



## Network of European LGBTIQ\* Families Associations – NELFA

### Freedom of movement in the European Union: Obstacles, cases, lawsuits...

NELFA has started to collect corresponding stories to underline the urgent need of better laws and regulations within the EU to guarantee the free movement of LGBTIQ\* people and their children. So far, many rainbow families lose fundamental rights when crossing borders and remain in legal limbo situations. Marriages and civil unions are (often) not recognised in host countries, children become half-orphans on paper or remain stateless, at least for a certain time.



### Recognition of marriage/civil union

#### Case 1:

- **CONSTELLATION:** British man, French man, residence: UK (London), marriage: UK, Child 1: adopted in UK
  - ⇒ **The couple considered to move to France, but Embassy officials said that they won't be able to be recognised as married couple there. The problem: In England and Wales, civil unions were at the beginning only converted in marriages, but French laws require a new wedding ceremony and a date which refers to this ceremony. The couple was advised to get divorced and to remarry again. But, UK requires a separation year. The status of the couple's child is unclear in France, because for a transcription of the adoption document, the couple needs to be recognised as married. There are around 50 other couples with similar problems. They have a common Facebook group. Most recently, some of these couples reported that the case should be solved, the French side accepts now obviously the conversion of UK civil unions into marriage.**

#### Case 2:

- **CONSTELLATION:** Polish man, Polish man, residence: Poland, marriage: Portugal (Madeira Island), no Child yet
  - ⇒ **The couple wanted to get married on Madeira Island, where they met up for the first time (and because Poland doesn't provide same-sex marriages. To get a permit in Portugal, the couple needed to present birth certificates and a proof of legal capacity to enter into a marriage. But they couldn't deliver such a document, because the Polish administration denied to hand it out. There are only papers stating "man" and "woman". The couple tried to contact the Portuguese side again and ask for a special exception and added some recent**

hate posts the couple got and media coverage. Then, Portugal accepted the marriage application by demanding a certificate of marital status - and this was easy to get. The couple married and tries now to get a Polish recognition: the registry denied, the province governor denied, they are still waiting for a first court decision. The couple works together with KPH, Pawel Knut. One of the man, a TV presenter, lost his job because of his public fight for marriage.

#### Case 3:

- **CONSTELLATION:** Lithuanian man, Belarusian man, residence: Lithuania, marriage: Denmark, no Child
  - ⇒ **After their marriage in Copenhagen 2015, the couple tried to transcribe their marriage in Lithuania to get a residency permit for the Belarusian partner. But, the migration department denied. The Vilnius County Administrative Court asked the Constitutional Court to clarify whether the term "spouse" includes "same-sex" spouse, the procedure began in late September 2018, open end...**

#### Recognition of birth certificates:

##### Case 4:

- **CONSTELLATION:** Greek woman, British woman, residence: Spain, marriage: Spain, Child 1: born before marriage, Child 2: born after, Notes: First child sick, but no possibility to get a passport
  - ⇒ **To obtain Spanish citizenship for the child (and a passport), the couple needed a British and/or Greek birth certificate. Britain didn't recognise the co-mother at that time (before 2014), Greece still don't accept two women on a birth certificate. At the end, a civil servant in Greece transcribed the Spanish document (only with the biological mother, even the certificate already stated both mothers...). But the family wasn't able to travel for a certain time.**

##### Case 5:

- **CONSTELLATION:** British woman, Spanish woman, residence: Spain, marriage: meanwhile in Spain, Child 1 and 2: born before marriage
  - ⇒ **The birth certificate couldn't be transcribed in the UK because the two mothers were not married. Spanish birth certificate with both mothers, in the UK only the biological (British mother is recognised).**

##### Case 6:

- **CONSTELLATION:** Argentinian/Greek woman, Argentinian/Italian woman, residence: Spain, marriage: ?, Child 1: born outside marriage
  - ⇒ **Spanish birth certificate with both mothers. ROPA method (Italian woman donated egg, Greek was the birth mother). Italy and Greece didn't transcribe birth certificate, Child gets Argentinian nationality.**

#### Case 7:

- **CONSTELLATION:** Greek woman, Greek woman, residence: UK, marriage: UK, civil partnership: Greece, Child 1 and 2: born in the UK
  - ⇒ **British birth certificate with both mothers. Greece doesn't recognise the birth certificate and cannot transcribe the birth. Child is not issued Greek nationality. Gets British nationality.**
  - ⇒ **The couple has started legal actions in Greece**

