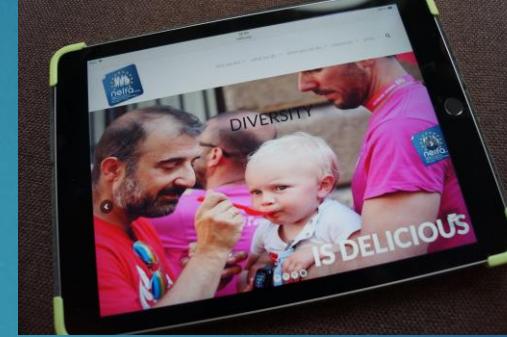


Rainbow Families in Europe: Rights on the move

**LUNCH SEMINAR IN THE EUROPEAN PARLIAMENT ON 21 MARCH 2019,
ORGANISED BY JULIETTE SANCHEZ-LAMBERT (INTERGROUP ON LGBTI RIGHTS)**



PART ONE

WHAT IS NELFA?



NELFA...

NETWORK OF EUROPEAN LGBTIQ*
FAMILIES ASSOCIATIONS (BRUSSELS)

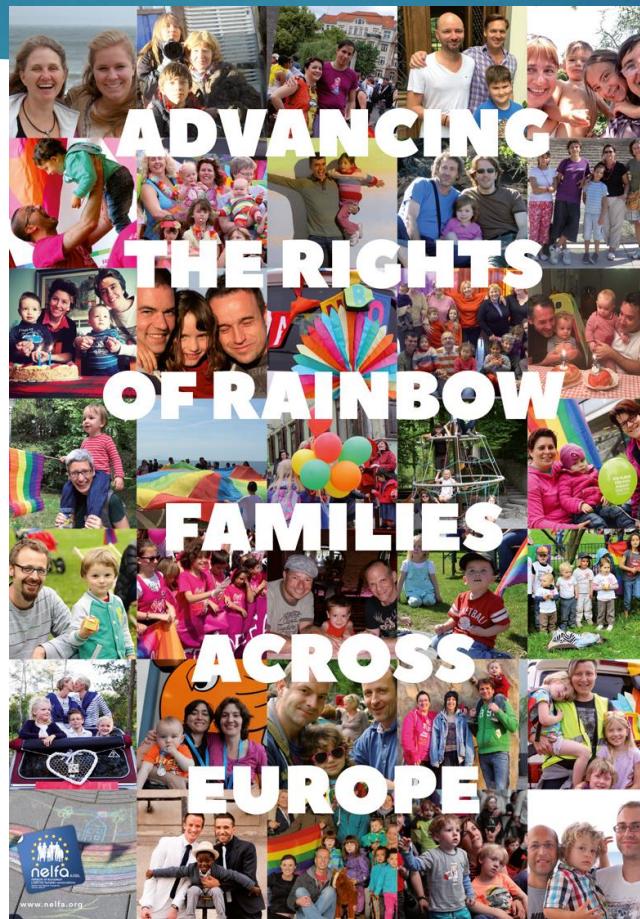
FOUNDED IN 2009, REGISTERED AS NON-
PROFIT ORGANISATION IN 2012

CURRENTLY 34 ORGANISATIONS
REPRESENTING 28 EUROPEAN
COUNTRIES (~ 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 major aims...



