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# NEWSLETTER

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## Rainbow families

- » challenges for LGBT parents and their children
- » LGBT Caucasus: *terra incognita*
- » free DVD for each reader!



## Message from Patricia

**A very warm welcome to the spring edition of our Newsletter!**

In this edition we explore the issues and challenges for LGBT parents and their children. While there has been some progress in individual European countries in terms of recognising LGBT parents and their children, on the whole Europe is still far from the situation where LGBT people, same-sex partners and their children enjoy equal recognition and dignity as other families.

There is still a lot of work to do to overcome prejudice and discrimination on a national level and to achieve a European consensus in favour of equal rights for LGBT parents and their children. However there is growing scientific evidence proving LGBT people and same-sex couples are as good as any other parents! We also provide examples of how the issues of parenting are being addressed in some individual European countries. Other contributions explore the notion of the best interest of the child and also provide rarely heard testimony from a child raised by gay parents.

This year ILGA-Europe visited three Caucasian countries and later this year we are going to publish a report on the situation for LGBT people in this so far little known corner of Europe. One of the contributions gives a glance of how difficult life is there for LGBT people.

In this Newsletter we also examine the importance of the European Parliament's Resolution adopted earlier this year. Recent events in Krakow, the escalating atmosphere in Moscow regarding the first Pride March, repeated ban of the Pride March in Chisinau are all reminders of how important it is to make the issue of LGBT human rights of concern for European institutions.

You will receive this Newsletter when many European cities are hosting or preparing various LGBT Pride events. I sincerely hope these festivals celebrating equality, diversity and the richness of our continent will not be spoiled by ugly expressions of hate and violence, and wish you all a great summer!

**PATRICIA PRENDIVILLE**

ILGA-Europe's Executive Director



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Alexander Nevsky Cathedral in Sofia

## Gearing up for Sofia!

**Each October LGBT activists and human rights professionals gather for the ILGA-Europe annual conference in a different European city. This year the conference takes place in Sofia and is organised by Gemini. The Bulgarian activists warmly invite you to take part and explain why this conference is so important to them and Europe. Plus there are some useful dates to help us to get ready for the Sofia conference!**

The Bulgarian gay organisation "Gemini" is grateful to you for choosing Sofia as host city of the 28th Annual Conference of ILGA-Europe in October 2006.

We have been following and analysing the political developments in Bulgaria, together with local and international contributions to the transition process that Bulgaria has been going through since 1989. A central issue to this has been the way in which Bulgaria is integrating itself in the Western safety and defense structures and the European Union. In welcoming you to the Conference, we believe it is increasingly important to understand the ongoing developments in Europe with regards to LGBT people's rights. We are witnessing the LGBT NGOs becoming more significant and transforming into a phenomenon that requires a different understanding.

From its very beginning the ILGA-Europe Conference has become a totally unique event bridging the gap between various cultures and ideologies of the world by bringing together activists, politicians and public figures from all over the world. The contribution that the 28th Annual Conference will play to integration in our region is more

than significant.

It is delightful to know that holding such an international event here in Sofia is becoming part of a tradition. It is a great privilege for us to host such a significant event in our city, bringing together so many activists, authoritative politicians and culture figures.

We are confident that the forthcoming Conference will give a great push to the development of the situation not only in Bulgaria regarding LGBT individuals, but will also take consolidation across the European continent to a new level whilst finding a path to new ideas. These ideas will, in turn, lead to real action.

Though we have a great amount of work ahead us, we will do our best to make your visit in Sofia a truly unforgettable experience. The programme is full of social events, giving you the chance to explore the hospitality of Bulgarians, so that the 28th Annual Conference of ILGA-Europe will be your first and by no means your last visit to Bulgaria!

Let's try our best to accomplish this mission!

**DESISLAVA PETROVA**

Public Relations & International  
Affairs officer  
The Bulgarian Gay Organisation  
"Gemini"

### Key dates and deadlines for the Sofia Conference:

12 June	First mailing
28 July	Deadline for submitting proposals
14 August	Second mailing: proposals, preliminary agenda and accounts for 2005
8 September	Deadline for submitting amendments to proposals Deadline for nominating candidates for the Executive Board and the regional representatives on the World Board Deadline for submitting proposals for 2008 conference host
3 October	Third mailing: final agenda, including amendments to proposals, candidates for the executive Board and the regional representatives on the World Board, candidates for hosting the 2008 conference and proposed budget for next financial year.



# Overcoming fear

Last January, ILGA-Europe and COC Netherlands organised a joint fact-finding mission to Armenia, Georgia and Azerbaijan to: identify and document human rights violations against LGBT people in the region; map civil society and existing initiative groups; identify current state of play in the field of health and HIV/AIDS prevention policies. Based on the findings of the mission a detailed report will be printed this summer. For now, let me share with you just some of the more illustrative stories and findings.

The situation for LGBT communities in the three South Caucasian Post-Soviet states started to change after the countries joined the Council of Europe. Solely due to international pressure, Penal Code articles which criminalised consenting same-sex acts were repealed, with Armenia becoming the last European country to do so as recently as April, 2003. The change of legislation was a mere political gesture and went through a lot of political resistance. According to the IWPR, "a mark of political resistance in Armenia to the overturning of this discriminatory law was displayed during a television interview with the country's European delegate Ohannes Ohannisian, who was unable to utter the word "homosexual" or "gay" and started using such awkward circumlocutions that the journalist struggled to hide her laughter".

