Chances and Challenges for Rainbow Families

PRESENTATION IN BRUSSELS ON 12TH OF NOVEMBER 2019
WHAT IS NELFA?
NELFA

THE NETWORK OF EUROPEAN LGBTIQ* FAMILIES ASSOCIATIONS (BRUSSELS) TURNED 10 YEARS OLD IN 2019.

CURRENTLY 38 ORGANISATIONS REPRESENTING 31 EUROPEAN COUNTRIES (20,000+ MEMBERS). APPROXIMATELY 10,000 CHILDREN!

MAIN GOALS: VISIBILITY, EXCHANGE (BEST PRACTICES, NEWS, MONITORING THE LEGAL SITUATION), 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...
CHANCES FOR RAINBOW FAMILIES IN EUROPE

Lesbian, gay, bisexual, trans*, intersex, queer couples and parents (to-be)
Legal progress

The recognition of same-sex partnerships began in 1989 – 30 years ago – in Denmark. The first same-sex marriages were possible in the Netherlands from 2001... and have a look at the development!
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Legal progress

LGBT komiteen in Denmark just published a fact sheet: The recognition of same-sex relations means already equality for 1.3 billion people. And we can add 1.8 million in Northern Ireland (21 October 2019)
Legal progress

In the meantime, joint parenthood (second-parent adoption or co-parent recognition from birth or even before) is available in 18 EU Member States (plus Andorra, Iceland, Norway, San Marino*, Switzerland).

=> 23 European countries
**Public opinion**
Eurobarometer 2019

<table>
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<tr>
<th>Country</th>
<th>Agreement Percentage</th>
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<tr>
<td><strong>Germany</strong></td>
<td>89%</td>
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<td><strong>Luxembourg</strong></td>
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<td><strong>Netherlands</strong></td>
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<td><strong>Spain</strong></td>
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<td><strong>UK</strong></td>
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<td><strong>Romania</strong></td>
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<td><strong>Slovakia</strong></td>
<td>31%</td>
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**Agreement that gay, lesbian or bisexual people should have the same rights as heterosexual people varies widely between the member states.**
Public opinion

Same sex marriages should be allowed throughout Europe (%)
Public opinion (Wikipedia 2019)
A new study from California measures LGBTIQ* acceptance in 174 countries (data from 1981 to 2017). Iceland, the Netherlands, Norway, Canada, and Spain are the top five most accepting countries, and all have increased in LGBT acceptance over time.
CHALLENGES FOR RAINBOW FAMILIES IN EUROPE
Lesbian, gay, bisexual, trans*, intersex, queer couples and parents (to-be)
TRANSFORMATION: BIOLOGICAL FAMILY => FUNCTIONAL FAMILY
Hostility

Many rainbow families in Europe still live in the hide. Open LGBTIQ* parents (to-be) and children may suffer from open hatred and contempt.

The (political) backlash is really noticeable: i.e. in Italy, Poland or Hungary – but even in the Netherlands, France and Spain.
Hostility

Rainbow families and LGBTIQ* rights – a “threat to society“ (Kaczynski)? Gay marriage the reason for earthquakes or a nuclear war (Robertson)?

Wrong accusations, untruths and rumours about LGBTIQ* parenting are still „normal“ in the public discourse. These verbal attacks cause new violence… and stress.
Discrimination

LGBTIQ* parents and their children are often deprived of their rights. This means less benefits, less protection: *tax credits, inheritance, access to health care, parental leave* (the latter: not available for many LGBTIQ* parents in 11 EU countries)

Children can’t get a common *family name*, sometimes they even remain stateless (no *passport*, no nationality)

LGBTIQ* parents face difficulties to travel or to sign docs for the school or other activities. They have problems to get *reduction* for zoo, theatre or public pools
Daily challenges
ignorance + inexperience

- **IT systems** and **administrative documents** sometimes don't recognise rainbow families: „Computer says NO!“

- Carers and teachers are often unaware of the rainbow family situation, **school curricula** are ignorant. This creates i.e. problems when children prepare their presents (Mother's/Father's Day)

- Rainbow families must accept **regular Coming Outs** and to disclose sensitive information
LGBTIQ* families rights
- Red: No recognition at all (0 %)
- Orange: Low recognition (0-13 %)
- Yellow: Some recognition (13-50 %)
- Green: Good recognition (50-90 %)
- Dark Green: “Full” recognition (90-100 %)
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**

**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 uncertainty for **RAINBOW FAMILIES**. Residence rights… but for other purposes?

In June 2018: important clarification through the **Coman case** (ECJ judgment: spouses of the same-sex fall under the Directive)
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…)}
SPECIFIC RIGHTS OF RAINBOW FAMILIES IN EUROPE
Lesbian, gay, bisexual, trans*, intersex, queer couples and parents (to-be)
**SURROGACY in Europe**

**Red:** completely banned, Denmark?

**Orange:** arrangements void and unenforceable => The Netherlands [under review], Czech Republic, Belgium, Ireland [under review]; no definitive laws: Albania (compensated), Cyprus

**Green:** UK (altruistic for UK citizens), Greece (altruistic for heterosexual couples and single women), Georgia (heterosexual couples, compensated), Portugal (altruistic for heterosexual couples with medical need), Ukraine (heterosexual married couples), Russia (allowed)

**Foreigners** engaged: Albania, Georgia, Greece, Portugal, Ukraine, Russia, (Northern Cyprus) – but more in the US, Canada… Mexico, Kenya, Laos…

Source: Families Through Surrogacy (Australia), September 2018
SURROGACY in Europe

**Question of citizenship** (European Centre for Parliamentary Research and Documentation: Normally, the gestational mother is seen as legal mother, not the genetic mother. **France**: legal relations via adoption (**Belgium, Netherlands** as well, **UK** [adoption or acquired parental order]), **Luxembourg**: bill proposes parenthood certificate

**Genetic motherhood**: Georgia, Greece, Israel (transfer of guardianship via court order), UK, US

**Legal guardian of the surrogate child are (directly) the intending parent(s)** in Armenia, Georgia, Greece, Kazakhstan, Portugal, Russia (GS), South Africa, Thailand, Ukraine
(LGBTIQ*) SURROGACY IN THE EU:

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, ELSENDORP), 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! : INTENDED PARENTS SHOULD BE RECOGNISED)
Recent court decisions...

