



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 in 2017 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 clear reasons for a divorce and, in addition, 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. In 2018, many of these cases could be resolved, after France accepted the conversion in general, but every couple needs an own Court decision. Most recently, in January 2019, the couple concerned received the judgement to request the transcription of their marriage, but the Consulate asks for documents they don't need to provide (civil partnership document with witnesses). Another member of the group says, that couples who live abroad, have to wait four to five years to receive the French passport...**
 - ⇒ **In the meantime, a Finnish-French gay couple reported the same problem with the transcription of their marriage contracted in Finland to be accepted in France. After a corresponding statement of the Consulate, the couple contacted a lawyer. Meanwhile, the responsible French administration in Nantes answered that there won't be a problem with the transcription. Unfortunately,**

the couple paid already around 3.000 € for a lawyer because of the Consulate's statement.

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. One of the man, a TV presenter, lost his job because of his public fight for marriage. Most recently, in January 2019, the couple lost their case before the Administrative Court in Warsaw, their marriage won't be recognised in Poland. Both were very disappointed – but had another, positive lawsuit decision in February 2019: The Administrative Court ruled that the Polish Constitution doesn't ban same-sex marriages in general. This is a new, worthful interpretation.**

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**
- ⇒ On 11 January 2019, the Constitutional Court in Lithuania ruled in a case of a same-sex couple: Foreign spouses of gay citizens must be given residency permits. The practice of denying these was discriminatory and against human dignity: "The refusal to issue permits cannot be based only on gender identity or sexual orientation" (it's not clear for the moment, if both cases are the same)
- ⇒ The migration department in Lithuania has confirmed that it will change its policy and start handing residency permits to foreign spouses of gay citizens.

Case 4:

- **CONSTELLATION:** Australian woman, French woman, residence: Sofia/Bulgaria, marriage: France, no child yet
- ⇒ **The lesbian couple got married on 1 June 2016 in France. Later that year, the Australian citizen was granted residency in Sofia, based on the 2004/38/EC Directive on freedom of movement. 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. The couple went to Court and the decision was taken only some weeks after the successful Coman case before the EJC. The Sofia Administrative Court ruled in favour of the couple. However, the Migration Department blocked the decision and started a complaint against the judgement. In a dramatic situation, the Australian woman was denied to entry Bulgarian territory at the airport (after a stay abroad), her wife just behind the glass pane. The lawyer of the couple came (organisation: Deystvie) and showed a document that the Australian partner had a special permit to stay. Now, the situation is still undecided. The next Court hearing in Sofia is to be expected in May 2019.

Recognition of birth certificates:

Case 4:

- **CONSTELLATION:** Greek woman, British woman, residence: Spain, marriage: Spain, Child 1: born before marriage (2014), Child 2: born after (2016), 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. UK didn't recognise the co-mother (because of the IVF treatment in Spain and not in UK and the couple wasn't married at that time). 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 because of the lack of the passport. The child was diagnosed with cancer and couldn't travel abroad at that time. Luckily, the family found a good treatment in Spain. For the second daughter, it's now easier: The couple, meanwhile married, could get a British birth certificate (the transcription was possible because of the marriage, then, the place of the IVF treatment is not decisive...). However, Brexit and the possible consequences means a new thread for the family.**

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 sanguis = 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 two children as usual, even the co-mother isn't recognised on the birth certificate. The responsible civil servant then (December 2018) just changed this item without any further questions concerning the rules, but stating that this won't change so much in the case of the couple's income... Not a real case of "freedom of movement", because the movement of the first child was completely accepted, but still a difficult cross-border situation...**

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 third one took place in December. We don't have any further information for the moment**
 - ⇒ **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**

Case 14:

