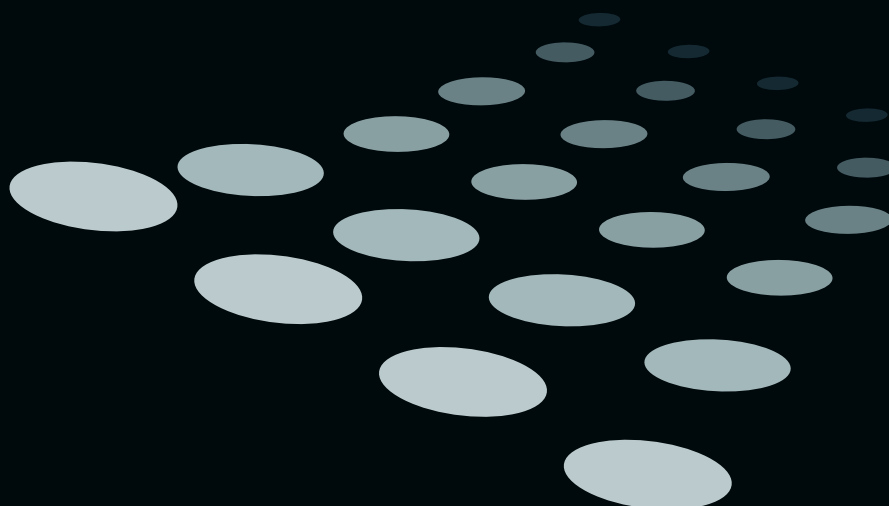




ILGA-Europe

**Annual Review of the Human Rights Situation of
Lesbian, Gay, Bisexual, Trans and Intersex People
in Europe**

2018



ILGA-Europe in brief

- ILGA-Europe are the European Region of the International Lesbian, Gay, Bisexual, Trans & Intersex Association (ILGA).
- ILGA-Europe are a driving force for political, legal and social change for lesbian, gay, bisexual, trans & intersex (LGBTI) people in Europe and Central Asia.
- ILGA-Europe are an international non-governmental umbrella organisation, bringing together over 490 organisations from 45 countries in Europe.
- ILGA-Europe advocate for human rights and equality for LGBTI people at European level organisations such as the European Union (EU), the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE).
- ILGA-Europe strengthen the European LGBTI movement by providing training and support to its member organisations and other LGBTI groups on advocacy, campaigning, community organising, fundraising, organisational development, and strategic communication.
- ILGA-Europe was established as a separate region of ILGA and an independent legal entity in 1996. (ILGA was established in 1978.)
- Since 1997, ILGA-Europe have enjoyed participative status at the Council of Europe.
- Since 2006, ILGA-Europe have consultative status at the UN's Economic and Social Council (ECOSOC) and we also advocate for equality and human rights of LGBTI people at UN level.
- ILGA-Europe's office is in Brussels.
- ILGA-Europe receive funding from public and private donors.



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Annual Review



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This Review covers the period from January to December 2017.

May 2018

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and others who we may have been mistakenly omitted in spite of their contributions towards this edition of the *Annual Review*.

Introduction

Welcome to the seventh edition of ILGA-Europe's *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe*. The publication includes events that occurred between January – December 2017. It provides a snapshot of what happened during the year, at national, regional and international levels, and it documents progress and trends regarding the human rights situation of LGBTI people.

While the institutional reviews and individual country overviews focus on 2017, our highlights section puts these trends in context, with reference to further developments that took place in early 2018, prior to the *Review's* publication.

The country chapter pages also feature a visual snapshot of the legal situation in a particular country at the end of 2017. Colourful graphics show how many of the Rainbow Europe criteria each country had met by the end of the year. The chapters all feature an opening overview, emphasising the major developments, as well as a series of recommendations aimed at policymakers.

This information is all available online too, via the ILGA-Europe website and our updated *Rainbow Europe* web module.

Once again, we must stress that this document is not an exercise in apportioning blame. ILGA-Europe's goal is not to point fingers at specific countries. Instead, this publication intends to serve as a tool for the exchange of best practices and policies, and as an open invitation for enhanced cooperation between governments and LGBTI civil society.

ILGA-Europe want this publication to meet our readers' expectations and needs, and welcome any suggestions for improvement.

We hope that you will find this edition of the *Annual Review* informative and useful.

ILGA-Europe's Annual Review Team
May 2018

A note on data collection and presentation

Collecting and presenting data on developments at national level in 49 countries represents a significant challenge for ILGA-Europe. Not only are we dealing with original reports in many diverse languages, the use of terminology around LGBTI issues is often not harmonised across Europe. Nonetheless, all information within the *Annual Review* has been verified using original documents and the best available local knowledge. Where possible, information was checked against institutional and national reports, and reliable news sources.

