13 persons (close to 15%) had graduated PHD/post university education. Only 2 of the respondents had graduated secondary education, while 2 persons preferred to not respond to the question.



*Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.*

### **Sexual orientation, gender identity and family life**

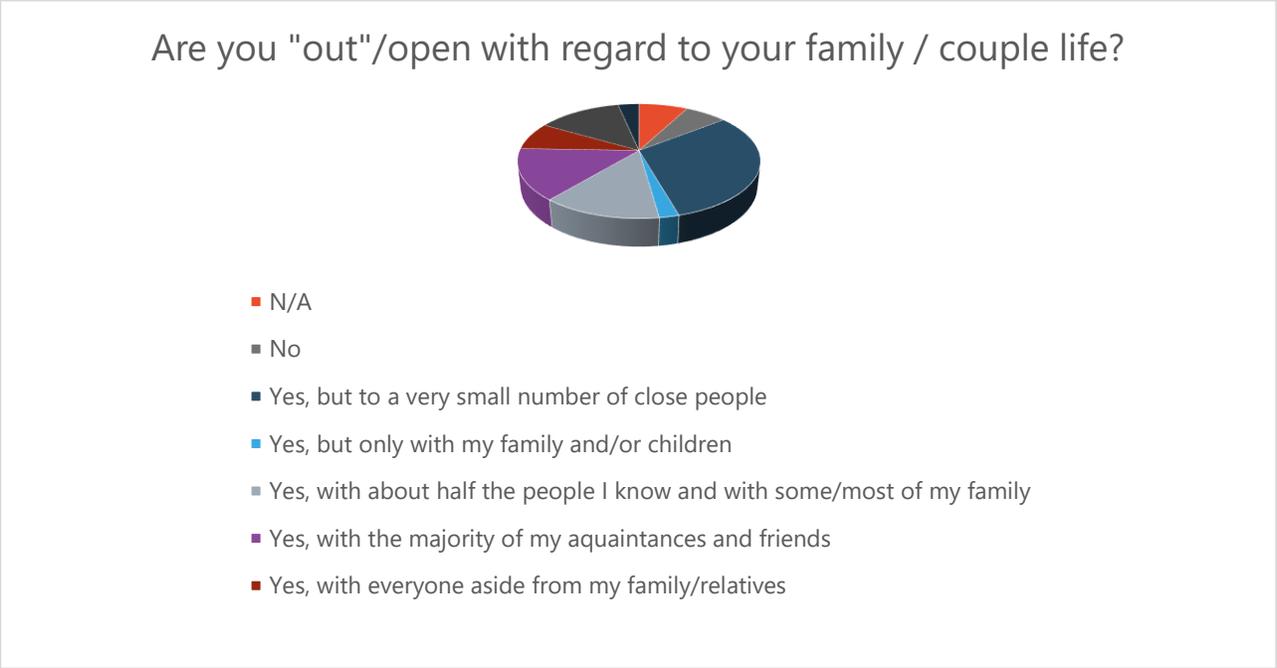
When asked if they were out with regard to their sexual orientation, a majority of the respondents (32 persons, representing over 36% of the total number of survey participants) indicated they were only out towards a small number of people, mainly friends and closer acquaintances.

Only 3 persons stated they were not out at all, and also 3 stated they were only out to their partner and close family members/children. Less than 15 % (13 persons) were out to everyone, and another 13 Or 14% of the number of respondents stated they were out to about half their acquaintances and friends.

At the same time, 12 persons indicated they were out to almost everyone, apart from their family/relatives. This is noted especially for the age-group 60+ and under 26.

Q11. Are you 'out' (open with regard to your sexual orientation)?																				
	No;		N/A;		Yes, but to a small number of close people		Yes, but only to my family/partner and children.		Yes, with about half the people I know and with some/most family members;		Yes, with the majority of the people I know.		Yes, with everyone, apart from my family		Yes, I am open with everyone		Did not answer		Total	
Responses received	3	3.45%	1	1.15%	3	36.78%	3	3.45%	1	14.94%	1	16.09%	1	13.79%	1	14.94%	2	2.30%	87	

For those in a couple/relationship at the time of taking the survey, a majority indicated they were not out with regard to their life as a couple, with a few exceptions (close persons). Only 12 of the respondents stated they were out to everyone regarding their couple/family life.



Interestingly enough, when asked about the reasons that prevented them from being out with regard to their family/couple life, the vast majority of respondents (\*59) indicated that they were either afraid of discrimination (33.33% of the total number of respondents) or afraid of 'other problems' (34.48%).