## Armenia

For Armenian LGBT people, however, it was hardly a laughing matter. While the Netherlands opened marriage to same-sex

couples in 2001, that same year Armenian homosexuals were still put to prison. Hovik is a young Armenian homosexual, who works as a barman in one of the regular Yerevan bars. In January 1999 Hovik (then just turned 16) got to know an older homosexual in the park and had sex with him. The man reported Hovik's homosexuality to the police. On 5th of February 1999 at 8:00 am, while Hovik and his parents were still sleeping, the police went to Hovik's home and arrested him. He was brought to the police station, where he spent 10 days before the court trial. He was beaten and made fun of by the police officers. Hovik relates that at the same time in the court another five people were convicted of consenting same-sex acts, including the older man who had reported Hovik to the police. Three of the five convicted were given a 1 to 2 year sentence, Hovik was given 3 months due to a bribe of 1000 USD which his aunt gave to the judge. He spent his sentence in a colony for minors, but managed to



Giorgi after attack

avoid the destiny of most homosexuals who get sent to prison, as he was introduced to his cell-mates, by the guards, as a robber. Hovik says the position of sexual minorities since the article 116 of the Penal Code was abolished, has not improved much.

Although legally the situation is better, the police continue their blackmailing and harassment. The most common victims of police harassment are closeted male homosexuals and transgender people. Hovik knows at least 5-6 homosexuals, who are currently being blackmailed by the police. "My life could have been different if I wasn't imprisoned. I always dreamed of being a hairdresser. And although it's happening later, this dream is coming true. I am attending a hairdressing course, and after studies will start working in a new, so much longed for profession".

## Georgia

The situation is not much different in Georgia. Giorgi is a 25 years old homosexual living in the capital of Georgia – Tbilisi. He has been living with his religious aunt in the suburbs since his parents kicked him out of the house when he told them he was gay. The aunt prays for Giorgi to be saved every time she goes to church. On 29 August 2005, at 00:30 am Giorgi was walking from his aunt's apartment to the nearest kiosk to buy cigarettes. About half way he was punched from behind by three young men and fell on the ground, face down. The attackers kicked his face and body for

about five minutes, calling him "pederast" (faggot). Once they saw his face bleeding heavily, they left, saying that "pederasts like you should be killed, they shouldn't be living". Giorgi's face and arms were wounded, his nose broken and there are still see many scars visible on his face. He reported the case to the police, but it was only after intervention from the Public Defender's Office that the police started to treat the case seriously. They refused, however, to document the case as a hate crime or discrimination, arguing that there is no relevant legislation in Georgia. Giorgi says that cases of violence against LGBT people in Georgia are very frequent, but few are reported as such due to fear of harassment by the police or risk of families finding out about the sexual orientation of the victim.

## Azerbaijan

LGBT people here live double lives and can not come out. Some report that they have double SIM cards for their mobile phones - one for gay friends, one for others. Others rent a second flat where they meet with their gay lovers, whereas others again consider leaving Azerbaijan. "I am considering migrating to Canada to have a 'normal' life, not to live a life where you are scared that somebody can see you". Although consenting same-sex acts were decriminalised in 2000 (became effective in 2001) LGBT still face many problems, in particular the more visible transgender community in the capital Baku.

There is hope though. New LGBT groups are being formed in the region, COC Netherlands in partnership with ILGA-Europe is starting an ambitious project in the region and the countries of the region have declared European Integration as their top foreign policy priority. The changes will not come easily, but they are inevitable.

MAXIM ANMEGHICHEAN

# Fighting homophobia with resolutions



**Following a wave of homophobia in various EU member states last year, the European Parliament adopted a resolution strongly condemning discrimination and homophobic hate. What is the significance of this Resolution and what further actions by the European Union are needed to advance the fight against homophobia in Europe?**



**"Homosexuality is unnatural" says Kazimierz Marcinkiewicz, Polish Prime Minister**



**"As a head of the government, I cannot accept that a parade of sexual minorities takes place in the middle of our capital city next to the Dom Cathedral" says Aigars Kalvitis, Latvian Prime Minister**

It might seem obvious that a democratic institution in Europe in the year 2006 should condemn homophobia, but it was actually a major step taken by the European Parliament when we adopted the resolution against homophobia. The first initiative for a resolution was called extremist and said to 'put the work on human rights at risk' in an email to all MEPs from some Polish members. After a lively debate in plenary, the resolution was carried by a large majority, supported by all five major political groups, including the conservative party EPP-ED – a majority that would not have been reached without the work of the Intergroup on gay and lesbian rights.

When the ten new Member States joined the EU, it was no secret that in some of these countries the attitude towards LGBT people was more negative than in the rest of the EU. The challenge was not letting this change the European work on LGBT issues negatively, but quite the opposite – to spread the progressive attitudes across Europe. Significantly negative events in Poland and Latvia inspired us to table the resolution to clearly mark the position of the EP and our determination to prevent the EU from going backwards. The resolution does not mention any specific Member States, since discrimination exists everywhere, but when following the national debates, one could see that the main targets were undoubtedly aware of their guilt. Part of a Latvian TV-programme was for example headlined "Homosexuals against Latvia in the European Parliament", only six out of 54 Polish MEPs supported the resolution, and of course, the Vatican condemned it.

What we experience is the clash of two visions of Europe, not the EU15

against the new member states. Homophobia unites different conservative religious forces and populist politicians needing a common enemy. They deny human rights hiding behind religious opinion and "public morals." Our vision of Europe collides with theirs. Even if the resolution has no legal consequences, it is a victory for LGBT people. The resolution shows that a majority of the EP wants a Europe based on the respect for human rights and will continue our work for this to be the cornerstone of all European policies, and EP support is needed against the severe lobbying by the Vatican. The resolution was an important step in our work to make LGBT issues visible and to put it on the agenda of the Commission. Shortly after the resolution passed, the Board of the Intergroup met with commissioner Frattini to follow up on the resolution debate and we promise to pressurise the Commission to fulfil its promises, for example to present a directive banning equally all forms of discrimination in all areas of the EU competence.

The main reason behind the resolution was the attitude towards LGBT pride marches – bans, violence and hate speeches by several leaders. More worrying, however, is how few politicians are willing to defend a minority's basic rights. Even those against homosexuality should be able to understand that the freedom of assembly is one of the fundamentals in a democracy and that it includes the right for a minority to be visible and protected against violence. The resolution sent a clear message to the Member States and it could be used as a reference in articles and letters in your work on the national and local level as a proof of how strong the support is, and as a reminder of the European obligations. Often legislation paves the way for change of people's attitudes.

