

# Rainbow Families in Europe

CROSS-BORDER PROBLEMS  
OF LGBTIQ\* PARENTS AND  
THEIR CHILDREN IN THE EU...



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network of european LGBTIQ\* families associations

# Freedom of movement!

Since 16 years, **DIRECTIVE 2004/38/EC** regulates that “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. The Fundamental Rights Charter of the EU (CFR 2009) mentions the free movement in Art. 45.

The terms for “family members” are gender-neutral. The Directive covers the **spouse**, a **partner** in a registered partnership with an EU citizen (however, Member States must have similar systems) and **direct descendants** under the age of 21. **And rainbow families?**



## Freedom of movement?

Unfortunately, many countries within the EU still don't recognise legal ties between LGBTIQ\* partners (and their children). Therefore, many rainbow families in cross-border situations are put in legal limbo.

Until summer 2018, it was unclear if the term "spouse" also covers "**same-sex** spouse". The so-called **Coman case** finally clarified this: Member States need to recognise same-sex marriages, contracted in another EU country, at least for the purpose of residence.

In the picture: Adrian Coman (right) and his husband Claibourn Robert Hamilton (left).



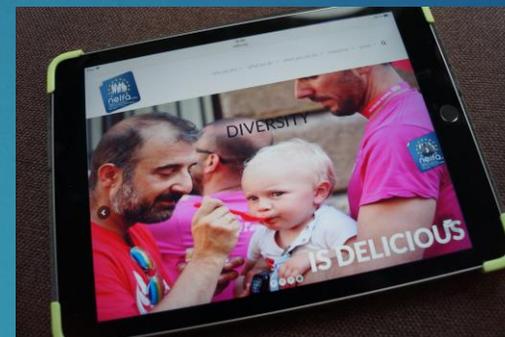
## Freedom of movement?

The content of civil status documents like marriage or birth certificates is not automatically recognised within the EU. Countries who don't offer for example joint motherhood, won't transcribe or register those documents established abroad.

An LGBTIQ\* meeting with EU Member State representatives in November 2019 in Brussels showed that only a few countries would recognise all those documents (legally issued in another EU country) for all legal purposes. Residence itself is not the only problem...

