

Off Paper and On-the-Ground:
Comparing the Experiences of Bulgarian
Rainbow Families Caught Between European
Union Treaties and National Transgressions

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Definitions

i. EU Free Movement

Article 21(2) of the Treaty on the Function of the European Union (TFEU) provides that: “Every citizen of the Union [EU] shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.”¹

ii. Intimate Citizen Regime

An examination of the cultural, social, and legal relationships between persons, and the publicity or privacy of their relationships. Including an additional historical layer, Bulgarian citizens experienced a conservative and controlling intimate citizenship regime.

iii. LGBTI+

An acronym for “Lesbian, Gay, Bisexual, Transgender, Intersex.” Though there are variations of the acronym to include Q for “Queer,” this article has opted to follow the acronymization used by LGBTI+ Bulgarians.

iv. Pronatalist

National practices relating to the promotion of pregnancy and child-rearing.

¹ See EC, *Treaty on the Functioning of the European Movement* [2008] OJ, 115 *article 21(1)-(3)* at 57, online: <http://data.europa.eu/eli/treaty/tfeu_2008/art_21/oj>.

v. Rainbow Families

The term, familiarized by the international LGBTI+ movement is used to denote the diverse familial approaches of LGBTI+ partners. Much of the public recognizes, and therefore uses, the term “gay marriage.” However, for the purpose of this research, the term “rainbow family/families” is written to include same-sex partners, partnerships comprised of one or more transgender, intersex, and/or non-binary person, and persons who are queer and/or bisexual. “Rainbow families” include marriages, partnerships, parenthood, and single parents belonging to the aforementioned identities.

In the realm of legal analysis, the pursuit of equality often clashes with the punitive experiences faced by marginalized communities. This essay delves into the intricate tapestry of LGBTI+ rights in Bulgaria, scrutinizing the disconcerting gap between the promise of equality under EU laws and the stark realities confronting these individuals in the Bulgarian state. The institutionalization and regulation of intimacy in Bulgaria have been both implicitly and explicitly heteronormative, radically privileging the conjugal, procreative heterosexual couple. This framework has led to the active oppression, exclusion, and marginalization of those who have acted on, and sought to live out, their same-sex desires and attachments. Intimate citizenship regimes, encompassing the laws, policies, and cultures that regulate everyday lived practices of intimate life, reflect a spectrum of patriarchy, heteronormativity, and majoritarianism.

The essay begins by reviewing Bulgaria's historical background, unfurling the tapestry of societal attitudes towards the LGBTI+ community. Examining religious impositions, particularly traditional Orthodox Christianity's emphasis on the nuclear family, provides readers with a lens through which to examine the State's entrenched prejudices. The academic discourse of the early 1990s regarding social sex further illuminates the evolving landscape. The theme then transitions to the European Union (EU), embarking on a comprehensive analysis of the EU's structures, the *Charter of Fundamental Rights in the European Union (Charter)*, and the value of Bulgarian accession into the EU.

Comparative socio-legal frameworks will allow readers to grapple with the disconnect in treatment faced by rainbow families between the EU's hard and soft laws on paper, and on-the-ground performances on behalf of the Bulgarian state. Eurobarometer Discrimination Surveys will statistically measure tolerance of rainbow families, both nationally and internationally across

EU Member States. EU laws and regulations affecting rainbow families are examined more closely before turning to Bulgaria's *Protection Against Discrimination Act* and Protection Against Discrimination Committee. The analysis then begins to identify gaps in protection and enforcement of EU laws impacting rainbow families' right to free movement and right to respect for private and family life.

The essay then pivots to assess the impact of top-down effects of EU laws and regulations on Member States, with Bulgaria at the forefront. Readers are meant to question the purpose of punitive solutions following continued infractions, and how EU authority ought to be better applied to encourage Member States to respect their agreed upon commitments. In the final section, individual and communal initiatives are affirmed during throughout their three-wave evolution. Within each wave, readers will become exposed to grassroots LGBTI+ advocacy, along with the trials and errors of community organizing, inclusive of the pivotal role of awareness raising and public education at the civic level. Recommendations, acting as a fourth wave, are offered to EU and Bulgarian executives, following the gaps noted throughout the historical, social-cultural, and legal review.

Altogether, the essay synthesizes key findings and arguments, reiterating the significance of understanding the factors contributing to the gap in LGBTI+ rights. The clarion call to shift efforts away from reactive legislation and soft law suggests an alternative approach. Inspired by Dean Spade, the essay calls for Bulgarian civil society to shift from a top-down to a bottom-up approach. The shift in power is suggested to be in response to the reactionary, or more aptly put, inaction, behind both existing authorities, and promotion of a new social movements stemming from within rainbow families.

Background: A Historical Overview of Bulgaria's State Interference in Intimate Citizen Regimes

Prior to contending with LGBTI+ rights in contemporary Bulgaria, we must first come to understand the State's origins. The historical framework of Bulgaria's intimate citizenship regime reflects a nuanced combination of gender equality, pronatalism, and heteronormativity.² Prior to communism, the Bulgarian Orthodox patriarchy notably granted married women rights to property ownership, independent business transactions, and equal access to divorce.³ In 1944, the Fatherland Front's (the Front) rise to power institutionalized gender equality through labour, secularized marriage, and equalized the status of children born outside wedlock in the communist Bulgarian Constitution of 1947.⁴

Throughout the communist era under the People's Republic of Bulgaria (1946-1990), a forceful expectation emerged for women to participate in paid labour, leading to high levels of women's employment. However, the regime strictly confined legitimate sexual practices to reproductive acts within marriages, discouraging sexual pleasure as an end in and of itself, even within heterosexual unions.⁵ Pronatalist policies reached their peak in 1951 with the *Bachelor Tax*, penalizing women aged 21 to 45 and men aged 21-50 without children.⁶ This law, enforced through public reprobation and imprisonment for infidelity, underscored the regime's control over intimate lives; including, and most insidiously, those of the State's LGBTI+ community.

² See Sasha Roseneil, et al., *The Tenacity of the Couple-Norm: Intimate Citizenship Regimes in a Changing Europe*, (JSTOR: UCL Press, 2020) at 62-62 ([doi:10.2307/j.ctv13xpsd5.10](https://doi.org/10.2307/j.ctv13xpsd5.10)).

³ *Ibid* at 64-65.

⁴ *Ibid*.

⁵ *Ibid*.

⁶ See Kristy Ironside, "Between Fiscal, Ideological, and Social Dilemmas: The Soviet 'Bachelor Tax' and Post-War Tax Reform, 1941–1962" (2017) 69:6 *Europe-Asia Studies* at 856-858 (DOI:[10.1080/09668136.2017.1344189](https://doi.org/10.1080/09668136.2017.1344189)).

The criminalization of same-sex acts persisted under communism. Legal changes in the 1950s increased the punishment for homosexuality, penalizing both sexual intercourse and satisfaction between individuals of the same sex for both men and women.⁷ Punitive efforts went so far as where State campaigns targeted “intellectual homosexuals,” sending them to corrective labour camps.⁸ LGBTI+ persons felt pressured to ensure their safety by entering into public heterosexual relationships-turned-marriages and have children; often repressing both their desires and truths.

During this period, there existed no autonomous civil society or social movement endeavours capable of contesting the prevailing communist agenda’s intimate citizenship. The enactments of the new *Constitution* in December 1947, including civil liberties and individual freedoms restricted use against the State.⁹ The Front subjected civic organization to stringent State oversight.¹⁰ The Front emerged from the anti-fascist coalition spearheaded by communists that seized authority between 1944 and 1989 and underwent a transformation into the most extensive mass organization in socialist Bulgaria.¹¹ Despite this, it lacked genuine political influence. From the late 1950s onward, its principal aim was to establish the “socialist way of life,” a symbol of communist ideology’s triumph.¹² To achieve this, the Front deployed tactics such as propaganda campaigns, lobbying initiatives, and the distinctive “Comrade Courts” as part of its endeavours to imbue everyday life with socialist principles. The courts emerged as pivotal arenas wherein local activists exercised moral surveillance over the intimate aspects of

⁷ Roseneil, *supra*, note 2 at 62.

⁸ *Ibid* at 68.

⁹ *Ibid*.

