



Rainbow Families in Europe

NELFA PRESENTATION IN DUBLIN ON 18TH OF JUNE 2019

NELFA?

NETWORK OF EUROPEAN LGBTIQ*
FAMILIES ASSOCIATIONS (BRUSSELS)

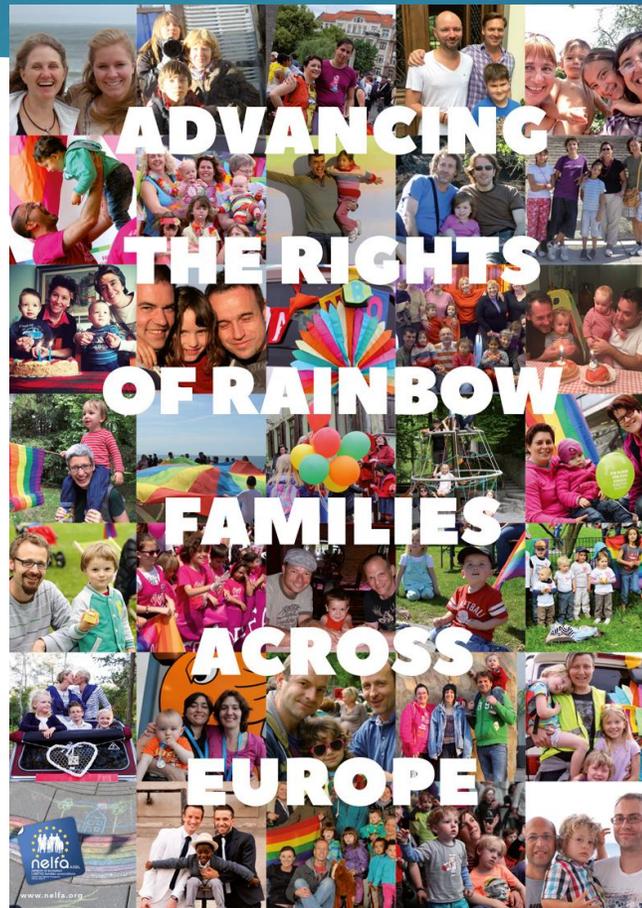
FOUNDED IN 2009, REGISTERED AS NON-
PROFIT ORGANISATION IN 2012

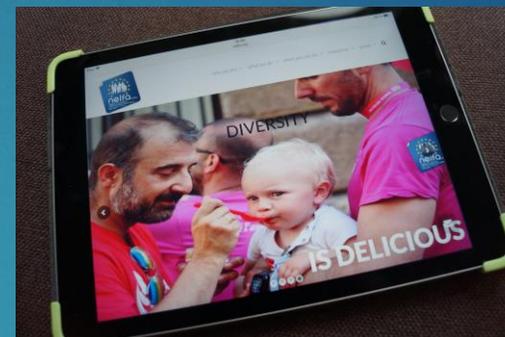
CURRENTLY 37 ORGANISATIONS
REPRESENTING 30 EUROPEAN
COUNTRIES (~ 20.000 MEMBERS)

MAIN GOALS: VISIBILITY, EXCHANGE
(BEST PRACTICES, NEWS), ADVOCACY
WORK ON THE EUROPEAN LEVEL FOR
MORE RECOGNITION, PROTECTION,
EQUAL TREATMENT AND ACCEPTANCE,
CAPACITY BUILDING (ERASMUS*, REC-
PROJECT) AND LEGAL SUPPORT



NELFA's major aims...