However, homophobia cannot be fought only by legislation or political statements by the EP. A democratic and tolerant society, where everybody enjoys equal rights can only be achieved if there is a genuine belief among the citizens that everyone is equal. We believe that this can be achieved over time by activists in civil society in coalition with inter alia the EP sending international signals for support. We need to get people to realise that everyone will profit from this. Our human rights are inextricably linked. They are like a house of cards – take one away and eventually the whole thing comes tumbling down. 2007 will be the European Year of Equal Opportunities, let us use this to make people more aware of their fundamental rights!

**MICHAEL CASHMAN (PES)  
SOPHIE IN'T VELD (ALDE)  
RAÛL ROMEVA (Greens-EFA)  
ALEXANDER STUBB (EPP-ED)**

Board members

of the Intergroup on gay and lesbian rights in the European Parliament

# Entering the United Nations... **By the front door!**



**The United Nations member states still have to recognise sexual orientation and gender identity as an issue of human rights. For many years ILGA has been trying to obtain consultative status with the UN Economic and Social Council (ECOSOC). The recent rejection of the consultative status to ILGA and the Danish LGBT organisation LBL clearly demonstrates there is still a battle to win over homophobia at the UN level.**

ILGA has a long history with the UN: it was in its name that the first speech mentioning homosexuality in a UN forum was given in 1992. ILGA was also the first LGBT association to be granted the right to attend UN meetings with ECOSOC status in 1993. A privilege which we lost in 1994 under the pressure of a right wing US politician,

## Putting LGBT rights on the UN agenda

In 2000, we re-applied to have the right to speak at the UN in our name and were again denied that right in 2002. Last year, after the death of the Brazilian resolution – the first ever draft UN resolution specifically banning discrimination on the grounds of sexual orientation and gender identity – ILGA decided to ask other LGBT groups to apply with us to the UN for ECOSOC status. Not that we thought it would be easy for ILGA to regain, but because our aim is to have homosexuality come out at the UN. We all know you cannot rely on your parents' good will to decide when is a good time to talk of your homosexuality.

Having LGBT groups applying for observer status was a good strategic move, for it has put LGBT issues on the agenda of the UN again: The US surprisingly voted alongside Iran, Zimbabwe and some other "good bedfellows" in the ECOSOC NGO Committee against ILGA and the other LGBT association whose application was on the table, the Danish federation LBL.

## America is NOT on our side

The recent developments in the US where 44 Democrats and one independent officially asked Condoleezza Rice to explain why the US reversed its 2002 vote in favour of ILGA's application, has helped put our association and LGBT rights back on the UN agenda. ILGA-Europe, LSVD (Germany) and CGLQ (Quebec)'s applications will be on the table in May and the event will not go unnoticed. Also in May the full ECOSOC will consider procedural challenges to the summary dismissal, without debate, of ILGA and LBL that happened in January.

The number and nature of the questions we got from the ECOSOC after introducing our dossier last year and the rejection of LBL, which had no previous history with the UN, show too well that the refusal has little to do with ILGA's disclosure of its full membership file.

The ECOSOC asked us to prove that ILGA had members in countries where homosexuality is criminalised, namely India and African countries. I can only see two reasons why ECOSOC asked ILGA to provide the registration certificates of each of the group in those countries. To corner us because they thought we would not have been able to prove we have members in those countries, hoping that would show there are no LGBT groups in those countries. Or to show some groups were affiliated to ILGA, which are illegal in their countries, and therefore that we did not have, according to their standards, full control over our membership.

## No kiss of death

It is only too clear that some countries will use any procedural mechanisms to justify their homophobia, but by doing so, they are forcing other countries to back LGBT rights. What is happening around ILGA's ECOSOC campaign is another small step for our visibility after the declaration of New Zealand and as many as 47 other countries pushing for a debate on sexual orientation and gender identity at the UN.

ILGA's rejection at the last ECOSOC meeting is no kiss of death. It is only the first step in a long drama.

ILGA and the other groups with applications for ECOSOC status (ILGA-Europe, LBL, CGLQ and LSVD) as well as groups from Europe and Latin America who are applying by May 31 2006 will not let the issue of the right of LGBT groups to speak in their own name at the UN, go away.

You can find updated information on the ECOSOC campaign at [www.ilga.org](http://www.ilga.org) – including an article "LGBT people demand a voice at the United Nations" by the new Co-Secretary General of ILGA, Philipp Braun

Activists from all parts of the world just met in Geneva at the ILGA World Conference last March and at the UNCHR where ILGA organised a series of panels for the diplomats to attend. We will need as many events in these troubled times – the Outgames in Montreal in July 2006 will be a powerful one – to show we are here to stay – not to be sacrificed on any altar, for any agenda.

**STEPHEN BARRIS**  
ILGA Manager

# International Conference on LGBT Human Rights



Joke Swiebel

**Already made your summer plans? For those who want to broaden their horizons in the world and want to combine business with pleasure, I can highly recommend Montréal (Québec, Canada). This summer Montréal will host the largest-ever International Conference on LGBT Human Rights.**



International Conference on LGBT Human Rights

The Conference will involve 2000 participants from around the world, and will be held on 26-29 July 2006, just before the 1st World Outgames for LGBT and other athletes. With the support of the Governments of Canada, Québec and Montréal, the Québec Human Rights Commission, and other sponsors, the conference will be the best-funded to date, and will take place in the spacious and ultra-modern facilities of the Palais des Congrès, Montréal's convention centre.

The 1st World Outgames will consist of competitions in 35 sports, combined with a great deal of culture, song and dance. Montréal with its well known gay village is a very lively and friendly city. Why not take part in the conference or the Outgames, or even better: in both. And afterwards, Canada will await you with open arms.

