



## Rainbow Families in the EU – your fact sheet

LGBTI-meeting Member States on 28<sup>th</sup> of November 2019, 16.00-18:00

**NELFA?** Is the [Network of European LGBTIQ\\* Families Associations](#), seated in Brussels (2009). Currently, NELFA has 38 member organisations in 31 countries, representing more than 20.000 people (approx. 10.000 children). 11 Board members run the network on a *voluntary basis*.

**Rainbow Families?** Families, where at least one partner/parent (to-be) identifies *themselves* as lesbian, gay, bisexual, trans, intersex or queer (LGBTIQ\*)

### Legal “patchwork” situation within the EU (incl. UK) by now

#### **MARRIAGE - CIVIL UNIONS** (source: ILGA-Europe [Rainbow Map 2019](#), [NELFA research](#))

**Marriage equality:** 14 countries (new: Northern Ireland), all these give also **joint adoption rights**

**Registered partnerships** (similar rights): 15 (16 with Germany – but no longer available)

**Registered partnerships** (limited rights): 6 countries (i.e. besides marriage equality)

**No recognition of LGBTIQ\* couples:** **Bulgaria, Latvia, Lithuania, Poland, Romania, Slovakia**

**Marriage “bans”:** Bulgaria, Croatia, Hungary, Italy, Latvia, Lithuania, (Poland), (Romania), Slovakia

#### **RECOGNITION OF NON-BIOLOGICAL PARENTS** (source: ILGA-Europe [Rainbow Map 2019](#), NELFA)

**Co-parent recognition from birth (i.e. ART treatment):** 11 countries (Ireland, France in 2020)

**Second-parent adoption (stepchild adoption):** 15 countries (incl. Estonia)

**Forms of guardianships:** Croatia (like stepchild adoption), Ireland

**No recognition of joint parenthood rights:** **Bulgaria, Cyprus, Czech Republic, Greece, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia (Italy – only through litigation)**

#### **RECOGNITION OF TRANS PARENTHOOD** (source: [Trans Rights Europe Map 2019](#))

**Recognition of the right gender identity in birth certificates:** Belgium, Malta, Slovenia, Sweden

**Gender Identity disorder diagnosis** (no adoption, child separation): **19 countries (+ partly Spain)**

**Divorce required** (**11 countries**), **medical intervention required** (**15 countries + Spain partly**), **surgical intervention required** (**8 countries**), **forced sterilisation** (# ECtHR, still in **7 EU countries**)

## Legal consequences for rainbow families (national level)

**Less benefits/obligations:** tax credits, inheritance rights, access to health care, *parental leave* (CFR Art 33: *not in 11 countries*) etc. because parents can't get married or enter a civil union (Art. 7/9/21)

**Less protection:** Children face discrimination because their social parents cannot be recognised as legal parents through a second-parent adoption or a co-parent recognition from birth (CFR Art. 7, 24)

**Less choices to find a new family:** Children in 14 EU countries cannot be jointly adopted by same-sex couples. Foster care: no possibilities in 10 Member States (singles and couples) (CFR: Art. 24)

## Legal consequences for rainbow families (EU level)

### FREEDOM OF MOVEMENT OF RAINBOW FAMILIES?

DIRECTIVE 2004/38/EC (CFR Art. 45): "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."

**Family members?** Covers the **spouse**, a **partner in a registered partnership** (but only between countries with similar instruments) and **direct descendants under the age of 21...**

### COMAN JUDGMENT IN LUXEMBOURG (ECJ) IN JUNE 2018

#### ACHIEVEMENTS

- term „spouse“ includes same-sex couples (concerning **residence** rights)
- 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?

*POSITIVE COURT DECISIONS afterwards in Lithuania, Bulgaria (marriage), Poland (birth certificate) see ILGA-Europe's [blog](#) on the Coman case and a [NELFA analysis](#) of the judgment*

### UNCERTAINTY FOR RAINBOW FAMILIES (case collection NELFA)

The legal systems are quite varying and the national regulations and restrictions for the recognition of LGBTIQ\* parents (i.e. rules for medically assisted insemination and the co-recognition of same-sex parents) are often mismatching even in countries with a high-level of equality. Families are put in jeopardy. **Children can lose at least one of their legal parents by crossing a border!**

*see a [comprehensive analysis](#) concerning children's rights in rainbow families*

