



Network of European LGBTIQ* Families Associations – NELFA

Freedom of movement in the European Union: Obstacles, cases, lawsuits...

Since 2018, NELFA collects cases to underline the urgent need of better laws and regulations within the EU to guarantee the free movement of LGBTIQ* people and their children. So far, many rainbow families lose fundamental rights when crossing borders and remain in legal limbo situations. Marriages and civil unions are (often) not recognised in host countries, children become half-orphans on paper or even remain stateless, at least for a certain time. Find below a current list of cases – they are updated on a regular basis.



Recognition of birth certificates (issued in another Member State):

Case 1: Stateless child



CONSTELLATION: Irish woman, Polish woman, residence: normally Ireland, marriage (2018): Ireland. Birth mother: Polish woman. Child: born in 2018 (Sofia). Notes: The girl was born after AI in a Spanish clinic (Granada), Birth certificate identifies two mothers.

The family has been unable to return to Ireland since the birth because Ireland and Poland have denied Sofia citizenship. Ireland does not currently recognise the Irish woman as Sofia's mother and the Polish woman and birth mother is not an Irish citizen. Poland refused because they do not recognise two mothers on a birth certificate, even though the birth mother is Polish. The couple has applied for Spanish citizenship for Sofia and are waiting to see if she will be accepted. Now, the child remains stateless and illegal in Spain, with no photo ID, she can't access any public services, and is unable to travel anywhere with a hard border. Recent info on the [family's blog](#). See also an ALL OUT [petition](#).

Case 2: Stateless child

CONSTELLATION: Polish/Belorussian woman, Polish woman, residence: Palma de Mallorca (Spain), marriage (2018) in Mallorca, Child 1: born in March 2019 (Azara). Notes: The girl was born after AI (Son Espases), Birth certificate identifies two mothers (madre A and madre B).

The couple applied for a Polish passport when Azara was 3 weeks old. In Poland, it is necessary to get at first the transcription of the birth certificate, then you can apply for an ID or passport. But the Polish authorities refused the transcription (because of two mothers). The couple submitted an appeal and still waits for an answer. So far, Azara cannot leave Spain, she is still stateless. The situation gets worse, because the Supreme Administrative Court (SAC) decided in early December 2019 that it isn't possible to register birth certificates where the child has two same-sex parents – due to Polish public order provisions (read [more](#)). However, the Court ruled that children of Polish citizens should receive a passport and PESEL (social security number i.e. for public health care and education). But legal experts expect problems because of unexperienced civil servants.

IMPORTANT TO KNOW: In another case in October 2018, a British-Polish couple was able to register their child in Poland after a positive SAC judgment (read [more](#)).

Case 3: Stateless child, later partial transcription in Greece

CONSTELLATION: Greek woman, British woman, residence: Spain, marriage: Spain, Birth mother: Greek woman. Child 1: born before marriage (2014), Child 2: born after marriage (2017). Notes: Both children conceived through AI in a Spanish clinic. Both birth certificates identify two mothers. First child diagnosed with cancer when she was 3 months old, but no possibility to get a passport until it turned 1 year old.

To obtain Spanish citizenship for the child (and a passport), the couple needed a British and/or Greek passport first. UK didn't recognise the co-mother (because of the IVF treatment in Spain and not in UK and the couple wasn't married at that time). Greece still don't accept two women on a birth certificate. At the end, a civil servant in Greece transcribed the Spanish document (only with the biological mother, even the certificate already stated both mothers...). But the family couldn't travel for a certain time because of the lack of the passport. The child was diagnosed with cancer and couldn't travel abroad. Luckily, the family found a good treatment in Spain. For the second daughter born in 2017 and after the marriage between the two women: The child obtained a British passport. There has been no intent to transcribe the birth certificate in Greece. Latest update: both children applied for and were granted Spanish nationality. Still the problem remains: in the UK the first child only has one mother. In Greece the second child hasn't had her birth certificate registered yet. Greece doesn't recognise the British woman as a mother for both children. The case was already topic in the EP's Committee on Petitions. Read [more](#).

