



The European Framework on LGBTQIA+ Rights

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1. Introduction



The overall situation of the rights of the LGBTQIA+ community in the European framework is characterised by numerous factors, often interacting with each other in multiple ways. According to the 2022 annual review by ILGA-Europe, 2021 was marked by a serious rise in hate speech and anti-LGBTQIA+ rhetoric by numerous political leaders, generating a wave of violent episodes and attacks that are severely undermining LGBTQIA+ rights in Europe. This growing aversion towards the LGBTQIA+ community also comes from the consequences of democratic erosion and political turmoil in countries such as Azerbaijan, Belarus, Hungary, Kazakhstan and Turkey, which consequently has led to LGBTQIA+ people being forced to flee from persecutions (ILGA-Europe, 2022). On the other hand, national human rights institutions (NHRIs) and courthouses in many countries have been working to protect and promote the rights of LGBTQIA+ communities. For instance, different countries promulgated fines and prison sentences over hate speech and hate crime events (ILGA-Europe, 2022).

Lastly, the European Parliament adopted a Resolution in 2021 declaring the European Union an “LGBTIQ Freedom Zone” and denouncing “all forms of violence or discrimination against persons on the basis of their sex or sexual orientation” (European Parliament, 2021b). The Resolution came as a direct response to the regressive behaviour of some countries against LGBTQIA+ rights, notably from Hungary and Poland. More specifically, the Resolution represents a positive alternative to the “LGBT free-zones” that have been emerging across Poland over the past two years. The European Parliament resolution also refers to the worsening of conditions in Hungary. In November 2020, the Hungarian municipality of Nagykáta implemented a resolution banning the dissemination and promotion of LGBTQIA+ propaganda. A month later, the National Parliament adopted a series of constitutional amendments that further restrain the rights of the LGBTQIA+ community, by not considering the existence of transgender and non-binary persons and limiting the right to a family life (European Parliament, 2021a) as the national parliament also passed a law allowing the adoption of children only to only married couples, which basically excludes same-sex couples who are not allowed to marry in Hungary (Euronews & AFP, 2020).

The present report explores the cases of Malta, Denmark, Belgium, and Norway, which are considered

to be amongst the top countries in Europe for the promotion and integration of LGBTQIA+ rights (in their national framework). Later, in the second part of the report the examples of Italy, France, Spain and Poland will be explored in further detail, through the examination of their national and legal framework on LGBTQIA+ rights. This report aims to analyse the current European framework of LGBTQIA+ rights, their state and implementation in EU and non-EU countries by sharing national regulations, best practices, and experiences so that the inclusivity and equality of the LGBTQIA+ community is never taken for granted again. The cases here reported attempt to give an overall example of how variegated the framework on the rights of the LGBTQIA+ is community in the European Union and in its member and non-member states.

1.2 Positive examples of LGBTQ-friendly countries: Malta

Malta is considered the top country in Europe when it comes to respecting and implementing LGBTQIA+ rights. The Constitution of Malta clearly states in Chapter IV - Fundamental Rights and Freedoms of the Individual - Article 32 that “every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity”. In addition, it states the freedom to hold public events and the freedom of assembly, association and expression. (Constitution of Malta). Furthermore, Act No. LV of 2016 “Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act” states clearly that different sexual orientations, gender identities and gender expressions – or any combinations of the three – will never constitute a disorder, disease, illness, deficiency, disability and/or shortcoming. Marriage equality is also part of the Maltese legislation, regulated by the Marriage Act No. XXIII of 2017 while the Civil Unions Act of 2014 allows for the civil union between two persons of the same or of different sex. The Maltese Government punishes, through ACT No. VIII of 2012 amending the national Criminal Code, Cap. 9, hate crimes and hate speeches based on sexual orientation and on gender identity (Rainbow Europe, 2022d).

The Gender Identity, Gender Expression and Sex Characteristics Act regulates the right to gender identity recognition, allowing name change without age limits and the right to self-determination. In addition, Article 3 (4) states that “The person shall not be required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity.”