Q13. If applicable, why is it that you are not open about your life as a couple/family?								
	It is nobody's business, it is personal;	Because of discrimination;	For fear of not encountering other problems;	Because being open would not change anything in our lives;	Because we do not want to – do not feel a need to.	Another reason (...)	Did not answer	Total

Responses Received	8	9.20%	29	33.33%	30	34.48%	3	3.45%	5	5.75%	7	8.05%	28	32.18%	87
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Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.

**Acceptance by family members, friends and acquaintances:**

When asked if they had ever been confronted with prejudice or discrimination from their relatives/extended family, because they were part of an LGBTI couple/rainbow family, over 43% of participants (38 persons) indicated they had faced at least on such situation. At the same time, 21 persons (24%) did not respond, while 28 persons (32%) stated they had not felt discriminated against by close family.



A lower but still significant number of respondents indicated they struggled with prejudice and discrimination from friends, because they were part of a rainbow family – 21 persons or 24% of the total number of respondents answered to that regard.

In fact, during individual and focus group interviews, one of the respondents indicated that:

*“Not many people know about me. I told my mother 2 years ago because she was going through a rough time, she had cancer. During the first 10 minutes after telling her, she only said that I would grow out of it, that it would pass”.*

(A, undisclosed age, Cluj - Romania)

A similar reaction was described by an even younger respondent:

*“It is difficult because most of the people around me don’t know. Not even my parents. I think they will beat me. I told my father once about a friend who is lesbian and my dad starting cursing and saying I should not hand out with her anymore, she can be a bad influence”.*

(A, 16, Turda - Romania)

Q16. For persons in a relationship/rainbow family, were you ever confronted with prejudice or discrimination from close friends or acquaintances?							
	Yes		No		Did not answer		Total
Responses Received	21	24.14%	45	51.72%	21	24.14%	87

When it comes to neighbors and persons from the close community, only 18% of respondents indicated being confronted with discrimination. In correlation with the number of persons who indicated they were not open with regard to their sexual orientation/family status (q11), the percentage becomes quite significant. The percentages are also quite significant for non-responding participants, which may also be linked to non-disclosure of information concerning their family status.

Q18. For persons in a relationship/rainbow family, were you ever confronted with prejudice or discrimination from neighbors or the close community?							
	Yes		No		Did not answer		Total
Responses Received	16	18.39%	48	55.17%	23	26.44%	87

Strengthening the importance of community acceptance - or the lack thereof, one of the respondents in the individual interviews indicated that:

*“I am in a relationship for the past 2 years. It is stable. Very few people now. This is a city with small town attitude (smiles). We thought about going somewhere where we can be ourselves. But we like our jobs here. We could never have a normal family if we stay in Romania.”*

(D, 33, Galati)

**Acceptance by co-worker, colleagues, or in the context of access to rights/service provision:**

Finally, with regard to the attitudes in the workplace or educational institutions, as well as access to rights and services, respondents still indicated instances of perceived discrimination on account of their family status.

When it comes to the workplace and school (university) environment, some 20 respondents indicated they were confronted with prejudice.

Q20. For persons in a relationship/rainbow family, were you ever confronted with prejudice or discrimination from work colleagues / colleagues from school or employers?							
	da;		nu		Did not answer		Total
Responses Received	20	22.99%	45	51.72%	22	25.29%	87

In relation to access to specific rights and services, most of the respondents indicated healthcare related services and banking services as the main areas where discrimination or prejudice towards their family status was perceived.

In fact, one of the respondents in the individual and focus group detailed discussions stated, on the topic of attitudes:

*“I work in kineto-therapy for the past 7 years, I have my private business here. I am currently single but when I was in a relationship and my parents finally accepted it, even though my mother had to go past many barriers – basically she went through the same things that I went through, as a teenager. But when I told her I want to be more involved in activism in my town, she went through a paranoid phase. She was very much afraid that people would start pointing fingers, and everybody knew her in our home town. And she thought I would expose myself to some nasty things.*

*The fact that I am gay did not affect my business, or my friendships, I was taking my partner everywhere. I have a feeling that if we want to change anything in Romania, more people need to get out of the closet, but I am aware it is not easy for everyone especially if they are surrounded by people who do not support them.”*