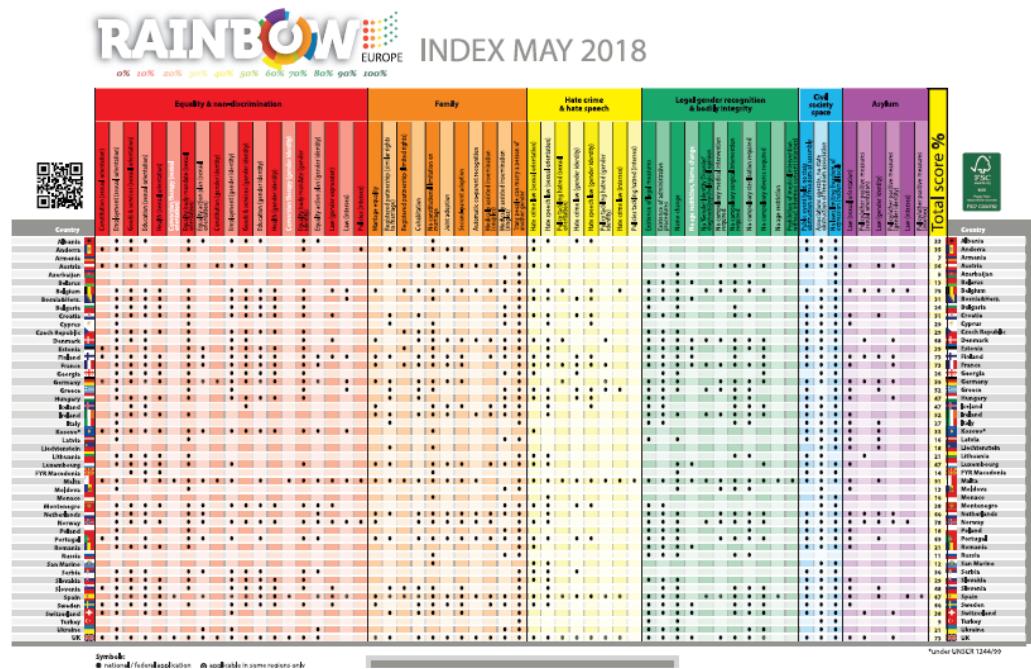
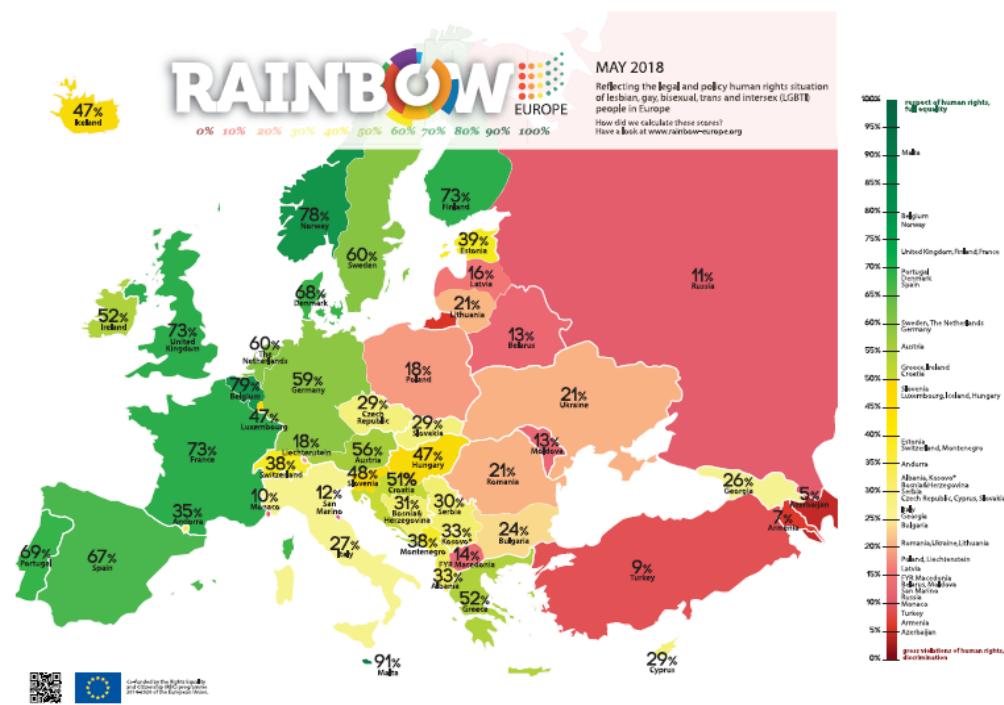


PART TWO

CURRENT STATUS OF RAINBOW FAMILIES IN EUROPE?