## Case studies – rainbow families in cross-border struggles

Rejected or only partly recognised birth certificates (i.e. UK-IRELAND, UK-GREECE, UK-POLAND, **SPAIN-GREECE**, SPAIN-ITALY, NETHERLANDS-FRANCE, DENMARK-BULGARIA, **SPAIN-POLAND**, **SPAIN-IRELAND/POLAND**). Loss of familial ties that were already established elsewhere. Sometimes, children remain stateless and without insurance for a long time! (*three current cases*)

### Sofia

Her parents are **Kashka**: Polish, **Sinead**: Irish

**Residence**: normally Ireland

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...)



**Problems with (converted) MARRIAGE documents**: **UK-FRANCE**, **FINLAND-FRANCE**. => incompatible regulations, families (with children) remain in legal limbo: an adoption isn't recognised when it was established before the conversion date (...). In **AUSTRIA**, same-sex marriages that were contracted before 2019 abroad (i.e. Portugal) are not accepted, couples must remarry. Officials in **HUNGARY** didn't accept a German same-sex marriage. At the same time, they denied access to a civil union because the couple concerned could not proof that they are not yet in a registered relationship (...). No recognition of same-sex marriages contracted abroad in **POLAND** (i.e. from Germany/Portugal)

### „Christopher“ (name changed)

His parents are **Leandro**: British **Francis**: 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...



## Possible solutions for cross-border problems

- **(strategic) litigation** in national courts, but also in Strasbourg (ECtHR) and Luxembourg (ECJ)
  - ⇒ interventions at the ECtHR (i.e. [written comments](#) in [A.D.-K. and Others v. Poland](#))
  - ⇒ helpful: [advisory opinion](#) of the ECtHR in April 2019 concerning intended parents
  - ⇒ but: exhausting efforts of individuals and still a long way to finally achieve equality standards
- **clarifying wording in the [Directive 2004/38/EC](#)** – rainbow families should be included, and free movement should also include other purposes than residence rights!
  - ⇒ However, these efforts might lead in a dead end (unanimity needed in the Council)
- **Recognition of the content of foreign civil status documents** (birth/marriage certificates)
  - ⇒ [Regulation 2016/1191](#) (simplified acceptance without apostille) should be expanded

Prof. Robert Wintemute (London): *“Relying on Article 21(2) TFEU, the Commission should propose a Directive or Regulation requiring recognition of marriage certificates, registered partnership certificates (if the registered partnership is substantially similar to a marriage), birth certificates (including information about legal gender or the parentage of a child), and gender recognition certificates issued in one EU Member State as valid for all purposes of national law in all other Member States. This Directive would facilitate the exercise of the Article 21(1) right of EU citizens to move and reside freely within the territory of the Member States and would not change national family law or civil status law in any Member State.”*

- The **EU Commission** offers two possibilities to **address possible infringements**:
  - ⇒ 1. *“A citizen may [file a complaint](#) about any measure, absence of measure or practice by an EU Member State that they consider incompatible with EU law.”*
  - ⇒ 2. *“A citizen may also consider contacting [SOLVIT](#), an EU network of national administrations that resolves cross-border problems. The network enables EU Member States and also Norway, Iceland and Liechtenstein to work together - without recourse to legal proceedings - and offer real solutions to problems caused by breaches of EU law by public authorities.”*
- **Recommendations of the conference “Advancing LGBTI equality in 2020 and beyond”** (Brussels, 23/24<sup>th</sup> September 2019, including a cross-border workshop)
  - ⇒ Implement the Freedom of Movement Directive
  - ⇒ Educate civil servants on @EHCR\_Press & @EUCourtPress case law
  - ⇒ Harmonise law across EU, more research & funding needed
  - ⇒ Strategic litigation essential (lawyers can ask national courts to refer cases to ECJ)
  - ⇒ The Commission should convince the Council to adopt the ["beyond employment" Directive](#)
  - ⇒ The European Parliament should adopt a resolution similar to the 10 October 2018 [resolution](#) (rainbow families) of the Parliamentary Assembly of the Council of Europe, stressing legislation that the European Commission could propose

**Our question to the audience:**

**“Is your country ready to recognise certificates issued in another Member State which have established familial ties between partners/spouses/children and their LGBTIQ\* parents – for ALL legal purposes?”**