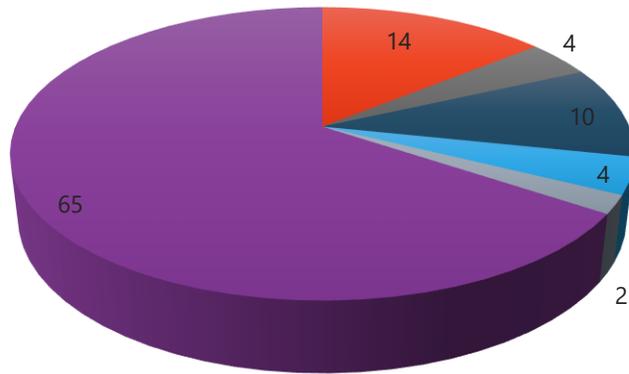
(V, Oradea, 27)

Furthermore -and relevant to this topic, one of the other respondents in the individual and focus group interviews stated, concerning the general workplace environment:

*“In my town I lived in a constant state of panic that I was going to be exposed and something bad might happen, and that certain professional opportunities would also be limited or restricted because of my sexual orientation. Working with children there is this risk, I have had parents of children who withdrew them from class because of me.”*

(L, gay, Turda – Romania, education expert)

Respondents (no) - prejudice or discrimination on account of your family status, when trying to access specific rights and services as a couple/family



The percentages are also quite significant for non-responding participants, which may also be linked to non-disclosure of information concerning their family status.

Q22. For persons in a relationship/rainbow family, were you ever confronted with prejudice or discrimination on account of your family status, when trying to access specific rights and services as a couple/family?

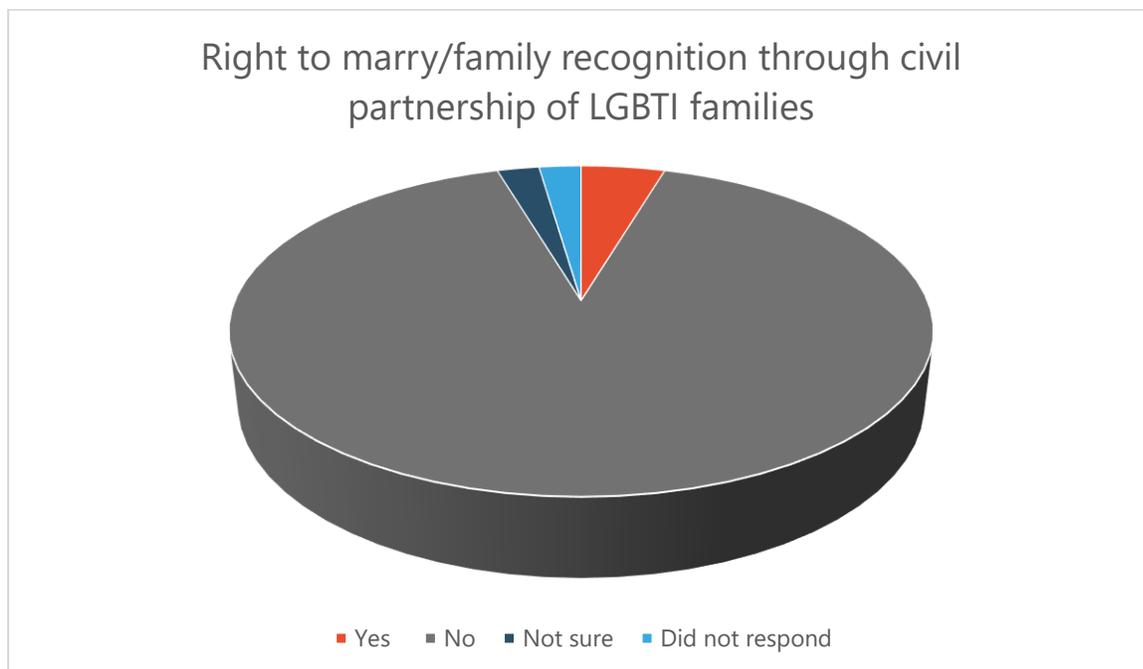
	Healthcare (when you went to the doctor, when you tried to apply for or benefit from insurance etc.)		Private services		Bank services (loans, opening accounts etc.)		Education (i.e. enrolling children in kindergarten or school etc.)		Freedom of movement as a couple/family		Did not answer		Total
Responses Received	14	16.09%	4	4.60%	10	11.49%	4	4.60%	2	2.30%	65	74.71%	87

*Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.*

**Knowledge/awareness of family-related rights**

When asked about the rights that LGBTI couples have about marriage or an otherwise recognized civil partnership, the clear majority of respondents (79 persons, which represent over 90% of the total number of survey participants) indicated that they are aware they would not have such rights.