One of the main purposes of the conference is to raise the profile of LGBT human rights at the United Nations level and in other international fora, and in so doing to help extend legal and social equality, increasingly enjoyed by LGBT individuals in Australasia, Canada, South Africa, most of Western Europe, and some parts of the United States, to LGBT individuals living in the rest of Africa, Asia, Eastern Europe and Latin America.

The Conference will be opened with a plenary session on the United Nations, starring Louise ARBOUR, the UN High Commissioner for Human Rights. Furthermore, there will be five plenary sessions with a focus on and various keynote speakers from different parts of the world. In the session on Europe, among others, Vladimir SPIDLA, Commissioner for Employment, Social Affairs and Equal Opportunities will address the Conference. We are very grateful such a high ranking EU politician will participate and discuss what the European Union stands for concerning LGBT human rights, in Europe and elsewhere. Speakers from elsewhere include Irshad MANJI (author of *The trouble with Islam*), Maria BERENICE DIAS (Judge in Brazil), Alice NKOM (Lawyer in Cameroon defending 11

men imprisoned for being gay), Georgina BEYER (a transsexual Member of Parliament in New Zealand). The closing session will be dedicated to The Future of LGBT Human Rights. Martina NAVRATILOVA (Winner of 18 Grand Slam Championships in singles tennis) will be one of the keynote speakers.

In between the plenary sessions there will be five timeslots of 90 minutes each for 40 workshops. They will consist of presentations, video screenings, discussions and some performances. So, in total at least 200 workshops will take place, on at least 30 themes and sub-themes, ranging from the right of assembly to same-sex partnerships, from the strategy of the LGBT movement to the struggle against HIV/AIDS. Already 1100 participants from 80 different countries around the world are registered, among them 800 speakers and presenters in various workshops.

At the end of the Conference the Declaration of Montréal will be presented, holding the main demands of the world-wide LGBT movement addressed to the international community. Future LGBT human rights conferences, beginning with the 2nd one to be organized by the 2nd World Outgames taking place in Copenhagen in 2009, will have to take stock of the progress made in realising these demands. In this way, the LGBT Human Rights Conference hopes to leave an important legacy, a legacy that can be used to carry on our world-wide fight for equality and justice.

The full Programme and all other information can be found at [www.montreal2006.org/en\\_conference.html](http://www.montreal2006.org/en_conference.html)

**JOKE SWIEBEL**

Former Member of the European Parliament and Co-President of the International Scientific Committee of the Conference

Montréal, 26-29 July 2006

# Toward equal access to parenting for LGBT persons in Europe

One of the most legally and politically controversial aspects of lesbian, gay, bisexual and transgender (LGBT) equality in Europe is equal access to the opportunity to be a parent. For example, more countries have allowed same-sex couples to register their relationships and acquire a broad package of legal rights and duties (at least 15: Andorra, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Iceland, Luxembourg, the Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom), than have allowed both members of a same-sex couple to become legal parents of the same child (9, see below). However, despite the perception that adoption of children by same-sex couples is more controversial than equal access to civil marriage (as it was in Belgium), substantially more countries (9, see below) allow both members of a same-sex couple to become legal parents of the same child than allow such a couple to register their relationship through the institution of civil marriage (3: Belgium, the Netherlands and Spain).

## What kinds of parenting opportunities do LGBT persons seek?

There are six main parenting opportunities to which LGBT individuals and same-sex couples seek equal access (ie, access on the same terms as heterosexual individuals and different-sex couples), without their sexual orientations or gender identities being held against them:

1. the right to visit, or have joint or sole custody of, their own genetically-related children from prior different-sex relationships ("visits or custody");
2. the right to adopt a child as an unmarried individual ("individual adoption", meaning that any partner they have acquires no parental rights and the child has only one legal parent after the adoption);
3. the right of an LGBT individual to adopt a child who is genetically related to the individual's same-sex partner but not to the individual ("second-parent adoption", meaning that the child has two legal parents of the same sex after the adoption);
4. the right of a same-sex couple to

adopt jointly a child who is not genetically related to either member of the couple ("joint adoption", meaning that the child has two legal parents of the same sex after the adoption);

5. the right of a lesbian or bisexual woman, who has a female partner or no partner, to be inseminated with the sperm of a male donor who is not her partner ("donor insemination"), and the related right of her female partner to receive when the child is born either automatic joint parental authority ("joint parental authority") or automatic full legal parenthood ("presumption of parenthood"), rather than apply for a second-parent adoption of the child; and

6. the right of a same-sex couple to commission a surrogate mother (in countries where this is permitted) and both be recognised as the legal parents of the child (in lieu of the surrogate mother and any donors of eggs or sperm), in the same way as a commissioning different-sex couple ("surrogacy").

## When does the European Convention on Human Rights require equal access?

To date, the European Court of Human Rights' has interpreted Articles 14 (non-discrimination) and 8 (respect for private and family life) of the European Convention on Human Rights as requiring equal access to visits and custody. In *Mouta v. Portugal* (1999), the Court held that it was discrimination violating the Convention to treat the sexual orientation of a gay father as a negative factor in deciding to transfer custody of his daughter from him to her mother, his heterosexual former wife. The same principle probably applies to gender identity. Thus, no family court in any of the 46 member states of the Council of Europe should treat the sexual orientation or gender identity of a parent as a relevant factor in making a decision about visits to, or custody of, the parent's genetically-related child. In *Fretté v. France* (2002), the Court was asked to extend the principle of *Mouta* to access to individual adoption. By 4 votes to 3, the Court declined to do so, but did not clearly answer the main question: was it discrimination violating the Convention to exclude an openly gay man from individual adoption because of his sexual orientation? The judges from Austria,

Belgium and the United Kingdom said "Yes", providing the 3 dissenting votes and writing a strong dissenting opinion in which they found no justification for the difference in treatment. The judge from Lithuania said "No", finding that the difference in treatment could be justified. The judges from Albania, the Czech Republic and France effectively said "Abstain": they declined to answer the question because they concluded that, for technical reasons rejected by the other 4 judges, Article 14 (non-discrimination) could not be invoked in this case. However, their abstentions had the same effect as the "No" vote of the judge from Lithuania, because they were not willing to find a violation of the Convention.