Case 4: No transcription, loss of the child

CONSTELLATION: Danish woman, Bulgarian woman, residence: formerly Denmark, now divorced (Denmark/Bulgaria), child: one, living in Bulgaria

The lesbian couple became parents in 2016, with a common Danish birth certificate. But, shortly after the birth of their son, they got divorced. The Bulgarian mother started to search for a possibility to transcribe the birth certificate in their home country to get a Bulgarian passport for the boy. The Municipality of Pazardzhik refused to do it (because of the law). After a complaint, the Administrative Court ruled, that a birth certificate will be issued, with a blank case „father“. The Danish mother (who was never heard) should submit a new court case for providing an origin of the ‘father’. The child lost his Danish mother, because the Bulgarian mother never allowed the other one to see the child anymore. In 2018, the Danish mother lost a two-instance court procedure in Bulgaria because her ‘parenthood rights’ would contradict the main principles of Bulgarian law and public order. The boy can’t even visit his Danish mother.

The European Court of Human Rights rejected the case because of formal reasons. The Danish mother has now a lawyer in Denmark, but obviously the National Danish Court accepts the Bulgarian ruling so far. She needs to pay alimony (because in Denmark her custody obligations remain), without any contact to her child. The Bulgarian mother is wanted by the police in Denmark, the case lays now at the prosecutor.

The case will be part of NELFA’s freedom of movement campaign in 2020.

Case 5: No transcription in Germany

CONSTELLATION: British/Irish woman, German woman, residence: at first Belgium, now Germany, marriage: no, Child 1: born in Belgium in July 2019

The Belgian authorities had issued a birth certificate with two mothers. Interestingly, the Irish Civil Registration Service (Office of the Registrar General) confirmed: "...that according to the Children and Family Relationships Act 2015, two same-sex parents are legally recognised in Ireland for the purposes of birth registration." (in contradiction to Case 1...). The civil servant didn’t ask for the German confirmation. It wasn’t possible, to apply for an International birth certificate. Reason (in French): « le modèle CIEC de la convention 16 de Strasbourg ne prévoit pas d'indiquer la coparente. On ne peut d'ailleurs pas indiquer la coparente sous la case père ». The German embassy issued a passport, registered both mothers as parents. Four months after the birth of daughter Lovis, the family moved from Brussels to Aachen in Germany. Here, the administration didn’t recognise the British/Irish (non-biological) mother as legal mother. The Belgian birth certificate couldn’t be recognised. The family has to apply for a stepchild adoption.



Case 6: No transcription in UK

CONSTELLATION: British woman, Spanish woman, residence: Spain, marriage: meanwhile in Spain, Child 1 and 2: born before marriage

The birth certificate couldn't be transcribed in the UK because the two mothers were not married. Spanish birth certificate with both mothers, in the UK only the biological (British mother is recognised).

Case 7: No transcription in Greece and Italy

CONSTELLATION: Argentinian/Greek woman, Argentinian/Italian woman, residence: Spain, marriage: unknown, Child 1: born outside marriage

Spanish birth certificate with both mothers. ROPA method (Italian woman donated egg; Greek was the birth mother). Italy and Greece didn't transcribe the birth certificate, but child gets Argentinian nationality.

Case 8: No transcription in Greece

CONSTELLATION: Greek woman, Greek woman, residence: UK, marriage: UK, civil partnership: Greece, Child 1 and 2: born in the UK

British birth certificate with both mothers. Greece doesn't recognise the birth certificate and cannot transcribe the birth. Child is not issued Greek nationality. Gets British nationality. The couple has started legal actions in Greece. The couple has lost the first hearing of the case and decided to not continue.

Case 9: Full transcription in Italy after litigation in 2016

CONSTELLATION: Italian woman, Italian woman, residence: Spain, marriage: Spain, Child 1: born in Spain, birth certificate with two recognised mothers and it has both surnames

The couple didn't get an identity document for her little boy, because this was Italy's task (ius sanguinis = children of Italian mothers always get Italian citizenship, despite of binational couple - not in this case). But, the Italian consulate in Barcelona denied a transcription of the birth certificate because of the couple's homosexuality. The City of Naples would accept it. The couple made this case public and at the end, the mayor of Naples transcribed the birth certificate with two mothers. The prefect didn't accept the decision and eliminated the co-mother from the document. The couple went to Court and won in 2016. Now, both mothers are recognised in the Italian birth certificate.

