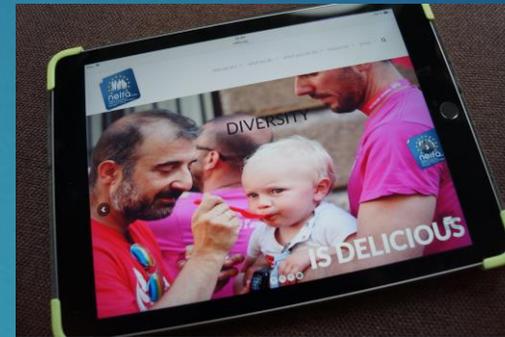




# Rainbow Families in Europe:

EURO LGBT FAMILY LAW INSTITUTE FRANKFURT REGIONAL MEETING, 13<sup>TH</sup> OF APRIL 2019



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....

Currently run on voluntary basis by 11 Board members from all over Europe, elected by the AGM for two years (most recently in Helsinki)

**PRESIDENT:** Eleni Maravelia (Spain)

**VICE PRESIDENT:** Björn Sieverding (Germany)

**TREASURER:** Giovanni Fantoni (Italy)

**SECRETARY:** Daniel Martinovic (Croatia)

Further **Board members:** Juan Bastón (Spain), Dominique Boren (France), Marcos Jornet (Spain), Giuseppina La Delfa (Italy), Veneta Limberova (Bulgaria), Jesús Santos Homobono (Spain), and Joanna Śmiecińska (Poland).



# NELFA...

ITSELF IS MEMBER OF

**ILGA EUROPE** (the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association)

**TRANSGENDER EUROPE** (a network of different organisations of transgender, transsexual, gender variant and other like-minded people)

**COFACE FAMILIES EUROPE** (a pluralistic network of civil society associations representing the interests of all families, social protection & inclusion)



# VISIBILITY means... COMMUNICATION!

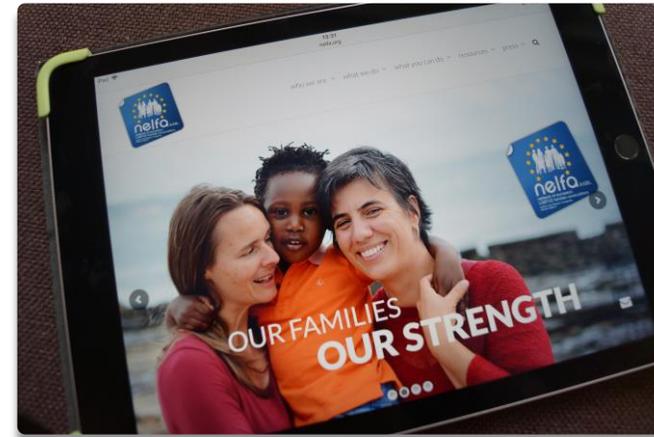
Exchange of LGBTIQ\* news for/about rainbow families: current discussions, laws, research findings, litigation etc.

Internal Email network

NELFA website [www.nelfa.org](http://www.nelfa.org)

Social media (Facebook, Twitter)

Newsletter (quarterly)



# VISIBILITY means... CELEBRATION!

NELFA and its members organise since 2012 events for the **International Family Equality Day** (IFED). This year's motto will be „Families: United we stand!“

Since 2018, NELFA celebrates also the **International Day of Families** (UN)

NELFA organises since 2010 **European Rainbow Families Meetings**

INTERNATIONAL  
FAMILY EQUALITY  
DAY 2019

Families:  
United  
We Stand



# ADVOCACY WORK...

NELFA Board members and volunteers provide **workshops, seminars, key speeches on different occasions** to raise awareness of rainbow families, they contribute with their expertise to reports, resolutions, guidelines.

Parliamentary hearings, committee meetings, international conferences (i.e. **ILGA**, Families&Societies, Men Having Babies)

Partners i.e. **Council of Europe** (NELFA with participatory status in the conference of INGOs), the European Parliament's **Intergroup on LGBTI Rights**, Eurochild



# ADVOCACY WORK...

NELFA members try to organise every year specific **rainbow families conferences** – for example in Naples 2017 (organised by Famiglie Arcobaleno) and in Lisbon 2018 (organised by ILGA Portugal). The next event will be in Zagreb from 10-12 May 2019 (organised by Dugine obitelji, Croatia).



