

Destination

>> **EQUALITY**

winter 2013-14



FAMILY



Evelyne Paradis

The picture featured on the cover of this magazine shows two women spontaneously kissing at a demonstration against the French marriage equality bill last year as a way to oppose the protesters. Like this image, the adoption of marriage equality in France, and especially the unexpectedly large protests against it, made headlines across the world. To some extent, the French situation epitomizes where Europe is standing when it comes to the recognition of LGBTI families: an increasing number of countries giving full recognition to LGBTI families; passionate, principled and sometimes divisive debates; and increasingly organised counter reactions to prevent legal recognition, which in some countries is leading to constitutional amendments to legally ban marriage equality.

In looking at recent developments to put together this magazine, a clear trend emerged: more of Europe is clearly embracing legal recognition and equality for LGBTI families. While public debates on marriage equality and LGBTI parenting often continue to be faced by fierce opposition to LGBTI equality, the debate goes beyond and leads to some fundamental discussions about the type of Europe and society that each and everyone of us want to live in.

As a result, beyond traditional allies and supporters of the LGBTI movement, the issue is increasingly taken on board by some political actors who in the past used to oppose any step towards legal recognition for LGBTI families. A huge re-evaluation and re-thinking of values is taking place. We are learning to embrace and accommodate differences, to realize that the human race is inherently diverse and the differences do not threaten but rather enrich our societies and lives.

For the bottom line is the following: at the core of all these political, legal and social debates are people. It is about their lives, their hopes and aspirations, their search for happiness, the values which we all share as human beings regardless of our differences, whether they are political, religious, cultural or others. And that is why we always need to put something which bring us together at the center of the debate - people and their happiness.

Evelyne Paradis
Executive Director

THE RECOGNITION OF LGBTI FAMILIES IN EUROPE: TENACITY AND PERSISTENCE IN OUR STRUGGLE FOR EQUALITY

Silvan Agius, ILGA-Europe's Policy Director, provides an overview of the current legal recognition of LGBTI families in Europe. While significant legal progress has been achieved, there is no room for complacency: new challenges are emerging and the main battle ahead is to win the hearts and minds of Europe.

The battle for full recognition of LGBTI families in Europe is far from being a done deal.

While it is undeniable that recognition of LGBTI families has come a long way in a growing number of countries, much more remains to be done for the removal of institutional barriers that continue to hinder the full enjoyment of human rights to our families across the continent.

On the one hand, a flight from the Canary Islands to Stockholm nowadays transports its passengers for nearly eight uninterrupted hours over countries that have introduced marriage equality for all irrespective of sexual orientation. This fact alone is proof of the great progress that we have achieved as a movement.

This said, it is also true that legal developments on issues related to LGBTI family are not following a single course towards equality. Another flight from Larnaca to Stockholm will transport its passengers over various countries that at best do not recognise same-sex relationships and at worst legally ban their recognition.

The European institutions, whether its European Union or Council of Europe, mirror the trends at the national level and provide only partial recognition to LGBTI families.

National recognition since the mid-1970s

The current recognition of same-sex couples in Europe has been achieved incrementally since the mid-1970s. At that time, same-sex couples were granted some basic cohabitation rights in the Netherlands.

In 1989, Denmark became the first country to introduce a same-sex specific institution that was similar to marriage in several ways, but differentiated through the exclusion of parenting rights from the package of entitlements. This model was subsequently followed by the other Nordic countries in subsequent years.

Ten years later, France adopted a different registered partnership institution that was open both to same-sex and different-sex couples but consisted of a significantly weaker package of rights and obligations than marriage. Luxembourg later followed suit.

In 2001, the Netherlands broke away from the so called 'separate but equal' model and became the first country in the world to introduced marriage equality for all couples. Through this law, all institutional differences of treatment were removed, including those regarding adoption.

Since the introduction of the above models, many countries have followed suit and nowadays some countries like the Netherlands, Belgium and France offer different options for the recognition of all couples, irrespective of gender or sexuality. In total, ten countries have opened marriage to all couples, while a further eleven countries have registered partnership institutions.

It is also noteworthy that while most of these laws were introduced through the support of parliamentary majorities, Switzerland and Liechtenstein adopted their respective laws following public support in national referenda.

In the UK, marriage equality was championed by David Cameron, which is promising as he showed that indeed marriage equality can be embraced by all, irrespective of their political orientation.

Central and Eastern European reaction

The adoption of registered partnership laws in the Czech Republic, Hungary and Slovenia had provided hope to the continuation of the spreading of recognition laws eastwards. Sadly, this hope was short lived. In reaction to increasing social and legal recognition of LGBTI families, a number of Central and Eastern European countries adopted legislation that ranges from the narrowing of the Constitutional provisions on marriage and family definition to heterosexual marriage and families only, to harsher laws banning or invalidating same-sex marriages on a given national territory.