¹⁰ See Ulf Brunnbauer, "Making Bulgarians Socialist: The Fatherland Front in Communist Bulgaria, 1944–1989" (2008) *East European Politics and Societies* 22:1 at 44-46.

¹¹ *Ibid*.

¹² *Ibid*.

their neighbours' lives.¹³ Consequently, promoting and defending the conventional married procreative heterosexual partnership.

Culturally, same-sex relationships remained largely invisible, with laws discriminating against homosexual behaviours and observing same-sex practices as deviant. These approaches were supported by Bulgaria's first *Criminal Code* [1896] penalizing sodomy with increased sentences following the *Code's* amendment in 1951.¹⁴ Yet, despite repeal of the *Code's article 420* decriminalizing consensual homosexual acts, public displays of homosexuality continue to be met with negative cultural perception.¹⁵ The liberalization of the intimate citizenship regime post-communism took over a decade to impact non-heterosexuals, linking homosexuality with criminality amidst a cultural backlash of patriarchalism and conservatism. Anti-corruption moves, crucial for EU accession, led to the removal of discriminatory legal paragraphs. The early 2000s saw a significant shift when human rights NGOs and European Commissioners raised concerns about discriminatory laws.¹⁶ This prompted legislative changes between 2002 and 2006, driven by EU policies, equalizing laws on same-sex practices.¹⁷ However, the top-down nature of these changes, influenced by EU transposition rather than internal social mobilization, raises questions about their lasting impact on the daily lives of Bulgarian people. Despite legal equality, cultural shifts and grassroots mobilization remain crucial for sustainable change in societal attitudes towards rainbow families.

¹³ *Ibid.*

¹⁴ See ILGA World Database, "Legal Frameworks: Criminalization of Consensual Same-Sex Acts" *ILGA World*, online: <<https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>>.

¹⁵ *Ibid.*

¹⁶ Roseneil, *supra*, note 2 at 64-65.

¹⁷ *Ibid.*

The European Union: Structure, the *Charter*, and Bulgarian Accession

A. *The Structure of the European Union*

The EU is an international organization established through treaties among Western European states to strengthen economic relations.¹⁸ The EU and its principal institutions – namely the European Council (Council), the European Parliament (Parliament), and the Court of Justice of the European Union (CJEU) – bear similarities to a state in various aspects. The EU possesses the authority to enact legislation and make decisions that hold binding force on Member States, often being directly applicable in their national legal systems.¹⁹ Nonetheless, a fundamental distinction between the EU and a state lies in the absence of sovereignty within the EU itself. Its jurisdiction is confined to areas where decision-making authority has been expressly delegated to it by the Member States.²⁰ Consequently, the EU operates solely within its “conferred competencies,” requiring explicit authorization from Member States to make decisions in specific domains.²¹ This transfer of competence is outlined in the treaties, particularly the TFEU.²² The treaty provisions that specify the EU’s entitlement to issue legally binding decisions within the scope of a particular policy are commonly referred to as legal bases.²³

Legal sources in the EU are categorized into primary and secondary sources. The primary sources include key documents such as the *EU Treaty* (TEU), TFEU, and the *EU Charter of*

¹⁸ See David Langlet & Said Mahmoudi, “The European Union and its Structure” (2016) *EU Environmental Law and Policy* at 4.

¹⁹ *Ibid* at 7.

²⁰ *Ibid*.

²¹ *Ibid* at 8.

²² TFEU, *supra* note 1.

²³ Langlet, *supra*, note 18 at 7.

Fundamental Rights (Charter).²⁴ Protocols, declarations attached to treaties, and Accession Treaties with new Member States are considered primary sources.²⁵ Modifications to primary sources require a new treaty ratified by all Member States. Historical amendments include the *Single European Act* (1987), the *Treaty of Maastricht* (1992), the *Treaty of Amsterdam* (1997), the *Treaty of Nice* (2000), and the *Treaty of Lisbon* (2009).²⁶

Secondary sources develop from primary sources, drawing validity from primary law. Secondary law is adopted by EU institutions, primarily the Council and the European Parliament, and include binding instruments – directives, regulations, and decisions- as well as non-binding instruments – recommendations and opinions.²⁷ Both primary and secondary instruments are defined in TFEU *Article 288*.²⁸ Member States must ensure the directive’s provisions are consistent with their national laws. If a directive is not implemented correctly, or on time, the Commission may initiate infringement proceedings against the Member State involved.²⁹

i. Keeping in Mind the Istanbul Convention

The Istanbul Convention (*Convention*), formally referred to as the *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, is not a tool proposed by the EU. Rather, it was drafted by the Council of Europe (CoE) and

²⁴ See European Union, “Types of Legislation” online: *European Union* <https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en>.

²⁵ *Ibid.*

²⁶ See European Union, “Founding Agreement” online: *European Union* <https://european-union.europa.eu/principles-countries-history/principles-and-values/founding-agreements_en>.

²⁷ 326/47, *supra*, note 22.

²⁸ Note, a regulation is universally binding, directly applicable in all Member States. A directive is binding as to the result to be achieved, allowing Member States flexibility in how they implement it. A decision is binding in its entirety, applicable only to the specified addressees. Recommendations and opinions lack binding force. Regulations, similar to national laws, are binding, generally applicable, and are directly applied by national courts and authorities. They can be invoked by individuals and do not require incorporation into national law. Directives, resembling international agreements, necessitate Member States to achieve their intended outcomes through national legislative measures. The directive's content must be transposed into national law within a specified deadline.; *Ibid.*

²⁹ See EC, Directive 2004/38/EC of the European Parliament and of the Council, [2004] OJ, L 158/77 at *article 36*.

adopted by the EU in the summer of 2023.³⁰ The CoE is a separate international organization focusing on promoting cooperation between European countries areas inclusive of human rights, rule of law, and democracy.³¹ While the EU is a distinct political and economic union, EU Member States, such as Bulgaria, may simultaneously be members of the CoE. Both act as differing forms of authoritative bodies to their respective members.

The CoE's drafting of the *Convention* opened for signature in 2011. Its purpose is to address and combat violence against women and domestic violence by establishing a comprehensive legal framework promoting cooperation among signatory states.³² While the EU recently ratified the *Convention*, some individual EU Member States had previously signed and ratified the *Convention*.³³ Its introduction in Bulgaria sparked a highly contentious human rights debate. Instead of focusing on the *Convention*'s principal goal of targeting domestic abuse, discussion in Bulgaria revolved around the role of LGBTI+ persons and whether European "gender propaganda" should be taught in schools.³⁴ These debates were part of a larger discourse concerning transnational mobilizations of the religious rights.

Due to negative associations with the *Convention*'s name, many Bulgarians distrusted its purpose; particularly those within Orthodox Christian circles. Although anti-LGBTI+ sentiments were pre-existing in Bulgaria, the *Convention* provided an opportunity to reinforce these

³⁰ See Council of Europe, "The European Union deposited the instrument of approval of the "Istanbul Convention" (2023) online: *Council of Europe* <<https://www.coe.int/en/web/portal/-/the-european-union-deposited-the-instrument-of-approval-of-the-istanbul-convention->>.

³¹ ³¹ See Council of Europe, "The Council of Europe at a glance" online: *Council of Europe* <<https://www.coe.int/ca/web/portal/the-council-of-europe-at-a-glance>>.

³² See European Parliament, "At a Glance: The Istanbul Convention: A tool to tackle violence against women and girls" (2017) online: <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/630297/EPRS_ATA\(2018\)630297_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/630297/EPRS_ATA(2018)630297_EN.pdf)>

³³ Note, the EU, however, has its own legal framework and initiatives to address gender-based violence and promote gender equality, such as the *Victims' Rights Directive and the Gender Equality Strategy*.