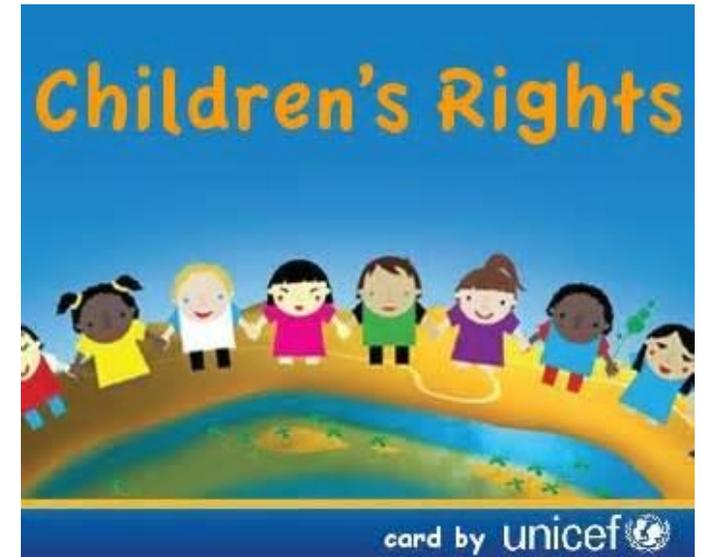
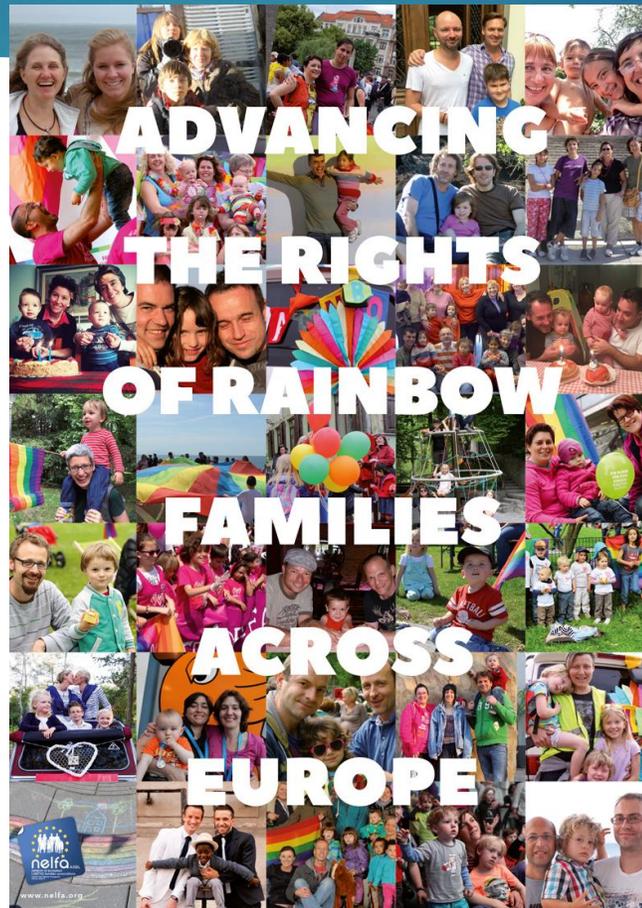
# CAPACITY BUILDING...

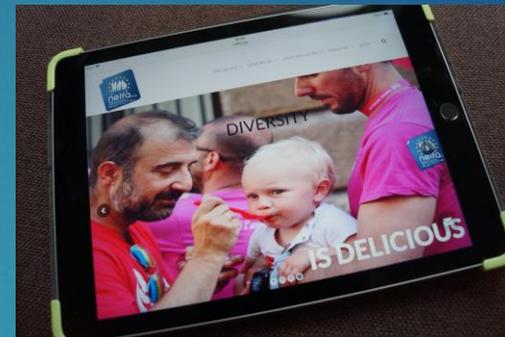
Since 2016, NELFA organises i.e. Erasmus+ projects, financed by the European Union. The main aim is to strengthen NELFA towards its educational activities. Our participants attend **training courses** (i.e. consulting, teaching and guidance skills, conflict management) and **job-shadowing** programmes (at major LGBTIQ\* organisations). In June 2019, we will finalise our third project “**Joining forces for the well-being of rainbow families**” (2018/2019).