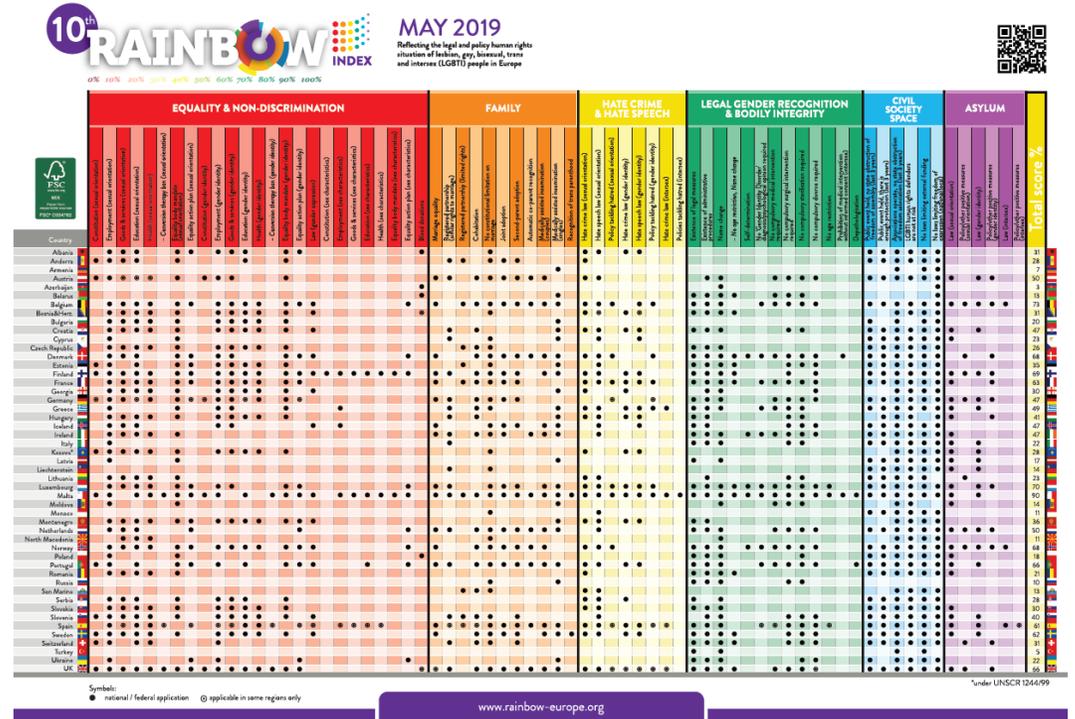
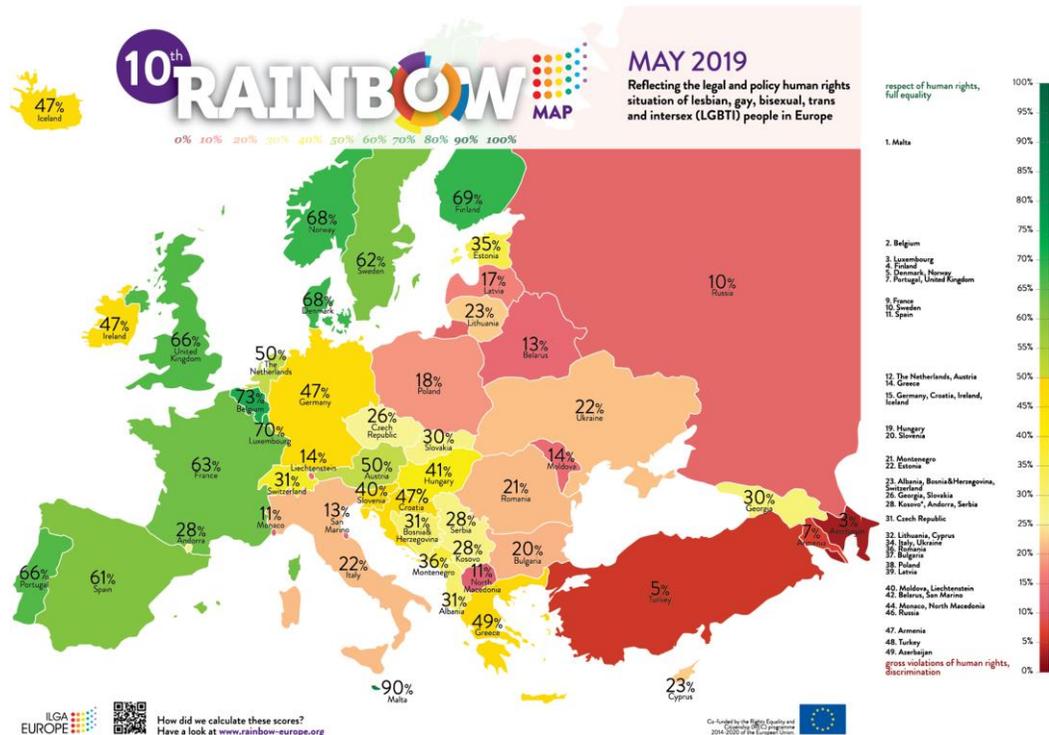




CURRENT STATUS OF RAINBOW FAMILIES IN EUROPE



ILGA's Rainbow Europe 2019



LGBTIQ* “family rights”

Registered Partnership: 24 European countries

(**20 EU**) recently: SAN MARINO (2018), soon Montenegro?