**Case studies show the consequences – for LGBTIQ\* families (and their children!!)**





## CASE STUDIES

# RAINBOW FAMILIES IN LEGAL STRUGGLES

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



# Azara (example one)

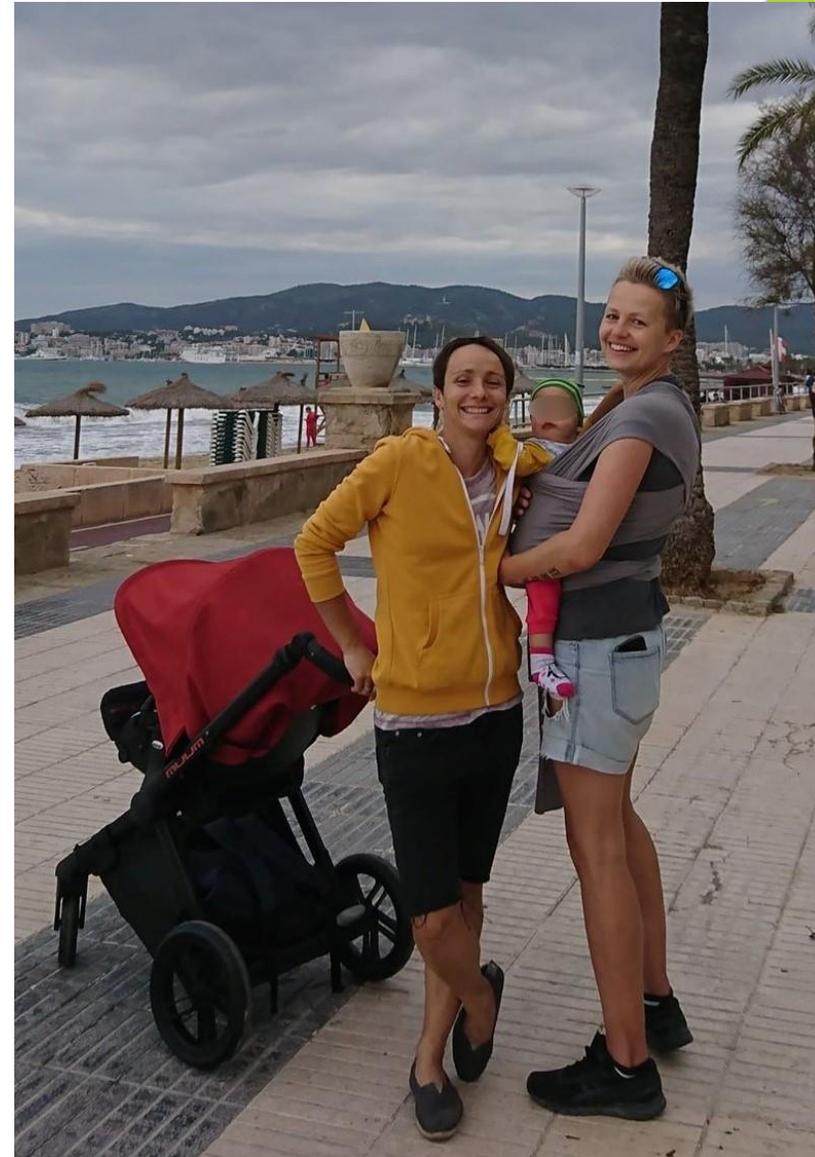
Baby Azara was born in March 2019 in Palma de Mallorca, Spain. Her mothers are Alena (Polish/Belorussian) and Joanna (Polish). Both women (married since 2018 and living in Spain since 2015) are on the Spanish birth certificate (madre A & B).

The couple wanted to apply for a Polish passport and ID when Azara was 3 weeks old. In Poland, it is mandatory to get at first the transcription of the birth certificate, and only then, one can apply for an ID or passport. However, the registry office in Wrocław refused the transcription because of the two mothers in the certificate. The couple submitted an appeal to a 2nd instance institution (provincial governor) – but didn't get a positive answer...

Azara couldn't leave Spain because she was stateless. The child wasn't able to obtain a Spanish citizenship as this is only possible after a year of having a Spanish foreigner identification number which is only issued to holders of foreign passports (which the child did not have as it was stateless). The situation got worse, because the Polish Supreme Administrative Court (SAC) decided in December 2019 that it is not possible to register birth certificates where the child has two same-sex parents – due to public order provisions (read [more](#)). In the justification however, the Court said that children of Polish citizens should receive a passport and PESEL (social security number i.e. for public health care and education). But it was not clear how this should be done...

In July 2020, finally, after many efforts by a lawyer, Azara received a PESEL and two weeks later, the registry of Gdansk issued a Polish ID for the child. In August, the family received a passport. Unfortunately, in the space of "parents", only one mother, Alena, is mentioned. For the second mother, Joanna, there is officially a "lack of information".

So, the family continues the fight in courts, perhaps also at EU level.



## Simon and Tom (example two)

The boys (now eight and seven years old) were adopted in 2013. Their parents are **Pierre** (French) and **John** (Scottish) and at that time, they were civil partnered under UK law.

Pierre did all the paperwork for Simon and Tom to be recognised as adopted in his home country and to get French citizenship for them. But the application was refused, because in France kids can only be adopted by married couples. They proceeded to change the civil partnership into marriage, but France didn't accept this neither.

Couples who registered a civil partnership in England and Wales have been able to convert this to marriage since late 2014, however, French laws require a new wedding ceremony and witnessed during this ceremony, which is not the case during a conversion. One gay couple was even advised by the French authorities to get divorced and to remarry again. But UK requires clear reasons for a divorce and, in addition, a separation period. In the meantime, the French-Scottish couple found help of families with similar struggles (Facebook group with 45 members).