Partner organisation is the consultancy corporation „**In Dialogue**“ in Gouda.



# NELFA's major aims...





## PART TWO

# CURRENT STATUS OF RAINBOW FAMILIES IN EUROPE?





# RAINBOW EUROPE

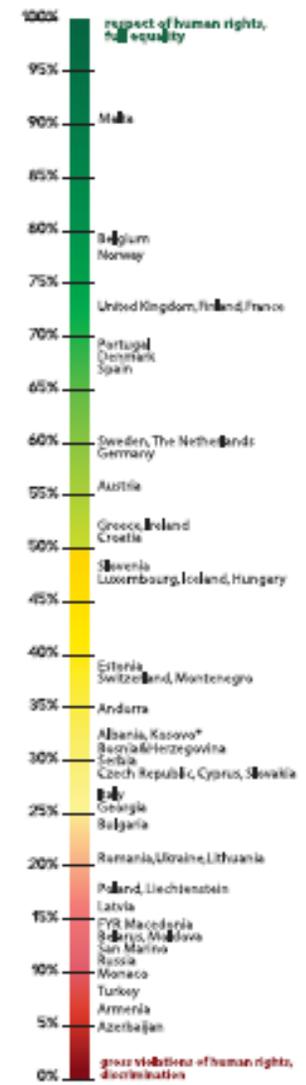
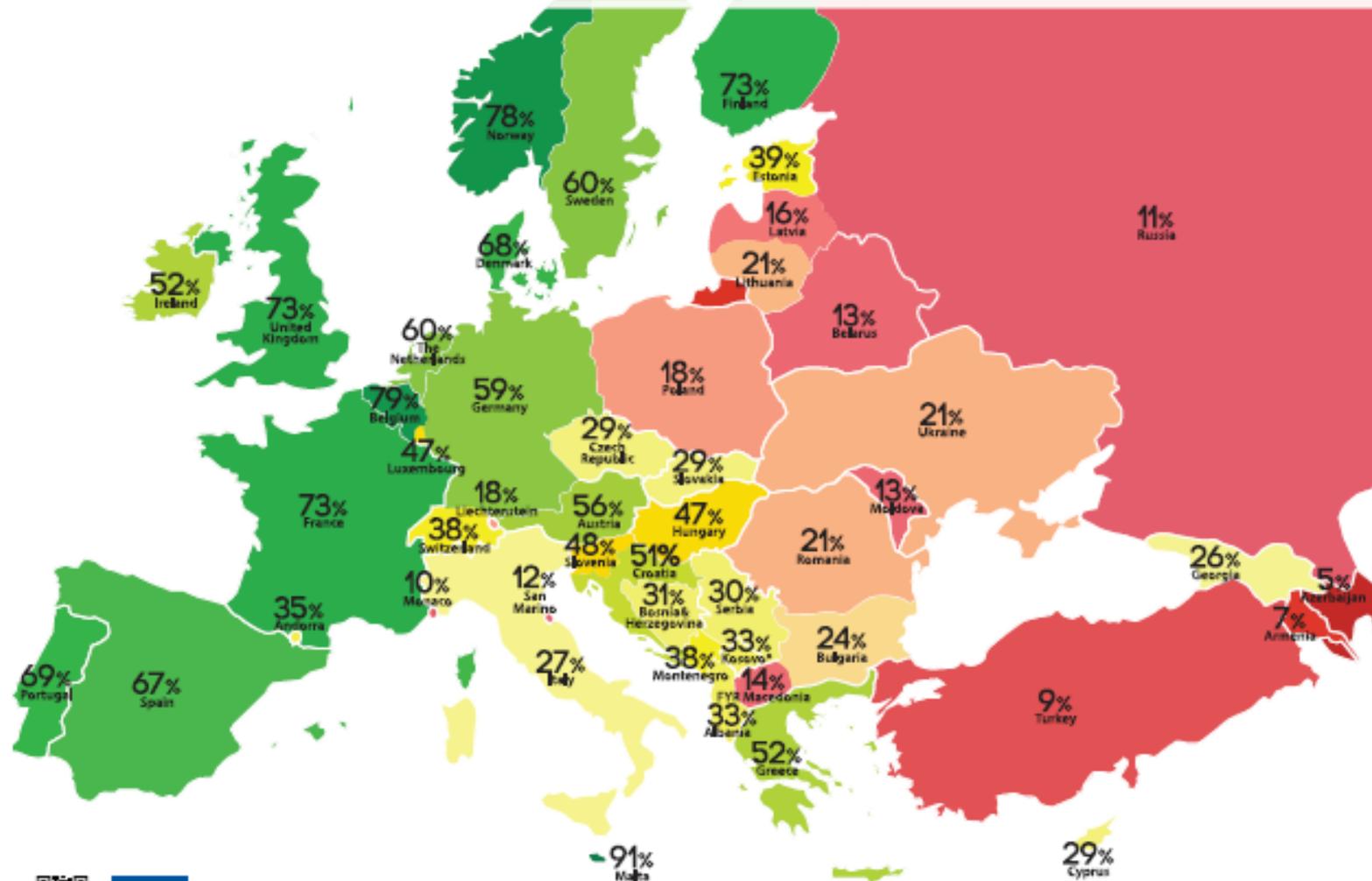
MAY 2018

