

The Coman Case and its consequences



ILGA-EUROPE ANNUAL CONFERENCE

WORKSHOP ON 25TH OF OCTOBER 2018 IN BRUSSELS

A COOPERATION OF ILGA-EUROPE, NELFA, ACCEPT ROMANIA AND DEYSTVIE IN BULGARIA

NELFA...

NETWORK OF EUROPEAN LGBTIQ*
FAMILIES ASSOCIATIONS (BRUSSELS)

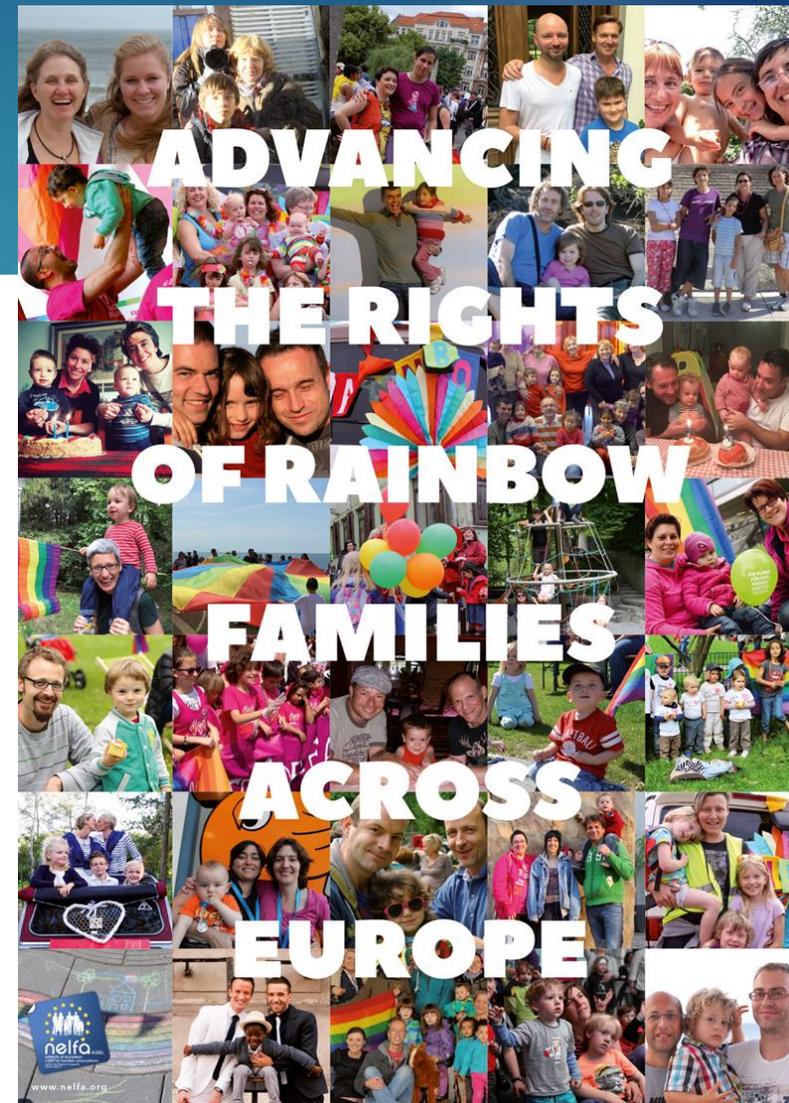
FOUNDED IN 2009, REGISTERED AS NON-
PROFIT ORGANISATION IN 2012

CURRENTLY 33 ORGANISATIONS in 26
EUROPEAN COUNTRIES (WITH MORE
THAN 20.000 MEMBERS)

MAIN GOALS: VISIBILITY, EXCHANGE
(BEST PRACTICES, NEWS), ADVOCACY
WORK ON THE EUROPEAN LEVEL FOR
MORE RECOGNITION, PROTECTION,
EQUAL TREATMENT AND ACCEPTANCE



NELFA's aims...