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 (21) countries (**14 EU**)

i.e. SWITZERLAND, SLOVENIA, SAN MARINO, ITALY, ESTONIA

Automatic Co-Parent Recognition: 12 countries

(**11 EU**) most recently: FINLAND + IRELAND

MAR: 14 (**12 EU**) [couples] /26 (**18 EU**) [singles]

Trans parenthood: BELGIUM, MALTA, SLOVENIA, SWEDEN

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)

Recognition of trans parenthood

FAMILY

CONCLUSIONS...

A patchwork situation in Europe

A lot of achievements within the last decades, with more speed in Western Europe (step by step in other regions)

Hardly any recognition of rainbow families in Lithuania, Poland, Slovakia, Romania/ Latvia and Bulgaria (EU)
[Rainbow Europe: 0 % in Turkey, Serbia, Azerbaijan]

IRELAND in the section "family": position 14 in Europe (score: 76 % - [Civil Registration Bill "included"])

Best conditions in Malta, Sweden, Belgium, The Netherlands, Spain, Portugal and Denmark

The recent ILGA-Europe Map doesn't reflect the whole rainbow of families: Foster care, surrogacy, multi-parenting and there are gaps. NELFA wants to fill these gaps with an own **RAINBOW FAMILY MOBILITY MAP**



LGBTIQ* families rights

- No recognition at all (0 %)
- Low recognition (0-13 %)
- Some recognition (13-50 %)
- Good recognition (50-90 %)
- "Full" recognition (90-100 %)



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Co-parent recognition 2019

- From birth or before (MAI)
- Second-parent adoption
- Litigation, guardianship



NELFA case collection...

Rejected transcription of a common birth certificate (PASSPORT?): UK-IRELAND, UK-GREECE, UK-FRANCE, UK-POLAND, SPAIN-GREECE, SPAIN-ITALY, NETHERLANDS-FRANCE, DENMARK-BULGARIA... => loss of legal familial ties (even forced by authorities [France] “sign, or you won't get a new certificate) or courts [Bulgaria] – “against the public order”)

(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. In AUSTRIA, same-sex marriages that were contracted before 2019 abroad (i.e. Portugal) are not accepted, couples have to remarry



EU LEVEL

Freedom of movement?

EU 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:133152>

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...

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.

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 currently discusses the case (summer 2019).



After Coman...

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 [...]”*



Francesca and Alexandra

Eleni: Greek, Kate: British

Residence: Spain (Barcelona)

2014: 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 and not married at this time, 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. Currently, Eleni's family tries to find advice for a complaint in Greece!



“

[...] 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?” (Yearbook of European Law, May 2019)

“

The recognition of civil status is currently governed by Member States' law and the Commission cannot therefore intervene in the petitioner's case. However, when Member States apply their national law, they must respect Union law – as interpreted by the Court of Justice of the European Union –, including on the free movement of citizens within the European Union.

”

EU COMMISSION (CONCLUSION IN THE PETITION 0513/2016 BY ELENI MARAVELIA [GREEK])



Committee on Petitions: Notice for Members (Petition on the non-recognition of LGBT families in the European Union), June 2019

What's next? Wishes...

- 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.

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

NELFA **contributes to court interventions** before the European Court of Human Rights in Strasbourg (i.e. with Prof. Robert Wintemute) and ILGA-Europe.

NELFA is partner in a new project **Rainbow Shield** with member organisations in Bulgaria and Romania to create a legal toolkit for LGBTIQ* (families).

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

New legal support!

- NELFA would like to build up a new network of legal researchers and lawyers in Europe (resp. EU)
- Major 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 ECHR or ECJ!
- Quick „first aid“ for rainbow families in troubles, to give them advice how to follow-up (pro bono?), further (paid) help for inquiring persons
- Most recently, NELFA has started a **cooperation with the Euro Family Law Institute (FLI)**, a network of lawyers working on LGBTIQ* family court cases



EU LGBTI survey: <https://lgbtisurvey.eu/lgbti/>



EU LGBTI SURVEY

www.lgbtisurvey.eu

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 37 ORGANISATIONS IN 30 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).

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