The rights of rainbow families in Europe





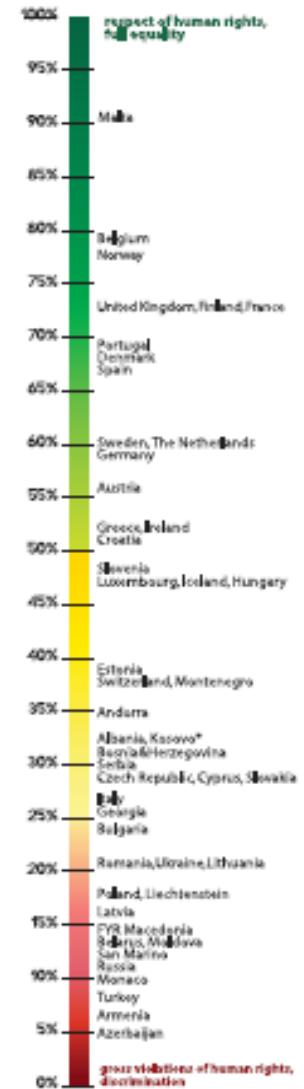
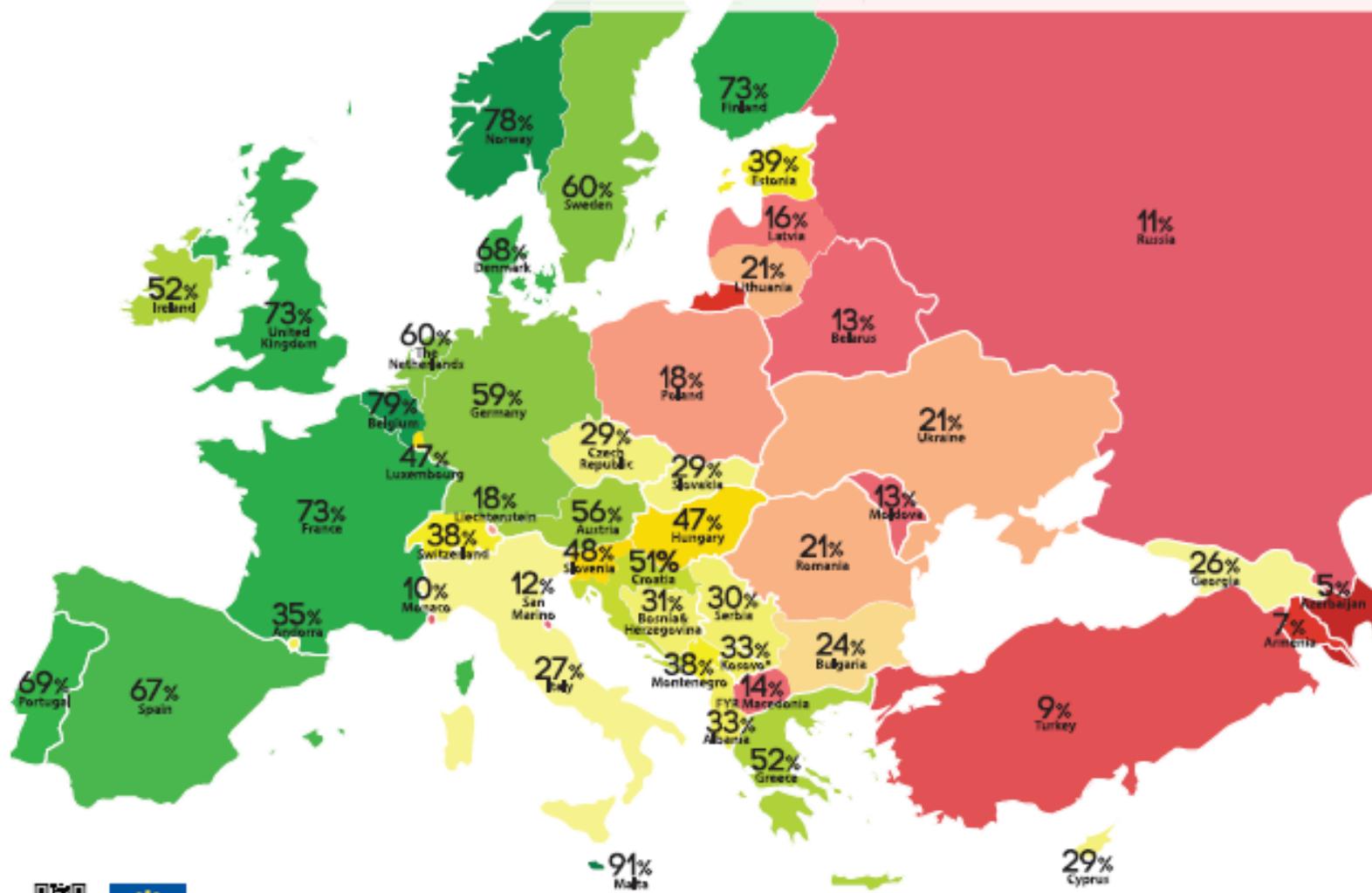
RAINBOW EUROPE

