

## A TALE OF TWO COUNTRIES: THE EFFECTS OF HOMOPHOBIA ON THE RIGHT TO ADOPT OF CIVIL PARTNERS IN ITALY AND THE CZECH REPUBLIC

A.C. RATH-BOSCA

**Albert-Camil Rath-Boşca**

Faculty of Law, West University of Timișoara, Romania

<https://orcid.org/0009-0004-6815-9509>, Email: [camilend@yahoo.com](mailto:camilend@yahoo.com)

**Abstract:** *Since 1989 there has been a steady increase in the number of countries that allow for civil partnership to exist. It has been and still is a constant fight for people that belong to the LGBTQ+ community to gain equal right to a heterosexual couple. In this specific article, we will see how two countries that are relatively homophobic by international standards have created laws that allow for civil partnership but do not grant equal or fair rights regarding the adoption of children*

**Keywords:** *adoption, LGBTQ+ rights, political opposition, Czech family law, Italian family law*

### Introduction

Even if there is a growing number of countries that allow the creation of civil partnership or outright grant the right of marriage to homosexual couples, there are still many aspects of a traditional marriage that may be unavailable to the civil partnership or harder to achieve in comparison to a heteronormative marriage.

One of these relatively normal practices of having and raising children. There is of course the biological issue, since both partners share their gender and most probably their biological sex, neither can produce offspring by natural means.

This leaves the average spouses of a civil partnership with 2 options, in-vitro fertilization or adoption. Both options come with their own predicaments and both occupy a more or less shady side of legal dealings.

Whilst on paper, most laws present a simple process for adopting a child, the reality may often be cruel and eventful. A child that is adopted will have had a few years living in an orphanage. Due to these unfortunate circumstances, there will already be a hurdle in the accommodation of the supposed progeny.

These are universal issues regarding the adoption procedure which daunt on every couple, heterosexual or otherwise. In this article, we wish to understand how certain countries have approached the issue of adoption when it comes to the rights of civil partners to adopt a child. When it comes the idea of adoption, most countries have a similar procedure. A child may be adopted based on a social inquiry that examines the safety and the conditions of the house and family. Based on this social enquiry and subsequent visits by the country specific authority, the couple will keep the child and set progeny shall gain all the rights of a naturally born child.

Since civil partnership has started appearing as a legal institution only after the year 1989 and slowly spread across Europe and the world, there is no specified doctrine regarding civil solidarity pacts. Due to this, general rules of marriage apply to the institution.

However, due to the political climate of each individual country some differences appear. Most countries that allow for civil partnership also allow for the couple to engage in the typical adoption procedure. Countries like Germany or France simply allow for civil partners to go through the general procedures for adoption. Some countries have implemented different rules or even deny the right of adoption to homosexual couples (<http://conflictoflaws.net/2020/change-in-german-international-adoption-law/?print=print>).

There are 2 other situations regarding the right to adopt. In a few countries the state only allows for stepchildren adoption and in some rare instances countries do not allow for any form of adoption from civil partners.

We will focus on the countries of Italy and Czechia as they are atypical in the realm of adoption rights granted to civil partners.

### ***The Legislative Context: Law No. 76 of 2016 (Cirinnà Law)***

Italy was the last major Western European country to introduce legal recognition for same-sex couples, primarily due to strong political and religious opposition. The Law No. 76 of May 20, 2016, "Regulation of civil unions between persons of the same sex and discipline of cohabitation contracts" (commonly known as the "Cirinnà Law," after its proponent Senator Monica Cirinnà), marked a historic breakthrough. This law granted same-sex couples almost all the rights and duties of marriage, including mutual assistance, cohabitation, property rights, and inheritance (Lucchini Guastalla, 2016).

However, the Cirinnà Law was a product of intense political compromise. One of the most contentious points, which ultimately led to significant concessions, was the issue of children and adoption. The original draft of the bill included a provision for "stepchild adoption" (adopting the biological child of one's partner). This provision faced fierce opposition from conservative parties and the Catholic Church, leading to a political deadlock.

Press coverage at the time vividly illustrates this "back and forth." *MercatorNet*'s "Italy in heated debate about 'civil unions'" (2016) highlighted the "highly polarized atmosphere" and the contentious nature of "stepchild adoption" and surrogacy, noting the thousands of amendments proposed by opponents. Similarly, *CTV News* (2016) reported on the Senate's approval, emphasizing that "last-minute changes removed references to 'faithfulness' in the relationship lest it be construed as equivalent to marriage" and, crucially, that the "stepchild adoption clause was sacrificed" to ensure the bill's passage. This deliberate omission meant that, upon the law's enactment, civil partners in Italy did not automatically gain the right to jointly adopt children, nor was stepchild adoption explicitly permitted by statute.