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](http://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, and Gender Unit, 2014-2018 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]

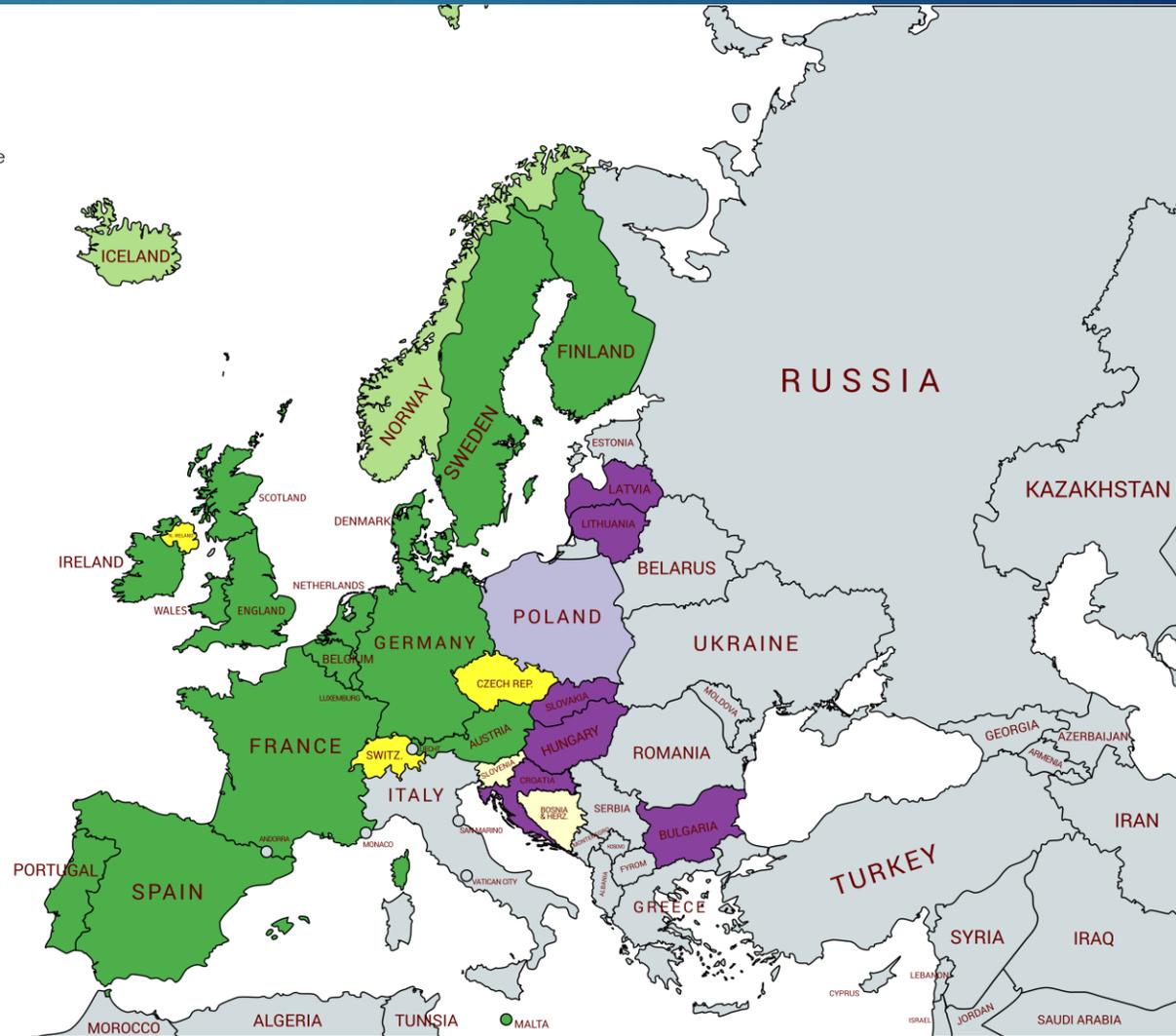
		Marriage equality	Family
●		Registered partnership (similar rights to marriage)	
●		Registered partnership (limited rights)	
		Cohabitation	
●	●	No constitutional limitation on marriage	
●		Joint adoption	
●		Second-parent adoption	
		Automatic co-parent recognition	
		Medically assisted insemination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