³⁴ See Anita Lekova, "Are You a Gender?: [Homo]Sexual Belonging in Bulgaria" (Central European University, Department of Gender Studies, 2021) at 1.

ideologies. During the 1990s, the introduction of the gender concept to academic circles in Bulgaria prompted efforts to find an appropriate translation.³⁵ Initially, there was an attempt to connect gender with the grammatical gender system in Bulgarian, which includes male, female, and neutral categories. However, this approach failed to establish a clear distinction between sex and gender. As a result, various translations emerged, such as “social sex,” and a direct transliteration of “gender.”³⁶ Among these options, social sex appeared promising as its aim was to differentiate between biological sex and the culturally and socially constructed aspects of gender. Unfortunately, this translation added to the confusion by implying that social sex referred to a socially constructed biological sex rather than the concept of gender. Nonetheless, when the *Convention* was drafted and translated into Bulgarian, social sex became the chosen working translation for gender, despite its tendency to be misunderstood.³⁷

Leveraging the flawed interpretation of gender as social sex, Society and Values, associated with the broader World Congress of Families, played a significant role in opposing the *Convention* by positioning itself as an organization rather than a political party to exert greater public influence.³⁸ The group actively worked to prevent the implementation of the *Convention*, starting with an online petition in 2018.³⁹ Their arguments centered on the belief that gender ideology posed a threat to traditional Bulgarian values, advocating for a binary understanding of gender with only male and female categories. These misinterpretations and desire to preserve, what are positioned to be, traditional Bulgarian principles led to opposition of the EU’s accession to the *Convention*.

³⁵ *Ibid* at 2-6.

³⁶ *Ibid*.

³⁷ *Ibid* at 35.

³⁸ *Ibid* at 37.

³⁹ *Ibid*.

However, in late 2021, after receiving an opinion from the CJEU on the ratification process, negotiations reached a conclusion.⁴⁰ Following the European Parliament’s consent in May 2023, the Council decided, as of June 2023, that the EU will officially join the *Convention*.⁴¹ The *Convention*’s use of strict and exclusive gender-binary language continue to expose LGBTI+ persons – considerably same-sex women, bisexual women, and trans women – to compounding forms of physical and state violence. Domination is exercised regardless of the Commission President’s speech at the *LGBTIQ Equality Strategy 2020-2025* open, where she states that she “will not rest when it comes to building a Union of equality. A Union where you can be who you are and love who you want – without fear of recrimination or discrimination. Because being yourself is not your ideology. It’s your identity. And no-one can ever take it away.”⁴²

B. The Charter of Fundamental Rights of the European Union

The *Charter* stands as the EU’s bill of human rights, comprising 50 articles outlining substantive rights and principles, followed by four articles with general provisions.⁴³ Member States are obliged to respect these rights and adhere to the principles of the *Charter* when acting within the scope of binding EU law. The *Charter* addresses the EU itself, applying to EU Member States only when they are implementing Union law.⁴⁴ Given that EU law is predominantly implemented at the national level, the *Charter* relies on national judges,

⁴⁰ See Swedish Presidency of the Council of the European Union, “Istanbul Convention Adopted in the EU” (2023) online: *European Council* <[⁴¹ See European Parliament, “At a Glance: EU accession to the Istanbul Convention” \(2023\) online: <\[⁴² ⁴² See European Parliament, “The 2020-2025 LGBTIQ equality strategy: Implementation overview” \\(2023\\) online: *European Parliament*\]\(https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/747114/EPRS_ATA\(2023\)747114_EN.pdf></p></div><div data-bbox=\)](https://swedish-presidency.consilium.europa.eu/en/news/istanbul-convention-adopted-in-the-eu/#:~:text=In%20late%202021%2C%20after%20the,will%20accede%20to%20the%20convention.></p></div><div data-bbox=)

<[⁴³ See EC, *Charter of Fundamental Rights of the European Union*, \[2000\] OJ, C 364/01.](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/753174/EPRS_STU(2023)753174_EN.pdf></p></div><div data-bbox=)

⁴⁴ *Ibid.*

parliamentarians, government officials, and legal practitioners as *Charter* agents. The *Charter* is legally binding and covers civil, political, economic, social, and cultural rights.⁴⁵ Its strength lies in the supremacy it holds over national law within the scope of EU law. However, there are instances where direct invocation may not be possible due to various factors, such as the *Charter* provision being a principle and not a right, or not being directly applicable to the case at hand.⁴⁶

While not all provisions may be directly invoked, the *Charter* significantly enhances the visibility of rights. The *Charter* explicitly outlines rights and principles, providing clarity often absent in other international rights documents. Unlike the *European Social Charter*, the *Charter* mandates Member States to adhere to all its provisions without the option to select specific ones.⁴⁷ Given the comprehensive coverage of rights by the *Charter*, it serves to increase the visibility of these rights at the national level. National courts have occasionally utilized the *Charter* to interpret or advance national law, even beyond the scope of EU law. Overall, the *Charter* plays a crucial role in promoting and protecting the fundamental rights of families within the EU. Though, more could be done to explicitly protect rainbow families.⁴⁸

C. Significance of Bulgarian Accession into the EU

Bulgaria, ranking the 16th largest European country, underwent a challenging economic period during the 1990s following its socialist leadership and subsequent disintegration of the Eastern Bloc.⁴⁹ However, from the late 90s onwards, Bulgaria's economy rebounded remarkably, as the country began working to position itself as one of the fastest-growing

⁴⁵ *Ibid.*

⁴⁶ See Fair Trails, "Practitioners Tools on EU Law: *EU Charter of Fundamental Rights*" (2020) at 15.

⁴⁷ See Olivier De Schutte, "Directorate-General for Internal Policies: The European Social Charter in the context of implementation of the *EU Charter of Fundamental Rights*" (2016).

⁴⁸ *EU Charter*, *supra*, note 43 at *article 9*.

⁴⁹ See Ekrem Yasar Akcay, "The EU membership process of Romania and Bulgaria relative to Turkey?" (2018) 21:1 JLSAEE at 52.

economies in Europe.⁵⁰ Significant milestones marked this recovery. Beginning on May 8th, 1990, when the EU introduced the *Trade, Business, and Economic Relations Convention*, and with it, the extension of the existing Phare Programme (The Programme of Community Aid to the Countries of Central and Eastern Europe) was extended to Bulgaria.⁵¹

The Bulgarian parliament declared its main goal of becoming a full EU member in October 1990.⁵² Negotiations with the EU commenced in January 1991, leading to the signing of the *Interim Europe Agreement on Trade and Related Matters* on March 8th, 1993.⁵³ The EU established the Copenhagen Criteria during discussions with Bulgaria and fellow Eastern European countries, defining the strategy for enlargement and setting criteria for new member states.⁵⁴ Political dialogue between Bulgaria and the EU, coupled with the positive impact for the *Transitional Agreement*, prompted Bulgaria to apply for full EU membership on December 14, 1995.⁵⁵ The European Commission provided opinions on July 15, 1997, categorizing Bulgaria as a candidate country, albeit in a second group not yet ready for accession negotiations, as outlines in the *Agenda 2000 Report*.⁵⁶

In response, the Bulgarian Council of Ministers adopted the *National Strategy for Participation in the EU* on March 23, 1998.⁵⁷ Negotiations officially began on February 15, 2000, leading to the negotiations of 21 chapters between the EU and Bulgaria by October 2001.⁵⁸

In 2002, the European Commission prepared a strategy outlining Bulgaria's path to meet the

⁵⁰ *Ibid.*

⁵¹ *Ibid* at 54.; See Eur-Lex, "Phare Programme" online: *European Union* <<https://eur-lex.europa.eu/EN/legal-content/summary/phare-programme.html>>.

⁵² Akcay, *supra*, note 49

⁵³ *Ibid.*

⁵⁴ *Ibid.*; See also European Council, "European Council in Copenhagen: Doc93/3" (1993) online: <https://ec.europa.eu/commission/presscorner/detail/en/DOC_93_3>.

⁵⁵ *Supra*, note 49.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

necessary requirements to attain full EU membership.⁵⁹ In the following year, Bulgaria's progress in meeting the Copenhagen Criteria was highlighted in a Progress Report indicating that implementation of public reforms would expedite the State's accession.⁶⁰ While corruption remained a significant challenge, Bulgaria made substantial advancements in regulating monetary policy and developing the domestic market, ensuring macroeconomic stability.⁶¹ By 2004, Bulgaria met political criteria in democracy, human rights, and the rule of law, with notable progress in public administration and the judiciary.⁶² Accession negotiations with the EU concluded successfully in December 2004, and the *Accession Treaty* was signed in April 2005.⁶³ On January 1st, 2007, Bulgaria officially became a full member of the EU, resulting in economic, political, and cultural improvements.⁶⁴

It ought to be noted that though accession into the EU is meant to strengthen relations amongst nations, it can be understood, based on earlier discussion in the essay, that the relations are largely economic. The human rights criteria do not explicitly mention protections against discrimination for rainbow families. In reviewing the Copenhagen Criteria, the term "discrimination" can be sourced but once under the section of anti-discrimination against racial bias and xenophobia.⁶⁵ Readers, as well as existing and future EU members, must question whether citizen protections, inclusive of rainbow families, are a genuine priority for the EU and its institutions. If it were, notice of rainbow family protections would be incorporated early on into the accession process.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*; See also European Parliament, "Briefing No 6: Bulgaria and the Enlargement of the European Union" at section d.