RAINBOW EUROPE

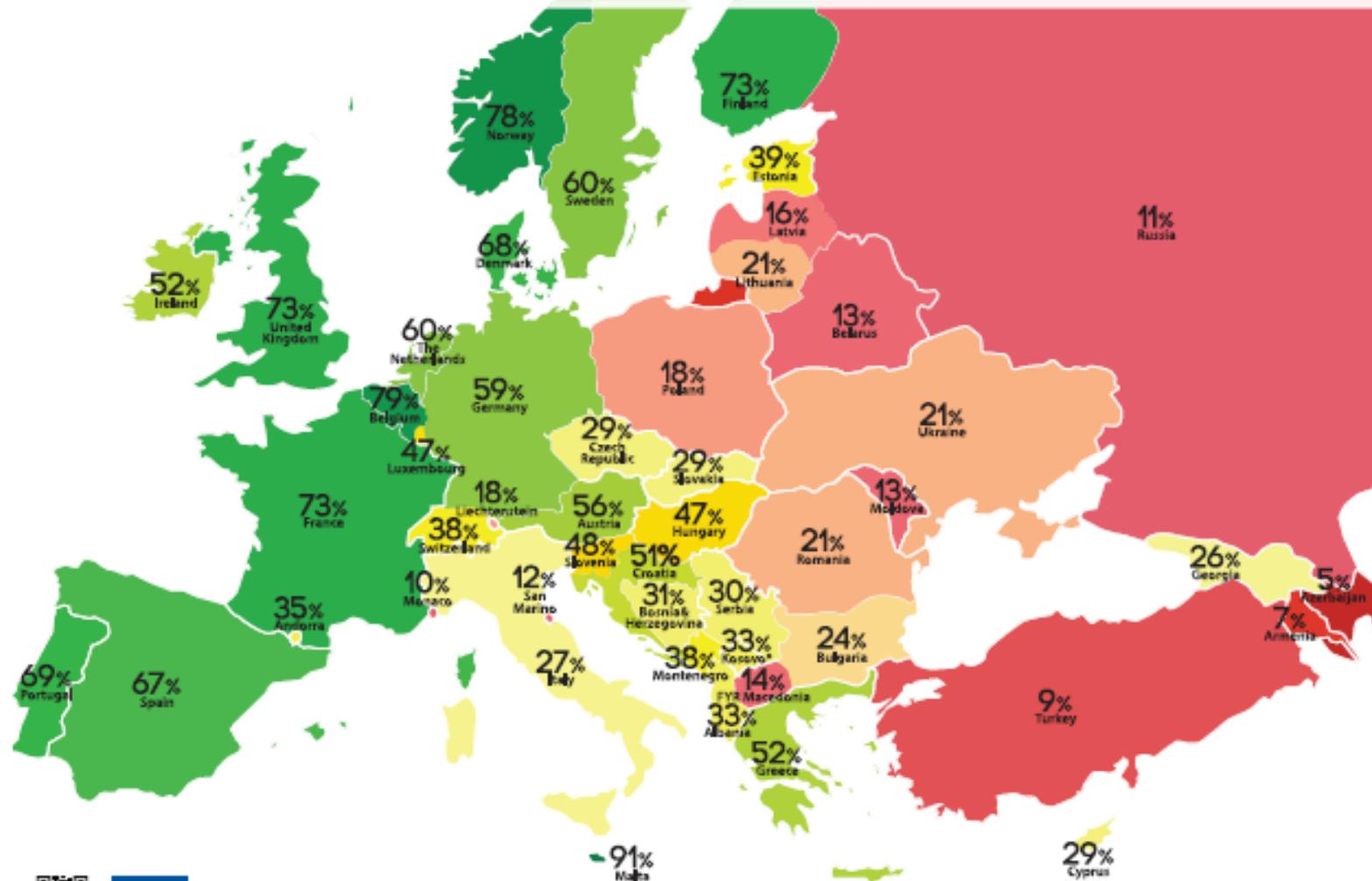
MAY 2018

Reflecting the legal and policy human rights situation of lesbian, gay, bisexual, trans and intersex (LGBTI) people in Europe

How did we calculate these scores? Have a look at www.rainbow-europe.org

47%
Iceland

0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%



Confunded by the Rights Equality and Gender Unit, 2014-2018 of the European Union.

