



## NEWS REPORT

**Date:** 14 October 2010  
**Expert:** Emmanuelle Bribosia  
**Title:** The Constitutional Court declares that a provision of the Civil Code on adoption contains sexual orientation discrimination.  
**Country:** Belgium

### Context

**Issue at stake:** Judgment of 16 September 2010 of the Constitutional Court, judging a provision of the Civil Code on the child surname's choice in case of adoption by the same-sex spouse or partner  
**Ground of discrimination:** Sexual orientation

**Source:** Belgian Constitutional Court, judgement of 16 September 2010, 2010/104 (nr 4869-4870)

**Field:** Civil status

**Legislative provisions:** Art. 353-2, §2, al. 1 Civil Code

### Content

**Case:** Two women, living together since 1998 and married since 2005, decided to have children. G. had a son in 2005 and N. had a daughter in 2004. In 2008 they both asked the Juvenile Court of Brussels for the simple adoption<sup>1</sup> of the child of their spouse and to give the children their respective surnames, which the Court accepted. However, the public prosecutor of Brussels decided to appeal against these two judgments. Indeed, according to Article 353-2, §2, al. 1<sup>st</sup> of the Civil Code, in case of a simple adoption of the child of the same-sex spouse or partner, both the person wishing to adopt and the same-sex spouse or partner have to declare in court which one of the two surnames the adopted child will bear. Therefore it is not possible for adopted child of same-sex couples to receive the surnames of both parents, whereas it is possible in all other cases of simple adoption. G. and N. alleged sexual orientation discrimination in

<sup>1</sup> Simple adoption under Belgian Civil Law refers to the legal action seeking for the recognition by a judge of the adoption that does not cause a complete dissolution of the links with the biological family.

Court of Appeal, which decided to refer the matter to the Constitutional Court for a preliminary ruling.

**Decision of the Court:** The Constitutional Court examined whether Article 353-2, §2, al. 1<sup>st</sup> of the Civil Code infringed the principles of equality and non-discrimination of Articles 10 and 11 of the Constitution, read separately or combined with Articles 8 and 14 of the European Convention on Human Rights and Fundamental Freedoms.

The Court noted that, except the case of simple adoption by a woman of the child of her opposite-sex spouse or partner – which has no influence on the surname of the adopted child – the adopted child has always the possibility to bear a surname composed, by the surname of the person wishing to adopt, and by his/her previous surname. Therefore it concluded that the provision of the Civil Code contains a difference of treatment in matter of simple adoption between, on the one hand, children adopted by the same-sex spouse or partner, and on the other hand, children simultaneously adopted by opposite-sex or same-sex spouses or partner and children adopted by their mother's husband or partner. According to the Court, this distinction is not justified. Thereby, Article 353-2, §2, al. 1<sup>st</sup> of the Civil Code is not compatible with the principles of equality and non-discrimination of Articles 10 and 11 of the Constitution.

**Internet link source and additional information:** <http://www.const-court.be/>