⁶⁵ European Council, *supra* note 55 at section 17.

Navigating the Landscape: Measuring EU and Bulgarian Acceptance of Rainbow Families

A. *Setting the Bar: The Eurobarometer Discrimination Surveys*

The EU emerges as relatively progressive in promoting LGBTI+ rights. EU Member States are signatories to international instruments such the 1997 *Treaty of Amsterdam* which grants the EU overt legal competence in tackling discrimination based on sexual orientation.⁶⁶ Bulgaria, having met the *acquis communautaire* requirements, now grapples with aligning its legal landscape to the progressively evolving European norms on homosexuality as the state does not offer constitutional recognition to rainbow families.⁶⁷ A second example is the *European Convention on Human Rights* (ECHR), emphasizing fundamental rights inclusive of anti-discrimination laws.⁶⁸ With this, the EU positions itself as a global commander for LGBTI+ rights. Notably, the EU claims to actively champion LGBTI+ rights internationally, exemplified by its role in initiating a UN declaration advocating for the global decriminalization of homosexuality.⁶⁹ Yet, the European reality reveals a nuanced picture.

Surveys by the EU's Fundamental Rights Agency (FRA) further indicate that instances of discrimination have increased for LGBTI+ persons and families.⁷⁰ Harassment and violence

⁶⁶ See EC, *Treaty of Amsterdam amending the Treaty of the European Union*, [1997] OJ C 340.; See also ILGA-Europe, "After Amsterdam: Sexual Orientation and the European Union: A Guide" (1999) at 37.

⁶⁷ See European Parliament, *Briefing: The rights of LGBTI people in the European Union*, at 6.

⁶⁸ Note earlier mentions of the European Union and the Council of Europe, whom the *European Convention of Human Rights* was drafted by, are separate bodies. However, the European Union sought to join the *Convention* as a means of strengthening cooperation between the two bodies and advancing human rights. Though it ought to be noted that Bulgaria had joined the Council of Europe and ratified the *Convention* in 1992, prior to the state's accession to the European Union, and yet continues to diverge from the *Convention's* goals. See also Nicolas Camut, "EU to join European Convention on Human Rights 'as soon as possible,' EU chiefs say" (2023) online: <<https://www.politico.eu/article/eu-join-european-convention-on-human-rights-soon-ursula-von-der-leyen-charles-michel/#:~:text=All%20EU%20member%20countries%20are,human%20rights%20on%20the%20Continent.>>

⁶⁹ See UN General Assembly, *Statement on Human Rights, Sexual Orientation, and Gender Identity*, 18 December 2018.

⁷⁰ See European Union Agency for Fundamental Rights, *EU LGBT Survey*, [2014].

remain prevalent, noticeably for trans and intersex persons who are subject to intensifying treatment.⁷¹ The Eurobarometer Discrimination Surveys quantify Bulgarian's social attitudes towards same-sex couples and the limited awareness and understanding regarding LGBTI+ rights. Altogether, the surveys indicate an increase in perceived discrimination against LGBTI+ persons between 2006-2019.⁷² When questioned whether LGBTI+ citizens ought to hold the same rights as non-LGBTI+ citizens, only 39% of Bulgarian voters agreed, making the state's position the third lowest in total.⁷³ Only 7% of respondents claimed to have friends who identify as homosexual, sharply contrasting with the EU average of 34%. In 2006, only 15% of Bulgarians expressed support for same-sex marriage, significantly lesser than the EU average of 42%. Furthermore, a mere 12% believed that same-sex couples should be allowed to adopt, contrasting the EU average of 31%.⁷⁴

In the 2008 Eurobarometer study, 17% of respondents claimed knowledge of their rights in the face of discrimination or harassment. The EU average was not much different at 22%. Both represent a critical gap in awareness. The study also reveals Bulgaria's lowest level of consciousness regarding discrimination against the LGBTI+ community, with 20% of voters recognizing the harm as widespread, whereas 51% of EU voters believe the targeted discrimination to be all consuming. These statistics become clear when only 1% of voters in Bulgaria claim to have witnessed LGBTI+ discrimination. Strikingly, 6% of EU voters have witnessed motivated discrimination. The statistical data offers credible insight into the

⁷¹ *Ibid.*

⁷² See European Union, *Eurobarometer: Discrimination in the European Union* [2019] online: <<https://europa.eu/eurobarometer/surveys/detail/2251>>.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

longstanding presence of LGBTI+ phobia within Bulgaria, and the EU more broadly, despite the EU's effort on paper.

B. EU Laws and Regulations Relevant to LGBTI+ Rights

The EU is a leader in anti-discrimination laws, including protection against discrimination based on sexual orientation. Notably, the *Employment Equality Directive* prohibits such discrimination in the workplace, and the CJEU's rulings on same-sex issues often interpret this *Directive*.⁷⁵ The EU's commitment to combating sexual orientation discrimination is emphasized in the *Charter*.⁷⁶ However, EU influence on National family law remains weak. This is due to the EU's limited authority related to family law, inclusive of regulations on the rights of rainbow families. Family law, particularly with cross-border implications, falls within the jurisdiction of Member States. Interestingly, the EU's non-binding soft law increasingly recognizes, and addresses, challenges faced by rainbow families. The concerns with soft law instruments, as affirmed by authors Kenneth Abbott and Duncan Snidel, is how an institution may simply amend or withdraw at pleasure and without consultation of affected parties.⁷⁷

The European Parliament, often regarded as one of the most "LGBT[I+]-friendly" EU bodies, has shown support for sexual orientation related rights through resolutions and proactive efforts during the accession process.⁷⁸ The Parliament's recent resolution on LGBTI+ rights within the EU envisions robust safeguards for rainbow families' rights against discrimination,

⁷⁵ See Council Directive 2000/78/EC of 27 November 2000 establishing framework for equal treatment in employment and occupation [2000] OJ L 303.; See also Case C-267/06 *Maruko* [2008] ECLI:EU:C:2008:179; Case C-147/08 *Römer* [2011] ECLI:EU:C:2011:286; Case C-267/12 *Hay* [2013] ECLI:EU:C:2013:823; Case C-443/15 *Parris*[2016] ECLI:EU:C:2016:897.

⁷⁶ *EU Charter*, *supra* note 43 at art 21(1).

⁷⁷ See Kenneth Abbott & Duncan Snidel, "Hard and Soft Law in International Governance" (2000) 54:3 IO at 422.

⁷⁸ See Dimitry Kochenov, "Democracy and Human Rights—Not for Gay People?: EU Eastern Enlargement and Its Impact on the Protection of the Rights of Sexual Minorities" (2007) TWLR 13 at 20–22.

and removing obstacles to their free movement.⁷⁹ The resolution urges the Commission and Member States to take action, with a specific call for legislation recognizing the legal ties of rainbow families within the EU.⁸⁰ Lenka Krickova echoes the importance to not lose the precision of terminology within open-textured interpretations that can be too easily abused and misapplied by Member States who seek to weaken the validity of rainbow families:

While birth certificates are supposed to be recognized unconditionally, the required recognition of marriages and registered partnerships is limited to ‘situations in which the spouses or the registered partners would have a right to equal treatment under the case law of the ECtHR.’ That means the Member States could, for example, ‘downgrade’ the marriage concluded abroad to the level of registered partnership as allowed in *Orlandi and Others v Italy*...Such careful wording of the resolution may show the Parliament’s effort to avoid requiring Member States to provide same-sex spouses, for instance, with the possibility to jointly adopt a child on equal footing with opposite-sex couples.⁸¹

The Commission responded with the *LGBTIQ Equality Strategy 2020-2025*, aiming to enhance legal protection for rainbow families in cross-borders situations.⁸² A proposed regulation for intra-EU recognition of parenthood is currently in its drafting stage, aligning with the President of the European Commission’s vision of universal parenthood recognition.