There are numerous more Acts and Laws regulating the rights of the LGBTQIA+ community in Malta, which has put the country in first place in Europe for the implementation and promotion of the LGBTQIA+ rights. In occasion of the International Day against Homophobia, Biphobia, Interphobia and Transphobia on May 2021, a campaign was launched on the island of Gozo celebrating “Love knows no gender and Our hearts are open to the diversity of our children.” On that same day, the Minister for Justice, Equality and Governance, Edward Zammit Lewis, underlined that the national government is engaged in continuing its efforts to promote equality across all spheres, including for LGBTQIA+ persons in Malta and Gozo, with the support of the Human Rights Directorate which is responsible for implementing the LGBTIQ Equality Strategy and Action Plan (Press Release by the Ministry for Justice, Equality and Governance and by the Ministry for Gozo “Love Knows No Gender” and “Our Hearts Are Open To The Diversity Of Our Children.”, 2021).

1.3 Norway: general framework of LGBTQIA+ rights

The ILGA-Europe annual ranking places Norway in second place for the respect and implementation

of LGBTQIA+ rights, right after Malta. The Constitution of Norway does not have specific references regulating the rights of the LGBTQIA+ community. However, the Sexual Orientation Anti-Discrimination Act of 2013, the Government proposes to ban all forms of discrimination based on sexual orientation, gender identity and gender expression, promoting their equal status, equal opportunities and rights (Sexual Orientation Anti-Discrimination Act, 2013). The Act also ensures the duty of organisations and educational institutions to prevent harassment on any ground, prohibits discrimination at the workplace and within employment relationships. Same-sex marriage is regulated by the Marriage Act (Lov 4 juli 1991 nr. 47 om ekteskap), as amended by Act of 27 June 2008 No. 53, while adoption is regulated by the Adoption Act of 2017 No. 48. Under the Adoption Act, it is stated that “only spouses and cohabitants may adopt together. Cohabitants here means two persons who live together in a stable and marriage-like relationship” (Adoption Act, 2017). The Norwegian government is widely active in promoting and safeguarding LGBTQIA+ rights, being the world’s first country in 1981 to pass an anti-discrimination law that included sexual orientation. This was amended to specifically include LGBT persons in the definition (Nikel, 2020). However, in June 2022, two people were killed in Oslo while eight others taken to hospital following a shooting near the London Pub, which is considered “the largest gay and lesbian venue in Oslo.” (Yeung et al., 2022). The brutal act has struck the heart of the Norwegian LGBTQIA+ community, causing the cancellation of the annual Oslo Pride March that was supposed to take place in the days following the attack. Leader of Oslo Pride, Inger Kristin Haugsevje, and Inge Alexander Gjestvang, head of the Association for Gender and Sexuality Diversity, declared in a common statement that “We will soon be proud and visible again, but today we will hold and share the pride celebrations from home” (Yeung et al., 2022).

1.4 LGBTQ+ rights in Europe: positive developments

Belgium ranks amongst the top positions for its political and legal support to LGBTQIA+ rights. Despite dropping a place compared to previous years (Belgium ranked second from 2018 to 2021), the LGBTQIA+ rights of the Belgian community have not regressed. Belgium regulates marriage equality through the amendment of several provisions of the national Civil Code, while hate crimes and hate speech are regulated through the law since 2003. In 2017, the country announced the “Law reforming regulations on transgender people with regard to the indication of an adjustment of the registration of gender in the civil status certificates and its consequences”, protecting and promoting the right to self-determination (Rainbow Europe, 2022a).

As for Denmark (ranked ninth last year), it has begun to address gaps in the fight against discrimination in the current legislation while managing to jump seven places, arriving in the second spot. Denmark’s impressive advancement is the result of the country stepping forward in the amendment of its equal treatment law, which include health, education, employment, provision of goods and services, and the penal code to cover sexual orientation, gender identity, gender expression and sex characteristics as aggravating elements in hate crimes (Chini, 2022). In addition, since 1996, the Law on the prohibition of discrimination in the labour market regulates the prohibition of discrimination in the work environment while marriage equality is legal in Denmark from 2012, when the national Marriage Act was amended to include same-sex couples in June 2012 while adoption is managed by the 2010’s Adoption Act (Rainbow Europe, 2022b).

LGBTQIA+ rights in Italy: a general framework



The situation of LGBTQIA+ rights in Italy is certainly lagging behind the other previously mentioned countries. In the Italian legal framework, LGBTQIA+ rights are not safeguarded enough when compared to other European realities. According to ILGA-Europe, Italy comes in the 33rd place out of 49 countries when it comes to the rights of the LGBTQIA+ community (Rainbow Europe, 2022c). Italy ranks behind Hungary, led by Viktor Orban, where the laws against gay promotion leave the country at 30th place for LGBTQ+ rights. The Italian situation has certainly worsened due to the fall of the Ddl (Disegno di Legge) Zan in the Italian Senate in 2021, a law against homophobic and transphobic violence that would have been a valuable ally in the fight against discrimination and violence effecting the LGBTQ+ community (Grazi, 2022). The present section will explore the Italian legal framework when it comes to the protection and promotion of LGBTQIA+ rights.

