Rights At Risk

Children in Rainbow Families

NELFA'S RESEARCH FINDINGS: THE LEGAL SITUATION WITHIN THE EU IN 2019
NELFA’s mission

ENSURING THAT THE CHILDREN OF LGBTIQ* FAMILIES IN EUROPE ENJOY THE SAME RIGHTS AS THOSE OF CHILDREN IN FAMILIES CURRENTLY RECOGNISED BY THE LAW.
NELFA’s main aim

Research data are a tool to argument from the children’s rights perspective and to show the gaps and risks in the member states (FIRST EU!)
IN PRACTICE...

APRIL/MAY 2019: MEMBERSHIP SURVEY

WE HAVE 38 MEMBERS IN EUROPE, 29 IN THE EU – REPRESENTING 21 MEMBER STATES.

UNFORTUNATELY, ORGANISATIONS IN 9 COUNTRIES DIDN’T ANSWER (SOME OF THEM EXCUSED, OTHERS JUST GAVE EXTRA INFO VIA PERSONAL CONTACT). WE WERE ABLE TO GET ADDITIONAL DATA FROM ACCEPT CYPRUS.

THE MISSING DATA WERE COLLECTED VIA INTERNET FOR: BELGIUM, CZECH REPUBLIC, DENMARK, ESTONIA, HUNGARY, LATVIA, LITHUANIA, LUXEMBOURG, MALTA, NETHERLANDS, PORTUGAL, ROMANIA, SLOVAKIA, SWEDEN, UNITED KINGDOM.

WE HAVE NOW A “FULL” PICTURE, BUT WOULD BE GRATEFUL TO RECEIVE SOME MORE CLARIFICATION AND CONFIRMATION…
Findings

FOSTERING IN THE EU:

IN THEORY, LGBTIQ* COUPLES CAN FOSTER CHILDREN IN 18 EU COUNTRIES

IN 2 ADDITIONAL EU STATES SINGLE PERSONS MAY APPLY

IN ITALY THERE ARE SOME REGIONS WHERE LGBTIQ* FOSTERING IS POSSIBLE

(AT LEAST) 7 EU COUNTRIES DON’T PROVIDE FOSTER PARENTING FOR LGBTIQ*. MANY CHILDREN TO BE FOSTERED ARE DEPRIVED OF THEIR BEST INTEREST TO FIND A NEW FAMILY.

UNCERTAINTY: HOW GOOD IS THE FOSTER SYSTEM? HOW EQUAL IS THE APPLICATION PROCEDURE? NON-REGULATION MEANS POSSIBILITY?
In general, surrogacy is banned in many EU countries or at least not regulated.

UK: Same-sex couples (at least one UK citizen) are allowed to search for a surrogate (costs reimbursed). Joint parenthood will be established within 6 months (parental order), the surrogate has 6 weeks to decide on her motherhood. Under review.

Belgium: Surrogacy is not regulated, two clinics (Gent and Brussels) offer treatment for same-sex couples. The new government (2019) has promised to prepare a law.

Netherlands: Surrogacy is not regulated yet (Bill 2019). Two clinics ready for same-sex clients (Leiderdorp, Elenendorp). Considerations in Amsterdam + Zwolle.

Foreign birth certificates: In general through court decision – recognition of the biological father, social father mostly through second-parent adoption (see also new advisory opinion of the ECHR!)
Findings

MULTI-PARENTING IN THE EU:

CROATIA: OFFERS A RESTRICTED FORM OF SHARED PARENTHOOD (PARENTAL PLAN AFTER A DIVORCE, LGBTIQ* ELIGIBLE)

NETHERLANDS: A PROMISING BILL WAS REJECTED IN SUMMER 2019, LEGAL PARENTHOOD ONLY FOR TWO PERSONS, BUT POSSIBLY SOME ADDITIONAL RIGHTS FOR CO-PARENTS ("DEELGEZAG") I.E. TO ACT IN SCHOOL OR AT THE DOCTOR (STILL UNDER REVIEW).
TRANS-PARENTING IN THE EU – AND RESTRICTIONS…

GENDER IDENTITY DISORDER DIAGNOSIS (1) (NO ADOPTION, CHILD SEPARATION POSSIBLE): REQUIRED IN 19 COUNTRIES + PARTS OF SPAIN (INFO: TGEU MAP)

MEDICAL INTERVENTION (2) REQUIRED IN 15 COUNTRIES + PARTS OF SPAIN. SURGICAL INTERVENTION REQUIRED IN 8 COUNTRIES.