Ten countries have indeed adopted such legislation, including Hungary, which in recent years has fallen victim to an ultra-conservative government that is reversing many of the past gains.

Depressingly, the most dangerous development may still be in the pipeline. This year, Russian legislators have explored the possibility of the removal of children from LGBTI parents. If adopted, it will be the most far-reaching violation of the rights of LGBTI families on the continent.

And what has Europe done for our families?

It is important to note that the European Court of Human Rights has been one of the drivers of equality for LGBTI families ever since its 2003 *Karner v. Austria* judgment,

where it had ruled that if a state provides certain rights and obligations to unmarried cohabiting heterosexual partners, it has to provide same rights and obligations also to cohabiting same-sex partners. That same argument was applied recently to the case of *Vallianatos and Mylonas v. Greece* regarding access to registered partnerships when such an institution is already open to heterosexual couples.

In 2010, in the case of *Schalk & Kopf v. Austria*, the European Court of Human Rights also recognised that same-sex couples enjoy "family life" which marked an important step forward in the recognition of the rights of couples irrespective of their sexuality. All previous complaints from same-sex couples were considered by the Court as issues of "private life".

Progress was also achieved in terms of LGBTI people's parenting rights and adoption entitlements. In fact, in 1999, in the case of *Mouta v. Portugal*, the court clearly indicated that the LGBTI parent's sexual orientation could not play a bearing in the custody of an individual's genetically-related children after divorce.

Since then, the same reasoning was applied in two other cases. In 2008, in the case of *E.B. v. France*, the Court stated that where adoptions by single individuals are possible, any decisions regarding prospective adopters cannot discriminate on the basis of sexual orientation. This year, in the case of *X and Others v. Austria*, the Court has said that the equal treatment principle also extends to second-parent adoption.

The European Court of Justice has also decided two cases positively in terms of the EU employment equality legislation and its application to registered same-sex partners. In 2008 in the case of *Maruko*, the Court stated that no difference in treatment should apply to same-sex survivor pension rights. In 2012, in the *Römer* case, the Court reaffirmed this principle and strengthened it.

And what else can we expect?

As Martin Luther King Jr once stated, "The arc of the moral universe is long, but it bends towards justice." Persistence has been one of our strengths as a movement, as has been our tenacity to fight for equality even in the more difficult circumstances.

As a living instrument, it is plausible to expect the European Convention on Human Rights to continue to be interpreted favourably to our families' equality by the Court. In parallel to this, we need to continue to press the EU to progress on the promised legislation towards the portability of rights associated with marriage and parenting across borders without unnecessary bureaucratic burdens or legal blockages.

In the meantime, it is important that we all keep up the struggle for equality wherever we are, as our collective efforts will surely win hearts and minds over prejudice and inequality.

ILGA-EUROPE'S KEY DEMANDS FOR THE RECOGNITION OF DIVERSE FAMILIES

ILGA
EUROPE



KEY

ILGA-Europe's vision is of a world freed from any form of discrimination on the grounds of sexual orientation, gender identity and/or gender expression; a world where the human rights of all are respected and everyone can live in equality and freedom.

In September 2012, ILGA-Europe has revised and updated its policy and key demands in the area of family. As the leading member organisation of ILGA-Europe working on the family issues, NELFA – Network of European LGBT Families Associations, fully supports this policy and key demands.

DEMANDS

PARTNERSHIP

In relation to partnerships, ILGA-Europe calls for:

- The removal of any provisions in marriage legislation that directly or indirectly limit certain couples' ability to enter into a marriage due to their sexual orientation and/or the gender identity of one or both of the partners.
- The removal of all discrimination on grounds of sexual orientation, gender identity or gender expression in national laws governing other forms of legally recognised partnerships including registered partnership and *de facto* cohabitation.
- Domestic recognition of all marriages and registered partnerships celebrated in other jurisdictions around the world without distinction or discrimination.
- The removal of any provisions in other laws or administrative practices that directly or indirectly govern specific rights of families, their children and other family members that may have a disparate negative impact on certain families due to sexual orientation, gender identity or gender expression.
- Compensatory measures should be introduced when the principle of irretroactivity of law perpetrates past unequal treatment based on the grounds of sexual orientation or gender identity.
- The provision of choice in the forms of legal recognition of partnerships that are equally available to all couples without distinction or discrimination.
- The removal of any remaining restrictions on the right to marry of trans people in compliance with the decision of the European Court of Human Rights in *Goodwin & I v UK* (2002).
- The removal of any obligation on trans people to divorce existing spouses/registered partners as a precondition for legal recognition of their gender identity.
- Specific consideration of criteria that could hinder the legal recognition of intersex people's partnerships.
- The removal of any exclusion or discrimination in the legal definition of family (should such a definition exist) irrespective of civil status and the sexual orientation, gender identity or gender expression of the partners.
- The removal of any remaining cisnormative¹ and heteronormative² linguistic and cultural bias that may be found in law, policies and/or practices which could result in direct or indirect discrimination on the basis of sexual orientation, gender identity or gender expression.
- The removal of any symbolic distinctions in the conduct of civil registration/marriage (e.g. place of registration) or ability for public officials to object to registering certain couples on the basis of their sexual orientation, gender identity or gender expression.
- Access to international protection and family reunification for third country nationals should be extended to include their spouse, registered partner or unmarried partner.