LGBTIQ* “family rights”

Registered Partnership: 22 European countries

Marriage Equality: 16 European countries (14 EU)

THE NETHERLANDS, BELGIUM, SPAIN, NORWAY, SWEDEN, PORTUGAL, ICELAND, DENMARK, FRANCE, UK*, LUXEMBOURG, IRELAND, FINLAND, GERMANY, MALTA, (most recently) AUSTRIA

Joint Adoption: 17 European countries (14 EU)

COUNTRIES above + ANDORRA

Second-Parent Adoption: 18 countries

(i.e. SWITZERLAND and SLOVENIA)

Automatic Co-Parent Recognition: 11 countries

Medically Assisted Insemination: 14/27 countries

		Marriage equality	Family
●		Registered partnership (similar rights to marriage)	
●		Registered partnership (limited rights)	
		Cohabitation	
●	●	No constitutional limitation on marriage	
●		Joint adoption	
●		Second-parent adoption	
		Automatic co-parent recognition	
		Medically assisted insemination (couples)	
		Medically assisted insemination (singles)	
		Trans people can marry a person of another gender	

Freedom of movement?

European Union citizens **and their family members** have the right to move freely and live in another EU country, subject to any conditions set out in the EU's treaties.

DIRECTIVE 2004/38/EC

Source: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:I33152>

Family members?

This covers the spouse, a partner in a registered partnership with an EU citizen and direct descendants under the age of 21 ... but the Directive doesn't specify if this includes same-sex partners, too.



EU Agency of Fundamental Rights (FRA) publication 2008

MEMBER STATE OF ORIGIN ...

	...allows same sex marriage	... provides registered partnership	... provides no status for same sex couples
...allows same sex marriage	Host MS recognises same sex married partner as 'spouse'	Host MS recognises registered partnership as giving rise to family reunification rights	Host MS examines if a 'durable' relationship duly attested' obliges it to 'facilitate entry and residence' of the partner
... provides registered partnership or other institution equivalent to marriage	Host MS recognises same sex married partner as 'spouse'	Host MS recognises registered partnership as giving rise to family reunification rights	Host MS examines if 'durable relationship duly attested' obliging it to 'facilitate entry and residence' of the partner
... provides no status for same sex couples	Host MS recognises same sex married partner as 'spouse'	Host MS recognises registered partnership as 'durable relationship duly attested' and therefore must 'facilitate entry and residence' of the partner	Host MS examines if 'durable relationship duly attested' obliging it to 'facilitate entry and residence' of the partner

Table 1: Obligation of host Member State under the Free Movement Directive¹⁵

Free movement obstacles/traps for rainbow families

- **POORLY INFORMED STAFF, SOMETIMES WITH A HOSTILE ATTITUDE (DUE TO A LGBTIQ* PHOBIC ENVIRONMENT)**
- **COMPLICATED, DIFFERENT REGULATIONS THAT DO NOT REALLY MATCH, SOMETIMES THEY ARE EVEN INCOMPATIBLE**
- **A SIGNIFICANT LACK OF FUNDAMENTAL LGBTIQ* RIGHTS IN THE HOST MEMBER STATE**



CONSEQUENCES...



LGBTIQ* PARTNERS

...can't exercise their right of residence, may lose related rights (tax advantages, inheritance or health care provisions, etc.)



CHILDREN

... may remain stateless because they can't get a passport, lose - at least - one of their parents (occurs problems on travels, in school, health care, etc.), their surname doesn't reflect their family status

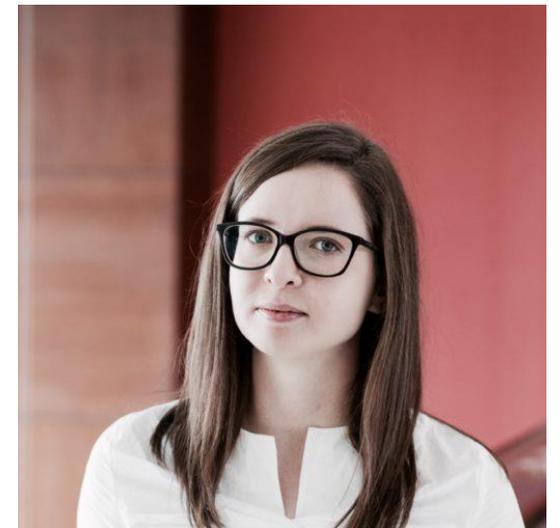


FAMILIES

... may end in legal limbo situations for years, experience stress through bureaucratic hurdles, endless paperwork and a general uncertainty

PROGRESS THROUGH LITIGATION...