In *E.B. v. France* (pending application no. 43546/02), brought by an openly lesbian woman who was also excluded from individual adoption, the Court has been asked<sup>2</sup> to follow the strong dissenting opinion in *Fretté* and make it clear that the Convention does not permit the exclusion of LGBT individuals from any opportunity, whether it be employment in the armed forces as in *Smith & Grady v. UK* (1999), or any parenting opportunity that is open to unmarried heterosexual individuals without partners. In some countries, such as the UK, a ruling in favour of Ms. E.B. would apply to access to both individual adoption and donor insemination.

A ruling in favour of Ms. E.B. would not apply to parenting opportunities that are by their nature limited to couples, or that are by law limited to different-sex couples or married different-sex couples. In many countries, these opportunities include access to second-parent or joint adoption, and to donor insemination. In countries where surrogacy is permitted, the legislation will often apply only to married different-sex couples, as in the UK. The European Court of Human Rights has yet to consider a case involving the right of a legally and factually same-sex couple to equal access to a parenting opportunity. In *X, Y and Z v. UK* (1997), which involved a

legally same-sex but factually different-sex couple, the Court rejected a claim by a (legally female) transsexual man that the Convention required that he be recognised as the legal father of the children born through donor insemination to his non-transsexual female partner. However, *X, Y and Z* has been superseded by *Christine Goodwin v. UK* (2002), in which the Court held that the Convention guarantees the right of a transsexual person to have the legal sex on their birth certificate changed to reflect their gender reassignment, and to contract a different-sex civil marriage based on their new legal sex. Although the Court left it initially to national governments (subject to review by the Court) to decide in which other specific situations the new legal sex would be recognised, the UK's Gender Recognition Act 2004 makes no exception for donor insemination. This means that a transsexual man, whose gender reassignment has been legally recognised under the Act, may benefit from the presumption of parenthood: he will automatically be the legal father if his non-transsexual female partner undergoes donor insemination.

A claim by an unmarried female-female couple, to joint parental authority over a child born through donor insemination, was rejected by the former European Commission of Human Rights in *Kerkhoven v. Netherlands* (1992),<sup>3</sup> even though an unmarried different-sex couple in the same situation would be granted joint parental authority. However, *Kerkhoven* was decided at a time when the Commission was rejecting claims by unmarried same-sex couples to equal treatment with unmarried different-sex couples. The Commission's case law on these claims was implicitly overruled by the Court in *Kamer v. Austria* (2003). The Court held that, in relation to succession to the tenancy of a house or apartment, it is discrimination violating the Convention to grant rights to tenants' surviving unmarried different-sex partners, but not to their surviving unmarried same-sex partners. It can be argued that the Court's reasoning in *Kamer* should also apply to cases in which a parenting opportunity (second-parent or joint adoption, donor insemination or surrogacy) is made available to

unmarried different-sex couples but not to unmarried same-sex couples. This is the case for joint adoption in Portugal and donor insemination in France. The Court's reasoning in *Kamer* does not necessarily apply to parenting opportunities that are limited to married different-sex couples.

## Which countries have provided equal access voluntarily?

For the moment, until the European Court of Human Rights extends its case law, it is for each individual Council of Europe member state to decide whether or not to grant same-sex couples equal access to second-parent or joint adoption, or to donor insemination or surrogacy. Which countries have granted equal access voluntarily? Complete information is available for second-parent and joint adoption. Of the 46 Council of Europe member states, 9 now grant same-sex couples equal access to second-parent adoption: Belgium, Denmark, Germany, Iceland, the Netherlands, Norway, Spain, Sweden, and the UK (in England and Wales, with a similar reform proposed in Scotland). Of these member states, 5 grant equal access to joint adoption: Belgium, the Netherlands, Spain, Sweden and the UK. The only member state to make an exception for intercountry joint adoption, the Netherlands, has announced that it plans to repeal the exception.

In the case of donor insemination and surrogacy, the author has not been able to conduct or find a proper survey of the legislation in the 46 Council of Europe member states, but can cite a few examples. Donor insemination is available to lesbian or bisexual women, with female partners or (in some cases) with no partner, with the assistance of a doctor or a midwife, in Belgium, Denmark, Finland, the Netherlands, Spain, Sweden and the UK. And in the UK, the legislation on surrogacy (s. 30 of

the Human Fertilisation and Embryology Act 1990) might be amended to include same-sex couples who have registered as "civil partners" under the Civil Partnership Act 2004.

## When will equal access be achieved across the whole of Europe?

Like other aspects of LGBT equality in Europe (eg, in the criminal law or in relation to employment), achieving equal access to parenting will be a long, gradual process. Initially, most of the work must be done at the national level, by challenging discriminatory laws in national legislatures or courts. Once equal access to a specific parenting opportunity has been achieved in a significant number of countries, a trend (an emerging "European consensus") is established, which can provide a basis for action at the European level requiring other countries to change their laws. In the case of parenting (as in the case of the criminal law and unlike in the case of employment), there is little scope for intervention by the European Union, which has limited competence in this area. Instead, it is the European Court of Human Rights that can provide assistance, if suitable cases are presented to it by LGBT individuals or same-sex couples (who have exhausted remedies in their national courts), and if the level of "European consensus" is sufficient to support a finding that denial of equal access to a specific parenting opportunity constitutes discrimination violating the Convention. LGBT individuals and same-sex couples must be patient, but the trend toward granting them equal access to parenting across the whole of Europe has begun.