In terms of language and terminology, we have tried to avoid causing confusion. For comparative reasons, the language within the *Annual Review* has been kept in line with ILGA-Europe's standards, and moves away from country-specific legal terms that may have a different meaning elsewhere. At the same time, we respected the variety of terms used by LGBTI communities to self-identify in different countries. For example, this is why the *Annual Review* does not exclusively refer to LGBTI but also to 'LGBT', 'LGBTQ' and other formulations.

Recommendations for national policymakers have been included in country chapters once again. These are intended to encourage policymakers to address the most pressing legal and policy priorities within the framework of our Rainbow Map/Index. While ILGA-Europe are urging national authorities to follow these recommendations, we did not come up with the suggestions unilaterally. The recommendations were gathered following an online consultation with a wide range of our member organisations. As a result, the recommendations are tailored to the needs of activists working on the ground.

Of course, the *Annual Review* cannot cover every development in all 49 countries in intricate detail. Firstly, the event itself may not have been adequately reported, or perhaps the reports were confusing or contradictory and ILGA-Europe were unable to verify them.

Secondly, the primary goal of the *Annual Review* is to reflect the human rights situation of LGBTI people and their position in society. This means that our primary focus is on events and LGBTI NGO work that represent important milestones towards the acknowledgement of the rights of the LGBTI community in that country.

Thirdly, information on intersex issues was collected where available but unfortunately intersex people's human rights are not still not comprehensively addressed in national-level legislation.

Finally, this is our seventh *Annual Review* and we always strive to develop our rigorous data collection system. However, a number of limitations remain. We will incorporate the lessons learnt during the previous *Annual Reviews* and continue to improve the quality of our reporting on LGBTI issues in Europe.

How to use this Annual Review?

This *Annual Review* covers developments at national, European and international level between 1 January 2017 and 31 December 2017.

The *Review* itself is divided into two main sections. **Institutional reviews** provide an overview of developments at the European Union, the Council of Europe, the United Nations, and the Organization for Security and Cooperation in Europe. The second section, **Country reviews**, contains 49 chapters covering European countries in alphabetical order.

ILGA-Europe also include an editorial-style **highlights** section at the start of the Annual Review, where we outline what we see as the major trends and developments that took place in Europe in the past year.

The layout of the country chapters follows the same structure as last year. All the country chapters open with a short introduction. This is followed by a colourful graphic, showcasing what the legal and policy situation was like in each country at the end of 2017. This graphic ‘wheel’ features the six main categories found on ILGA-Europe’s Rainbow Map/Index and is based on the graphics used on the Rainbow Europe web module – www.rainbow-europe.org

Each of the country chapters concludes with a series of **recommendations**. These are targeted at national-level policymakers and return for the second year. We hope this will help to direct policymakers to the areas where they can improve the legal and policy situation for LGBTI people. It is not intended to be an exhaustive list. Rather, it will pinpoint where respective domestic laws are lacking and suggest where legislators can start to be proactive.

These bullet points are motivated by feedback that ILGA-Europe received from our members and Rainbow Europe’s team of country experts. For clarity (and to try and save some trees!) we tend to stick to three suggestions per country but naturally this can be difficult, as our members are often working on a whole range of issues.

And we completely get it. It’s so hard to choose just three elements of life, as all the laws and policies recorded in the Map/Index are important. The existence of one law cannot serve as a sticking plaster for the wounds caused by the absence of another. Equal marriage laws won’t stop you being harassed in the workplace on the basis of your gender identity. Equal treatment laws regarding goods and services won’t defend you against LGBTIphobic hate crimes. And action plans won’t automatically help your intersex child feel safe or included in school.

Life is complicated and we need to feel protected in all aspects – that is why there is still so much work left to be done. And why ILGA-Europe will continue to develop and improve our Rainbow Europe benchmarking tool, to continue to hold governments to account, and to continue to showcase the innovation of our members in the Annual Review.

Highlights,
key
developments
and trends

Every year, as we prepare to mark International Day against Homophobia, Transphobia and Biphobia, ILGA-Europe are naturally asked what the state of play for LGBTI people in Europe is. As there is no such thing as a typical LGBTI person, it's impossible for our responses to capture the lived reality for our communities across the region in one neat and tidy answer. The experiences that LGBTI people and human right activists in Europe have are diverse, rich and conflicting. What ILGA-Europe can reflect and comment on is the legal, political and social environments that significantly influence the life of a person, whether they are lesbian, gay, bisexual, trans or intersex.