Case 10: Registration of a child born through IVF abroad, only after a public battle

CONSTELLATION: Italian woman, Italian woman, residence: Italy, marriage: no, Child 1: born in Italy - through MAR in Denmark

The biological mother went to the town hall in Turin to register her son, but civil servants stated that this won't be possible because of a law from 2004 that doesn't allow MAR (abroad). The only thing they could offer would be for the mother to state that she had sexual intercourse with a man. But the mother denied and made this public. After some days, the mayor took a courageous decision and accepted the registration with two mothers on the certificate. A court case may follow, but lawyers and activists expect a positive outcome. In the meantime, other rainbow families (gay and lesbian couples) were granted in a similar way through mayors in Italy.

Case 11: Partial transcription in France

CONSTELLATION: French woman, French/Bulgarian woman, residence: UK (Bristol), marriage: no, Child 1: born in UK, birth certificate with two mothers

The couple started the procedure to get a French passport for their son in summer 2018. But the French administration didn't accept the birth certificate. They asked for a proof who is the biological mother (document from hospital, signed by the doctor). Then, they forced to sign a paper where the couple had to accept that a filiation will be only documented between the child and its biological mother - if this won't be provided, a French passport could not be handed out. Finally, the couple accepted this. They got the passport, but from French side, one of the mothers lost her legal parenthood.

Case 12: Cross-border difficulties, lack of information

CONSTELLATION: UK/Austrian woman, Canadian woman, residence: Germany, marriage: Germany, civil partnership: Austria, Child 1: born in Austria 2015 (co-recognition of both mothers), Child 2: born in Germany 2018 under identical circumstances (only biological mother is recognised)

The couple didn't get enough or even wrong information from civil servants in Munich and Freiburg. They stated that a co-recognition might be possible, but this wasn't the truth. Now, the couple needs to apply for a stepchild adoption which can last 2-3 years. The tax authorities granted only 1,5 children as credits for the Canadian co-mother. But, after a review from LSVD, this was also a wrong information. There are corresponding rules from 2014 to grant two children as usual, even the co-mother isn't recognised on the birth certificate. The responsible civil servant then (December 2018) just changed this item without any further questions concerning the rules, but stating that this won't change so much in the case of the couple's income... First child's birth certificate was accepted (...).

Case 13: Second-parent adoption not recognised in Italy

CONSTELLATION: Swedish/Italian woman, Italian woman, residence: France (work in CH), marriage in France, Child 1: born in France 2015

Born in France 2015, they started the adoption process immediately for the co-mother in France. The "livret de famille" was changed, the child got a second surname recognised. Sweden accepted the ruling and changed the passport. Italy didn't reply and the couple began a lawsuit in 2016. In the meantime, they had two hearings (January, June 2018) without results. The third one took place in December 2018. We don't have any further information for the moment

Status: Sweden has fully recognised the adoption, but has not fully transcribed the birth certificate, as this country only attributes "temporary" citizenship to those born abroad, so that around 18 years of age, the couple's daughter will have to make a new further request for citizenship demonstrating a real link to the country (knowledge of the language, continuity of visit ...). France: marriage and adoption full recognised, Switzerland: civil partnership recognised, adoption not clear (so far no need), Sweden: first woman's family statement includes wife and kid, her wife doesn't have any, the daughter has 2 surnames but the "temporary" statement doesn't include any parenthood, Italy: first woman's family statement includes the daughter, her wife is single without kids, the daughter has only one surname and one parent.

Case 14: No transcription in France

CONSTELLATION: Spanish woman, Spanish/French woman, residence: Spain, marriage in Spain and validated in France (livret de famille), Child 1: born after Spanish marriage, ROPA method (Spanish woman donated egg, Spanish/French woman was the pregnant mother, Child 2: was born in December 2018

Child 1 has a birth certificate with both mothers, in France only the pregnant mother is recognised (Spanish/French mother), the kid can obtain French nationality. Child 2 has a Spanish birth certificate with both mothers, but cannot obtain French nationality (France refuses to transcribe the birth because the biological mother is not French

One Spanish family record book with all the members of the family. And two French family record books (one with the marriage and the other one with the Spanish/French mother and Child 1). Option is an adoption process in France