2.2 The legal framework

In the Italian framework, significant support for the LGBTQIA+ community is given by the European Union Directive 2000/78/CE establishing equal treatment in the workplace. It states that “discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty” therefore ascertaining that “any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community” (Council of the European Union, 2000). In Italy, the implementation of Directive 2000/78/EC on equal treatment in employment and occupation is given by the

Legislative Decree No. 216 of 9 July 2003, which states that “This decree contains the provisions relating to the implementation of equal treatment between persons regardless of religion, belief, disability, age (nationality) and sexual orientation, with regard to employment and working conditions, taking the necessary measures to ensure that these elements do not generate discrimination [...]”(Normattiva, 2022). Toscana is the first Italian region that adopted a law banning discrimination against homosexuals in employment, education, and public services. The Tuscan regional law regulating discrimination against the LGBTQIA+ community, law No 63, titled “Norms against the discriminations determined to the sexual orientation or from the identity of gender”, and dates back to November 15th, 2004. Later, in January 2005, the regional law was challenged by the Berlusconi government. The judges of the Constitutional Court considered the law legitimate, except for Articles 7 and 16, respectively stating that a patient would have been allowed to decide who to give decision-making power over his/her treatment while the latter introduced sanctions of up to more than 3,000 Euros for all the public operators who would have behaved in a discriminatory way against gays, lesbians, and trans people. Certainly, the implementation of Law No. 63 in Toscana represents a significant step ahead despite the removal of some articles that were among the most innovative and aimed at the concrete fight against discrimination to which the LGBTQIA+ community is subjected in our country (Gay. it!, 2006).

Concerning the adoption of children by same-sex couples, the Italian legislation does not formally provide protection for this matter. However, a recent decision of the Court of Cassation has granted two married women the correction of the birth certificate of a child born with assisted fertilisation, so that the child can be recognized as a child of both mothers (Carbonara, 2017). Furthermore, the adoption of two children by a homosexual couple has been acknowledged for the first time in Italy by Florence’s children’s court. According to Susanna Lollini of the *Avvocatura per i Diritti LGBTI* organization, the adoption of two children was carried out by two Italian gay men in the U.K. The Florence court ordained the transcription in Italy of a ruling by a British courthouse, thereby recognising their status as the couple’s children and their Italian citizenship (Ansa, 2017).

2.3 A step forward

An important breakthrough for the LGBTQIA+ community is given by the so-called Cirinnà law (Law No. 76/2016), entitled “Regulation of Civil Unions between Persons of the Same-Sex and Discipline of Cohabitation.”, which regulates gay unions while introducing rights and legal protection for unmarried couples. The law is the result of many years of mobilisation by politicians and civilians alike, seeing the daylight after a quite complex legal process. The law was the outcome of a specific directive from the European Court of Human Rights, which back in July 2015 censured Italy due to its legislative inadequacy regarding same-sex unions (Cavalletto, 2017). Although this law allows gay couples to be together in a civil union, it does not recognize all the rights and duties that couples united in marriage have. The marriage union remains in Italy reserved for heterosexual couples, while in 16 European Union countries homosexual people can freely marry.

For some European countries, this has been an established accomplishment achieved over time: for instance, in the Netherlands same-sex marriage was introduced in 2000, in Belgium in 2003, and in Spain in 2005 (Savino, 2021). As stated by Giulia Maria Cavaletto, the Italian case represents a paramount example of the cultural resistance to the inevitable range of social changes of the last years. Despite the existence of countless cohabiting heterosexual couples (eventually with their children or one of the partner's children) and of same-sex couples (who too can have children from past unions or medically assisted procreation), in many institutional and religious contexts, the idea of family was fixed in the image of men and women united for procreational purposes (Cavaletto, 2017).