### ***The Absence of a Statutory Right and the Role of Jurisprudence***

Following the Cirinnà Law's passage, the legal doctrine became clear: civil partners had no *explicit statutory right* to adoption. Unlike heterosexual married couples who can adopt jointly under Law No. 184/1983 (the adoption law), same-sex civil partners were left in a legal void regarding parental recognition for children raised within their unions. This void

## *A TALE OF TWO COUNTRIES: THE EFFECTS OF HOMOPHOBIA ON THE RIGHT TO ADOPT OF CIVIL PARTNERS IN ITALY AND THE CZECH REPUBLIC*

necessitated recourse to the courts, making Italian jurisprudence the primary driver of limited parental recognition:

### 1. Recognition of Foreign Adoptions:

One of the early areas of judicial intervention involved the recognition of adoptions finalized abroad by same-sex couples. Italian courts, particularly the Supreme Court of Cassation, began to rule that adoptions by same-sex couples finalized in other countries (where such adoptions are legal) should generally be recognized in Italy, provided they do not conflict with fundamental public order principles. This established a precedent for acknowledging the existing parent-child relationship, even if it could not have been formed in Italy.

### 2. The "Special Cases" of Stepchild Adoption:

Despite the legislative omission in 2016, Italian courts began to interpret existing adoption laws (primarily Law No. 184/1983, which governs ordinary and "special" adoptions) in a manner that allowed for stepchild adoption by a non-biological civil partner under very specific circumstances. This was not a general right but an application of the existing provisions for adoption in "special cases" (*adozione in casi particolari*), which aims to protect the best interests of a child already integrated into a *de facto* family unit.

Key rulings by local courts and appeals courts affirmed that if a child's best interests were served, and a stable, loving parent-child relationship already existed with the non-biological partner, stepchild adoption could be granted. These decisions often invoked Article 8 of the European Convention on Human Rights (right to respect for private and family life), drawing parallels with the European Court of Human Rights' jurisprudence, such as *Oliari and Others v. Italy* (2015), which had pushed Italy to legislate civil unions in the first place.

Press coverage reflected these judicial developments. *Il Fatto Quotidiano* (e.g., "Adozioni gay, la Cassazione apre: 'Adottare il figlio del partner non lede l'interesse del minore'," June 22, 2016) reported on key Cassation Court decisions affirming that stepchild adoption does not harm the child's best interests. These articles highlighted the courts' role in gradually expanding rights where the legislature had failed to act.

### 3. The Continued Battle for Birth Certificates:

Despite these judicial steps, Italy continues to face challenges, particularly regarding the automatic registration of children born abroad to same-sex parents (e.g., through surrogacy, which is illegal in Italy, or assisted reproduction). Local councils initially registered children with both parents in some cases, only for the Ministry of Interior to issue circulars pushing back, leading to legal disputes and uncertainty. Al Jazeera's report "Protests in Italy as government restricts same-sex parent rights" (2023) vividly illustrates the renewed political and legal "back-and-forth" under the Meloni government, which has actively sought to limit the recognition of same-sex parents. This struggle demonstrates that even after the Cirinnà Law and positive court rulings, the legal status of children in same-sex families remains contested.

This is a clear example of society not following the law and having to deal with human rights that it never was equipped to confront. The only real reason that civil partners can't adopt

children unless they are the biological progeny of one of the partners is a general sense of queerphobia that leads to unfair political calculations.

The life of the queer becomes a political coin for politicians to bank when they feel the need to rally or gain social capital. Politicians can demonize the queer community whilst the opposition offers meek support leading to a standstill at best or a degradation of a national minority at worst.

When it comes to the Czech Republic the story has different beats and yet it shares in this similar oeuvre of queerphobia. In comparison to Italy, the right to create a civil partnership was given in 2006 without the intervention of the ECHR. Even if this was offered there were a lot of issues from the jump. In its original form, the law did not allow for many of the benefits typical to a marriage. In the original law there is no right to inherit, there is no right to have a widow's or widower's pension, the property regime of community was not automatically applied and most important, there was no right to adopt any children by the couple.

In 2016 the Constitutional Court of Czechia has granted the right to individual adoption of children. By this we mean that one of the civil partners could adopt a child and have full parental rights while the other partner would have no legal bound to the child. In 2025 there were new modifications to the original law. Some huge improvements of life are: the automatic right to inherit as a first-class heir, the right to a widower's pension and the right to adopt the biological children.