Finally, the authorities accepted to transcribe the UK marriage certificates to the French equivalent. They received a "livret de famille", but the boys' adoption is still not recognised. The family wants to start a new application.



## Francesca (example three)

5-year-old Francesca was born in 2014 (through assisted insemination in Spain). Her mothers are **Eleni** (Greek) and **Kate** (British). Meanwhile, Francesca has a sister (born in 2017). Both birth certificates identify two mothers.

To obtain Spanish citizenship (and a passport) for Francesca, the couple needed a British and/or Greek passport first. However, 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. Francesca was diagnosed with cancer and couldn't travel abroad. Luckily, the family found a good treatment in Spain. The second daughter Alexandra obtained a British passport (after the parents' marriage. So far, 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, Francesca only has one mother. In Greece, Alexandra 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 (twice), but without any sustainable outcome.



## Lilly & Darina (example four)

In a final judgment in mid-December 2019, the Supreme Administrative Court in Sofia (Bulgaria) refused to recognise the marriage of Lilly and Darina concluded in the UK. 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 Darina filed a lawsuit in the Sofia City Administrative Court against the refusal of Lyulin District to register their marriage. The judgment was appealed by Deystvie. See the [press release](#).

The judgment is surprising, because the European Court of Justice clarified in the [Coman case](#) (June 2018), that same-sex marriages must be recognised.

In another case of a French-Australian lesbian couple, the Supreme Court finally decided in favour of a recognition in Bulgaria (read [more](#)).

Both couples took part in an All Out [campaign](#) in 2018. In the meantime, their was referred to the European Court of Human Rights in Strasbourg.



## Czeslaw & Willem (example five)

Czeslaw (Polish/Czech) and Willem (Dutch) are together almost 12 years and got married in May 2014 in Delft (The Netherlands). They live in the Vinohrady district of Prague.

The Netherlands were the world's first country with marriage equality in 2001. In the Czech Republic, civil unions are legal since 2006. The couple's application to get their Dutch marriage recognised was refused, but the office concerned offered to downgrade it to a registered partnership.

In the Czech Republic, there are differences between marriage and registered partnership in 105 legal provisions. Czeslaw and Willem had for example to struggle with buying their apartment (due to a lack of common property rights).

The couple sued the State but lost on two levels (final decision in May 2018). They decided not to appeal to the Constitutional Court because they were afraid of influencing the current legal efforts negatively...

As chairman of Prague Pride, Czeslaw is one of the campaign leaders for marriage equality in the Czech Republic. A vote on the bill (incl. adoption rights for LGBTIQ\* people) was expected to take place in January 2019, but it was moved to March and postponed since then.

In summer 2020, the initiative **jsme fér** has started an online petition campaign to push the deputies. In the meantime, there are more than 70.000 signatures for more equality!



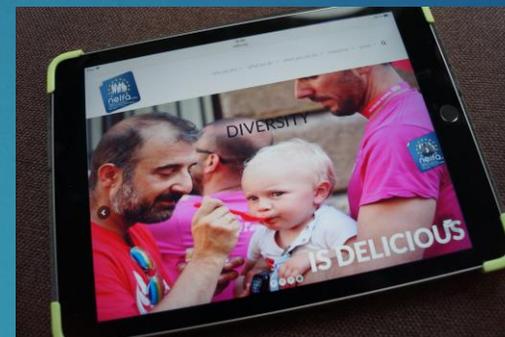
# Summary

Whenever same-sex couples and LGBTIQ\* families are not recognised (see NELFA's [case collection](#)), this has important legal consequences: less obligations for the parents, less protection and benefits for all involved, especially for the children.

Negative effects on: **tax credits, inheritance rights, access to health care, parental leave** (not for rainbow families in 11 EU countries! [Gender Equality Index 2019]). Children can't get a common **family name**, sometimes they even remain stateless (no **passport**). They may even face problems as adults to get a marriage licence with a non-recognised birth certificate stating same-sex parents...