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

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



Confined by the Rights Equality
and Citizenship Directive
2014/2010 of the European Union

LGBTIQ* “family rights”

Registered Partnership: 24 European countries
(20 EU) most recently: SAN MARINO (2018)

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: 19 countries **(14 EU)**

(i.e. SWITZERLAND, SLOVENIA, SAN MARINO)

Automatic Co-Parent Recognition: 11 countries

(10 EU) most recently: FINLAND (IRELAND?)

MAR: 14 **(12 EU)** [couples] / 27 **(18 EU)** [singles]

●	Marriage equality
●	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

Family

Hardly any recognition of rainbow families



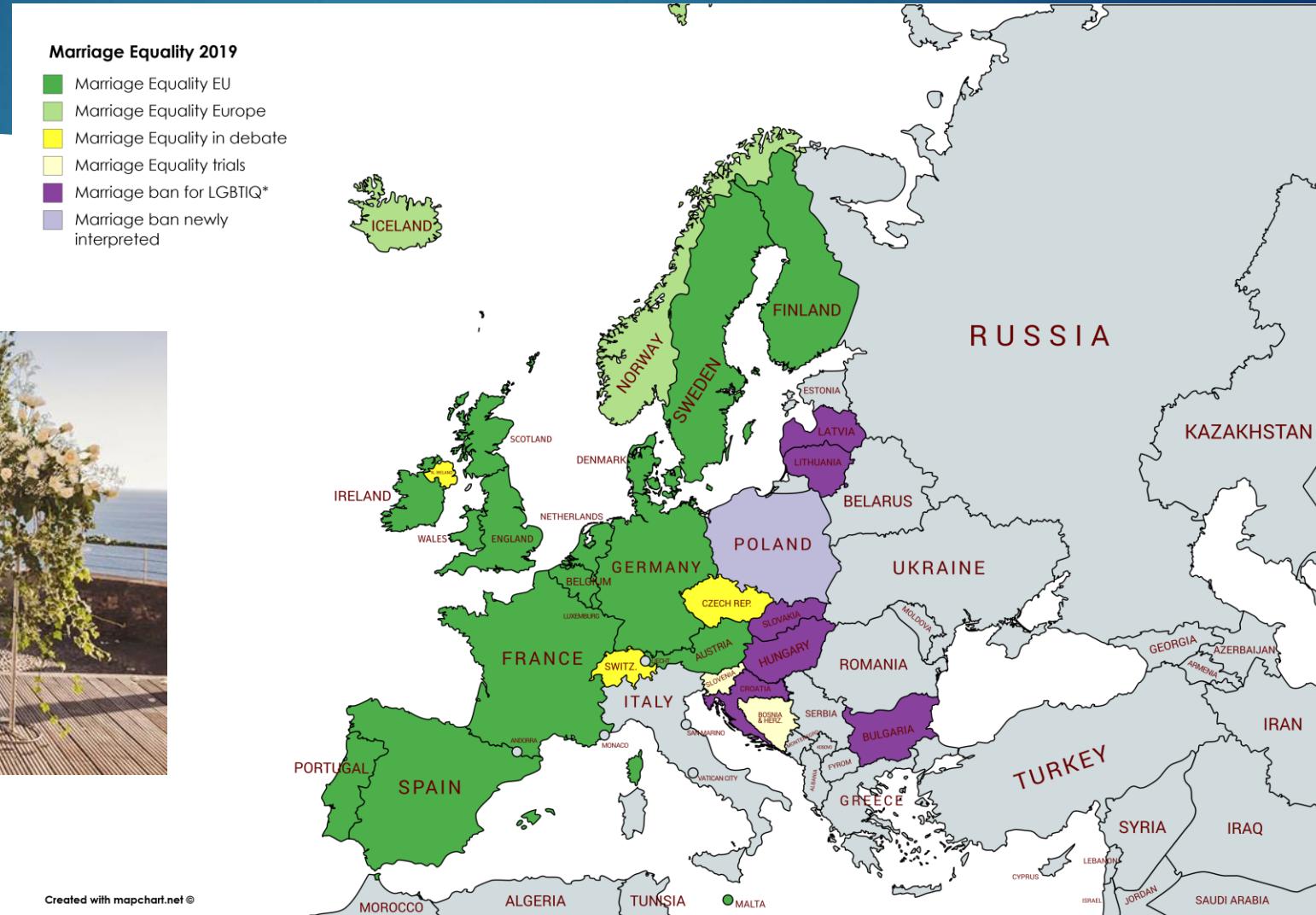
LGBTIQ* families (nearly)
without recognition