DIVORCE REQUIRED: 11 + (NO. IRELAND)

FORCED STERILISATION (3): 7 EU COUNTRIES (# ECTHR 2017)

TRANS PARENTHOOD (RIGHT GENDER IDENTITY IN BIRTH CERTIFICATE) (4): IN MALTA, SWEDEN, SLOVENIA, BELGIUM
JOINT LEGAL PARENTHOOD?

CO-PARENT RECOGNITION
Findings

SECOND-PARENT ADOPTION IN THE EU:

IN 14 STATES, NON-BIOLOGICAL PARENTS CAN BECOME LEGALLY RECOGNISED (TAKES UP TO TWO YEARS)

CROATIA: SIMILAR INSTRUMENT: PARTNER-GUARDIANSHIP (SPECIAL COURT PROCEDURE)

IRELAND: GUARDIANSHIP AFTER TWO YEARS OF SHARED RESPONSIBILITY

ITALY: STEP-CHILD ADOPTION THROUGH COURT DECISIONS – BUT THE JUDGE MAKE THE FAMILY…
“AUTOMATIC” CO-PARENT RECOGNITION:

“FULL” RECOGNITION: In Spain, the Netherlands and UK, married (registered) partners can be named on a birth certificate (assisted or self-insemination – plus conditions). Denmark excludes home-insemination but has the possibility to recognise the known donor.

PARTIAL CO-PARENT-RECOGNITION: In Belgium, Austria, Portugal, Sweden and Finland this requires as main condition a medically treatment in a domestic clinic. Marriage is not always necessary.

CO-PARENTHOOD PRESUMPTION: Registered (or married) partners are automatically seen as legal parents in Malta and Slovenia (but here only ART possibilities abroad).

New (restricted) possibilities are to be expected in France and Ireland.
Co-parent recognition examples

Access to IVF 2005
Lesbian couples with fertility treatment in public hospitals have the possibility to be registered as legal parents from birth. Home insemination or assisted insemination abroad will be recognised through a stepchild adoption procedure. This is available in Sweden since 2003. Marriage equality came in 2009.

Fertilisation Act 2009
Same-sex parents can both be named on a birth certificate. For married or registered couples automatically. Unmarried or unregistered partners need a parenthood agreement and a UK clinic document. Male couples must get a parental order (after surrogacy – valid since 2010).

Children’s Act 2013
Lesbian singles or couples are parents when they had an anonymous donor (treatment in a clinic), known donor; then, maternity or paternity statement (+ care and responsibility statement to be legal parents). Not recognised: home insemination, multi-parenting.
## Co-parent recognition examples

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<th>Civil union bill 2014</th>
<th>New law 2014</th>
<th>New law 2015</th>
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<td>Same-sex couples in a civil union have the same rights as different-sex couples. This also includes the automatic co-parent recognition. Since summer 2017, Malta offers marriage equality. Since 2018, IVF treatment is possible for single women and lesbian couples.</td>
<td>The birth mother’s partner is automatically “legal mother” when the donor’s identity is unknown and they are married or registered partners. Known donor: the partner (or donor) can acknowledge the child. Unmarried couples: court decision is necessary. Recognition of foreign birth certificates.</td>
<td>Married lesbian couples can register both their names on their child(ren)’s certificates (since 2018: also through home insemination). Cohabiting or couples in de facto unions: the non-biological mother must normally go through an adoption process. Since 2019: MAR for couples in public clinics possible.</td>
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After the worldwide first court ruling on IVF equality for lesbian couples, the legal co-parenthood is possible since 2015 for unregistered or registered (and since 2019 married) female partners — but only with fertility treatment in a clinic. Single women are not included...