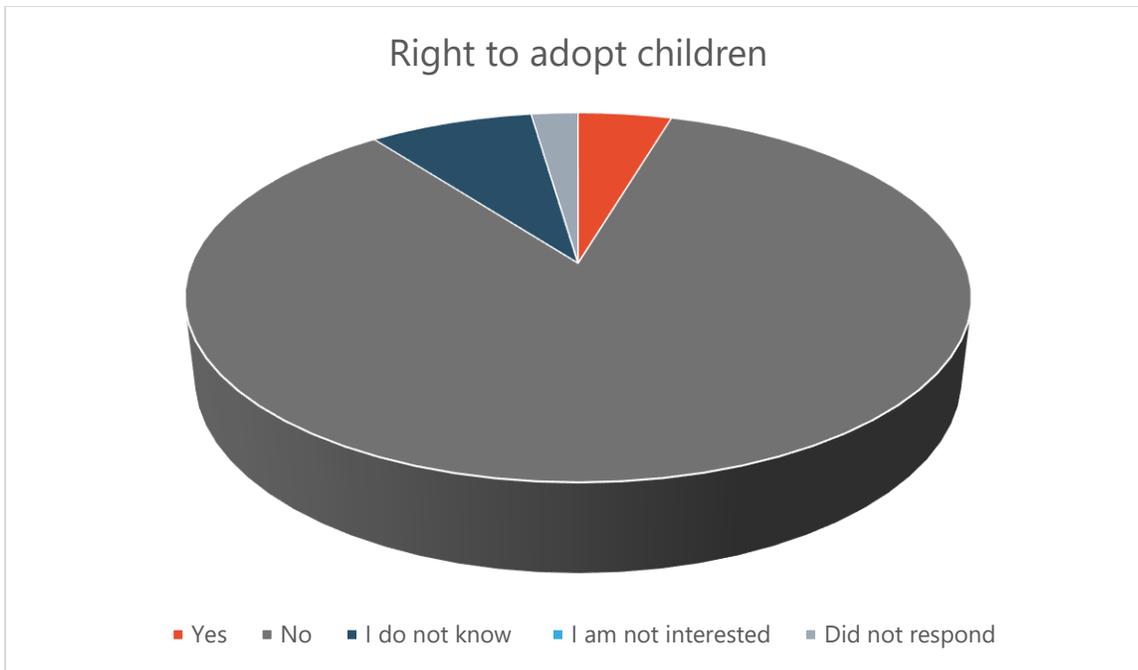
Four of the respondents believe that rights related to family life would be available; for Rainbow Families – which unfortunately is not accurate for Romania; and 2 persons stated they were not sure or did not know if the right to family recognition was extended to Rainbow Families.



### ***Parenting***

With regard to their rights as parents or potential parents, respondents showed different levels of awareness/knowledge and interest.

When asked about adoption (Q26: As far as you are aware, do LGBTI persons or families have a right to adopt children?), the majority of LGBTI respondents (85%, or 74 individuals) highlighted that Rainbow Families do not have the right to adopt children in Romania.



On medically assisted reproduction it should be highlighted that respondents indicated a relatively low level of knowledge/awareness: 34%, or 30 individuals, indicated they were not aware if LGBTI persons have the right to access these methods. Also, some 11 persons indicated that LGBTI persons have this right.

It should be emphasized that these procedures are not regulated as such in Romania.

Q27. As far as you know, do LGBTI persons or families have a right to access methods of medically assisted reproduction in Romania?											
	yes		no		I do not know		I am not interested		Did not answer		Total
Responses Received	11	12.64%	45	51.72%	30	34.48%	0	0%	2	2.30%	87

With regard to negative attitudes or discrimination encountered by Rainbow Families with children (Q28), the majority of respondents (79, that is over 90%) did not answer or found the question inapplicable to their particular case. However, out of the 4 persons who indicated they had children (Q6), 3 indicated that they had been confronted with negative attitudes or discrimination.

Also, one of the respondents in the individual interviews provided a good insight in this regard:

*“I would like to think about adoption, but I think it is not possible. My partner and I live together for 10 years. People close to us know; to the others, we are not open because it is none of their business.*

*We contemplated IVF as well, but it is very expensive. I do not know if we are eligible.*

(N, 34, Timisoara)

With regard to the rights of future parents, almost 20% respondents assessed them as being similar/equal to those of non-LGBTI families, while another 20% indicated they were not aware of their rights as potential parents in LGBTI families. This shows that continued information and services are still available to counter negative attitudes and potential situations of discrimination / denial of rights for Rainbow Families.