Marriage Equality and discussions



Created with mapchart.net



Registered partnerships and discussions



Registered Partnerships 2019

- Civil unions (strong)
- Civil unions (weak)
- Civil unions recently discussed



Co-parent recognition and discussions



Co-parent recognition 2019

- Recognition (automatically)
- Recent discussions
- Second-parent adoption
- Other forms (i.e. litigation)
- Adoption bill discussed



Created with mapchart.net ©

Medically Assisted Insemination

**LA PMA
POUR TOUTES**

Medically Assisted
Insemination 2019

- MAR for lesbian couples
- MAR recent discussions
- MAR for single women
- MAR for couples & singles



First little summary

- We have achieved an enormous legal progress within the last decades in Europe, especially in the EU
- The development is still ongoing: more and more rights for LGBTIQ* families
- **A lot of LGBTIQ* people use EU free movement rights to find their happiness**
- We have a progressive West and a relatively complicated situation in East
- In general: a patchwork situation, many different regulations and approaches to find an adequate legal framework for the recognition of rainbow families



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:l33152>

Family members? Gender-neutral...

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 rainbow families. In June 2018: a clarification through the **Coman case**.



NELFA case collection...

CONVERTED MARRIAGES: UK-FRANCE, FINLAND-FRANCE => incompatible regulations at the beginning, then a positive decision in France, but still bureaucratic hurdles and couples (sometimes also with children) remain in legal limbo

Rejected transcription of a common birth certificate (PASSPORT?): UK (England/Scotland)-IRELAND, UK-GREECE, UK-FRANCE, UK-POLAND, SPAIN-GREECE, NETHERLANDS-FRANCE, DENMARK-BULGARIA... => loss of legal familial ties (even forced by national authorities [France] or Courts [Bulgaria] – “against the public order”)



Francesca and Alexandra

Eleni: Greek, Kate: British

Residence: Spain (Barcelona)