# Marriage Equality and discussions

## Marriage Equality 2019

- Marriage Equality EU
- Marriage Equality Europe
- Marriage Equality in debate
- Marriage Equality trials
- Marriage ban for LGBTIQ\*
- Marriage ban newly interpreted



# 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



# 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



# 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**.



# The Coman Case and its implications...

**Analysis by Alina Tryfonidou (University of Reading/UK) for NELFA in 2019:**

- Term „spouse“ includes same-sex couples
- Same-sex marriages are equal to different-sex marriages for the purposes of EU law
- A Member State cannot rely on national law
- Term „spouse“ must comply with the right to „family life“, „family reunification“

## **Limitations:**

- Independent of the place where the marriage has been contracted?
- Genuine residence for more than three months
- Marriage status in host countries during visits?
- Third-country national residing lawfully in the EU?



# 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 [...]”*



# 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...**



# STRATEGIC LITIGATION

Together with ILGA-Europe, NELFA wants to contribute to **strategic litigation**. After recent meetings (EU Commission, Parliament staff and Committee on Petitions), this seems to be **the most sufficient way** to work on rainbow family rights in the European framework.

NELFA has started a **case collection** in September 2018. We want to gather as much cases as possible to share them with the Commission and to see which ones would be good for a **new “Coman case”**?

ILGA-Europe just launched a **new blog** on how to use the Coman case in the near future, in cooperation with NELFA input

Our NELFA member Deystvie/Bulgaria has applied for a REC project – to create a **legal toolkit** for rainbow families (including an international conference, probably in 2020)

## New blog post



Photo: Larisa Baltă

**Together we can make the Coman judgment a reality:**

**The freedom of movement of same-sex couples across the European Union**

Arpi Avetisyan, Senior Litigation Officer and Juliana Teoh, Advocacy Officer, ILGA-Europe

# A new legal network!

- NELFA would like to build up a new network of legal researchers and lawyers in Europe (resp. EU)
- Mayor aims: regular contact, exchange about court cases concerning same-sex couples and rainbow families (in cross-border situations), best practices [successful lawsuits] and common efforts to bring „good cases“ to the EHCR or ECJ!
- And/Or: quick „first aid“ for rainbow families in troubles, to give them advice how to follow-up (pro bono?), further (paid) help for inquiring persons



# 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 and April 2019 – open end. Currently, Eleni's family tries to find advice for a complaint in Greece!**



## LIBE Committee ...

**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!?**



“

*[...] 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>.



# 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/2RjW0Us](http://bit.ly/2RjW0Us). NEWSLETTER: [HTTP://BIT.LY/2FCN5C5](http://bit.ly/2FCN5C5).

## MAKE A DONATION

SUPPORT NELFA AND LGBTIQ\* FAMILIES IN EUROPE BY MAKING A DONATION.  
**BANK:** CRELAN, BELGIUM **IBAN:** BE18 8601 1595 2465 **BIC:** NICABEBB