2.4 Going backward: the failure of the Ddl Zan

The Ddl Zan was first introduced in the lower house of the Italian Parliament in May 2018 by centre-left member of parliament (MP), Alessandro Zan, in response to an increasing wave of homophobic and transphobic verbal and physical aggression in Italy. Indeed, the new legislation would have amended Italy's penal code to outlaw discrimination based on sex, sexual orientation, gender, gender identity and disability. The bill passed the lower house in November 2020 but faced major setbacks in the Senate (Carlo, 2021). In October 2021, the 315-member Senate voted by 154 to 131 to stop the debate on the law. According to the extreme right-wing parties that voted against the bill in the upper house of the Parliament, the law would have threatened freedom of expression and encouraged "homosexual propaganda" in schools (Tondo, 2021). In June 2021, the Vatican made an unparalleled intervention requesting the Italian government to modify the law over growing concerns it would impair the "freedom of thought" of the Catholic Church (Tondo, 2021).

The Ddl Zan came after a long period of notable aggression against the LGBTQIA+ community. The bill would have led people convicted of such aggressions and hate crimes to a possible period of four years detention and would have enabled an increase in funding for advocacy groups that work to support the victims of these attacks and fight against discrimination at any level (Tondo, 2021).

2.5 Conclusion

The road towards equality remains long and uphill. Certainly, the law No. 76/2016 on civil unions between same-sex people represents an important step forward, despite the right to a marital union being still reserved for heterosexual couples only. In Italy, the right to change the legal gender is legal, with no surgical intervention required, and serving in the military is allowed for gay people. On the other hand, LGBTQIA+ discriminations have no protection in Italy and same-sex adoption is illegal (Equaldex).

The Ddl Zan could have represented a victory from numerous perspectives, especially in halting the hate crimes against the LGBTQIA+ community. An example is of the recent report of two men, Nicolo and Matteo, who were subject to verbal assaults for sharing a kiss while taking part in a photographic project. Passers-by commented on the scene with insults directed toward them. They commented on the accident by

stating that there is still so much hatred to fight. However, they remain “[...] happy for what we have done today, knowing that it will help many people, but sad to have again experienced on our skin the enormous scourge of homophobia. We do not stop, and we will not hide, NEVER.” (Gay.it!, 2022).



LGBTQIA+ Rights in France: a critical overview



In 2022, France was ranked 7th by ILGA in a list of 49 European states regarding the promotion and protection of LGBTQIA+ human rights. Scoring 64% per cent of achieved protection according to ILGA's Rainbow index, France has had one of the highest positive jumps in score this year. This is especially due to the enacting of long-awaited reforms such as the prohibition of all forms of conversion therapy in January of this year and the extension of medically-assisted procreation to all cisgender women, including women in lesbian relationships and single women. However, this is not to say that the situation of LGBTQIA+ persons in France is optimal. Multiple reports and notably the annual report of SOS Homophobie on queer-phobias in France portrays a very different environment than this 7th place ranking seems to point to.

3.2 Legal Framework

The French legal framework regarding LGBTQIA+ rights and protection is fairly wide and covers all areas of law. In this sense, same-sex sexual activity was decriminalized by law in 1791, and same-sex marriage was legalized in 2013 along with same-sex couple's adoption. There are no laws prohibiting the promotion and discussion of LGBTQIA+ topics in the public sphere. Discrimination against LGBTQIA+ persons is prohibited by law in all areas including employment and housing. Ranked 7th this year among all 49

European states, France is setting out to be a “good student” when it comes to the protection of LGBTQIA+ rights. In this context, France has taken the initiative of developing further protection than most states. Particularly, in January 2022, France became one of the first European states to ban conversion therapy for gender identity, thus outlawing all forms of conversion therapy practices. Additionally, in March 2022, France got rid of the deferral period imposed on gay and bisexual men for blood donations, replacing by a general provision applicable to all regardless of gender and sexual orientation.

3.3 Limits and pushbacks

While the aforementioned legal framework provides for extensive protection of LGBTQIA+ human rights, there are still a number of areas in which France either lacks or refuses to provide protection. In this report, we will limit ourselves to three fundamental issues, namely the continuation of intersex genital mutilation (IGM), the imperfection and non-inclusivity of the medically-assisted procreation (IVF) law and the inadequacy of legal gender recognition (LGR) procedures.