Case 15: Refusal of joint parenthood for foreigners

CONSTELLATION: Spanish woman, Greek woman, residence: Belgium, marriage: Belgium

The couple got married in summer 2018 and started shortly afterwards an IVF procedure. In the meantime, they received the information, that only the Spanish (birth) mother will be accepted and named of the birth certificate if the child was born in Belgium. Belgian authorities claim that since in Greece two women cannot be named on the birth certificate of a child, the Greek woman cannot be named as the mother in Belgium either. The couple ended giving birth in Spain and obtaining a Spanish birth certificate with both women as mothers. Belgian authorities accepted this birth certificate and now the child is living in Brussels and legally has 2 mothers. **NOTE: not all couples can choose where to give birth. Belgian authorities are not granting the same rights to EU citizens residing in Belgium.**

Case 16: Cross-border difficulties

CONSTELLATION: Dutch woman, French woman, residence: The Netherlands, marriage: not yet, child: IVF procedure has just started

The couple (which is neither married nor in a civil union) would like to move to France, but they already know, that the country won't accept their common birth certificate. In the Netherlands, the co-parent will be recognised. Another option is now an adoption process which is also available in the Dutch system. To get an adoption recognised in France, the couple must be married. They don't want to, but as this is the best solution to be recognised as a family, they would do it. A complaint at the competent Court in Nantes would be more difficult. The lawyer of the French organisation apgl was then involved.

Case 17: No transcription in Ireland

CONSTELLATION: Irish woman, British woman, residence: Brighton/UK, marriage: yes, in 2015 (civil partnership in 2010), children: two (born in 2014 and 2016) at the time of reporting, in the meantime, the couple has additionally twin babies

The couple use the same sperm donor for both children, both women gave birth of one of their children. They tried to get Irish passports – but face now major problems, because the second daughter was conceived by the British mother. The UK birth certificate states “mother and parent”, so the Irish co-mother (‘parent’) wasn't accepted as mother in Ireland. For the first child, it was no problem, because the biological mother was Irish citizen... A Senator brought the case in 2017 to the Minister of Foreign Affairs in Ireland. He just stated the Irish Nationality and Citizenship Act, 1956 to deny once again the request to transcribe the UK birth certificate with two mothers. No update available...

Case 18: No transcription in Ireland

CONSTELLATION: Irish woman, Irish woman, residence: Ireland, marriage: not clear, Child 1: 5 years old (born through AI in Scotland), Child 2: 1 year old (see Child 1)

The Irish lesbian couple had fertility problems, so one of them got treatment outside of Ireland in a Scottish clinic. Both mothers are named on the children’s birth certificates. But the social mother isn’t recognised as legal mother in Ireland. She reports personally (via the [Equality for Children](#) campaign) in November 2019: “We moved back to Ireland in October of last year and had hoped that the legislation would be in place to recognise our family by then. I am on our children’s birth certificates but am a legal stranger to them in this country. Our two children are now 5 and 1. For our 5-year-old we had to get an affidavit to say that Angela was the only parent involved in her life. Even though I am on her birth certificate! I was completely ignored. I don’t exist. I can’t sign medical consent forms. I couldn’t sign the paperwork for her starting school in September. For our 1 year old, we’ve been putting off getting his passport to avoid the need for an affidavit, hoping the legislation being put in place would allow the passport office to recognize my name on his birth cert. Now we are faced with the decision between another affidavit (which is a legal lie really) or go for guardianship once he turns two in February before applying for his passport, which we need for a holiday. I have been unable to sign medical consent forms for him. I was almost turned away from his vaccination appointment because I’m not his “real Mam”. Every single altercation like this affects me emotionally. All we want is to be recognised as a family.”

Case 19:

CONSTELLATION: Polish woman, British woman, residence: Essex/UK, marriage: no, civil partnership, child: one child (born in December 2019), [ECtHR case](#)

The couple tried to get the common UK birth certificate transcribed in Lodz in 2012 to obtain Polish citizenship for the child, but the local administration denied it because of the Polish provisions (no civil partnerships, only marriages between man and woman, only birth certificates stating “mother” and “father”. The mothers appealed in 2012 (Governor), 2013 (Administrative Court in Lodz) and 2014 (Supreme Administrative Court) – but without any success. The transcription of a birth certificate stating a “mother” and a (same-sex) “parent” would be against the Polish public policy. In the meantime, the case reached the next level. It will be discussed at the EHCR in Strasbourg. NELFA is actually (2019) partner of a third-party [intervention](#), led by Prof. Robert Wintemute.