2

PARENTING

In relation to parenting, ILGA-Europe calls for:

- The elimination of restrictions on the rights and responsibilities of parents based on their sexual orientation, gender identity or gender expression.
- Laws and policies on adoption and fostering that are based on the needs and rights of children, and the suitability of prospective adopters/foster parents to parent without discrimination on the civil status or the grounds of sexual orientation, gender identity or gender expression of the parent/s.
- The ending of discrimination in access to fertility treatment and assisted reproduction.
- The abolishment of the sterilisation requirement in laws that regulate the recognition of trans people's gender identity in the process for change of name and/or legal gender.
- The provision of the possibility of preservation of the gametes of trans people that chose to undergo gender reassignment surgery.
- The removal of any discrimination in judicial decisions regarding the custody of children.
- The removal of unequal treatment in parenting based on sexual orientation, gender identity and gender expression (e.g. in the setting up of adoption priority lists etc).
- The possibility of adoption of a child by its co-parent, without discrimination based on the child's birth status, the parents' civil status, or the parents' sexual orientation, gender identity or gender expression.
- The recognition of both lesbian mothers as the legal parents of a child born within their relationship should follow the established parental recognition procedures without discrimination on the ground of sex, gender and/or sexual orientation.
- Rights and responsibilities vested in parents in *de facto* relationships should be provided without discrimination on grounds of sexual orientation, gender identity or gender expression.
- Legal, financial and work-related benefits to be made available to all families without discrimination based on a child's filiation or the parent's sexual orientation, gender identity or gender expression.

3

CHILDREN AND OTHER FAMILY MEMBERS

In relation to children and other family members, ILGA-Europe calls for:

- Equal treatment of children, regardless of: (i) the civil status of their parent/s; (ii) whether they are adopted or fostered; and (iii) whether they share a biological link with their parents.
- The best interests of the child should guide all measures aimed at children and therefore children should be protected against discrimination based on the sexual orientation, gender identity or gender expression of their parent/s and in accordance with the *UN Convention on the Rights of the Child (1989)*.
- Children should not experience any discriminatory restrictions on their ability to travel to or enter into a country due to their non-biological ties to their parents.
- All of the children's social parents should be able to have their parental responsibility recognised.
- Children should never be separated from their families on the basis of the sexual orientation, gender identity or gender expression of their parent/s.
- Access to international protection and family reunification for third country nationals should be extended to include: (i) any children for whom the migrant shares parental responsibility; (ii) any children of the migrant's spouse, registered partner or unmarried partner; and (iii) any other dependant relative of the migrant.

4

ADDRESSING DISCRIMINATION

Beyond formal equality in law, policies and practices, ILGA-Europe calls for:

- Comprehensive anti-discrimination legislation that does not contain exceptions based on marital and/or civil status.
- Measures that address institutional LGBTIphobia as well as the heightened vulnerability to discrimination that same-sex/same-gender couples and their children may experience due to their visibility and their mismatch with cisnormative and heteronormative notions of family.
- Mainstreaming of LGBTI/rainbow families in formal education, and public information materials thus addressing invisibility and promoting the notion that all families have equal value.
- Visibility of LGBTI/rainbow families (with or without children) should be included in the media and elsewhere in society among other family forms.

¹ *Cisnormativity* refers to the practices and institutions that legitimise and privilege those who are comfortable in the gender belonging to the sex assigned to them at birth. On the other hand, this norm systematically disadvantages and marginalises all persons whose gender identity and expression do not meet social expectations.

² *Heteronormativity* refers to cultural and social practices where people are led into believing and behaving as if heterosexuality was the only conceivable sexuality. It also implies the positioning of heterosexuality as the only way of being 'normal' and as the key source of social reward.



ACKNOWLEDGE THE DIVERSITY OF FAMILY LIFE

Nils Muižnieks, Council of Europe Commissioner for Human Rights, highlights the evolution of family concept in Europe and argues that welfare and interest of children will only be enhanced by the legal recognition of LGBTI families.

The concept of the family is changing rapidly in Europe. Families composed and recomposed in multiple ways represent the current social reality. The recognition of family relationships has to reach beyond any traditional notion of the family. It is in the best interest of children that their parents and primary carers have legal rights and responsibilities. The family unit, whatever form it takes, should enjoy adequate and equal legal protection.