The Czech Republic became the first post-communist country in Central Europe to legalize same-sex civil partnerships with the enactment of Act No. 115/2006 Coll., on Registered Partnership and on Amendment to Certain Related Acts, effective July 1, 2006. This legislation, a result of a protracted political struggle and a narrow override of a presidential veto, granted same-sex couples a bundle of rights akin to marriage, including inheritance, mutual maintenance, and hospital visitation (Global Regulation, n.d.). However, a significant and highly contentious exclusion was the explicit prohibition on adoption.

Article 13, paragraph 2 of the original Act No. 115/2006 Coll. starkly stipulated: "A person living in a registered partnership cannot be an adoptive parent of a child." This provision meant that not only could same-sex couples not jointly adopt, but even an individual in a registered partnership was barred from adopting a child on their own, a right that was otherwise available to single individuals, regardless of their sexual orientation (Global Regulation, n.d.). This created a paradoxical situation where entering into a legal partnership actually *removed* a potential individual adoption right.

The press at the time reflected this nuanced outcome. While LGBTQ+ advocates celebrated the passage of the Registered Partnership Act as a historic step, many simultaneously decried the "half-measure" that withheld crucial rights, particularly concerning children. News reports from outlets like Radio Prague International ("Czech lawmakers pass gay partnership bill," 2005, and "Czech Senate approves registered partnership law," 2006) highlighted the compromises made to overcome conservative opposition and secure parliamentary passage after years of failed attempts (Radio Prague International, 2005; 2006). The subsequent successful override of President Václav Klaus's veto on March 15, 2006, by a single vote, underscored the fragility of the political consensus and the depth of the divides on the issue (The New York Times / Associated Press, 2006; The Washington Post / Associated Press, 2006).

## *A TALE OF TWO COUNTRIES: THE EFFECTS OF HOMOPHOBIA ON THE RIGHT TO ADOPT OF CIVIL PARTNERS IN ITALY AND THE CZECH REPUBLIC*

The blatant discrimination embedded in the original act's adoption clause did not go unchallenged. Advocacy groups and legal experts persistently argued that the ban was unconstitutional and violated fundamental human rights, particularly the right to respect for private and family life. This persistent pressure culminated in a landmark decision by the Constitutional Court of the Czech Republic in June 2016.

The Court, in a pivotal ruling, struck down Article 13, paragraph 2 of Act No. 115/2006 Coll. It declared the blanket ban on individual adoption by persons in registered partnerships to be discriminatory and a violation of human dignity and equality, as enshrined in the Czech Charter of Fundamental Rights and Freedoms. The Court reasoned that denying an individual in a registered partnership the right to adopt, while allowing a single person to do so, was illogical and unjust (Dostupný advokát, 2025; Reuters, 2016).

Press outlets widely reported this breakthrough. Reuters, for instance, published "Czech court clears way for those in same-sex unions to adopt children" on June 28, 2016, emphasizing that the ruling "overturn[ed] a ban that it called discriminatory" (Reuters, 2016). However, it was crucial to note that this ruling *only* allowed individual adoption by a registered partner; it did not open the door for joint adoption by same-sex couples. The "non-legal" parent in such a family still lacked a formal legal relationship with the child.

### *The Legislative Evolution: Stepchild Adoption in 2025*

Despite the 2016 ruling, the Czech legislative landscape for same-sex families remained complex. The absence of joint adoption rights and, more specifically, the lack of explicit provisions for stepchild adoption (where one partner adopts the biological child of the other) continued to create legal uncertainties and practical difficulties for families with two parents of the same sex.

The persistent lobbying by LGBTQ+ organizations, such as "Jsme Fér" (We Are Fair), alongside evolving public opinion, eventually led to further legislative action. After renewed parliamentary debates, which again saw the defeat of a full same-sex marriage bill, a compromise amendment to the Civil Code was passed. This significant amendment was signed into law by President Petr Pavel and came into force on January 1, 2025 (Expats.cz, 2025; Dostupný advokát, 2025).

While the specific article numbers within the amended Civil Code dealing with this change would require precise legal consultation, the core effect of the 2025 amendment is that a registered partner can now legally adopt the biological child of their partner (Expats.cz, 2025). This is a monumental step, providing legal security and recognition for numerous "rainbow families" in Czechia where one parent is biological and the other is a social parent.

However, the 2025 amendment still does not grant the right to joint adoption for same-sex couples from the outset, such as adopting a child from an orphanage or foster care system as a couple. This means that while stepchild adoption is permitted, the path to parenthood for same-sex couples remains distinct and less comprehensive than that for heterosexual married couples. As reported by sources like Expats.cz ("Same-sex partnership law takes effect in Czechia: What are your rights as a foreigner?", 2025), this amendment is viewed as a significant "compromise" and a "step forward," but not yet "complete equality."