<b>Q31. Do you know / are you aware of your rights as potential parents in LGBTI families?</b>													
	No		I think I know my rights, but I am not sure;		I know my rights, they are the same as for other potential parents.		I know my rights, they are different from those of parents in non-Rainbow Families		Other/N/A...		Did not answer		Total
Responses Received	18	20.69%	12	13.79%	17	19.54%	5	5.75%	3	3.45%	34	39.08%	87

*Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.*

An interesting finding comes in relation to the assessment of difficulties encountered by Rainbow Families in their attempt to become parents, as 25% of respondents highlighted that they fear they would encounter such challenges. None of the 87 respondents indicated instances of discrimination upon trying to access certain information /services, while 3 individuals mentioned they could not find sufficient information about their rights /options.

<b>Q32. Did you encounter any difficulties in relation to your plans of becoming a parent?</b>													
	No;		No, but I fear I might		Yes, I could not find sufficient information about my rights /options;		Yes, I felt discriminated while trying to access services/information		Yes (others)		Did not answer		Total
Responses Received	10	11.49%	22	25.29%	3	3.45%	0	0%	0	0%	52	59.77%	87

*Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.*

## **Interviews and focus groups with Rainbow Families**

The research design also took into account the necessity to supplement the analysis of secondary sources and the survey with a method that can bring to light specific cases of discrimination which affected members of Rainbow Families. To this end, a semi structured interview template was designed, aiming to identify both the perceived level of discrimination and personal discriminatory experiences.

A total of 37 persons participated in interviews and focus groups conducted in various locations, including Bucharest, Constanta, Timisoara, Cluj, Baia Mare and Galati.

The interviews were used for media work<sup>17</sup>, while some of the relevant excerpts are quoted throughout this report.

For the purpose of this report, we would additionally use a few relevant excerpts of these interviews below.

- **Views about family from individual or focus groups discussions - 2017**
  - *“An accepting society is a healthy society... things one does not know about can be explained and once people understand, it is easier to accept (...) Personally (...) I live with the*

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<sup>17</sup> Videos and articles, which are indicated below, were some of the results of the project:

Video-clip with Iren, a single mother talking about her family

<https://www.facebook.com/asociatia.accept/videos/1273311802696772/>

News reports on RAINBOW families: <http://stirileprotv.ro/stiri/actualitate/in-momentul-in-care-trecem-granita-in-romania-nu-mai-suntem-o-familie-batalia-pentru-recunoasterea-cuplurilor-gay.html>

News reports on RAINBOW families, 22 oct 2016 - <http://a1.ro/video/antena-3/dincolo-de-stiri/adrian-coman-mama-a-fost-primul-om-caruia-iam-spus-ca-sunt-gay-id604623.html>

Articles regarding contemporary and rainbow families:

<http://dilemaveche.ro/sectiune/tema-saptamanii/articol/familia-ne-o-definim-noi>

<https://www.vice.com/ro/article/cum-e-sa-fii-mama-singura-transgender-in-romania>

<http://dilemaveche.ro/sectiune/tema-saptamanii/articol/sintem-o-natie-de-mironosite>

[http://adevarul.ro/locale/constantia/exclusiv-procesul-putea-schimba-romania-doi-barbati-cer-recunoscuta-casatoria-1\\_578ba15a5ab6550cb8f15ec1/index.html](http://adevarul.ro/locale/constantia/exclusiv-procesul-putea-schimba-romania-doi-barbati-cer-recunoscuta-casatoria-1_578ba15a5ab6550cb8f15ec1/index.html)

*feeling that I cannot be myself and be open about my relationship in Romania”*

(P, Cluj, 33)

- *“I am a lesbian and I work in a bar. I have a stable relationship with my partner, and I am going through a divorce from my ex-husband. We have a 5 year old boy. When I got married my ex knew about me, that I was bisexual, and accepted it initially; but then I felt like I was suffocating and couldn’t live that lie any longer. So, problems started to appear. My ex wished to take my child away from me and he’s sure he will succeed in getting full custody, because my sexual orientation (...). The boy lives with me and my partner now. I do not have a problem being open about our relationship in front of him, and my boy cares very much about my girlfriend. I do not want to raise him in denial, I want him to know. Even if he ends up talking about our home-life to children in school without realizing it may be a problem.*