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<sup>1</sup> All judgments of the Court are available in English and French at <http://www.echr.coe.int> (HUDOC). Insert the family name of the individual bringing the case (the applicant) after "Case Title" or "Intitulé de l'affaire".

<sup>2</sup> On 3 June 2005, FIDH (*Fédération Internationale des ligues des Droits de l'Homme*), ILGA-Europe, BAAF (British Agencies for Adoption and Fostering), and APGL (*Association des Parents et futurs parents Gays et Lesbiens*) submitted Written Comments to the Court in this case.

<sup>3</sup> See <http://www.echr.coe.int> (HUDOC) (tick "Decisions" on the left).



Photo by Perrilla Kliff



Luciano with his foster parents, Janfrans &amp; Pascal

# Issues of parenthood

**While more people are getting more comfortable with LGBT people's visibility and even with legal recognition of same-sex unions, the issue of LGBT people being a parent still causes a lot of controversy. There is a whole catalogue of myths and stereotypes surrounding rainbow parenting. But do they have any scientific background and are we indeed such 'dangerous' and 'harmful' parents? The research shows a completely different picture.**

Gay fathers and lesbian mothers have unique challenges to meet. Though in many societies there is still much incongruity between the two identities – being gay (especially for men) and being a parent, there is a large body of research about gays and lesbians as parents. As serious and systematic research on children of gay and lesbian parents only started in the 1980s, most of available studies are very recent and the overall research is very scarce. Though it is clear now that the research does not support common negative stereotypes widespread in our societies.

We all know that gays and lesbians are especially discriminated against in the field of parenting, and many professionals – judges, medical doctors, childcare specialists – still feel very suspicious about gays and lesbian as parents, and this suspicion has a profound impact on people's lives – because of this they are denied custody and adoption rights and politicians speculate that supporting gay and lesbian rights can threaten children (E.G. Lewin, E., 1984). Moreover, gay and lesbian parents, like any parents, sometimes have problems with their kids, and in these cases – under the influence of stereotypes – professionals tend to relate problems to the parents' sexual orientation. But are they really related to it? NO.

So it is very important for us and others to know what the studies show.

Firstly, common stereotypes address people's fear that children in gay families suffer sexual abuse. Research shows that almost all the cases of child abuse are done by males, female adult abusers are so rare that these cases are almost non-existent. And most of the abused children are females, not males. Furthermore, most of the abusers have not developed mature sexual orientation, and most of those who have developed a mature sexual orientation are reported to be heterosexual. However, the research data does not stop society granting parenting rights to heterosexual males!

Secondly, common stereotypes view gays and lesbians as people, who round the clock are interested in sex and only sex, not in parenting, and gay and lesbian parents can exist only in the societies where adoption is allowed. However, research shows that gays and lesbian parents exist in every society, and there is great diversity in the gay and lesbian communities. Some gays and lesbians have children from their previous heterosexual relationships. Some gays and lesbians decide that they want to become parents after they accept their sexual orientation. Some become step-parents to their partner's children. Some gay and lesbian parents live with their partners, though some are one-parent families. There is still very scarce research in this field of diversity. Research in parenting

behaviours of homosexual and heterosexual fathers and mothers shows that there is no difference in the degree of involvement and level of intimacy with children, responsibility and care (e.g. Bigner, J.J. & Jacobsen, R.B., 1989). Some studies even show that gay fathers and lesbian mothers take more care in socialising with children and are more responsible than their heterosexual counterparts, and exhibit more parenting awareness skills (Flaks et al., 1995), which may be the result of the perceived societal pressure on homosexual people to be a "perfect" parent. Add to this, the fact that there are no unexpected and unwanted children in gay and lesbian families- research shows, that lesbian parents especially, differ from heterosexual parents in that their desire to have a child is much stronger.

Another common concern is about children's sexual orientation – this argument is most often used in the debates on adoption rights. Society tends to think that the children of gays and lesbians will surely become gays and lesbians themselves, as they believe that homosexuality is the result of dysfunctional or at least non-traditional family relationships (as if all the existing gays and lesbians were coming from very non-traditional families living somewhere on the Moon!). However, the research does not support this stereotype. Findings show that only less than 10% of children of gay and lesbian parents are gays or lesbians (e.g. the famous study by Bailey et al., 1995) These findings support the theory that sexual orientation is neither the product of choice nor the result of the parents' role modelling.

What about gender role behaviour? Many people believe that there is no possibility for children of gays and lesbians to develop 'appropriate' gender role behaviour. Since there is no research yet about children of gay fathers, research among children of lesbian mothers shows that those children's behaviour, like gender role behaviour of children of heterosexual mothers, falls within normal limits. There is no evidence of gender identity difficulties among children of lesbian mothers in any of the studies (e.g. Golombok et al., 1983).

Research has generally focused on the parenting style and developmental status of children of lesbian mothers. However, few studies address the impact of having a child on a lesbian couple's relationship (e.g. Stiglitz, 1990). So there is a need for larger samples and deeper research in this field. Though many studies show that lesbian mothers experience greater lack of social and family support (e.g. Kirkpatrick, 1987), they also show that, with regard to the children's development, there is no evidence to support the assumption that children are in any way negatively affected by their mother's sexual orientation, however, there are effects on children with either lesbian or heterosexual mothers from the experience of divorce.

So, while gay and lesbian parents face the same challenges of parenthood as their heterosexual counterparts, there are still unique challenges to meet, which make parenting even more complicated. First, this is the disapproval of society and stigma, which is put on same-sex relationship. Since in many societies gay and lesbian relationships are not institutionalised, many family therapists, doctors, social workers and other professionals, as well as friends and relatives, tend not to see their family as a family unit, and therefore they often lack the atmosphere of approval and support every family needs. Gay and lesbian parents often live in constant fear that they will lose their parental rights. And the pressure and stress associated with being a gay or lesbian parent in an unsupporting and homophobic society usually puts another heavy burden on the relationship with the partner.