### *Comparing notes*

Now that we have analyzed the process by which both countries passed on legislation allowing homosexual couples to enter civil partnerships, we must ask ourselves why is there still a level of distance between marriage and civil partnership.

Unfortunately, the answer is not one that is bound to law or doctrine itself, is the lawmakers taking these decisions. After the later 2010's round of ECHR decisions that solidified an interpretation of article 8 of the European Convention of Human Rights by which it is a violation of human rights to not allow gay couples to form a family bound by law there has been a myriad of countries adopting regulations in this regard.

Even if the world saw an increase in the number of countries that allow for civil partnership to occur there has been a notable decrease both in the safety and the acceptance of non-heteronormative couples and family structures. This present danger creates a divide between not only the people belonging to the LGBTQ+ community and heterosexuals, but it also creates an internal mismatch between courts and the legislative apparatus.

In both cases we can see that the courts had to intervene to allow for the right to adopt the children of one partner by the other in order to create a fully functional family, or its equivalent.

In the case of Italy courts had to find a novel interpretation of a 1983 law. The general rule is based on article 44, paragraph 1 letter d) which gives the right to adoption in cases where pre-adoptive placement is impossible. The interpretation of the Court of Cassation states that in the case of same sex civil partnerships the impediment to pre-adoptive placement is legal.

A simpler mechanism could have been the interpretation of article 44, paragraph 1, letter b) where it is stated that there are some exceptions to the general rule that adoption which such as the child being adopted by the partner of the parent. By the term partner we refer to a general notion of partnership, not at the strict sense of civil partner. This may include husbands, wives and even de facto concubines.

In both cases, this can be considered legal wizardry. It's an overly complicated interpretation at the edge of common language from the supreme judicial authority of Italy. This example of bizarre interpretation is the result of the morality of judges that interact with the people via cases confronting political calculations which we already established as deplorable from both the practical and moral reasons.

The Czech Republic has followed a similar path regarding the right to adoption. In the original Registered Partnership Act 115/2006, article 13, paragraph 2 forbids any person in a civil partnership to also adopt or be an adoptive parent.

This rule creates a bizarre predicament by which a person that has already become an adoptive parent would lose the right to be a father or a mother. The law in its original form allowed for a faulty simulacrum of a family without some of the essential elements of marriage.

In 2016, the courts had to do another act of legal wizardry. In this specific instance, the Supreme Court of the Czech Republic has decided that the notion of losing your right to parent a child due to becoming a civil partner is illogical and a clear infringement of human rights.

The court agreed and at the time allowed for an individual that is in a civil partnership to adopt a child or to maintain the rights of an adoptive parent, however, the ruling did not grant the right to adopt the children of the partner.

This again leaves us in the strange predicament of an individual that is the adoptive parent of the child, but its civil partner does not have any legal bond to that adopted progeny.

## *A TALE OF TWO COUNTRIES: THE EFFECTS OF HOMOPHOBIA ON THE RIGHT TO ADOPT OF CIVIL PARTNERS IN ITALY AND THE CZECH REPUBLIC*

It's a step forward in a lost race, giving another simulacrum of familial life to a minority which by most European standards has more than reasonable requests to have a normal family life.

Only this year a new law regulating how civil partnerships operate. And in that law another such loosening step was taken. Now it is possible for the civil partner of any person to become the adoptive parent of the biological kid from a previous marriage or in vitro insemination.

Another possible threat regarding this adoption procedure lies at article 13, paragraph 1 which states that the civil partner is obligated to preserve the dignity, physical, emotional and intellectual health of the adopted child and that they do not endanger the moral development of the child.

In normal circumstances this is a perfectly reasonable condition regarding adoption, yet, due to the slow and steady rise of homophobia in Czechia as it can be seen using the rainbow-map data (<https://rainbowmap.ilga-europe.org/countries/czechia/>) it is safe to presume that at some point a possible ruling invoking traditional values may threaten the rights of civil partners to co-parent a child.

Of course, there is no mention of the 2016 decision, making the sea of civil law murky again. Only further jurisprudence can clarify the issues at hand and we must be hopeful that the judges will come to reasonable and helpful decisions.

In both countries there has been a sort of moral resistance against the lack of foresight or the sheer incompetence of the politicians but it has been limited by the separation of powers in the state, as all court decisions should be. We should not get to this point in the European Union. The lack of consistency on the European Union's territory gives birth to such incongruencies. In some countries, civil partners are fully entitled to adopt children whilst a handful of countries only allows exceptional adoptions or banned the right of civil partners to adopt altogether such as Hungary.