10 April 2019: ECtHR in Strasbourg with advisory opinion: legal ties of children born through surrogacy with intended parents. But CoE Member States should decide which legal way they provide.

24 April 2019: The German Federal Court decided that a surrogate (here: Ukraine) is the legal mother, even if the intended mother gave her ovum.

09 May 2019: Couples who seek surrogacy abroad won’t be able to register themselves as co-parents to their children in Italy (stepchild adoption possible).


04 October 2019: The Court of Cassation in Paris finally decided that the filiation between intended parents and their children born through surrogacy (here: California) has to be recognised (Mennesson case).
Segev and Matan

Parents: Mr. Schlittner (Israeli-Polish) and Mr. Hay (Israeli)

Residence: Ramat-Gan, Israel

2010: Birth of Segev and Matan after a surrogacy agreement in California, with a married woman (Kristy)

USA: Birth certificate states two dads (Father/Parent, Mother/Parent) with custody rights and legal parenthood

Poland: In 2012, the authorities (Mazowiecki Governor and then Minister of the Interior) rejected the application of Mr. Schlittner to obtain Polish citizenship for the twins. They saw Kristy as mother and due to the law – her husband as father (presumption of parenthood), even Mr. Schlittner is the confirmed biological father. In July 2013, the Warsaw Regional Administrative Court backed the authorities, in May 2015 also the Supreme Court.

Current status: Schlittner-Hay lodged their ECtHR complaint on 5 Nov 2015, in August 2019 a group of lawyers (including NELFA) sent a joint amicus-curiae-brief, to support the complaint and citizenship application.
NELFA ART guidelines

Artificial Reproductive Techniques (http://nelfa.org/who-we-are/documents/)

• Equal access to ART for LGBTIQ* (donation of gametes, IVF, reciprocal IVF, surrogacy)

• Full legal protection for the children, regardless from the ART used by their parents

• All ART should be altruistic, costs reimbursed to the parties, never for purely economic reasons

=> Ethical approach

• Regulation is the best guarantee for all involved => appropriate legislation

• Clarifying language: surrogacy – motherhood, parents – donors

• Gametes donation could be anonymous or open, child’s right to access as much info as possible about conception/family history

• Surrogacy: parentage established before pregnancy, all parties are well-informed before an agreement


CoE: De Sutter report

“Children’s rights related to surrogacy”, (rejected in 2016)

Condemnation of “for-profit surrogacy” (estimations reach 98-99%), but open-minded regarding altruistic gestational surrogacy, tightly regulated and available for residents only (controversial CoE debate...)

De Sutter: “The lack of a multilateral legal instrument on parentage related to surrogacy increases the risk of children’s rights abuses”


UN Children’s Rights Convention (UNCRC):

ARTICLE 3: Best interests of the child

ARTICLE 7: Registration after birth: name, nationality, to know and to be cared for by his/her parents

ARTICLE 9: maintain personal relations/direct contact

De Sutter: “A child cannot be blamed for being born out of a surrogacy arrangement”
I nonetheless consider it as **beyond the scope of the present report to examine questions regarding access to medically assisted procreation and gestational surrogacy**, except in so far as any laws that already exist in member States are applied in a discriminatory way. For example, where single women are granted access to medically assisted procreation, this access should be granted equally to everyone who is able to give birth, regardless of their sexual orientation; in the few Council of Europe member States where surrogacy is possible, **equal access should again be granted to all, without discrimination** [...]

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**JONAS GUNNARSSON (PACE-rapporteur, Committee on EQUALITY and NON-DISCRIMINATION)**

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**Council of Europe, Resolution 2239 (October 2018).** Private and family life: achieving equality regardless of sexual orientation.

CoE: De Sutter report II
“Anonymous donation of sperm and oocytes”, (April 2019)

More than 8 million children worldwide have been born as a result of assisted reproductive technologies – most countries favoured anonymous donation

De Sutter: “Anonymity should be waived for all future gamete donations in Council of Europe member States, and the use of anonymously donated sperm and oocytes should be prohibited.”

Tendency to waive the principle of the anonymity of gamete donations: Sweden (1984), Germany, Switzerland, the Netherlands, Austria, Finland, Iceland, UK, Portugal (2018)

Scheib 2017: The US study noted that in a sample of young American adults conceived through a sperm donation programme with the identity of the donor being accessible, 40% asked for access to the identity.

De Sutter: “No changes to legal parentage should result from the lifting of the anonymity even when the donor has agreed to it being lifted.”
What next?

- **Celebrating the full rainbow of families** – focus on the well-being of the children
- CoE and EU should continue to claim on the Member States to respect the **fundamental rights of all citizens**
- Clarification of the wording in EU-Directive 2004/38/EC (i.e. direct descendants). Are familial ties of rainbow families included?
- **EU: The recognition of the CONTENT of civil documents (VERY IMPORTANT!!)**
- Endeavours to strengthen children's rights, (their opinions taken into account…)
- **FOR RAINBOW FAMILIES: LITIGATION…**
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/2RJWOUS. NEWSLETTER: HTTP://BIT.LY/2FCN5C5.

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