During the past decade, significant progress has been made in the legal recognition of LGBTI families. Nearly half of Council of Europe member states now give official recognition to same-sex couples. Ten states have legislation in place granting the right to same-sex marriage. Access to adoption procedures and assisted reproduction technologies is also becoming available to many LGBTI parents together or alone.

The jurisprudence of the European Court of Human Rights reflects the current developments. The landmark judgments of *Schalk and Kopf v. Austria* (24 June 2010), and *X and others v. Austria* (19 February 2013), have been particularly remarkable in establishing the Court's position. The Strasbourg Court has clearly recognised that same-sex couples living in a stable partnership with or without children fall within the notion of 'family life' protected by the European Convention. It has also noted that there is an emerging European consensus towards legal recognition of same-sex couples.

The European Convention does not impose an obligation to grant same-sex couples the right to marriage as it refers directly to national legislation in this area. However, the member states' margin of appreciation in providing an alternative partnership recognition scheme is narrowing down. This trend is likely to accelerate when the majority of European countries have partnership legislation in place. I encourage member states to take legislative initiatives in this field.

The principle of the best interests of the child is sometimes used as an argument against the promotion of the family rights of LGBTI people. Yet, there is no reason to assume that children would not be equally well cared for by LGBTI or other parents. Sexual orientation and gender identity should not be used as grounds to deny parental rights or restrict people's access to adoption procedures.

Stereotypes and prejudice feed homophobia and transphobia. We have to refute stereotypes and struggle against prejudice by disseminating factual information, carrying out an active rights-based debate and enhancing the visibility of LGBTI persons and families as ordinary members of society. The acknowledgement of the diversity of family life is essential for overcoming the obstacles to this necessary social transformation.

Agnes Uhereczky is the Director of COFACE, the Confederation of Family Organisations in the European Union. She highlights the changing nature of family in Europe and the needs for universal inclusive European policies as well as steps taken by her organisation to engage with LGBTI families.

FAMILIES ARE ENTITLED TO SUPPORT – WHEN THEY NEED IT AND WHAT THEY NEED



COFACE is the oldest international NGO in Brussels. It has been raising the voice of families and lobbying in Brussels for 55 years. What makes an organisation great however is not only the number of its years, but its ability to adapt to change.

No one can deny that families today are not the same as families 50 years ago. In most cases individuals can choose with whom, when and how they want to build a family. Families living in Europe today are dual-earner families, with an average of two children. Working families are mostly interested in finding the right work-life balance, childcare and flexible working arrangements, therefore we have chosen to make reconciling work and family life one of our central issues we are working on, and this concerns single parent families as well as migrant families as well as LGBT families, and we hope that by tackling such transversal issues, we can lose the labels in front of families, and do a service to all of them.

We at COFACE believe that every family, without discrimination between family forms, has the right to live in dignity and harmony. And for this, families need time; they need to have adequate income as well as access to quality and affordable services.

We also try to look at families as dynamic, ever changing social entities, and not a static bloc serving the interest of administrators. We refer to this as families in transition. The birth of a child, an accident, divorce or separation, the loss of a job, or on the contrary both parents working can upset the daily life, routine, the sharing of tasks and

even threaten the financial and existential security of the family.

Therefore, there needs to be a universal family policy and service provision for all families, as well as there need to be safety nets and targeted services for when, and for those who need it. Research tells us that successful families are the building blocks of a strong, cohesive society.

Unfortunately, there are also families, who are living in a country where this is not possible, or who are in a social or economic situation that does not allow them to fully participate in society, to be recognised or puts them at risk of poverty. We started working on how to support vulnerable families in February 2013 under the Irish Presidency. Marriage Equality from Ireland made a great presentation at this conference¹, and this was a first step for COFACE to engage with the issue. We are currently elaborating an EU Roadmap for Vulnerable families 2020, and are planning on even more activities for 2014 and 2015, and the issue of LGBT families will be brought up again.

What will make Europe great is how we provide for and include those less fortunate or those being discriminated against, and how we provide opportunities for all families to take care of their children and elderly relatives and to find their own path to flourish.

¹ <http://www.coface-eu.org/en/Events/Vulnerable-families/>

“FOR ME, ADOPTION
BY SAME-SEX
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SOMETHING SO
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WHAT MATTERS
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STRUCTURE.”

Extract from “Fils de...” (“Son of ...”) book and exhibition bringing together thirty portraits of sons and daughters of lesbian and gay parents. They are French, they are between 18 and 87 years, they live in large cities or in small villages. Thirty portraits, thirty stories. Thirty perspectives on family. Photographs by Zabou Carrière, texts by Taina Tervonen. The exhibition was shown in Paris, Geneva, Liège, and is available for rent. Contact: desmotsdesphotos@gmail.com



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