There is ECHR jurisprudence regarding the rights of recognizing parental rights, however, some countries refuse to accept it. As such, there is no clear unity regarding the rights of civil partners to have children.

In a theoretical scenario, two civil partners that have children would intermittently gain and lose the parental rights if they decided to travel across Europe. If they were Belgian residents going through Czechia, they would either lose their custody of the child temporarily or if they go through Hungary they will technically not be allowed or recognized as the parents of that children.

### **Conclusions**

In the midst of a rising far-right typology of politics, the rights of civil partners exist in a strange space of growth. Even if there is a steady increase in the number of countries allowing for civil partnership either because of the advocacy of certain non-governmental organizations or because of ECHR decisions, the general sentiment of people living in the European Union is getting more and more hostile towards all minorities, regardless of their nature.

Be it immigrants or homosexuals, the new realm of politics is slowly eroding a half a century long battle for equal rights that has been carried since the Stonewall Riots. A first step into at least preserving such rights would be a unitary EU regulation that grants the right of recognition to all civil partnerships at an international level. Not based on ideological reason, but based in sheer practicality.

## REFERENCES

1. Dostupný advokát. (2025, January 12). *Same-sex unions and family rights: parenting and adoption*. Retrieved from <https://dostupnyadvokat.cz/en/blog/same-sex-unions-and-family-rights>
2. Dostupný advokát. (2025, January 13). *Civil partnership or marriage?*. Retrieved from <https://dostupnyadvokat.cz/en/blog/civil-partnership-marriage>
3. Expats.cz. (2025, January 3). *Same-sex partnership law takes effect in Czechia: What are your rights as a foreigner?*. Retrieved from <https://www.expats.cz/czech-news/article/same-sex-partnerships-in-czechia-do-you-know-your-rights>
4. Global Regulation. (n.d.). *Machine Translation of "On Registered Partnership And Amending Certain Contexts. The Laws Of The" (Czech Republic)*. Retrieved from <https://www.global-regulation.com/translation/czech-republic/507282/on-registered-partnership-and-amending-certain-contexts.-the-laws-of-the.html>
5. Radio Prague International. (2005, December 16). *Czech lawmakers pass gay partnership bill*.
6. Radio Prague International. (2006, January 26). *Czech Senate approves registered partnership law*.
7. Reuters. (2016, June 28). *Czech court clears way for those in same-sex unions to adopt children*. Retrieved from <https://news.trust.org/item/20160628154158-a1o40>
8. The New York Times / Associated Press. (2006, March 15). *Czech lawmakers override presidential veto of gay union bill*.
9. The Washington Post / Associated Press. (2006, February 16). *Czech President vetoes gay union bill*.
10. Al Jazeera. (2023, March 18). *Protests in Italy as government restricts same-sex parent rights*. Retrieved from <https://www.aljazeera.com/news/2023/3/18/protests-in-italy-as-government-restricts-same-sex-parent-rights>
11. Cipriani, F. (2017). *Unioni Civili: Same-Sex Partnerships Law in Italy*. *The Italian Law Journal*, 2(2).
12. *Il Fatto Quotidiano*. (2016, June 22). *Adozioni gay, la Cassazione apre: 'Adottare il figlio del partner non lede l'interesse del minore'*.
13. Law No. 76 of May 20, 2016, "Regulation of civil unions between persons of the same sex and discipline of cohabitation contracts," *Gazzetta Ufficiale della Repubblica Italiana*, No. 118 (May 21, 2016).
14. Lucchini Guastalla, E. (2016). *Civil Unions and Cohabitations Under the New Italian Law*. Università Bocconi News. Retrieved from <https://www.unibocconi.eu/wps/wcm/connect/Bocconi/Content/Navigation/News/2016/September/Civil+unions+and+cohabitations+under+the+new+Italian+law/>
15. MercatorNet. (2016, January 25). *Italy in heated debate about 'civil unions'*. Retrieved from <https://mercatornet.com/italy-in-heated-debate-about-civil-unions/24838/>
16. Oliari and Others v. Italy, App. Nos. 18766/11 and 36030/11, Eur. Ct. H.R. (2015, July 21).
17. Sgura, A. (2023). Incrementalism revisited – the contrasting approaches of Italy, England and Wales and Northern Ireland towards legalization of same-sex marriage. *Journal of Homosexuality*, 70(11), 2217-2244.
18. CTV News / Associated Press. (2016, February 25). *Italy Senate OKs civil unions, but LGBT groups are unhappy*.