Another important issue is the degree of secrecy about one's sexual orientation and the related fear of discovery, that can make the life of gay and lesbian parents and life of their children very hard. For couples in the closet, the need for secrecy creates self-imposed isolation, which becomes a very serious cause of relationship difficulties and is very hard for children (Baptiste, 1988).

Finally, it is important to mention that in psychology, like in other sciences, the statement that homosexuality is a mental illness and a form of pathology for a long time preceded the question of whether it is or not. This is why it is so very necessary to understand that biases and prejudice are the problem that preceded scientific interest to homosexuality and the life of same-sex couples, and therefore we need more scientific data, based on objective scientific methodology, to question the prejudice-based assumptions, in order to get to know the truth.

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Photos by Pernilla Klüft

**Children need to be proud of their family. For them to be proud of their family and their parents, the parents have to be proud of themselves, says Annika Hamrud, author of "Queerkids – och deras föräldrar" (in Swedish on Normal förlag 2005).**

# Best interest of the child

The UN convention of the child states clearly that children should not be discriminated against due to their roots or family. The convention also states that children have the right to parents and that parents have many obligations towards the child. Children also have the right to both of their parents, but the convention doesn't specify parents as two people of the opposite sex, nor does a parent have to be biologically linked to the child.

Children should have the right to their carers and to the people that they have formed a parental bond with. But not only that. They should also have the right to be open and proud of their parents. These are simple and clear principles but often other values take precedence. "Family values" is a term that we have heard a lot during recent years in European debate. "Family values" often implies that there is a certain kind of family that is desirable. "The best interest of the child" then means to live in a family that meets these "family values". In these discussions, few people seem to think about real children, but about what a family "should be in a perfect world". And these so-called "family values" do not always include loving the parent that is there and takes care of you.

In Sweden, family values are not often referred to, mainly due to the fact that there is no catholic population and the Christian democrats are few. But there are other ways to use the term "the child's best interest" that

excludes many children. For example, one statute in The UN convention that is very often quoted is the one about a child's right to knowledge about its heritage.

In this case the statute is being used to support legislation that makes anonymous donors used in donor insemination illegal. Swedish organisations for children's rights claim that all countries that allow sperm banks to offer anonymous sperm is in breach of the UN convention. And by saying this they put blame on same sex couples that have had children via anonymous donor insemination. When they read the UN declaration they ignore all other important things in the statute and say that these parents do not have their children's best interest in mind. And they tell the children that their parents are not good for them.

In my book "Queerkids – och deras föräldrar" (Queerkids – and their parents) I have followed the debate in Sweden on gay rights and fertility rights. I show that Sweden is a country with an ideology that puts biological links very high even though it wants to be non-discriminating in many ways. From my own experience of giving birth to a child in the US and going through adoption procedures in both Sweden and the US I realised how much more biology is important in Sweden than in America.

The different countries in Europe have rather different ideas about family, who is included in "a family" and what is best for the child. Some countries put biological links and the idea of the nuclear family above everything else. Some others will have a more pragmatic view of the child's best interest and will therefore acknowledge emotional and financial links between a grown-up and a child without any biological links. Some countries have a broader view of family than just the nuclear family. There is also a wide discrepancy between the countries of how fathers are being seen. In some countries single mothers are being shunned while in others the number of single women is high

I do not have insight of all the European countries, but in many ways I think that the country that resembles the US the most in Europe is Great Britain, culturally and in some ways also legally, though maybe not socially. The main similarities between the UK and the US are that there are a rather large number of children put up for adoption via the social services and that in both countries there is a shortage of foster and adoptive parents. In both countries gays and lesbians are being seen as a resource in this sense and in some regions social services will actively recruit among gays and lesbians. These countries also have similar legal systems so that the best interest of the child can be tried in court. In England a step-parent of any sex can get a residence order that will strengthen the bond between the grown-up and the child without going all the way to adoption. Such a thing would never be possible in a country like Sweden. The biological parent in Sweden has all the rights and whether or not the child has formed strong links with someone else is not something that can be brought up in court or elsewhere. The interesting thing is that "family values" are often talked about in the US and the UK. Still, some other cultural norms create a welcoming environment for children of LGBT-parents in these countries.

Often discussions on LGBT-rights, family and children, focus on marriage and adoption. Although those issues are important, a marriage or an adoption law does not automatically create the best environment for all children of LGBT-parents. Therefore it is not correct to draw the conclusion that children of LGBT-parents always live a better life because

the government in the country the family lives allows same sex couples to adopt. I am in no way saying that it is not a huge step forward that it is now possible in Sweden for gays and lesbians to adopt but one should bear in mind that the reasons for introducing a law can vary – and we have yet to see the first same sex couple to adopt in Sweden.

The new law has, never the less, had an effect. The general attitude towards children of LGBT-parents has become more positive in Sweden. Also, the situation for children that are born after donor insemination abroad has improved since their second mother now can adopt them.

Maybe it could be argued that the country in Europe that offers the best security legally for children right now is Great Britain. From the outside it appears so, even if it is not possible for an outsider to know how prejudice affects children in their daily life.

In the UK same sex-couples can enter a registered partnership and adoption is not only legal but also accessible for LGBT-people. Insemination for lesbians and single women is accessible. And as I wrote before, a non-biological parent that has not adopted the child can get a residence order that gives the child and the grown-up rights. That is more than you can find anywhere else regarding rights for children of LGBT-parents in Europe.

What does the child's best interest really mean though? I sometimes feel as if people who do not have ALL children's best interest in mind have corrupted the phrase. A child's best interest can never be a theoretical discussion about an ideal family but has to focus on real children, no matter how they have come into the world and under what circumstances. Laws will never be in the child's best interest if they are not implemented in the same spirit. All children need stability and love. They also need to be accepted in their environment. They need approval from their teachers and friends. Therefore the struggle for acceptance of LGBT-people in society has a direct impact on children's well being. And therefore it is very important that schools do not get away from teaching about different flavours of discrimination.