⁷⁹ See EC, *European Parliament resolution on LGBTIQ rights in the EU* [2022] OJ C 117.

⁸⁰ *Ibid* at para 8.

⁸¹ Lenka Krickova, “Same-Sex Families’ Rights and the European Union: Incompatible or Promising Relationship?” (2023) 37:1 IJLPF at footnote 27.; *Ibid*.

⁸² See EC, *Progress Report on the implementation of the LGBTIQ Equality Strategy 2020–2025* [2023] OJ, 24-26.

Recalling the 2020 State of the Union speech, President Ursula Von Der Leyen stated, “if you are a parent in one country, you are a parent in every country.”⁸³ However, the proposal’s success depends on unanimous approval by the Council, which appears unlikely due to varying Member States’ attitudes, like that of Bulgaria, towards same-sex parenting. Until legislative solutions are adopted, rainbow families rely on their free movement rights guaranteed by the treaties and the *Citizens’ Rights Directive*.⁸⁴

The European Court of Justice (ECJ), a branch of the CJEU, is the EU body responsible for overseeing Member State compliance with EU laws.⁸⁵ The ECJ recently made significant strides in favor of rainbow families, such as in the *Coman* and *Pancharevo* (also referred to as V.M.A and/or Baby Sara Case) cases, which removed legal barriers to their free movement.⁸⁶ *Coman* affirms the definition of “spouse” to include same-sex partnerships while *Pancharevo* asserts that “an EU Member State must recognize family ties between members of a rainbow family that have been established in another EU Member State, when the family moves to its territory for the purpose of free movement.”⁸⁷ While the ECJ’s recognition in these cases is limited to specific EU law purposes, there is potential for broader cross-border recognition of rainbow families’ legal ties. Despite criticism for past shortcomings in protecting rainbow families’ rights, recent engagement with key EU bodies indicates a gradual shift, and Member States may consider these

⁸³ See EC, *State of the Union Address* [2020].

⁸⁴ TFEU, *spura* note 1 at art 21.; See also, EC, *Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States* OJ L158/77.

⁸⁵ See European Union, “Court of Justice of the European Union (CJEU)” online: *European Union* <https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en>

⁸⁶ See Case C-673/16 *Coman* [2018] EU:C:2018:385.; See also Case C-490/20 *Pancharevo* [2021] CJEU.

⁸⁷ *Pancharevo*, *ibid.*; See also European Parliament, *Briefing: Free Movement Rights of Rainbow Families* [2023] at 11.

developments when enacting new legislation, while national courts could incorporate EU law into their case-law.

C. Bulgaria's Effort: PADA and PADC

The Bulgarian judicial system transformed following the enactment of the *Protection Against Discrimination Act* (PADA).⁸⁸ PADA not only addresses direct and indirect discrimination but clearly defines sexual orientation as “heterosexual, homosexual, or bisexual orientation,” aligning with both EU legal principles and other international legislation. The *Act* echoes principles outlined in the Council of Europe’s *Protocol No. 12 to the European Convention on Human Rights*.⁸⁹ The introduction of the ground-breaking measures – in the Bulgarian context –, shifting the burden of proof in favor of victims and empowering legal non-profit entities to champion cases on behalf of victims, includes support for *some* members of rainbow families.⁹⁰ However, the term “rainbow family/families” is itself not included within the act.

A pivotal aspect of PADA is the established single equality authority of the Protection Against Discrimination Commission (PADC).⁹¹ This specialized body operates independently and is comprised of nine members; five elected by Parliament, and others appointed by the President.⁹² PADC’s mandate is expansive – again, in a Bulgarian context – working to include protection on all grounds uniformly with regards to sexual orientation. Its powers include investigating complaints by victims and third parties without limitation, issuing binding rulings

⁸⁸ See *Protection Against Discrimination Act* [2006] Bulgaria

⁸⁹ *Ibid.*; See also ETS 177, *Convention for the Protection of Human Rights (Protocol No 12)*, Rome, 4.XI, 2000.

⁹⁰ *Ibid* at article 47.

⁹¹ See Equinet, “[Commission for Protection Against Discrimination](https://equineteurope.org/author/bulgaria_cpd/)” (2005) online: *Equinet* <https://equineteurope.org/author/bulgaria_cpd/>.

⁹² *Ibid.*

on discrimination, conducting surveys, publishing independent reports, and engaging in legal actions, including joining court proceedings in an *amicus curiae* capacity.⁹³

Additionally, PADC assists in the recommendations of legislative reforms when providing opinions on drafts.⁹⁴ PADA and the PADC represent a novel framework within Bulgaria. Together, the two symbolize, to some, a commitment protection against local discrimination and a response to harm done. The comprehensive scope, specific prohibitions, and the authoritative role of PADC is designed to administer a robust foundation for promoting and safeguarding the rights of Bulgarians.

On-the-Ground Realities for Rainbow Families in Bulgaria

A. Pancharevo and the Right to Free Movement

Believed to be a significant triumph for LGBTI+ movement across EU countries, the CJEU's ECJ issued a landmark ruling on December 14, 2021, with *Pancharevo*. The case holds immense significance for rainbow families throughout the EU.⁹⁵ The CJEU declared that a parent-child relationship established in one Member State ought to be acknowledged in all other Member States without exceptions.⁹⁶ This is regardless of the stance of the Member State carries of rainbow families.⁹⁷

The case involved a child born to a Bulgarian National and a United Kingdom National residing in Spain, where the Spanish authorities recognized the parenthood of the same-sex

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ See Administrative case No. 6746 / 2022.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

parents on the birth certificate. However, Bulgaria refused to issue Bulgarian identity documents to the child, citing its non-recognition of same-sex marriages and the absence of evidence of a biological connection between the Bulgarian mother and the child.⁹⁸ Bulgaria referred the case to the CJEU in November 2020. The CJEU underscored the protection of the parent-child relationship in rainbow families, stating that Member states have the authority to determine their stance on same-sex marriage, but this cannot impede the fundamental rights guaranteed under the TFEU.⁹⁹ The CJEU mandated that a Member State is obligated to issue identity documents to a child with same-sex parents as recognize by another Member State without undermining national identity or public policy.¹⁰⁰

Recognizing the lawfully established parent-child relationship by the Spanish authorities through the birth certificate, the CJEU asserted that all Member States are obligated to recognize such relationships. The court explicitly acknowledged the child's rights under the *Charter* and held that her exercise of the right to move freely in the EU cannot be hindered solely because her parents are of the same sane. Drawing parallels with the *Coman* case, the CJEU stated that a child with a birth certificate designating an EU citizen as parent should consider a direct descendant, irrespective of the parents' sexual orientation.

However, the Bulgarian Supreme Administrative Court (SAC) issued its final decision on March 1, 2023, rejecting issuance of a birth certificate for Baby Sara.¹⁰¹ The SAC's refusal to recognize the child's Bulgarian citizenship, despite the CJEU's decision, underscores the

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

continued challenges faced by rainbow families with respect to navigating legal systems that deviate from the principles of EU law.

B. Koilova and Babulkova and the Right the Respect for for Private and Family Life

Though the recent September 2023 case had been decided by the European Court of Human Rights (ECHR), and not the CJEU, the facts involving a Bulgarian same-sex couple remain relevant to the discrimination faced by LGBTI+ citizens in an EU Member State.¹⁰² The couple, who had been cohabiting since 2009, married in the United Kingdom in 2016.¹⁰³ The couple sought recognition of their marriage, and following the application to change their civil status to “married,” the state of Bulgaria rejected the request due to the country’s definition of marriage being solely between a man and a woman according to the *Family Code*.¹⁰⁴ Despite a legal appeal, the SAC confirmed the State’s rejection in 2019. The decision aligned with both Bulgarian law and the State’s *Constitution*.

In its judgement, the ECHR stressed the intrinsic value of official recognition for same-sex couples, emphasizing the legitimacy it confers in society.¹⁰⁵ The court noted that Bulgarian law lacked a legislative framework for recognizing same-sex marriages contracted abroad, leaving the couple in a *de facto* union status without legal protection.¹⁰⁶ Assessing the public interest, the Bulgarian government argues social acceptance was in fact growing, but the court found no public interest contrary to the applicants’ rights to recognition and protection.¹⁰⁷ Despite

¹⁰² See Case of *Koilova and Babulkova v. Bulgaria* 40209/20.