LGBTIQ\* parents face difficulties to travel with their children or to sign docs for the school or other activities. They have problems to get **reduction** for zoo, theatre or public pools.





## BACKGROUND

# LEGAL SITUATION OF RAINBOW FAMILIES IN EUROPE

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





## NELFA overview 2020

In June 2020, the Network of European LGBTIQ\* Families Associations published a presentation with details of ILGA's Rainbow Europe package and a lot of additional findings. It is some sort of current status of the rainbow families movement in Europe. You can find it [here](#).





# BACKGROUND

## INSTITUTIONS AND HUMAN RIGHTS IN THE EU





## COUNCIL OF EUROPE



# Council of Europe

- International organisation to uphold human rights, democracy and the rule of law in Europe. Founded in 1949, 47 Member States
- **Parliamentary Assembly**: resolutions have no legal force, no compliance obligations (but on the other hand (important) **guidance**)
- European Convention of Human Rights (1953) – and the creation of the **European Court of Human Rights** (judgements are binding, but no executive powers: indemnities => states might pay legal costs, repeating prohibition)



# Convention (ECHR)

- **Article 8:** respect for one's private and family life => not to separate a family, enforce access for a divorced parent to his/her child
- **Article 12:** right to marry and to establish a family => same-sex marriage NOT yet included, but positive obligation to ensure a specific legal framework for the recognition and protection of same-sex couples (Oliari and Others vs. Italy)
- **Article 14:** prohibition of discrimination => settled case law implies "sexual orientation" ("or based on other status")



## ECHR - interventions

**NELFA** is involved in several interventions at the European Court of Human Rights about custody rights of LGBTIQ\* parents or the recognition of familial ties which were established elsewhere. The cases concern i.e. Poland and Romania.

We contributed to recent **written comments** by ILGA-Europe, Professor Robert Wintemute (King's College London) and the Helsinki Foundation for Human Rights (HFHR), seated in Warsaw/Poland.

Our goal is to do this on a regular basis with the backing of our **legal support group** (with LGBTIQ\* family lawyers and other experts). Our aim are trendsetting judgments for all rainbow families in Europe, in particular in the EU.

**More about NELFA's legal service: [www.nelfa.org](http://www.nelfa.org)**



“ [...] rainbow families exist throughout Europe, whether or not legislation provides for them. These families have the same needs as any other family, yet many are deprived of their rights on the grounds of the sexual orientation or gender identity of the partners or parents. It is crucial and urgent that our legal systems acknowledge this reality and that States work to overcome the discrimination experienced by both adults and children [...] ”

JONAS GUNNARSSON (PACE-RAPPORTEUR, COMMITTEE ON EQUALITY AND NON-DISCRIMINATION)

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

Resolution : <https://bit.ly/2FpaqqR>. Report: <https://bit.ly/2NuRdmD>.



# EU INSTITUTIONS



# 2009: Charter of Fundamental Rights (CFR)

- **Article 7:** Respect for private and family life
- **Article 9:** Right to marry and to found a family
- **Article 21:** Any discrimination shall be prohibited (explicitly: sexual orientation)
- **Article 24:** Rights of the child => protection and care, they may express their views freely, primary consideration of the child's best interest, maintain a personal relationship and direct contact to both of its parents (see Children's Rights Convention!)
- **Article 33:** Family and professional life => legal, social and economic protection, paid maternity leave and paternal leave
- **Article 44:** Right to petition
- **Article 45:** Freedom of movement/residence



# EU Parliament

- Ordinary legislative procedure (co-decisions with the Council of the European Union)
  - Debate and adoption of resolutions (i.e. legislative initiatives (freedom of movement: **mutual recognition of civil documents**)
- ⇒ **NELFA** maintains a steady contact to the (in general very active and successful) **EP's Intergroup on LGBTI Rights**, provides its expertise in different committees: PETI, JURI, LIBE
- ⇒ NELFA has contributed to hearings and discussions about rainbow families (AllofUs-campaign, Coman-consequences etc.)