- **CONSTELLATION:** Spanish woman, Greek woman, residence: Belgium, marriage: Belgium
 - ⇒ **The couple got married in summer 2018 and started shortly afterwards an IVF procedure. In the meantime, they received the information, that only the (now pregnant) Spanish (birth) mother will be accepted and named of the birth certificate. Greek law follows the woman concerned even in Belgium. And in Greece, a co-parent recognition for same-sex couples isn't possible. (The same for marriages, but this was no problem to do it in Belgium...). For a Spanish citizenship, the Greek woman [EU staff] would need to live at least a year in Spain, but this is not feasible because of the job and the arriving baby. Belgian law allows co-parent recognition since 2015, but only for Belgian citizens. One possible way for the couple could be, to give birth in a Spanish hospital, to receive a common birth certificate there and then trying to get a transcription in Belgium. This should be possible (info: Homoparentalités)**

Case 15:

- **CONSTELLATION:** Dutch woman, French woman, residence: The Netherlands, marriage: not yet, child: IVF procedure has just started
 - ⇒ **The couple (which is neither married nor in a civil union) would like to move to France, but they already know, that the country won't accept their common birth certificate. In the Netherlands, the co-parent will be recognised. Another option is now an adoption process which is also available in the Dutch system. To get an adoption recognised in France, the couple must be married. They don't want to, but as this is the best solution to be recognised as a family, they would do it. A complaint at the competent Court in Nantes would be more difficult... The lawyer of the French Rainbow Family group apgl is now involved.**

Case 16:

- **CONSTELLATION:** Danish woman, Bulgarian woman, residence: formerly Denmark, now divorced (Denmark/Bulgaria), child: one, living in Bulgaria
 - ⇒ **The lesbian couple became parents in 2016, with a common Danish birth certificate. But, shortly after the birth of their son, they got divorced. The Bulgarian mother started to search for a possibility to transcribe the birth certificate in their home country to get a Bulgarian passport for the boy. The Municipality of Pazardzhik refused to do it (because of the law). After a complaint, the Administrative Court ruled, that a birth certificate will be issued, with a blank case „father“. The Danish mother (who was never heard and she even didn't know about the court case) should submit a new court case for providing an origin of the 'father'. The child lost his Danish mother, because the Bulgarian mother never allowed the other one to see the child anymore. In 2018, the Danish mother lost a two-instance court procedure in Bulgaria because her 'parenthood rights' would contradict the main principles of Bulgarian law and public order. The boy can't even visit his Danish mother**
 - ⇒ **The Danish mother has now a new lawyer in Denmark, but there is no further information on which steps will come next. The European Court of Human Rights in Strasbourg rejected the case because of formal reasons**

Case 17:

- **CONSTELLATION:** Irish woman, British woman, residence: Brighton/UK, marriage: yes, in 2015 (civil partnership in 2010), children: two (born in 2014 and 2016) at the time of reporting, in the meantime, the couple has additionally twin babies
 - ⇒ **The couple use the same sperm donor for both children, both women gave birth of one of their children. They tried to get Irish passports – but face now major problems, because the second daughter was conceived by the British mother. The UK birth certificate states “mother and parent”, so the Irish co-mother ('parent') wasn't accepted as mother in Ireland. For the first child, it was no problem, because the biological mother was Irish citizen... A Senator brought the case in 2017 to the Minister of Foreign Affairs in Ireland. He just stated the Irish Nationality and Citizenship Act, 1956 to deny once again the request to transcribe the UK birth certificate with two mothers**
 - ⇒ **The organisation LGBT Ireland knows at least one further case of a Scottish/Irish lesbian couple with similar problems. NELFA will get the details soon**

Case 18:

- **CONSTELLATION:** Polish woman, British woman, residence: Essex/UK, marriage: no, civil partnership, child: one child (born in December 2019)
 - ⇒ **The couple tried to get the common UK birth certificate transcribed in Lodz in 2012 to obtain Polish citizenship for the child, but the local administration denied it because of the Polish provisions (no civil partnerships, only marriages between man and woman, only birth certificates stating “mother” and “father”). The mothers appealed in 2012 (Governor), 2013 (Administrative Court in Lodz)**

and 2014 (Supreme Administrative Court) – but without any success. The transcription of a birth certificate stating a “mother” and a (same-sex) “parent” would be against the Polish public policy. In the meantime, the case reached the next level. It will be discussed at the EHCR in Strasbourg this summer.

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