¹⁰³ *Ibid.*

¹⁰⁴ See The *Family Code* No. 47 Bulgaria [2009] at Chapter 2, *article 5*.

¹⁰⁵ Though not the scope of this essay, the language of recognition brings to mind both Franz Fanon and Glen Clouthard who beg the question of recognition as Black and Indigenous persons moving through colonial spheres. The same can be applied to rainbow families.

¹⁰⁶ 40209/20, *supra* note 103.

¹⁰⁷ *Ibid.*

Bulgaria's failure to undertake measures for legal recognition of same-sex couples, and its lack of clear public interest justification, the ECHR ruling determined a violation of *Article 8 ECHR*. The decision focused on the states' positive obligation to recognize and protect same-sex couples.

Weighing the Consequences: EU Responses to Bulgaria's Deviation from International Laws

While Member States may have the freedom to delegate legislative powers and implement directives through international and local authorities, this does not exempt them from ensuring proper transposition of directive provisions into national law. In fact, failure to do so could potentially lead to infringement proceedings by the Commission, as the *EU Treaty* mandates sincere cooperation from Member States in implementing EU law. This is done in accordance with *Article 4(3)* of the TEU establishing Member States' commitment to fulfill treaty obligations and facilitate EU tasks without threatening objective.¹⁰⁸ When a Member State breaches treaties, the Commission, or concerned Member States, can bring actions before the CJEU under articles 258 and 259 of the TFEU, respectively.¹⁰⁹ It is unlikely that a fellow Member State would bring forward a concern unless they were directly impacted. And, as mentioned within the article, the motivation in receiving accession to the EU is primarily for strengthening *economic* relationships, not LGBTI+ relationships. We must question what drives the reason behind the silence from Member States following breaches impacting rainbow families. For those curious of on-the-ground civic power, individuals have limited access to the

¹⁰⁸ TFEU, *supra* note 1 at *article 4(3)*.

¹⁰⁹ *Ibid*, at *article 258*.; *Ibid*, *article 259*.

CJEU. They are, however, able to submit complaints to the Commission which may initiate proceedings.

The Commission becomes aware of violations through Member State reporting mechanisms which signals improper directive implementation.¹¹⁰ If a defaulting State does not correct errors, the Commission holds discretion as to whether infringement proceedings will occur.¹¹¹ It is important to note that not all cases reach the CJEU. The Commission must prove the breach, transferring the burden to the Member State if a *prima facie* case is established.¹¹² The CJEU may prescribe interim measures during proceedings.¹¹³ Further, the CJEU cannot annul national legislation upon discovering an infringement.

Rather, the Member State is required to comply and align its laws with EU rules.¹¹⁴ Failure to comply may lead to a new infringement proceeding under *Article 260(2)* of the TFEU, allowing the Commission to specify penalties.¹¹⁵ An assessment of penalties considers infringement seriousness, duration, and deterrence.¹¹⁶ Two options are available to the CJEU following an infringement: A financial penalty, for the future, aiming to induce prompt compliance, and a lump sum, to remedy a past breach.¹¹⁷ Regardless of forwarding-looking or remedial costs, Bulgaria's continued infringements on the rights of rainbow families begs for a new approach.

¹¹⁰ Langlet, *supra* note 18 at 131-135. See also, EC, *2022 Annual Report on monitoring the report of EU law* [2023] online: *European Commission* <https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2022-annual-report-monitoring-application-eu-law_en>.

¹¹¹ *Ibid.*; *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ TFEU, *supra* note 1 article 260(2).

¹¹⁶ Brunnbauer, *supra*, note 110.

¹¹⁷ *Ibid.*

People Power: Organizational Momentum and Civic Advocacy

A. First Wave: 1992-2002

Inspired by the post-communist democratic changes and Western European and American LGBTI+ activism, a group of friends established BULGA. The group brought together advocates, medical professionals, and journalists to focus on legislative changes and health issues for LGBT persons (not yet lending attention to Intersex individuals).¹¹⁸ BULGA would come to face internal disagreement and dissolve.¹¹⁹ Soon after, Guenko Guenkov registered Gemini; The organization focused on HIV prevention and participation in legal debates and reform. Gemini sought to repeal *Article 175* of the *Penal code* and bring forward legal protections against discrimination.¹²⁰

Sofia University assisted its students, and other intellectuals, in shaping critical thinking and participation in protest against the State. This period brought people with similar interest together, leading to the formation of the first LGBTI+ informal networks. Some activists borrowed LGBTI+ literature from Gemini's office and the British Council Library, uncovering the previously forbidden history of the gay and civic movements in Western Europe and the United States. Desislava Petrova, member of Gemini, was among the first to reveal her sexual identity on national television. While many activists were aware of Gemini, many also maintained their distance, whether due to secrecy, safety, or scrutiny. Despite Gemini's

¹¹⁸ Shaban Darakchi, "Bulgarian LGBTIQI Movement: Generations, Identifications, and Tendencies" (2021) 25:7 SJ at 913-914.

¹¹⁹ Shaban Darakchi, "Bulgarian LGBTIQI Movement: Generations, Identifications, and Tendencies" (2021) 25:7 SJ at 913-914.

¹²⁰ *Ibid.*

challenges in organizing a coherent community with clear goals, its establishment was critical in the inclusion of homosexuality into public spheres.

B. Second Wave: 2002-2012

LGBTI+ activism in Bulgaria experiences a significant shift during its second wave characterized by diversification and expansion. Gemini, the sole public-facing organization before 2002, began to face a funding crisis.¹²¹ This resulted in disintegration and mistrust within the organization. Soon after, in 2004, Bilitis Resource Centre, led by Monika Pisankanewa, and Queer Bulgaria Foundation emerged as equally separate and collaborative organizations. In their earliest stages, the two focused on rights concerning gay men, and, over time, would evolve to include the rights of women, transgender persons, rainbow families more broadly.¹²²

Online presence for LGBTI+ persons and networks increased, fostering with it a growth in international awareness and connections. The emergence of Bulgaria's first LGBTI+ blog, "Stalik", began its operation in 2008 by Radoslav Stoyanov, and became a crucial source of information and support for its users. Online forums, such as "gay.bg," "momcheto.bg," "elnaz.bg" and "gepime.com," have also contributed to the formation of optimistic attitudes, strengthening the LGBTI+ movement and its networks both internally and internationally.¹²³ Involvement in websites, school newspapers, radio programs, and similar promotional activities allow activists to express themselves and participate in the public.

Bulgaria's entry into the EU in 2007 instilled a new confidence in the State's LGBTI+ citizens. The result was an increase in public testimonies of their mistreatments and human rights

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

violations on behalf of the State. Though organizational efforts provided supports within their capacities, the citizens demanded more from the State. In response, Gemini organized the State's first pride event in 2008.¹²⁴ The public event was the first of its kind in the State. Many traditionalists felt threatened by the public gathering with one protestor even throwing a Molotov cocktail into the crowd causing injuries and police arrests.¹²⁵ Despite the backlash, the event marked a milestone in Bulgarian LGBTI+ activism.

In the same year following Sofia Pride, LGBTI+ persons were threatened with the murder of Mihail Stoyanov who was suffocated to death in Borissova Garden.¹²⁶ Alexander Georgiev and Radoslav Kirchev, defendants in the case, were members to a group whose aim is to “clear the park of gays,” and perceived Stoyanov to identify as such.¹²⁷ Three witnesses, part of the group conducting purges, testified that they had seen the two suspects murder Stoyanov.¹²⁸ The investigation officially concluded on May 28, 2012.¹²⁹ Seven years following the murder, Sofia City Court convicted the accused of Stoyanov's death.¹³⁰ According to Gama News, a Bulgarian LGBTI+ media outlet, Georgiev received a 13-year prison sentence, while Kirchev, a minor at the time of the murder, was sentenced to four years and 10 months.¹³¹ The verdict also includes a collective payment of 250,000 leva to Stoyanov's family.¹³² Hristina Stoyanova, the victim's mother, expressed her dissatisfaction with the sentence.

¹²⁴ *Ibid.*

¹²⁵ Amnesty International, “Open Letter: Bulgaria: The Perpetrators of the Killing of Mihail Stoyanov must be Brought to Justice” (2012).