2012: Birth of Francesca via MAR in Spain by Eleni

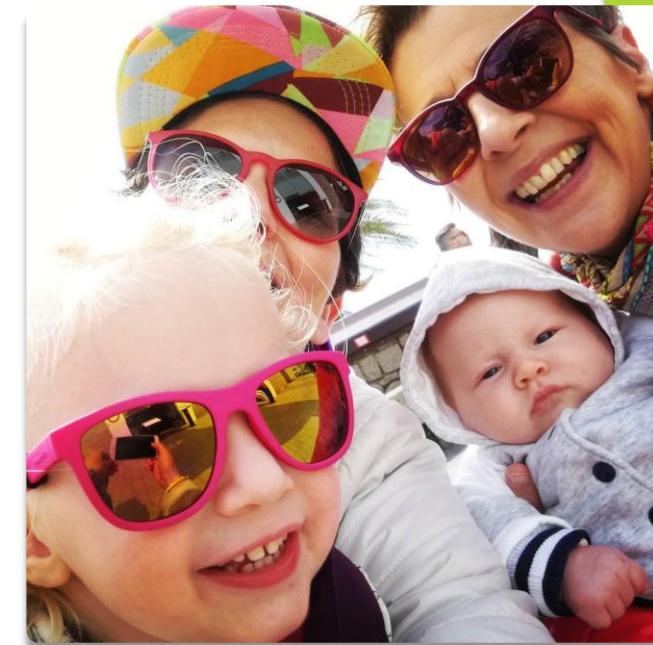
2016: Birth of Alexandra via MAR in Spain by Eleni

Spain: birth certificates recognise both mothers. To obtain Spanish citizenship, a child with foreign parents needs to be registered abroad.

UK and Greece didn't accept the transcription of Francesca's birth certificate (UK: fertility treatment in Spain, Greece: same-sex couples not recognised). Francesca didn't receive a passport. After three months, Francesca was diagnosed with cancer.

The responsible person for the transcription turned a blind eye and made a partial registration of the birth.

The case was discussed by the Committee on Petitions in July 2018, second hearing will be on 2nd April 2019.



UPDATE IN THIS CASE...

Concerning the Petition 0513/2016 (Eleni Maravelia) :

Claude Moraes (EP's Committee on Civil Liberties, Justice and Home Affairs) on 08 March 2019: „*The absence of mutual recognition of parental status for same-sex partners within the EU may pose restrictions to the exercise of their right to free movement by LGBTI individuals and their children, in contravention with the provisions of the Charter of Fundamental rights.*“

Article 7: respect for private and family life

Article 21(1): non-discrimination (sexual orientation)

Article 24(2): protection of the best interest of the child

EU-Parliament's decision in Strasbourg, Feb. 2019

EU COMMISSION: new List of Actions from 2019-2024!?



SECOND little summary

FREEDOM OF MOVEMENT OBSTACLES:

Crossing a border can mean: i.e. losing your civil status (marriage, civil union), and/or your parental rights. For the child: losing your legal tie to one parent, legal protection/benefits (tax, health care...)

- A SIGNIFICANT LACK OF FUNDAMENTAL LGBTIQ* RIGHTS IN A RANGE OF HOST MEMBER STATES AND A NON-IMPLEMENTATION OF EU RULES
- COMPLICATED, DIFFERENT REGULATIONS THAT DO NOT REALLY MATCH, SOMETIMES THEY ARE EVEN INCOMPATIBLE (France/UK-Finland)
- POORLY INFORMED STAFF, SOMETIMES WITH A HOSTILE ATTITUDE (DUE TO A LGBTIQ* PHOBIC ENVIRONMENT)

See NELFA's case collection: <http://nelfa.org/inprogress/wp-content/uploads/2019/01/NELFA-fomcasesdoc-2019-1.pdf>



What's next?

- *The EU INSTITUTIONS should continue to claim on the Member States to respect the fundamental rights of all EU citizens (regardless of their sexual orientation and/or gender identity)*
- Clarification of the wording in Directive 2004/38/EC (i.e. direct descendants). Are familial ties of rainbow families included?
- ***The mutual recognition of the CONTENT of civil documents (VERY IMPORTANT!!)***
- Endeavours to strengthen children's rights, (their opinions taken into account...)
- ***FOR RAINBOW FAMILIES: LITIGATION...***