#### Case 8:

- **CONSTELLATION:** Italian woman, Italian woman, residence: Spain, marriage: Spain, Child 1: born in Spain, birth certificate with two recognised mothers and it has both surnames
  - ⇒ **The couple didn't get an identity document for her little boy, because this was Italy's task (ius sanguinis = children of Italian mothers get always Italian citizenship, despite of binational couple - not in this case). But, the Italian consulate in Barcelona denied a transcription of the birth certificate because of the couple's homosexuality. The City of Naples would accept it. The couple made this case public and at the end, the mayor of Naples transcribed the birth certificate with two mothers. The prefect didn't accept the decision and eliminated the co-mother from the document. The couple went to Court and won in 2016. Now, both mothers are recognised in the Italian birth certificate.**

#### Case 9:

- **CONSTELLATION:** Italian woman, Italian woman, residence: Italy, marriage: no, Child 1: born in Italy - through MAR in Denmark
  - ⇒ **The biological mother went to the town hall in Turin to register her son, but civil servants stated that this won't be possible because of a law from 2004 that doesn't allow MAR (abroad). The only thing they could offer would be for the mother to state that she had sexual intercourse with a man. But the mother denied and made this public. After some days, the mayor took a courageous decision and accepted the registration with two mothers on the certificate. A court case may follow, but lawyers and activists expect a positive outcome. In the meantime, other rainbow families (gay and lesbian couples) were granted in a similar way through mayors in Italy.**

#### Case 10:

- **CONSTELLATION:** French woman, French/Bulgarian woman, residence: UK (Bristol), marriage: no, Child 1: born in UK, birth certificate 2 mothers
  - ⇒ **The couple started the procedure to get a French passport for their son in summer 2018. But, the French administration didn't accept the birth certificate. They asked for a proof who is the biological mother (document from hospital, signed by the doctor). Then, they forced to sign a paper where the couple had to accept that a filiation will be only documented between the child and his biological mother - if this won't be provided a French passport could not be**

handed out. Finally, the couple accepted this. They got the passport, but from French side, one of the mothers lost her marital rights.

#### Case 11:

- **CONSTELLATION:** UK/Austrian woman, Canadian woman, residence: Germany, marriage: Germany, civil partnership: Austria, Child 1: born in Austria 2015 (co-recognition of both mothers), Child 2: born in Germany 2018 under identical circumstances (only biological mother is recognised)
  - ⇒ **The couple didn't get enough or even wrong information from civil servants in Munich and Freiburg. They stated that a co-recognition might be possible, but this wasn't the truth. Now, the couple needs to apply for a stepchild adoption which can last 2-3 years. The tax authorities granted only 1,5 children as credits for the Canadian co-mother. But, after a review from LSVD, this was also a wrong information. There are corresponding rules from 2014 to grant 2 children as usual, even the co-mother isn't recognised on the birth certificate. Not a real case of "freedom of movement", because the movement of the first child was completely accepted, but still a reality case of struggles through crossborder situations...**

#### Case 12:

- **CONSTELLATION:** Swedish/Italian woman, Italian woman, residence: France (work in CH), marriage in France, Child 1: born in France 2015
  - ⇒ **Born in France 2015, they started the adoption process immediately for the co-mother in France. The "livret de famille" was changed, the child got a second surname recognised. Sweden accepted the ruling and changed the passport. Italy didn't reply and the couple began a lawsuit in 2016. In the meantime, they had two hearings (January and June 2018) without results. The next will be in December**
  - ⇒ **Status: Sweden has fully recognised the adoption, but has not fully transcribed the birth certificate, as this country only attributes "temporary" citizenship to those born abroad, so that around 18 years of age, the couple's daughter will have to make a new further request for citizenship demonstrating a real link to the country (knowledge of the language, continuity of visit ....). France: marriage and adoption full recognised, Switzerland: civil partnership recognised, adoption not clear (so far no need), Sweden: first woman's family statement includes wife and kid, her wife doesn't have any, the daughter has 2 surnames but the "temporary" statement doesn't include any parenthood, Italy: first woman's family statement includes the daughter, her wife is single without kids, the daughter has only one surname and one parent.**

#### Case 13:

- **CONSTELLATION:** Spanish woman, Spanish/French woman, residence: Spain, marriage in Spain and validated in France (livret de famille), Child 1: born after Spanish marriage, ROPA method (Spanish woman donated egg, Spanish/French woman was the pregnant mother, Child 2: will be born in December 2018

- ⇒ **Child 1 has a birth certificate with both mothers, in France only the pregnant mother is recognised (Spanish/French mother), the kid can obtain French nationality. Child 2 will have a Spanish birth certificate with both mothers, but cannot obtain French nationality (France will refuse to transcribe the birth because the pregnant mother is not French**
- ⇒ **One Spanish family record book with all the members of the family. And two French family record books (one with the marriage and the other one with the Spanish/French mother and Child 1). Option is an adoption process in France**

**NELFA contact: [www.nelfa.org](http://www.nelfa.org), Email: [info@nelfa.org](mailto:info@nelfa.org), Tel. : +32 498 70 80 75**