- **2016:** Daniela Conte and Marta Loi from Barcelona/Spain won a case law in Italy to transcribe the birth certificate for Ruben (born in 2015), stating two mothers and both surnames
- **2014-2018:** Giuseppina La Delfa and Raphaele Hoedts were able to reunite their family, recognised in France (marriage and mutual adoption of their two children) also in Italy after two successful lawsuits
- **Most recently 2018:** Two Polish mothers won a lawsuit for their son who was born in UK. Poland must transcribe the birth certificate with both mothers
- **EU LEVEL => ECHR December 2017:** Francesca Orlandi and Others v Italy – Italy must provide some form of recognition for same-sex couples married abroad (similar cases before: Oliari and Others v Italy, Schalk and Kopf v Austria, Pajic v Croatia, Taddeuci and McCall v Italy)



SETBACKS WITH LITIGATION

2018: Two Greek women with two little children, living in UK, try to get Greek passports, but the birth certificates can't be transcribed due to national restrictions for same-sex couples. They failed before the Supreme Court (because they didn't use the necessary instances...)

NON-FREEDOM OF MOVEMENT CASE 2018: Marie Charron & Ewenne Merle-Montet v France. The [EHCR](#) in Strasbourg declared the lawsuit inadmissible (the applicants did not exhaust domestic remedies). It was a [decision](#) on medically assisted reproduction (MAR) for a lesbian couple in France



STRATEGIC LITIGATION

Wishes and expectations

- As much universal, binding judgements which pave the way for more recognition, protection and equal treatment of (children in) rainbow families
- We should build sustainable alliances, networks, toolkits to support rainbow families in legal limbo situations (EU)
- mutual recognition of all documents related to rainbow families in cross border situations: marriage/civil union certificates, birth certificates etc (see EP, February 2018)
- With regard to the current situation: a clear stand and active role of the EU institutions to ensure the free movement of LGBTIQ* couples (and their children)



THE COMAN CASE



KEY FACTS

2010: Adrian Coman (Romanian citizen) and Clai Hamilton (US citizen) – marriage in Belgium

2012: Question to the migration authorities in Romania how to obtain a residence permit for Clai

2014: Complaint against Romania (with regard to freedom of movement within the EU, discrimination on the grounds on sexual orientation (in contrary to the EU Charter of Fundamental Rights))

2016: Case at the Constitutional Court in Romania

2017: Case at the Court of Justice in Luxembourg

5 June 2018:

The European Court of Justice held that the term “spouse” includes the same-sex spouse of a Union citizen, for the purpose of the grant of family reunification rights in free movement cases. Hence, a Union citizen can rely on EU law to require the Member State of destination to admit within its territory his/her same-sex spouse, irrespective of whether that Member State has opened marriage to same-sex couples

18 July 2018: Romania adopts the CJEU ruling



WORKING WITH THE COMAN JUDGEMENT



МЛАДЕЖКА ЛГБТ ОРГАНИЗАЦИЯ



ДЕЙСТВИЕ

Deystie Bulgaria

29 June 2018: The Sofia City Administrative Court ruled in favor of a same-sex couple who fought for their right to reside as a married couple in Bulgaria. Cristina and Mariama, an Australian-French couple, got married on 1 June 2016 in France. Later that year, Cristina, an Australian citizen, was granted residency in Sofia, based on the 2004/38/EC Directive on freedom of movement in the EU. However, in 2017, the Ministry of Interior's Migration Directorate denied her the right to reside based on the argument that same-sex marriage is not allowed under the Bulgarian Constitution. Currently, the positive decision of the Court in Sofia is blocked. The Migration Department complaint against the ruling...



ILGA-Europe and strategic litigation



And now? How to deal with these cases?



THANK YOU for
your attention!



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BRUSSELS / 2018

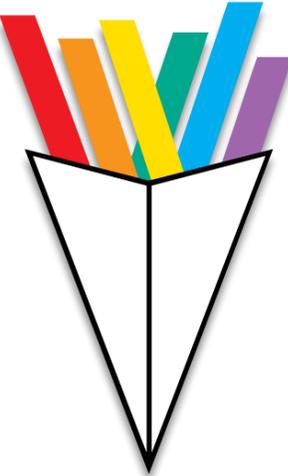


PHOTO COLLECTION...