When we are inevitably asked to talk about the landscape in terms of law and policy for LGBTI equality in Europe at the moment, there also seems to be an assumption that all our answers are going to be overwhelmingly positive. Of course, there have been great steps forward for the LGBTI communities in 2017 and early 2018. However, the stories that end up in the media headlines do not always capture the full complexity of what it means to advocate for LGBTI equality in Europe and Central Asia right now. The reality for LGBTI communities across our continent is complex. Looking at the situation as it stands in the spring of 2018, the most honest statement we can make is that **the work on LGBTI equality is nowhere near done**. In fact, from ILGA-Europe's vantage point, there are several signs around us that many of the recent wins are fragile. It's incredibly clear that the risk of having hard-won equality milestones rolled back is all too real.

'Rollback' is indeed very real from the perspective of LGBTI communities in our region, with the most visceral example being the resurgence of **state-led persecution targeting LGBTI people**. From the horrific cases of torture in secret detention camps in Chechnya to the wave of arbitrary arrests and intimidation by police forces in Azerbaijan, 2017 has shown how far some states are

willing to go to silence LGBTI communities. Sadly, we have all witnessed the persisting reality that, in Europe and Central Asia today, agents of the state still deliberately target people they perceive to be LGBTI.

The impunity which followed (in both situations) is especially worrying. The authorities in **Azerbaijan and Chechnya** showed little remorse for their actions. In fact, in both cases, the authorities actually defended and attempted to justify their actions targeting LGBTI communities, reinforcing the fact that these measures were condoned by the state. Equally concerning is the lack of an effective investigation in Chechnya, in spite of European and international pressure calling for action from the Russian authorities in response to these gross human rights violations. It begs the question – when vocal condemnation is followed by little concrete action, what does that say about the leverage held by international institutions right now in parts of our region?

Of course, 'rollback' also refers to the general atmosphere that human right advocates are working in. Populism, anti-democratic opinions and far-right extremism are not just emerging trends or isolated incidents anymore. They are ever-present features in the lives of many LGBTI activists. Democratic backsliding is here and is very real. This claustrophobic working environment is being felt by activists across the region – Poland, Turkey and Hungary are just a few examples that spring to mind immediately. In late 2017, the Ankara governor's office banned public events organised by LGBTI groups, adding an unwanted layer of complexity to the already complicated lives of NGOs in the Turkish capital. This inevitably puts a question mark in the minds of LGBTI community organisers, creating uncertainty around how they can run events like Pride or provide support services to their community. Published in 2018, the EU's Fundamental Rights Agency's report on *'Challenges facing civil society organisations working on human rights in the EU'* also backs up the stories we hear

from our members, that the issue is not an isolated problem confined to a few 'problem' governments. It exists across Europe.

If political leadership on LGBTI equality gives way to political apathy or populism, then **life can get very difficult for civil society very quickly**. The LGBTI communities know all too well how vulnerable we are to undemocratic tendencies. Very often, law and policies are the last line of defence for LGBTI people against discriminatory behaviour or personal attacks. That is why it is vital that the movement continues to hold governments to account and insist on making sure our countries' legislation explicitly protects our human rights.

Another trend that LGBTI activists are encountering with greater frequency is actually one that twists the human rights discourse for its own benefit. Organisations that are part of the so-called '**anti-gender' movement** have created a conspiracy theory around what they call 'gender ideology' or 'gender theory'. Who knows exactly what 'gender theory' is supposed to mean, but this non-existent threat serves as the perfect cover for their genuine opposition to gender equality and LGBTI equality.

We have mentioned some of these movements in previous Annual Reviews, so their existence is not the new trend. What is becoming increasingly clear is the scope of their networks – which cross continents – and the immediate impact that their words and actions are having on real people all over Europe. The virulent opposition stirred up in many countries to the Istanbul Convention is one very timely example. This whole point of this Convention from the Council of Europe is to give a legal instrument to protect and prevent gender-based violence, but its adoption in several countries has been actively opposed by anti-gender groups – for example in Latvia, Bulgaria and Lithuania. In early 2018, Croatia actually ratified the text, only for anti-gender opponents to

immediately begin a signature collection to attempt to reverse the decision. How a group, that purports to have the best interests of families at its core, can actively seek to block an instrument designed to stop violence is beyond belief.

Having said all that, there are still – thankfully! – several major success stories to share from the LGBTI movement in Europe.