*Many of my friends know about me, some knew from my days in high school, and some I never told because on occasions they said stuff like “gays are not normal people” and things like these. So I did not want to tell them. These are people who lived in a traditional culture. (...)”*

(K, 39, Romania)

- Concerning the difficulties of coming out to family members, one of the respondents stated:

- *“My wife filed for divorce last year when I finally talked to her about my gender identity. She thinks I am a freak. She said I would never see our boy again. Now we talk in a civilized manner. But I feel bad. I did not want to lose my family. I see how my son looks at me. I just started my transition. I know I am too old for this, but it is never too late. I always knew something about me was wrong. Not wrong, but not normal. Not like others. Not like men. Now when I think back, I am not sorry, I just regret the consequences.”*

(G, trans person, 44, Baia Mare)

- Regarding their plans and future in Romania, in the absence of legal protection:

- *“My girlfriend and I met in high school. Now I go to University and I hope she will join me soon. She is very strong and smart. Our families are friends; our parents are happy we spend time together, because she is a little younger than I am, and they think I am a good influence.*

*For now, it is exciting to hide. We do not like the fact that we cannot be affectionate in public (...) I do not know how our parents would react, but I think they would kick us both out. We will tell them someday.... Or maybe not. (...)*

*We never think seriously about the future in Romania. We both want to leave this place. When we graduate, we will. I could never have a like with M here. We talked about how nice it would be to live together, go shopping hand in hand like other couples do, walk dogs or maybe our babies. Now, when we walk the dog, we try to hide any gesture from the*

people around us.”

(R, lesbian, 20, Timisoara)

- “I told my parents I had a partner for the past 6 years. It was easy with her mother and sister, they are supportive. But my parents...my dad is an extremist and very religious. He asked me once if I was a lesbian but the context was horrible, so I said no. We have a pink elephant in the room. My girlfriend has been living with me for 2 years now. We have so many plans for the future together... Legally speaking, I am not very interested in marriage, I need an alternative solution. A legal one. I want to be left alone, have a child with my girlfriend, (...) for now I Don't want to expose myself so I am cautious”.

(O, lesbian, 24, Cluj)

- On the more general topic of legal protection for families, some of the respondents in the individual or focus group discussions wished to emphasize the following:

- *“I find it normal that same sex couples in a relationship have the same treatment and protection”*

(V, Cluj, 24)

- *“This is not the place to think about adoption and surrogacy and other things. Here, you cannot even be visited by your girlfriend in hospital”*

(C, lesbian, undisclosed age, Baia Mare)

- *“I do not think we are equal. We are not. If my boss finds out about me, I lose my job. If the judge who gave me my children after the divorce know about me, he maybe would not have given me the custody. I will never find out; I do not want to”.*

(Paula, lesbian, Galati, 36)

## VII. Conclusions

The concept of 'family' has considerably evolved in recent decades, while the family's role in a community is its turn being challenged and explored. Communities and societies are affected by these changes, with "contemporary families" being the topic of political, legal, moral and economic debates. In order to understand the effects and issues surrounding the debate of the family definition, different points of view are often looked at. The two most prominent views are conveyed as traditional and modern. A traditional family according to stereotypes and folk philosophy is a patriarchal institution consisting of a male father, a (submissive) female mother, and children. But this prototype of family does not take into consideration situations when half of the couple is taken away, the couple is not married, the couple is of the same gender, there are no children, or some members do not live together.

In reality, there has never been only one type of family. The realities of human social and economic relations are considerably more complex. To adequately and comprehensively define a family is to examine the many different types of relationships that can occur. Even so, the concept of a family still remains the same: it is about support, companionship and emotion, as well as rights and recognition.

However, the aim of this report was not to define family in general, but to look into the realities of specific types of contemporary families in today's Romania: Rainbow Families. In this regard, the report shows clearly that in addition to societal homophobia, stigma and discrimination, the LGBTI+ families and community are additionally affected by legislative barriers - legal restrictions on same-sex relationships and parenting.

As such, one of the key messages to be taken from the Report is that all families are equal and, as such, all families are therefore deserving equal recognition and equal protection. The principle of equality before the law and equal protection of the law and the right to be free from discrimination are at the core of the values in Europe, enshrined in a number of international and regional human rights instruments, including the European Convention of Human Rights. In that sense, Romania has to make additional steps to prevent the widespread discrimination of rainbow families and address the legal barriers which limit the rights of such families and foster a vicious circle of inequalities.