3.4 The Refusal to Ban Intersex Genital Mutilations

One of the most notable exceptions to France’s “good behavior” regarding LGBTQIA+ human rights protection is its refusal to outlaw genital mutilation practices on intersex children. As highlighted by an article published by Global Human Rights Defence on June, 2022 (Tissandier, 2022), France has been called by many Agencies of the United Nations which have qualified such practices as torture as early as 2016. However, France has not implemented any of the recommendations (52 to this day) and has even legislated in the opposite direction. All initiatives taken by various organisations or parliamentary groups to present protective provisions have been struck down. When presented in Parliament during the discussion of the “loi bioéthique” in 2021, an amendment was presented to ban genital mutilation practices on intersex children, grounding itself on internationally accepted observation that most intersex conditions do not engage the life prognostic of the child and should be left to their own will when they reach the age of consent. However, it was struck down like all others with 72 votes to nine. There is little hope that a will to change this will emanate from the French government in the next 5 years following the re-election of Macron who was already president when all measures were struck down. The European Court of Human Rights has been turning to intersex genital mutilation practices in the currently pending case of *M. v. France*. It is possible that a decision of the Court declaring such practices a violation of the Convention would have a stronger impact on the political will to finally create a protective framework at the national level.

3.5 IVF Law: the Exclusion of Trans Individuals

Adopted at the end of July 2020, the new “loi bioéthique” expands the right to access to IVF to “all women”. While this law was long awaited and at first welcomed by the French queer and feminist communities, it appeared upon its adoption that its scope had been severely reduced. If it presents itself as an inclusive

expansion of the right, in reality it only opens procedures to single women and lesbian couples. However, it was made explicit in the text that neither trans men nor trans women would be included in the scope of the provision. In this sense, trans men, who can biologically bear children and therefore could profit from procedures of the sort, are no longer allowed to do so once their legal gender has been changed to male. This is not only a limitation of rights but a step backwards. Nothing in French law prohibited doctors from performing such procedures on trans men in the past. Similarly, the law prohibits trans women from accessing their gametes once their legal gender has been changed to female. Thus, a trans woman who would like to use her priorly preserved gametes in an IVF procedure with her partner is no longer able to. This marks a severe attack on the integrity and dignity of trans persons in France. While the country has worked at the de-pathologisation of transition procedures, this setback shows a still strong entitlement of the state over trans bodies and human rights.

3.6 Inadequate and Pathologizing Legal Gender Recognition Procedures

France recognized the right of trans persons to change their legal gender in 2016 after the European Court of Human Rights found a violation in its absence. This same law abandoned the previously enforced surgery and sterilisation requirements for legal gender change. It still requires a diagnosis of gender identity disorder or a psychiatric opinion. The current legal gender recognition procedures involve a mandatory court appearance. This has led to the fate of individuals being left in the hands of judges, who often are not trained and informed properly about trans identity. Moreover, the current procedure removed the representation requirement, meaning any individual can lodge a request without the assistance of a lawyer. While this is commendable in the way that it rendered the procedure free of charge, the French judicial system has failed to provide individuals with clear guidelines to access the procedure, making it hard to navigate for non-legal professionals.

Unlike some other European states, France does not yet provide for legal recognition of non-binary people. This omission could be countered soon by the decision of the European Court of Human Rights in the case of *Y. v. France* with regard to the complaint of an intersex person that their rights under the convention were violated by the absence of a non-binary option in legal gender registration.

3.7 Conclusion

It is fair to say that France has a reasonably extensive legal framework when it comes to the protection of LGBTQIA+ human rights. In this sense, it compares positively to other European states with lower ranks in the ILGA ranking. However, it still has a long way to go in certain areas. It appears that France has yet to increase its recognition and protection of gender identity, expression and sex characteristics to, at least, match the level of protection it has created for sexual orientation.

LGBTQIA+ Rights in Spain: An Overview



In 2022, Spain ranked 10th in the ILGA Rainbow Europe ranking according to its position on LGBTQIA+ human rights. Similarly, as other countries looked at in this report, it can be considered a relatively safe place for LGBTQIA+ persons. However, it still scores at an overall 62 per cent on the ILGA ranking while Malta at number one culminates at 92 per cent. Therefore, while it is necessary to highlight the positive development that has helped Spain reach the 10th place, it is just as necessary to point out the aspects in which the Spanish framework lacks efficiency. Additionally, Spain dropped four spots since the last ranking in 2021 when it at the sixth position for two consecutive years. This report will first look at the overall legal framework in Spain and point out areas in which developments still need to be made. Then, it will look at three recent developments that have bettered the living conditions of Spanish LGBTQIA+ persons, namely the new Bill for trans youth, the inclusive IVF law and the recognition of lesbian parenthood.