One incredibly encouraging example is the growth of the **trans and intersex movements** – both in terms of visibility and impact. These movements continue to flourish and issues concerning trans and intersex activists are increasingly finding their way onto the agendas of policymakers.

In October 2017, the Council of Europe adopted a resolution on **the human rights of intersex people** – the first intersex-specific resolution of its kind from a European intergovernmental institution. This major development, which came about following an extensive collaboration between intersex activists and the Council of Europe's Parliamentary Assembly rapporteur on the rights of LGBTI people, Piet de Bruyn, offers a clear roadmap for national governments across Europe on how to respect and protect the fundamental rights of intersex people.

At national level, the Portuguese parliament voted in favour of a law that would make it illegal to perform unnecessary surgery on intersex children on 13 April 2018, making it only the second European country to approve such legislation after Malta. This same law introduces a model of self-determined legal gender recognition, although that has not entered into effect yet. However, the Portuguese president subsequently vetoed the law on self-determination and protection of intersex people's bodily integrity. At time of writing, the law was due to be re-examined by members of parliament.

This said, two other countries did pass **legal gender recognition** laws since the last Annual Review was published. Belgium passed a new legal gender recognition procedure and the Greek parliament improved the national gender recognition law in October 2017 (although missed the opportunity at that point to introduce self-determination).

And the fact that makes us even more excited is that fact that this work is sustained. There were some new laws passed in the past twelve months, but even more progressive change is on the way. For example, activists in several countries have reported that their governments are currently working on legal gender recognition legislation in some capacity. Ireland is reviewing its existing 2015 legislation, with a view to extending its scope to include younger trans people, intersex people and non-binary people. Another review proposed in the UK is considering the introduction of self-determination, while Sweden, Spain, Luxembourg and Iceland are also looking at how to improve their existing laws.

We are also witnessing several positive trends in family law, an area of legal change that consistently commands headlines and public attention. Indeed, there is growing recognition of the wonderful diversity of families – and the need to legislate to protect them beyond marriage equality alone. In February, Finland’s parliament passed a new Maternity Act and one of its provisions will allow for **automatic co-parent recognition** for female same-sex couples following fertility treatment. When it comes into force in 2019 the law will protect children in rainbow families who (up until now) have been in a very precarious legal position.

Marriage equality became a reality for couples in Finland, Malta and Germany since the last Annual Review was published; the individual laws themselves all had very different backgrounds. Long-time Rainbow Europe fans will remember that the Finnish law had actually been

signed by the president in 2015 but it did not come into effect until March 2017. In Malta, the bill’s entry into force was the culmination of years of planning. In Germany, after years of entrenched opposition, the parliament’s swift vote in favour of equal marriage (in a move that felt like it almost happened overnight) was an important lesson for LGBTI activists – never to lose hope, but try to be agile and ready to react. You never know when change is just around the corner.

As the final touches are being put to this Annual Review, Adrian Coman and Clai Hamilton have just received the Court of Justice of the European Union’s judgment in a case that centred on their family’s right to freely move within the EU. The couple were married in Belgium in 2010 but are not recognised as a family by the Romanian authorities. The positive decision in the **Coman case** (clarifying that the term “spouse” in freedom of movement laws includes same-sex couples) now requires all EU Member States to recognise such unions for the purposes of freedom of movement and residence in the EU. This clearly include the six remaining EU Member States who currently fail to legally recognise same-sex couples – Romania, Bulgaria, Poland, Slovakia, Lithuania and Latvia. On a less positive note, the constitution of Georgia was revised in 2017 to definite marriage as between a man and a woman only, while in March 2018, the Latvian parliament’s Mandate, Ethics and Submissions Committee rejected a petition for introduction of gender-neutral **partnership** legislation. These are reminders that there is still a lot of work to do in Europe regarding recognition of rainbow families.

In 2019, people all over the European Union will (hopefully) go to the polls and send clear directions to policymakers about what sort of representation they want. ILGA-Europe will no doubt be asked about the state of play for LGBTI activism before and after the **European elections** too. Looking at the current context, it is clear that human rights must be at the heart of that discussion,

not lost on the fringes. And getting out to vote in these elections will be a priority, because the EU institutions still have relevance for LGBTI equality in 2018. Over the past twelve months, we have witnessed their role in defending the rule of law. It might sound like going 'back to basics' in a way, but these conversations around rule of law in Poland or democratic values in Hungary or the common application of EU law raised by the Coman case – all of these remind us why laws, policies and European institutions are so important. They offer marginalised communities a significant layer of defence against discrimination.