# ANNEXES

## 1. Coman case Timeline

November 5, 2010: Adrian Coman and Clai Hamilton get married in Brussels, Belgium, after eight years of a stable relationship.

September 2012: Being unemployed, Adrian Coman considers returning to Romania, together with his husband. He begins the procedure by requesting a transcription of the Belgian marriage certificate into the Romanian register, which is one document requested to apply for a residence for his husband. The Romanian Consulate in Belgium declines his request.

December 2012: Adrian Coman asks the General Inspectorate for Migration to consider a residence permit for his husband, Clai Hamilton, on the basis of the right to free movement for EU citizens and their family, which includes a spouse who is not an EU citizen.

January 2013: General Inspectorate for Migration declines to consider a residence for Clai Hamilton in Romania, despite his marriage to an EU citizen, Adrian Coman. If Adrian Coman married a female citizen of the United States, she would have received a positive response, with no restrictions.

October 2013: ACCEPT and the Coman-Hamilton family file a complaint against the Romanian Government, represented by the General Inspectorate for Migration and the Ministry of Internal Affairs. Bucharest Fifth District Court declines its competence to hear the case; for two years Romanian Courts try to establish which court has the competence to hear the case.

September 2015: Bucharest Court of Appeal clarifies that the Bucharest Fifth District Court is competent to hear the Coman-Hamilton family case.

October 2015: First hearing before the Bucharest Fifth District Court in the Coman Hamilton family case. ACCEPT requests referral to the Romanian Constitutional Court of civil code Article 277 (2) and (4).

December 2015: Bucharest Fifth District Court admits the complaint of the Coman-Hamilton family and ACCEPT, and agrees to refer the civil code provisions to the Romanian Constitutional Court.

July 20, 2016: RCC postpones to September 2016 its decision in the Coman-Hamilton family case and allows a separate initiative to redefine family in the Romanian Constitution to move forward to the Parliament. The Court is to assess the initiative again after approval in Parliament.

September 20, 2016: While expected to make a decision on this date, the RCC announces a new hearing of the Coman-Hamilton family case and postpones to October 27, 2016 the examination of whether civil code art. 277 (2) and (4) are constitutional; the two paragraphs prohibit the recognition of same-sex marriages registered abroad, except as regards the right to free movement on the EU territory. Adrian Coman and Clai Hamilton, joined by ACCEPT, ask for the recognition that they are a family and have the right to move to Romania. All this time, their family life continues in New York, far from their parents in Romania.

October 27, 2016: ACCEPT, Adrian Coman and his family appear before the Romanian Constitutional Court in a new hearing, following the RCC decision in September 2016 to re-hear the case. In the context of community law, which guarantees the right to free movement, ACCEPT asks the RCC to send preliminary questions to the Court of Justice of the European Union. RCC decides to postpone its decision to November 2016 on whether to send preliminary questions to the CJEU. ACCEPT asked to clarify how the provisions in the community law and the Romanian Constitution can be interpreted harmoniously when the family status of LGBT people is questioned in the context of the application of their right to free movement. EU judges are asked to interpret the term „spouse” in the context of community law and the principle of free movement on the EU territory, and whether this term includes spouses of the same sex. Also, ACCEPT would like the EU Court to clarify whether, in community law, same sex spouses have equal rights regarding the right to reside on the Romanian territory.

November 29, 2016: The Romanian Constitutional Court decides to suspend the case until an opinion by the CJUE is issued on the questioned raised by accept.

December 23, 2016: The RCC submits the case file, alongside with an application for a preliminary ruling reference, to the Court of Justice of the European Union. The registration date at the CJUE is 30.12.2016.

May 8, 2017: The deadline for submitting written statements on behalf of the case parties at the CJUE has closed.

## 2. The preliminary reference to the CJUE

The Coman case was registered as Coman and Others Case C-673/16. The Court will provide official translation of the preliminary reference question and a number of attached documents. Since the case was submitted at the end of December, case documents are yet to be translated and published on the Curia website, and the questions have yet to be published in the Official Journal.