4.2 Overall Legal Overview

As a general starting point, Spain decriminalised homosexual activity in 1979. In 2003, it legalized same-

sex marriage and adoption was soon rendered available for same-sex couples as well. When it comes to gender identity rights, the framework is less extensive. Legal gender recognition procedures are available and while surgeries are no longer required to qualify, a proof of some form of medical treatment for a period of at least two years must be provided. Additionally, Spain does not provide for the legal recognition of non-binary gender identities through a third legal gender category. This was proposed in Parliament in 2021 but was struck down regardless of the rapid developments of such frameworks in other top-of-the-list countries (see for instance the Netherlands, Belgium, Malta, etc). Regarding discrimination, the Spanish legal framework provides for the prohibition of discrimination on grounds of sexual orientation and gender identity. However, we note from the data collected by ILGA Europe that as of now, gender identity is not an accepted ground when looking at employment discrimination. On the same level, Spain does not provide for any positive measures in protecting and receiving LGBTQIA+ asylum seekers on grounds of their sexual orientation and/or gender identity. Moreover, conversion therapy, while outlawed in some regions, has yet to be prohibited at the national level and continues to be practised in some territories without a protective framework from the state. Spain has yet to create a protective framework for intersex persons. In particular, it does not have legal provisions at the national level prohibiting Intersex genital mutilations, regardless of the condemnation of such practices by UN bodies and NGOs.

4.3 New Bill for Trans Youth

The new bill introduced on trans rights was approved by the Cabinet in June 2022. This new framework will significantly expand the rights of trans and gender-non-conforming youth. While it still has to be approved by the Spanish parliament in the coming months, this bill proves a clear will from the Spanish government to enhance the protection of trans human rights. It would slowly push the current legal gender recognition and protection procedures towards self-determination. To this extent, the bill would grant anyone over 16 years of age the right to change their legal gender and name without parental consent but most importantly without needing a government or medical approval. From ages 14 to 15, one will be able to change their legal gender and name with parental consent, and the intervention of a judge if necessary. Children ages 12 and up would be able to change their legal name and gender with parental consent and when authorised by a judge. Additionally, this new Bill will extend to non-citizens living in Spain.

4.4 Inclusive IVF Law and the Expansion of Filiation Rights to Unmarried same-sex couples

In November 2021, the Spanish health minister enacted the extension of the scope of the pre-existing legal framework for IVF to all persons with gestational capacity. Thus, it opens the procedure to all who were not yet included such as single women, lesbians, bisexuals and trans persons. Access to IVF for those groups was not illegal before the order was signed, but was only free of charge and performed in the public system for cisgender heterosexual women in stable relationships. This was made binding by a policy passed by the previous government in 2014. This reversal is a sign of positive development towards the expansion of inclusive reproductive rights. Particularly since the new order allowed for the extension of the right to trans persons with gestational capacity, which was not part of the pre-2014 framework.

The new government has also amended the law regarding filiation. In this context, both women in a lesbian couple will be able to register their child in the national registry without having to get married or formalise their relationship. In promulgating the new framework, the Spanish government has announced aiming to create a protective framework based on equality that would include all forms of stable coexistence. The law also applies and benefits single parents. This development is closely linked with the stand of the Spanish government regarding filiation and reproductive rights. In extending IVF to single women and lesbian couples specifically, it has taken a step-in recognising that such family structures are viable. It would then make no sense to limit their right to see the child coming out of those procedures to be legally and fully recognised.

4.5 Conclusion

As a conclusion of this brief overview, it is clear that many changes are happening in Spain in recent years which have considerably increased the recognition and protection of LGBTQIA+ persons in the country. This can be largely attributed to the change in government with the government being currently seated by Podemos, a left-wing party which has long expressed its support for the LGBTQIA+ cause. In this sense, it will be interesting to follow more developments that should come in the rest of this mandate. While the recent changes enacted by the government are a great beacon of hope, there is still lots to be done in order to ensure the protection and recognition of all LGBTQIA+ individuals in Spain. Particularly, the case of non-binary and gender non-conforming legal recognition and protection and the necessary prohibition of intersex genital mutilation and others harmful practices. Both of those topics will be decided on by the European Court of Human Rights in cases brought against France in the following years – the outcome will undoubtedly impact the stance of the Spanish government in creating new policies.