Recognition of marriage/civil union and consequences

Case 1: No transcription of marriage/adoption certificates

CONSTELLATION: British man, French man, residence: UK (London), marriage: UK, Child 1: adopted in UK (2012)

The couple considered in 2017 to move to France, but French embassy officials in London said that they won't be able to be recognised as married couple there. The problem: In England and Wales, civil unions were at the beginning only converted in marriages, but French laws require a new wedding ceremony and a date which refers to this ceremony. The couple was advised to get divorced and to remarry again. But UK requires clear reasons for a divorce and, in addition, a separation year. The couple was not a single case at that time. They opened a Facebook group for families with similar struggles. It has still 45 members (January 2020). In the meantime, the French authorities accept UK marriage certificates – they will be finally transcribed. But only from case to case, after a Court decision and the involvement of (expensive) lawyers. The couple concerned has now a “livret de famille” stating their marriage (and dated on the conversion in 2016). They are still waiting for the reimbursement of the legal fees (like others).

Some of these couples now have additional problems: The family concerned was told that there will be a problem with the recognition of their son's adoption certificate. In France, only married couples can apply for a joint adoption. But in this case, the adoption took place in 2012 (and the official conversion of the UK marriage is now dated with 2016...). In another case, a Franco-Scottish gay couple couldn't get French citizenship for their two adopted boys because their UK marriage wasn't recognised. Now, they have also the “livret de famille” and the citizenship procedure started again (December 2019). Further problems: Consulate asked for documents the couples didn't need to provide (i.e. civil union certificate with witnesses).

In the meantime, a Finnish-French gay couple reported the same problem with the transcription of their marriage contracted in Finland to be accepted in France. After a statement of the Consulate, the couple contacted a lawyer. Meanwhile, the responsible French administration in Nantes answered that there won't be a problem with the transcription. Unfortunately, the couple paid already around 3.000 € for a lawyer...



Case 2: No transcription in Bulgaria (see here a Deystvie [press release](#))



CONSTELLATION: Bulgarian woman, Bulgarian woman, residence: Bulgaria, marriage: UK

In a final judgment in mid-December 2019, the Supreme Administrative Court in Sofia refused to recognise the marriage of Lilly Babulkova and Darina Koilova concluded in the United Kingdom. The couple has been together for 10 years and has been trying to register their marriage in Bulgaria as well, which is the obligation of every Bulgarian citizen who has married their partner abroad, but they were denied that. Back in 2017, Lilly and Dari filed a lawsuit in the Sofia City Administrative Court against the refusal of Lyulin District to register their marriage. The judgment was appealed by LGBT Youth organisation Deystvie.

Case 3: No recognition and no downgrade either

CONSTELLATION: German woman, Hungarian woman, residence: both spouses live in Budapest, the German woman still has a German address, too, marriage: yes, in GER

The couple got married in 2018. Hungary doesn't provide a similar legislation but offers registered partnerships to same-sex couples. So, the couple asked for a recognition of the German marriage at least as civil union. But this downgrade was denied because the German woman couldn't provide evidence of the (necessary) single status from Germany (where she is married...). The woman reports in an Email to NELFA in August 2019: *"When we went to the registry office to apply for the partnership, the registrar was initially unwilling to do so. We provided all relevant paperwork, including certified translations of the German documents. She claimed that since according to the documents we are married, but cannot be married in Hungary, she cannot fill out the form for a registered partnership. After some arguing back and forth, where we also showed her a [court decision](#), she finally proceeded with filling out the application. However, she also told us that Hungarian bureaucracy is quite chaotic, and sometimes such documents get lost in the system - which we interpreted as a veiled threat and expression of her reluctance to take our case."* Two months later the application was denied, supposedly because the couple applied to have their marriage accepted as a marriage, which cannot be granted. They went back to the registrar's office to double-check that they filled out the correct form (the one requesting a registered partnership) and they did. Háttér Society, the LGBTIQ* organisation in Hungary, knows similar cases and offered legal advice. At the moment, no further update available.