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

The case has become emblematic of the challenges facing Bulgaria's justice system, characterized by prolonged pre-trial proceedings and deficiencies in the indictment. The murder prompted LGBTI+ activists to once again call for reform of the *Criminal Code* that plainly excludes sexuality as a prohibited hate motive. Without such reform, deaths of LGBTI+ persons due to their sexual orientation are reduced to murder by hooliganism.¹³³ Only in July 2023 would inclusion of provisions against hate crimes related to sexual orientation be included.¹³⁴

Stoyanov's case has changed the perspective of some who previously viewed LGBTI+ activism as problematic, prompting an increase in support. The accumulation of events fueled anger and a willingness to mobilize for change. In 2010, volunteers from the initial pride events formed the youth organization, Deystvie (Action). Initially focused on LGBTI+ youth rights, the group, led by Denitsa Lyubenova and Veneta Limbareva, now serves as the primary LGBTI+ advocacy resource in Bulgaria, providing legal aid and campaigning for legislative reforms.

C. Third Wave: 2012-Present

The third wave of LGBTI+ activism in Bulgaria is characterized by three key aspects: Political diversification; the establishment of consistent LGBTI+ communities; and a growing division within the movement. Prior to 2012, the movement, centered around NGOs, lacked significant political diversification. However, come 2012, the Sofia Queer Forum would mark a turning point. The forum introduced an intersectional, progressive, and novel approach to LGBTI+ rights in Bulgaria. The movement gained momentum in 2013 when activists participated in a year-long anti-government protest, prompting reflection on sexual orientation as

¹³³ GLAS Foundation, "Report on Anti-LGBTI Hate Crimes and Incidents in Bulgaria" (2017) at 6.

¹³⁴ The Sofia Globe, "Bulgaria Steps Up Legislation Against Hate Crimes" (2023).

a political issue.¹³⁵ Shortly after, Victor Lilov was introduced as the first openly-gay candidate for mayor's office in Sofia in 2015.¹³⁶

This period inspired the launch of Gays Lesbians Accepted in Society (GLAS) Foundation in 2014. The foundation's contribution to the public includes the creation of HUGE, an online platform for gay news, and HOMOSOC, a publication of in-depth research into homosexuality during the Communist regime.¹³⁷ GLAS has also partnered with Bilitis and Deystvie to create The Rainbow Hub Project; a multi-use space for gathering and hosting events. Single Step established itself in 2016 as a response to gaps in existing organizations. Their concentration includes youth mental health, creative camps, and STBBI prevention through testing and combating stigma.¹³⁸

While community-building events and groups have bolstered the LGBTI+ movement in Bulgaria, they often stem from project-based funding leading to a rightful concern of corporatizing LGBTI+ issues and misaligning public and private interests.¹³⁹ In 2018, activists issued critical statements against corporations with anti-feminist histories from participating in Sofia Pride. This sparked debates on the role of corporations in pride events, bringing tension within the movement but also diversifying it. In 2023, Sofia Pride appeared divided, with the parade seconding as an advertisement piece and off location gatherings returning to the core of grassroots LGBTI+ rights.

¹³⁵ Darakchi, *supra* note 119 at 113-114.

¹³⁶ Darakchi, *supra* note 119 at 113-114.

¹³⁷ GLAS Foundation, "HOMOSOC: Homosexuality during the Communist Regime in Bulgaria" (2019).

¹³⁸ *Ibid.*

¹³⁹ Sunil Babu Pant, "Why Grassroots Activists Should Resist Being Professionalized into an NGO" online: *The Guardian* < <https://www.theguardian.com/global-development-professionals-network/2017/jul/07/why-grassroots-activists-should-resist-being-professionalised-into-an-ngo> >

Recommendations: A Call for a Fourth Wave

A) Calling for Proactive Actions Over Reactive Hard Law

LGBTI+ persons are afforded “an uneven distribution in life chances under...legislation.”¹⁴⁰ Dean Spade points to the grip neoliberalism holds in shaping hard and soft laws, as well as the social attitudes, that govern our lives. Spade calls for change-making from within the affected community while working to change “policies, political attitudes, approaches to direct service, and the distribution of power.”¹⁴¹ As part of these changes, Spade suggests the substitution of formally poorly instituted administrative processes and punitive approaches that respond to harm in a reactionary manner with proactive person-centered and community-driven solutions.

*B) Calling for Free and Accessible Public Education Destigmatizing LGBTI+ Persons and Rainbow Families*¹⁴²

Education emerges as a powerful tool for societal transformation. However, knowledge ought not to be reserved for those able to attend higher education and literary skills. Initiatives promoting free and accessible education, aimed at dispelling stereotypes and fostering understanding about rainbow families, can significantly contribute to breaking down ingrained heteronormativity and traditionalist values.

¹⁴⁰ Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*, (Duke University Press: 2023) at 20-23, 94-98.

¹⁴¹ *Ibid* at 94-98.

¹⁴² Bulgarian Fund for Women, “Study of the Needs of Organizations Working on Women, Girls, and Vulnerable Groups’ Rights in Bulgaria” (2022) at 24-27.

C) Calling for the Solicitation of Citizen Feedback for Commission Review of State infringement Relating to LGBTI+ Rights¹⁴³

Strengthening enforcement mechanisms for LGBTI+ rights require empowering citizens to actively engage in the process. Allowing citizens' complaints for Commission review encourages for a more robust accountability framework, promoting adherence to EU law obligations.

D) Calling for Greater Supports and Advocacy Unique to Transgender and Intersex Persons

The existing legal landscape, while recognizing discrimination based on sexual orientation, lacks explicit protection for Transgender and Intersex persons. The re-evaluation of legislation to differentiate sex from gender is paramount.

E) Calling to Broaden the Scope: LGBTI+ Persons and Rainbow Families Seeking Asylum

Challenges faced by LGBTI+ persons and families seeking asylum in Bulgaria underscore the need for a comprehensive legal framework that recognizes and safeguards their human rights.¹⁴⁴ Addressing the specific vulnerabilities of these individuals and families is an essential component, and starting point, for a more inclusive human rights approach.

¹⁴³ Darakchi, *supra* note 119 at 913-914.

¹⁴⁴ Sabine Jansen & Thomas Spijkerboer, "Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe" (2011) *COC Netherlands* at 6-8.

Conclusion

This essay navigates the intricate terrain of rainbow family rights, tied to the rights of LGBTI+ people, within the European Union and Bulgaria. The stark disjunction between the promised equality within the EU framework and the harsh realities faced by LGBTI+ persons in the Bulgarian state unveils itself throughout the article; The deeply entrenched pronatalist tactics, supported by the *Bachelor Tax* and punitive camps; the overt and covert heteronormative frameworks and privileges; and the generations of oppression and marginalization amongst individuals with same-sex desires and connections. The efficacy, or lack thereof, of the EU's sanctions on Member States follows an in-depth analysis of EU structures, its *Charter of Fundamental Rights*, and the State benefits of EU accession. Proceeding with a thorough examination of data sourced from the Eurobarometer and Bulgaria's *Protection Against Discrimination Act* and Committee, gaps affecting the rights of free movement and respect for private and family life continue to surface.

We come to understand that EU sanctions mean nothing more than a fine that can be paid off with State dollars, leaving the wrong to go substantively uncorrected. A review of person-led activism inspired the essay's final plea where recommendations are made at both EU and Bulgarian levels. Though it may feel instinctive to call for legislative reform, reference to Dean Spade asks rainbow families to no longer rely on institutional bodies who treat their lives and needs reactionarily. Instead, rainbow families ought to continue exemplifying the standard of life they desire and put forward the legislative and directive changes they themselves would like to implement as opposed to waiting for authorities to apply their power as an afterthought.

LEGISLATION

The *Family Code* No. 47 Bulgaria [2009].
Protection Against Discrimination Act [2006] Bulgaria.

JURISPRUDENCE: INTERNATIONAL

Administrative case No. 6746 / 2022.
Case C-147/08 *Römer* [2011] ECLI:EU:C:2011:286.
Case C-267/06 *Maruko* [2008] ECLI:EU:C:2008:179.
Case C-267/12 *Hay* [2013] ECLI:EU:C:2013:823.
Case C-443/15 *Parris* [2016] ECLI:EU:C:2016:897.
Case C-673/16 *Coman* [2018] EU:C:2018:385.
Case C-490/20 *Pancharevo* [2021] CJEU.
Case of *Koilova and Babulkova v. Bulgaria* 40209/20.