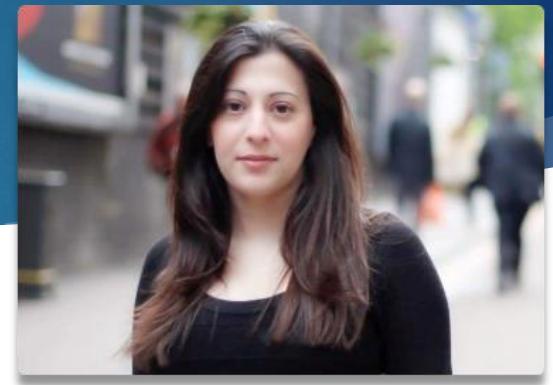


“

[...] What is needed, therefore, is for the EU to take a clear stance on the matter and to inform the Member States that EU law requires them to recognise, for all legal purposes, the familial ties among the members of a rainbow family coming from another Member State, as these have been established elsewhere [...]

”

PROF. ALINA TRYFONIDOU (UNIVERSITY OF READING/UK), INDIVIDUAL NELFA MEMBER



WORKING PAPER: “EU Free Movement Law and the Children of Rainbow Families: Children of a Lesser God?” (2019, not published yet)

“ [...] rainbow families exist throughout Europe, whether or not legislation provides for them. These families have the same needs as any other family, yet many are deprived of their rights on the grounds of the sexual orientation or gender identity of the partners or parents. It is crucial and urgent that our legal systems acknowledge this reality and that States work to overcome the discrimination experienced by both adults and children [...] **”**

JONAS GUNNARSSON (PACE-RAPPORTEUR, COMMITTEE ON EQUALITY AND NON-DISCRIMINATION)

Council of Europe, Resolution 2239 (2018). Private and family life: achieving equality regardless of sexual orientation.

Resolution : <https://bit.ly/2FpaqqR>. Report: <https://bit.ly/2NuRdmD>.



After Coman...

POSITIVE EXAMPLE LITHUANIA: In January 2019, the Constitutional Court ruled that provisions regarding freedom of movement of family members also apply for same-sex couples. A refusal to issue a temporary residence permit to a spouse/partner can't be based solely on the gender identity and/or sexual orientation.

NEGATIVE EXAMPLE BULGARIA: The marriage of a French-Australian couple (contracted in France) was finally accepted by the Sofia City Administration Court in June 2018 (residency), but the Bulgarian Migration Department blocked the decision. The Supreme Court will discuss the case probably in May 2019.



After Coman...

POSITIVE EXAMPLE POLAND: In October 2018, the Supreme Administrative Court (SAC) in Warsaw ruled in favour of a Polish lesbian couple (living in UK) concerning the transcription of their son's British birth certificate (with both mothers recognised) to enter the Polish birth register.

It is the first time, that a child with Polish citizenship has now officially two mothers.

Lawyer A. Mazurczak: “**The best interest of a child and the principle of non-discrimination were the key elements in the SAC’s line of argumentation.**”

Preliminary ruling at the ECJ (CJEU)? “*The SAC pointed out that there is no need to refer for a preliminary ruling to the CJEU, given that it had already ruled in Coman and Others that same-sex marriages need to be recognized [...]*”



Thank you for your attention!

NELFA

... IS THE EUROPEAN PLATFORM OF LGBTIQ* FAMILIES ASSOCIATIONS, BRINGING TOGETHER LGBTIQ* PARENTS AND PARENTS-TO-BE FROM ALL OVER EUROPE. NELFA CURRENTLY REPRESENTS 34 ORGANISATIONS IN 28 EUROPEAN COUNTRIES WITH MORE THAN 20,000 MEMBERS. NELFA IS A MEMBER OF ILGA-EUROPE, TRANSGENDER EUROPE AND COFACE FAMILIES EUROPE. WEBSITE: [HTTP://WWW.NELFA.ORG](http://www.nelfa.org). LEAFLET: [HTTP://BIT.LY/2RjwoUs](http://bit.ly/2RjwoUs), NEWSLETTER: [HTTP://BIT.LY/2FCN5C5](http://bit.ly/2FCN5C5).

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