LGBTQIA+ rights in Poland: a general framework



ILGA-Europe's Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People 2022, states that Poland is amongst the worst countries in Europe for the protection and promotion of LGBTQIA+ rights. The Constitution of the Republic of Poland clearly states in Article 18 that "Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland." The text clearly excludes same-sex couples, considering the right to protection only to married people, as long as it is "a union of a man and a woman" (The Constitution of the Republic of Poland, 1997). Polish President Andrzej Duda, whose second mandate was renewed in August 2020, promoted an anti-LGBTQIA+ agenda throughout his campaign. He defined the LGBTQIA+ movement as something "more destructive than communism", comparing it to his parents' generation's fight against communist ideology (Drew, 2020). In addition, the President signed the Family Charter, which specifically bans same-sex couples to marry or to adopt children. In particular, two sections of the Family Charter strike LGBTQIA+ rights. The first section is that which pledges to "defend the institution of marriage", stressing the fact that marriage should remain strictly between men and women. The second stresses that adoption should not be allowed amongst homosexual couples. Lastly,

one section reports the need to protect younger generations from LGBTQIA+ ideology (Redi-Smith, 2020).

5.2 Main shortcomings in Poland

A particular low point for Poland came on June 15, 2022, when the national administration demonstrated full support for Hungary's new legislation which banned the "portrayal and the promotion of gender identity different from sex at birth, the change of sex and homosexuality" for people under 18. Poland, along with Romania and Slovakia have plans to copy the act (ILGA-Europe, 2022).

Hate speeches and hate crimes are a significant issue in Poland. The former case saw Michał Romanowski, the Deputy Minister of Justice, calling the wedding ceremony of a same-sex couple in Bydgoszcz "clownery" that should be blocked (ILGA-Europe, 2022). In June 2021, the Minister of Education and Science, Przemysław Czarnek, suggested that Poland should copy a Hungarian law that forbids schools to use materials considered to promote homosexuality (Reuters, 2021). The result of such statements can be seen in the attack of a gay couple holding hands in February 2021, when the attacker stabbed one of them with a knife while screaming "don't do this in front of the children!". On 11 November, Poland's Independence Day, two apartments with rainbow flags hanging outside their windows were attacked, one with an air rifle and one with a brick, resulting in one person being injured (ILGA-Europe, 2022). According to the European Union Agency for Fundamental Rights report, a 39-year-old Polish gay man, stated that "The general atmosphere in Poland has changed drastically over the past years in terms of perception of LGBT and environments. State officials praise their intolerance by announcing more and more new areas of the country 'free from LGBT'. I have no confidence in the police and the courts in these matters. I am more than sure that in the event of some problems with my orientation, he was first treated with ironic disgust, humiliated and then ignored systemically" (European Union Agency for Fundamental Rights, 2020). The report highlighted how in Poland, LGBTQIA+ respondents to the surveys on life satisfaction are less pleased with their lives than the overall population by 1,7 points. In contrast, LGBTQIA+ interviewees in – for instance – Greece, Bulgaria or Czechia are more satisfied with life compared to the general population (European Union Agency for Fundamental Rights, 2020).

5.3 LGBT-free zones

In previous years, approximately 100 municipalities and regions across Poland, representing nearly a third of the territory, adopted non-binding resolutions proclaiming themselves free from "LGBT ideology". While these resolutions are largely symbolic, "they have provided new ammunition in Poland's increasingly bitter cultural war" (Ash, 2020). The purpose of "LGBT-free zones" is to banish what local authorities perceive to be the promotion of homosexuality and other sexual identities, particularly in schools (Reuters, 2022). The European Parliament described the "LGBT free zones" as the result of "non-binding resolutions pledging to refrain from taking any action to encourage tolerance of LGBTI people and saying they would not provide financial assistance to NGOs working to promote equal rights" (European Parliament, 2019). These measures have put Poland in conflict with the European Commission, which has stated that LGBT-

free areas violate EU non-discrimination law on grounds of sexual orientation (Reuters, 2022). In July 2021, the European Commission opened a landmark infringement operation against Poland after the refusal to explain whether LGBTQIA+ people experience discrimination in the labor market in the so-called “LGBT free zones” across the country (ILGA-Europe, 2022). In addition, the European Commission deferred EU funding talks with several Polish areas, including five “LGBT-free zones” Świętokrzyskie, Podkarpackie, Małopolskie, Łódzkie and Lubelskie. The ILGA-Europe report stated that following the consequent domestic and international pressures, more than a dozen Polish cities have revoked anti-LGBT resolutions or Family Rights Charters. In September 2021, four Polish regions (Świętokrzyskie, Podkarpackie, Małopolskie and Lubelskie) withdrew their status of “LGBT-free zones”, along with several local municipalities, releasing statements that affirmed their support for equality and the respect of fundamental rights (ILGA-Europe, 2022).