Case 4: Cross-border problems

CONSTELLATION: Russian woman, Polish woman, residence: Warsaw (Poland) since four years (Russian woman with temporary residency and work permit), marriage: June 2019 in Edinburgh, Scotland, no children yet

The couple want to move to Spain (i.e. Barcelona) because of the rise of nationalism and anti-LGBT movements in Poland. The Russian woman explains in an Email to ILGA-Europe in August 2019: *“We would like to live and work legally in Spain. We were convinced that our marriage will facilitate the whole process and we could move to Spain under the law on free movement of EU citizens and their non-EU family members. Last week, we received the response from Spanish Aliens Office that to have a valid marriage in Spain and to be treated like a married couple (with all the attendant rights and responsibilities) apart from our marriage certificate from Scotland we must provide a certificate attesting that our marriage is registered with the Civil Registry Office in Poland. We are deeply disturbed by this this news and requirement, because it is not possible to register the same-sex marriage in Poland, the decision of Civil Registry Office would be negative. We even do not know if we receive a written explanation of negative decision with exact reasons for the refusal.”* **NELFA was in contact with the couple and tried to provide first legal aid. No update available by now.**

Case 5: No transcription in Poland

CONSTELLATION: Polish man, Polish man, residence: Poland, marriage: Portugal

The couple wanted to get married on Madeira Island, where they met up for the first time (and because Poland doesn't provide same-sex marriages. To get a permit in Portugal, the couple needed to present birth certificates and a proof of legal capacity to enter into a marriage. But they couldn't deliver such a document, because the Polish administration denied to hand it out. There are only papers stating "man" and "woman". The couple tried to contact the Portuguese side again and ask for a special exception and added some recent hate posts the couple got and media coverage. Then, Portugal accepted the marriage application by demanding a certificate of marital status - and this was easy to get. The couple married and tries now to get a Polish recognition: the registry denied, the province governor denied. One of the man, a TV presenter, lost his job because of his public fight for marriage. Most recently, in January 2019, the couple lost their case before the Administrative Court in Warsaw, their marriage won't be recognised in Poland. Both were very disappointed – but had another, positive lawsuit decision in February 2019: The Administrative Court ruled that the Polish Constitution doesn't ban same-sex marriages in general. This is a new, worthful interpretation.



Case 6: No residence rights, resolved through a Court ruling in January 2019

CONSTELLATION: Lithuanian man, Belarusian man, residence: Lithuania, marriage: Denmark

After their marriage in Copenhagen 2015, the couple tried to transcribe their marriage in Lithuania to get a residency permit for the Belarusian partner. But, the migration department denied. The Vilnius County Administrative Court asked the Constitutional Court to clarify whether the term "spouse" includes "same-sex" spouse, the procedure began in late September 2018. On 11 January 2019, the Constitutional Court in Lithuania ruled in a case of a same-sex couple: Foreign spouses of gay citizens must be given residency permits. The practice of denying these was discriminatory and against human dignity: "The refusal to issue permits cannot be based only on gender identity or sexual orientation" (it's not clear for the moment, if both cases are the same) The migration department in Lithuania has confirmed that it will change its policy and start handing residency permits to foreign spouses of gay citizens.

Case 7: No residence rights, resolved through a Court ruling in July 2019

CONSTELLATION: Australian woman, French woman, residence: Sofia/Bulgaria, marriage: France, no child yet

The lesbian couple got married on 1 June 2016 in France. Later that year, the Australian citizen was granted residency in Sofia, based on the 2004/38/EC Directive on freedom of movement. However, in 2017, the Ministry of Interior's Migration Directorate denied her the right to reside based on the argument that same-sex marriage is not allowed under the Bulgarian Constitution. The couple went to Court and the decision was taken only some weeks after the successful Coman case before the EJC. The Sofia Administrative Court ruled in favour of the couple. However, the Migration Department blocked the decision and started a complaint against the judgement. In a dramatic situation, the Australian woman was denied to entry Bulgarian territory at the airport (after a stay abroad), her wife just behind the glass pane. The lawyer of the couple came (organisation: Deystvie) and showed a document that the Australian partner had a special permit to stay. In July 2019, the Supreme Court in Sofia finally ruled in favour of the couple. The French marriage must be recognised in Bulgaria (in line with the Coman judgment in summer 2018...)

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