The questions submitted to the court ([OJ C 104 from 03.04.2017, p.29](#))

1. Does the term 'spouse' in Article 2(2)(a) of Directive 2004/38/[EC], ( 1 ) in conjunction with Articles 7, 9, 21 and 45 of the Charter of Fundamental Rights of the European Union, include the same-sex spouse, from a State which is not a Member State of the European Union, of a citizen of the European Union to whom that citizen is lawfully married under the law of a Member State other than the host Member State?
2. If the answer to Question 1 is in the affirmative, do Articles 3(1) and 7(1) of Directive 2004/38/[EC], in conjunction with Articles 7, 9, 21 and 45 of the Charter of Fundamental Rights of the European Union, require the host Member State to confer the right of residence in its territory or for a period of longer than three months on the same-sex spouse of a citizen of the European Union?
3. If the answer to Question 1 is in the negative, can the same-sex spouse, from a State which is not a Member State of the European Union, of a European Union citizen, to whom the citizen concerned is lawfully married under the law of a Member State other than the host Member State, be classified as 'any other family member' within the meaning of Article 3(2)(a) of Directive 2004/38/[EC] or 'partner with whom the Union citizen has a durable relationship, duly attested' within the meaning of Article 3(2)(b) of Directive 2004/38/[EC], with the corresponding obligation for the host Member State to facilitate entry and residence for him, even though the host State does not recognise marriages between members of the same sex or provide for an alternative form of legal recognition, such as registered partnerships?
4. If the answer to Question 3 is in the affirmative, do Articles 3(2) and 7(2) of Directive 2004/38/[EC], in conjunction with Articles 7, 9, 21 and 45 of the Charter of Fundamental Rights of the European Union, require the Member State to confer the right of residence in its territory or for a period of longer than three months on the same-sex spouse of a citizen of the European Union?

### 3. Current legislative provisions pertaining to freedom of movement and same-sex family recognition

The following legislative excerpts are referred to in the preliminary ruling questions addressed to the Court of Justice of the European Union.

#### **The Romanian Constitution**

##### ARTICLE 26

- (1) The public authorities shall respect and protect the intimate, family and private life.
- (2) Any natural person has the right to freely dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals.

##### ARTICLE 48

- (1) The family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children.
- (2) The terms for entering into marriage dissolution and nullity of marriage shall be established by law. Religious wedding may be celebrated only after the civil marriage.
- (3) Children born out of wedlock are equal before the law with those born in wedlock.

#### **The Romanian Civil Code**

##### Article 258

##### Family

- (1) Family is established through free marriage between spouses, their full equality, and the right and duty of parents to ensure their children's upbringing and education.
- (2) The family is entitled to protection by society and the State.
- (3) The state is obliged to support the economic and social measures, marriage and family development and consolidation.
- (4) For the purposes of this Code, spouses understand man and woman united in marriage.

##### Article 259

##### Marriage

- (1) Marriage is freely consented union between a man and a woman concluded under the law.
- (2) Men and women have the right to marry in order to start a family.
- (3) Religious celebration of marriage can only be made after the end of civil marriage.
- (4) Conditions for the conclusion of marriage and the grounds are established by this Code.
- (5) The marriage ceases by death or judicial declaration of death of a spouse.
- (6) Marriage can be dissolved by divorce under the law.

#### Article 271

##### Consent to Marriage

Marriage between man and woman is established through personal and free consent.

#### Article 277

##### Prohibition or equivalence of forms of cohabitation with marriage

(1) The marriage between persons of the same sex is prohibited.

***(2) Marriages between persons of the same sex be concluded abroad by Romanian citizens or foreign citizens are not recognized in Romania.***

(3) Civil partnerships between persons of the opposite sex or same sex concluded abroad by Romanian citizens or foreign citizens are not recognized in Romania.

***(4) Legal provisions on free movement of citizens of member states of the European Union and European Economic Area remain applicable.***

#### **The EU directive on freedom of movement - Directive 2004/38/EC**

##### Article 2

##### Definitions

For the purposes of this Directive:

1) "Union citizen" means any person having the nationality of a Member State;

2) "**Family member**" means:

(a) **the spouse;**

(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);

(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

3) "Host Member State" means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.

## Article 3

### Beneficiaries

**1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.**

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

(b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.

## Article 7

Right of residence for more than three months

**1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:**

***(a) are workers or self-employed persons in the host Member State; or***

***(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or***

***(c) — are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and***

***— have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or***

***(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).***

2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

(a) he/she is temporarily unable to work as the result of an illness or accident;

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed

during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.

4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.

## **Charter of Fundamental Rights of the European Union**

### **Article 7**

#### **Respect for private and family life**

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

### **Article 9**

#### **Right to marry and right to found a family**

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

### **Article 21**

#### **Non-discrimination**

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

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

### **Article 45**

#### **Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.