Right after the establishment of “LGBT free zones”, a European Parliament resolution was adopted by 463 votes in favour, 107 against and 105 abstentions, where Member of the European Parliament (MEPs) expressed their profound concern in front of the increasing number of aggressions on lesbian, gay, bisexual, transgender and intersex (LGBTI) people in the European Union by public officials, national and local governments as well as political leaders. Concerning the Polish “LGBT free zones”, the European Parliament urges the Polish administration to condemn and ban these acts and to withdraw all resolutions attacking the rights of the LGBTQIA+ community (European Parliament, 2019).

5.4 Conclusion

In conclusion, it should be taken into account that the status of same-sex couples in the Polish legal framework is the subject of many scientific publications and remains a burning issue. Polish regulations do not allow any legitimisation of homosexual couples, which consequently affects the principle of freedom of movement for people in the European Union, “as exercising the free movement of persons causes degradation of the marital status of same-sex couples in Polish internal law.” (Bicz, 2021).

Conclusion



It is clear that the European situation on LGBTQIA+ rights is widely diverse. The first section, after a brief introduction on the European framework of LGBTQIA+ rights, defined the general situation of these rights in Malta, Denmark, Belgium and Norway, delineating the reasons why these countries are ranked in top positions according to the annual Rainbow Europe Ranking. Later, the section dedicated to Italy explores the legal framework of LGBTQIA+ rights in the Italian territory, where the law no 76/2016 on civil unions between same-sex people surely represents a major step forward, although the right to conjugal union remains reserved only for heterosexual couples. On the other hand, the blocking of the Ddl Zan against homophobic and transphobic violence by the Italian Senate constitutes a step back for the Italian LGBTQIA+ community.

Concerning France, it is widely deemed that the French Government has a reasonably extensive legal framework when it comes to the protection of LGBTQIA+ human rights. However, there is still much work to be done on specific topics: it appears that France has yet to enhance its recognition and protection of gender identity, expression and sex characteristics, to be consistent with the level of protection provided for sexual orientation. The situation of LGBTQIA+ rights in Spain has much improved over the past years. This improvement can be mostly attributed to the change in the national administration, as the current government is represented by Podemos, a left-wing party that has a long history of supporting the LGBTQIA+ cause. While the recent changes enacted by the government are a great glimmer of hope, there

is still lots to be done in order to ensure the protection and recognition of all LGBTQIA+ individuals in Spain.

Lastly, the situation of LGBTQIA+ rights in Poland is not among the best. The continuous promotion of anti-LGBTQIA+ propaganda and the spread of the Polish “LGBT free zones” makes the country a hostile territory for the LGBTQIA+ community, forcing individuals to hide and repress their true-selves or driving them away from their homes.

Each country has its own culture and beliefs on LGBTQIA+ rights and practices. But it is undeniable that LGBTQIA+ rights are human rights, deeply protected by the European Union, which wants to promote and create a territory where the rights of the LGBTQIA+ community are ordinary and reasons of union instead of causes for suffering and discrimination. It is important for central governments, political parties, LGBT organisations to share and exchange best practices on the promotion of LGBTQIA+ rights.



DEFINITIONS

Bisexual	Individuals who are physically and emotionally attracted to male and female individuals and/or to different gender identities.
Cisgender	Status of person whose deeply felt sense of gender identity matches the sex/gender they were assigned as birth. In opposition to transgender.
Endosex	Status of a person whose primary and secondary sex characteristics fall completely within one binary sex category. In opposition to Intersex.
Interphobia	The irrational fear and aversion towards intersex and intersex people.
Intersex	Status of a person presented primary and/or secondary sex characteristics that do not match the male/female binary.
In vitro fertilisation (IVF)	IVF is one of several assisted reproductive techniques (ART) used to assist couples in conceiving a child (Source: The Free Dictionary)
Homophobia	The irrational fear and aversion towards homosexual, bisexual and transgender individuals.
Homosexual	Individuals who are physically and emotionally attracted to same-sex persons.
Trans(gender)	Status of a person whose deeply felt sense of gender identity does not match the sex/gender they were assigned at birth.

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