The message emerging loud and clear from this Annual Review is that **there has never been a better time to support LGBTI equality work**. That statement might seem counter-intuitive at first; when faced with all these evolving challenges it can be difficult to know where to start. But the LGBTI movements have been growing in size and creativity over the past few years.

It can actually be very frustrating for ILGA-Europe and our members to see that complacency might be setting in among some policymakers, as so much more could be achieved right now, if only the political will was followed by real-world action. If politicians, funders, independent media outlets (basically anyone with resources and time to devote to equality work) ever wanted to boost their support for LGBTI initiatives, then the time is now! Their increased support would be utilised by activists and their impact would repay the initial investment multiple times over. We can see what historic milestones have already been achieved by NGOs and individuals operating with minimal budgets. There is an explosive energy within the LGBTI communities; it just needs the right conditions to flourish. Imagine what these same resourceful activists could do with more targeted support! Check back next year to find out...

Italy



The topic of family continued to feature prominently in Italy during 2017, particularly in the country's courts. Judges – at local, national and European levels – were asked to decide on a series of cases that were of interest to rainbow families living in Italy.

The European Court of Human Rights decision in the *Orlandi* case was probably the most high-profile of these judgments. The Court found that the fact that Italy had left same-sex couples who had married abroad in a legal vacuum with no protection (prior to the 2016 introduction of civil unions) had violated their human rights. It was a timely reminder for policymakers, and also reminds Annual Review readers of the low level of legal protection for rainbow families in Italy, even in 2017.

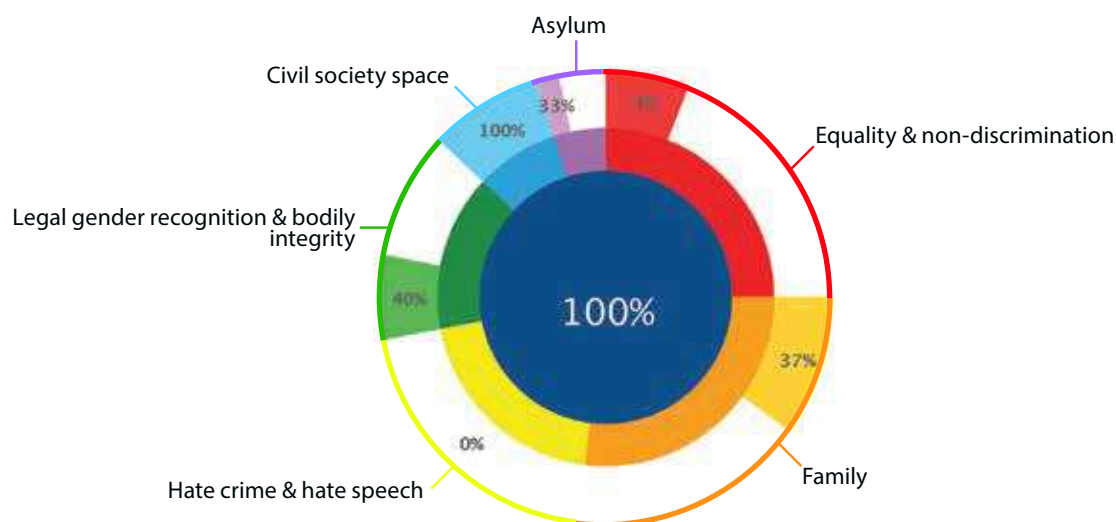
Other cases decided by Italian courts included the Constitutional Court's verdict that decisions around who should be registered as a child's mother following a surrogacy agreement should be guided by the child's best interest. Also, several same-sex couples were registered as parents by local municipalities following adoptions carried out abroad.

Anti-equality groups focused their efforts on education in several regions, issuing complaints about plays that featured gender fluid characters and classifying schools in Bologna by whether or not they include anti-homophobia lessons on the curriculum. The trans community in Romania and Italy were saddened by the news of the murder of a Romanian trans woman in Rome and several LGBTI NGOs started a campaign to assist her family with repatriation and funeral costs.

In a positive development, Umbria introduced a regional law against homo- and transphobia, recognising such discrimination as detrimental to a person's health. This encouraging policy move stands in stark contrast to the lack of legislation protecting LGBTI from discrimination at national level.

All Rainbow Europe information is available online at www.rainbow-europe.org

Legal and policy situation in **Italy** as of 31 December 2017



In order to improve the legal and policy situation of LGBTI people, ILGA-Europe recommend:

- Ensuring marriage equality for all.
- Drafting and adopting legislation to allow same-sex couples to have access to joint adoption.
- Prohibiting medical intervention on intersex minors when the intervention has no medical necessity and can be avoided or postponed until the person can provide informed consent.