Automatic parenthood for both spouses after birth (same year: marriage equality, MAR and [step-child] adoption), condition: treatment in a fertility clinic and i.e. declaration of consent of the social mother. Home insemination or cases before 2016: the couple will have to go to court and use the co-parenting procedure.
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<th>Civil union's act 2017</th>
<th>Maternity Act 2019</th>
<th>New law 2020?</th>
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<td>Same-sex registered partners in Slovenia have similar rights as married different-sex partners – except of joint adoption and access to medically assisted insemination. Therefore, lesbian couples also fall under the presumption of being legal co-parents automatically through their registration (IVF treatment is only possible abroad).</td>
<td>In February 2018, the Parliament approved a citizen's initiative concerning rainbow families: A legal co-parent recognition from birth is possible for lesbian couples (whether they are married or unmarried). Conditions: fertility treatment in a clinic and the father can’t be confirmed.</td>
<td>The upcoming access to medically assisted insemination in France for lesbian couples (and single women) will probably include a co-parent recognition. Condition: a declaration of consent before birth. The certificate should then mention the conception via ART (<em>only for lesbian couples</em>). Surrogacy arrangements are not included.</td>
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CHILDREN CAN HAVE TWO LGBTIQ* PARENTS IN 18 EU MEMBER STATES (STILL INCLUDING UK).

11 COUNTRIES OFFER FORMS OF CO-PARENT RECOGNITION FROM BIRTH (OR EVEN BEFORE).

5 ADDITIONAL COUNTRIES GRANT AT LEAST FORMS OF SECOND-PARENT ADOPTION PROCEDURES

2 COUNTRIES HAVE LIMITED FORMS OF JOINT PARENTHOOD OPTIONS.

IN 10 EU MEMBER STATES, CHILDREN ARE DEPRIVED OF THE RIGHT/POSSIBILITY TO HAVE TWO LEGAL LGBTIQ* PARENTS...
NELFA’s mission

ENSURING THAT LGBTIQ* FAMILIES CAN ENJOY FULLY THE EUROPEAN UNION’S RIGHT TO FREEDOM OF MOVEMENT BETWEEN MEMBER STATES.
BACKGROUND...

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

FAMILY MEMBERS? COVERS THE SPOUSE (ALSO SAME-SEX AFTER THE COMAN JUDGMENT IN JUNE 2018), A PARTNER IN A REGISTERED PARTNERSHIP WITH AN EU CITIZEN (BUT ONLY BETWEEN COUNTRIES WITH SIMILAR INSTRUMENTS) AND DIRECT DECENDANTS UNDER THE AGE OF 21...

BUT UNCERTAINTY FOR RAINBOW FAMILIES: FREE MOVEMENT COVERS ONLY RESIDENCE RIGHTS OR IS IT ALSO RELATED TO OTHER PURPOSES?
CROSS-BORDER RECOGNITION OF SAME-SEX MARRIAGES:

AS FAR AS WE KNOW, 11 COUNTRIES WITHIN THE EU RECOGNISE (IN GENERAL AND IN MOST CASES) SAME-SEX MARRIAGES CONTRACTED ABROAD.

IN FRANCE, THERE ARE PROBLEMS WITH MARRIAGES THAT WERE FORMERLY CONVERTED FROM CIVIL UNIONS (UK, FINLAND). IN AUSTRIA, FOREIGN SAME-SEX MARRIAGES THAT WERE CONTRACTED BEFORE 2019 ARE NOT RECOGNISED. SLOVAKIA ANNOUNCED TO ACCEPT THE COMAN RULING.

STATUS QUO IN NORTHERN IRELAND, ITALY, CZECH REPUBLIC AND CROATIA: SAME-SEX MARRIAGES ARE DOWNGRADED TO CIVIL PARTNERSHIPS.


HUNGARY: A COURT DECIDED IN 2018 TO RECOGNISE SAME-SEX MARRIAGES AS CIVIL UNIONS, BUT A HIGHER INSTANCE OVERRULED THIS JUDGMENT... THE STATUS IN GREECE, CYPRUS AND MALTA IS UNCLEAR.
Example „Christopher“
(name changed)

His parents are **Leandro**: British, **Francois**: French

**Residence**: UK

2008: Parents in a civil partnership
2010: Birth of Christopher, 2012: Adoption
2016: Parents converted their union into a marriage

Chris’ parents considered moving to France, but Embassy officials told them that they need to get (fraudulently) divorced. In 2014, same-sex couples (England + Wales) were offered to ‘convert’ their civil unions into a marriage. Their certificates were backdated without a ceremony. In France, marriages must have a wedding ceremony with witnesses and the certificate must reflect the date of the wedding – so the marriage was „fundamentally incompatible“ with French law. Many other families have similar problems.