# EU Parliament

The **EP's Intergroups** on **LGBTI Rights** and **Children's Rights** joined forces and issued on 20th of March 2020 a common letter to Equality Commissioner **Helena Dalli** (with support from NELFA). More than 60 MEPs call for a better recognition of LGBTIQ\* parents and their children whenever they exercise their freedom of movement. Read the full letter **here**. (graphic: NELFA)



# Council of the EU

- Defines the general direction of the Union and priorities, co-decisions with the EU Parliament) – **proposals must be adopted in unanimity**
- Currently, some Member States block legislative initiatives because of LGBTIQ\* related content => downgraded to an informal status
- => **enhanced cooperation?** Enables groups of States to establish measures between themselves
- **NELFA** has contacts to the General Secretariat of the Council. In 2018, the Network was invited to hold the keynote at the IDAHOT-event.



# EU Commission

- Executive branch of the EU, responsible for proposing legislation, implementing decisions, upholding the EU treaties (**Fundamental Rights Charter**: opt-out possibilities for UK and Poland), Fundamental Rights Agency collects and analyses data: **LGBTIQ\* surveys 2013/19, freedom of movement report 2018**)
- **BUT**: “*substantive family law falls within the exclusive competence of Member States. Shared competence [...] however exists in the Area of Freedom, Security and Justice, where the Union is tasked [...] to develop judicial cooperation [...] in civil matters having cross-border implications.*”
  - ⇒ List of actions for LGBT rights (incl. rainbow families), possibilities for direct complaints, funding of projects to advance rights
- **NELFA** gives specific input at meetings



EU2019F | Ministry of the Interior of the Czech Republic | European Commission

**Advancing LGBTI equality in the EU in 2020 and beyond**  
**23-24 September 2019**  
**Brussels, Belgium**

The banner features a rainbow-colored horizontal bar with a stylized graphic of three overlapping lines in red, orange, and green on the right side. Logos for EU2019F, the Ministry of the Interior of the Czech Republic, and the European Commission are visible at the top.

# EU Commission

Unfortunately, the Commission has problems to start legislative measures. The chances of success are low due to the rule that all Member States must decide in unanimity. But, yes, we still try to convince the people involved to push this issue forward. Rainbow families and their cross-border recognition will find a place in the upcoming **LGBTI equality strategy**.





# BACKGROUND

## SOME STATEMENTS FOR FUTURE PURPOSES...



“

*European family law resembles a mosaic, being composed of several individual, fragmented, instruments covering discrete aspects of law. This mosaic is still incomplete: a number of areas are not covered, e.g. [...] property consequences of registered partnerships, capacity, existence, validity, effects and recognition of registered partnerships and marriages, names, filiation, adoption, emancipation.*

”

AUDE FIORINI (UNIVERSITY OF DUNDEE), AUTHOR (REQUESTED BY EP'S JURI COMMITTEE)



**Directorate-General For Internal Policies: Which legal basis for family law? The way forward.** Manuscript completed in November 2012

“

*[...] 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 Commission will soon put forward a strategy to strengthen LGBTQI rights. As part of this, I will also push for mutual recognition of family relations in the EU. If you are a parent in one country, of course, you are a parent in every country.” [...]*

”

URSULA VON DER LEYEN – PRESIDENT OF THE EUROPEAN COMMISSION



**State of the European Union 2020:** “Building the world we want to live in: A Union of vitality in a world of fragility” (16 September 2020)

# What next?

- CoE and EU should continue to claim on the Member States to respect the fundamental rights of all citizens (regardless of their sexual orientation and/or gender identity) = **EQUALITY**
- 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 (marriage and birth certificates etc.) issued in another Member State**
- 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 **42 ORGANISATIONS IN 33 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: [HTTPS://BIT.LY/2LCF33C](https://bit.ly/2LCF33C). NEWSLETTER: [HTTP://BIT.LY/2FCN5C5](http://bit.ly/2FCN5C5).

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