SECONDARY MATERIALS: INTERNATIONAL SOURCES

ETS 177, *Convention for the Protection of Human Rights (Protocol No 12)*, Rome, 4.XI, 2000
UN General Assembly, *Statement on Human Rights, Sexual Orientation, and Gender Identity*, 18 December 2018.

SECONDARY MATERIALS: OFFICIAL JOURNAL OF THE EUROPEAN UNION

EC, *Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States* OJ L158/77.
EC, *European Parliament resolution on LGBTIQ rights in the EU* [2022] OJ C 117.
EC, *Charter of Fundamental Rights of the European Union*, [2000] OJ, C 364/01.
EC, *Directive 2004/38/EC of the European Parliament and of the Council*, [2004] OJ, L 158/77.
EC, *Directive 2000/78/EC of establishing framework for equal treatment in employment and occupation* [2000] OJ L 303.
EC, *Progress Report on the implementation of the LGBTIQ Equality Strategy 2020–2025* [2023] OJ.
EC, *Treaty of Amsterdam amending the Treaty of the European Union*, [1997] OJ C 340.
EC, *Treaty on the Functioning of the European Movement*, [2012] OJ, C 326/47.
EC, *Treaty on the Functioning of the European Movement* [2008] OJ, 115 *article 21(1)-(3)*.

SECONDARY MATERIALS: BRIEFS

EC, *European Council in Copenhagen: Doc93/3* (1993).
European Parliament, *At a Glance: EU accession to the Istanbul Convention*, (2023).
European Parliament, “At a Glance: The Istanbul Convention: A tool to tackle violence against women and girls” (2017).
European Parliament, “Briefing No 6: Bulgaria and the Enlargement of the European Union.”
European Parliament, *Briefing: The rights of LGBTI people in the European Union*
European Parliament, *Briefing: Free Movement Rights of Rainbow Families* [2023]

European Parliament, “The 2020-2025 LGBTIQ equality strategy: Implementation overview” (2023).

De Sschutte, Olivier, “Directorate-General for Internal Policies: The European Social Charter in the context of implementation of the *EU Charter of Fundamental Rights*” (2016).

SECONDARY SOURCES: ADDRESSES, GUIDES, STUDIES, SURVEYS, & REPORTS

Bulgarian Fund for Women, “Study of the Needs of Organizations Working on Women, Girls, and Vulnerable Groups’ Rights in Bulgaria” (2022).

EC, *State of the Union Address* [2020].

European Union Agency for Fundamental Rights, *EU LGBT Survey*, [2014].

Fair Trails, “Practioners’ Tools on EU Law: *EU Charter of Fundamental Rights*” (2020).

GLAS Foundation, “HOMOSOC: Homosexuality during the Communist Regime in Bulgaria” (2019).

GLAS Foundation, “Report on Anti-LGBTI Hate Crimes and Incidents in Bulgaria” (2017).

ILGA-Europe, “After Amsterdam: Sexual Orientation and the European Union: A Guide”

(1999).

SECONDARY MATERIAL: ARTICLES

Akçay, Ekrem Y., “The EU membership process of Romania and Bulgaria relative to Turkey?” (2018) 21:1 JLSAEE.

Brunnbauer, Ulf, “Making Bulgarians Socialist: The Fatherland Front in Communist Bulgaria, 1944–1989” (2008) *East European Politics and Societies* 22:1.

Darakchi, Shaban, “Bulgarian LGBTQI Movement: Generations, Identifications, and Tendencies” (2021) 25:7 SJ.

Ironside, Kristy, “Between Fiscal, Ideological, and Social Dilemmas: The Soviet ‘Bachelor Tax’ and Post-War Tax Reform, 1941–1962” (2017) 69:6 *Europe-Asia Studies*.

Jansen, Sabine & Thomas Spijkerboer, “Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe” (2011) *COC Netherlands*.

Kenneth Abbott & Duncan Snidel, “Hard and Soft Law in International Governance” (2000) 54:3 IO.

Kochenov, Dimitry, “Democracy and Human Rights—Not for Gay People?: EU Eastern Enlargement and Its Impact on the Protection of the Rights of Sexual Minorities” (2007) TWLR.

Krickova, Lenka, “Same-Sex Families’ Rights and the European Union: Incompatible or Promising Relationship?” (2023) 37:1 IJLPF.

Langlet, David & Said Mahmoudi, “The European Union and its Structure” (2016) EU Environmental Law and Policy.

SECONDARY SOURCES: ESSAYS

Lekova, Anita, “Are You a Gender?: [Homo]Sexual Belonging in Bulgaria” (Central European University, Department of Gender Studies, 2021).

SECONDARY MATERIALS: BOOKS

Roseneil, Sasha et al., “The Tenacity of the Couple-Norm: Intimate Citizenship Regimes in a Changing Europe” (JSTOR: UCL Press, 2020).

Spade, Dean, “Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law” (Duke University Press: 2023).

SECONDARY SOURCES: WEBSITES

Babu Pant, Sunil, “Why Grassroots Activists Should Resist Being Professionalized into an NGO” online: *The Guardian* <<https://www.theguardian.com/global-development-professionals-network/2017/jul/07/why-grassroots-activists-should-resist-being-professionalised-into-an-ngo>>

Council of Europe, “The Council of Europe at a glance” online: *Council of Europe* <<https://www.coe.int/ca/web/portal/the-council-of-europe-at-a-glance>>.

Council of Europe, “The European Union deposited the instrument of approval of the “Istanbul Convention” (2023)

online: *Council of Europe* <<https://www.coe.int/en/web/portal/-/the-european-union-deposited-the-instrument-of-approval-of-the-istanbul-convention->>.

Eur-Lex, “Phare Programme” online: *European Union* <<https://eur-lex.europa.eu/EN/legal-content/summary/phare-programme.html>>.

EC, *2022 Annual Report on monitoring the report of EU law* [2023] online: *European Commission* <https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2022-annual-report-monitoring-application-eu-law_en>.

EC, *Recognition of Parenthood Between Member States*, online: *European Commission* <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/family-law/recognition-parenthood-between-member-states_en>.

European Union, “Court of Justice of the European Union (CJEU)” online: *European Union* <https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en>

European Union, *Eurobarometer: Discrimination in the European Union* [2019] online: <<https://europa.eu/eurobarometer/surveys/detail/2251>>.

European Union, “Founding Agreement” online: *European Union* <https://european-union.europa.eu/principles-countries-history/principles-and-values/founding-agreements_en>.

European Union, “Types of Legislation” online: *European Union* <https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en>.

ILGA-Europe, “European Court Rules in Favour of the Best Interest of the Child in Same-Sex Custody Case” (2021) online: *ILGA-Europe* <<https://www.ilga-europe.org/news/european-court-rules-favour-best-interest-child-same-sex-custody-case/>>.

ILGA-Europe, “How Trans Parents are Better Protected After European Court Ruling” (2021) online: *ILGA-Europe* <<https://www.ilga-europe.org/blog/how-trans-parents-better-protected-after-european-court-ruling/>>.

ILGA World Database, “Legal Frameworks: Criminalization of Consensual Same-Sex Acts” *ILGA World*, online: <<https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>>.

Nicolas Camut, “EU to Join European Convention on Human Rights ‘as soon as possible,’ EU chiefs say” (2023) online: *Politico* <<https://www.politico.eu/article/eu-join-european->

convention-on-human-rights-soon-ursula-von-der-leyen-charles-michel/#:~:text=All%20EU%20member%20countries%20are,human%20rights%20on%20the%20Continent.>

Swedish Presidency of the Council of the European Union, “Istanbul Convention Adopted in the EU” (2023) online: *European Council* <[The Sofia Globe, “Bulgaria Steps Up Legislation Against Hate Crimes” \(2023\) online: <<https://sofiaglobe.com/2023/07/29/bulgaria-steps-up-legislation-against-hate-crimes/>](https://swedish-presidency.consilium.europa.eu/en/news/istanbul-convention-adopted-in-the-eu/#:~:text=In%20late%202021%2C%20after%20the,will%20accede%20to%20the%20convention.></p></div><div data-bbox=)