After two years of fighting, the French authorities finally accepted the conversion of the marriage (Nov 2018). But the status of Christopher is still unclear, because he was adopted before the marriage date 2016. But in France, you can only adopt AFTER the marriage…
RECOGNITION OF BIRTH CERTIFICATES:

THE FINDINGS ARE STILL VAGUE.

COUNTRIES WITH JOINT LEGAL PARENTHOOD FOR SAME-SEX COUPLES SHOULD ACCEPT FOREIGN BIRTH CERTIFICATES: POSITIVE FEEDBACK FROM SPAIN, FINLAND, THE NETHERLANDS AND WE EXPECT THOSE REACTIONS ALSO FROM SWEDEN (NO BIRTH CERTIFICATES BUT REGISTRATION), DENMARK, PORTUGAL, SLOVENIA AND MALTA.

UK: NO RECOGNITION OF FOREIGN BIRTH CERTIFICATES OF UNMARRIED COUPLES WITH IVF TREATMENT OUTSIDE UK. AUSTRIA: BIRTH CERTIFICATES FROM MEXICO FIRST REFUSED, BUT A POSITIVE COURT DECISION (2019)


NO AUTOMATIC CO-PARENT RECOGNITION IN ESTONIA AND GERMANY MAY POSE PROBLEMS (GERMANY: AUSTRIAN CERTIFICATES OBVIOUSLY ACCEPTED). NO DATA YET FROM OTHER COUNTRIES, BUT PROBABLY PROBLEMS (NO JOINT LGBTIQ* PARENTING OPTIONS)
Example “Sofia”

Her parents are Kashka: Polish, Sinead: Irish

Residence: normally Ireland, actually Poland

2018 (summer): Birth of Sofia via MAR in Granada/Spain

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

Ireland and Poland didn’t accept the transcription of Sofia’s birth certificate (The Polish embassy employee first promised a temporary passport, but this was denied after months of non-communication. Last statement: „Search for a lawyer!“, the registry office in Krakow then issued an official rejection after permanent delays. The Irish Passport Office immediately sent a rejection)

Current status: Sofia remains stateless, without ID, without insurance. The family doesn’t reside in Spain, but can’t get back to Ireland. They went by car to the relatives in Poland (illegally), but will come back to Spain hoping that the authorities will grant an extraordinary citizenship for Sofia (can take one year...)

ILGA-Europe, the European Statelessness Network and PICUM are involved, All Out campaign is planned...
SUMMARY of the current findings...

- **Children** in 14 EU countries might **suffer disadvantages** (tax credits, inheritance rights, access to health care etc.) because their **LGBTIQ* parents can’t get married** (in 6 countries their parents can’t even be recognised at all – even no civil unions)

- **Children** in 14 EU countries **can’t be jointly adopted** by same-sex couples (means: less choices to find new parents). Foster care: no possibilities in 10 States

- **Children** in 10 EU Member States **face discrimination** because their **social parents can’t be recognised as legal parents** through a second-parent adoption

- **Children** in 17 EU countries are **in a worse position** because their **social parents are not legally recognised from birth** (even children with different-sex parents are – at least if married...)

- **Children** within the EU may **lose essential legal ties** to at least one of their parents (ties that were already established elsewhere…) just by crossing a border: Adoption and **birth certificates may be not recognised**. In some reported cases, the children can’t get any passport and remain stateless, at least for a while. Free movement?

- Mayor problems are for example reported in France, Italy, Greece, Ireland, Poland, Bulgaria (…)

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*Children* refers to children of LGBTIQ+ individuals, and *LGBTIQ* is an abbreviation for Lesbian, Gay, Bisexual, Transgender, Intersex, Queer.
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 38 ORGANISATIONS IN 31 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. LEAFLET: HTTP://BIT.LY/2RJW0US. NEWSLETTER: HTTP://BIT.LY/2FCN5C5.

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