We should never accept that schools pick and choose when they talk about tolerance. They cannot discuss racism and choose to ignore homophobia. Children of LGBT-parents that attend the school should be treated with the same respect as kids from any other family.

Children need to know that their family is all right. They need to have peers and teachers acknowledge them and their family just as they are. Children should not have to live with secrets, particularly not big secrets like not telling anyone who their parents are. Children need pride. They need to feel proud of their family and their roots, and children that can tell their friends that they have been to a Pride-event are proud children. Children of LGBT-parents should not have to be in the closet, because that is definitely not in the child's best interest.

Therefore the struggle for acceptance for LGBT-peoples rights in Europe, and elsewhere, is in the child's best interest. Parents that are safe and proud are good parents. And in a child's best interest lies to have parents that do not have to hide who they are and are not discriminated against.

# Experiences of children with gay parents

There is a growing number of LGBT people and same-sex couples bringing up children, but we still do not hear often their voices. This is a personal and touching testimony by one of such children.

I "came out" at twenty years old, as the heterosexual daughter of a gay mother, when I wrote an article for the university newspaper speaking out against homophobia. My "coming out", and that of my entire family, has, in fact, been quite a long, arduous and finally liberating process. What I discovered as an adult, thanks to the work and publications of a San Francisco-based organisation called COLAGE (Children of Lesbians and Gays Everywhere), is that there are commonalities in the experiences of children of LGBT families. By raising awareness of our experiences it can be possible to increase the self-determination of our families and decrease the potential victimisation that occurs as a result of homophobia and institutional discrimination.

## Love makes a family

The most common opinion I have heard about homosexuality over the years is: "I don't care what they do behind closed doors, as long as they keep it to themselves and... don't have children." So does that mean I am a mistake? That my mother is a bad mother? These were just two of the messages I received growing up in the 70s and 80s in New York. My child mind and heart struggled silently against them, knowing deep inside that my mother loved me, as did her female partner, and my father and stepmother, and eventually my stepmother's female partner following the death of my father, and all the other biological and non-biological family around us.

I am personally passionate about the rights of LGBT families, and "non traditional" families generally speaking, convinced that a happy loving home is the best environment to raise children. At the same time, supporting children through family change, such as divorces and deaths, is a need that applies to all kinds of families

With the political discourse on adoption rights, many in the general

public do not realise that currently the majority of children of LGBT families are coming from recomposed family situations, such as divorced biological parents. That means that we, children of LGBT parents, exist regardless of the legislation.

## Sexuality is fluid

In my family, identity definitions such as heterosexual or gay, are based more on partner choices and political/social context than sexuality, believing that few people can fit their actual sexuality into a simply defined box.

Usually the public discourse on homophobia tends to focus on the SEX in sexuality, for me as an adult child of an LGBT family, homophobia is an assault on the human need to express love and intimacy.

## There is nothing to prove

I felt extraordinary pressure growing up to prove that gay parents don't have gay children. Only after my "coming out" did I effectively battle the internalised homophobia and properly explore and discover my own sexuality free from social oppression. Just as with heterosexual parents, LGBT parents have children of various persuasions.

The need to prove that we are "normal" can be expressed in different ways as LGBT families are living under intense scrutiny. I heard through the grapevine of my extended family once, that they were relieved that I turned out as "normal" as I did. The implication that homosexuality, and LGBT families are "abnormal" must be transformed into a new, open understanding of sexuality, partnership and family.

## Illusions are self-defeating

Especially with recomposed family situations, it can be easy to live the illusion of a traditional family. This is also true in societies where



Photo by Arnis Balcus

homosexuality is still practically unimaginable, and gay and lesbian couples can easily pass as “friends.” Whereas everybody should be free to choose the comfortable balance between private and public life, this issue is exacerbated in environments that are discriminatory and risky to LGBT families.

During the period of my adolescence when I lived with my father, stepmother and siblings, it was easy to live the illusion of a “traditional” family. Even my best friends at that age had no idea that my mother was a lesbian. While this illusion protected me from ostracism at school, by the time I was in my twenties I could no longer live the lie. I was tired of the oppressive squeezing in my gut every time I had introduced my mother’s partner as her “friend.” Each little lie was a betrayal to my family, to the love I felt for my mother’s partner, to the sanctity of their committed relationship. Each little lie implied

that we were ashamed of who we were as a family.

### Silence is oppressive

When silence was first imposed upon me at seven years old, I fought back, only to be brutally shut up afterwards for what seemed like an eternity throughout the remainder of my childhood and adolescence. My mother’s sexuality was treated within the extended family as the “dirty secret” that everybody knows about.

Already a young adult, I had the chance to watch a video documentary entitled “Both My Moms’ Names are Judy” in which children aged six to twelve shared their experiences and feelings living with gay and lesbian parents. The tears that consumed me at that moment came from a very deep wound, one that could only be healed by breaking the silence, refusing to lie. I gained hope to know that there are now children who can speak freely and proudly of their families. I am glad to know that for my significantly younger sister and brother, their experience was less oppressive than my own.

As an adult child of an LGBT family, I must insist strongly on the importance of honesty and openness with those who are close to the family unit such as extended family and friends. Untold truths lead to feelings of shame, guilt and a lack of authenticity in relationships. I am convinced that if we act as though there is nothing to feel ashamed about, more people around us will accept that there is nothing to be ashamed about.

### Honour family defining moments

At my stepmother’s commitment ceremony with her partner, my siblings and I were optimistic about the future of our family after several years suffering from the death of our father. That same evening I returned

joyous to my paternal grandmother’s house where I was living at the time only to end up feeling deeply disturbed and sorrowful. I had been asked by my stepmother not to reveal yet to my father’s family that she was now a lesbian, and in a new commitment. I was disturbed that I was asked to hide from one part of my family the good news from another part of my family. Once again, something beautiful was being treated as a shameful secret.

This was a family defining moment that was not honoured.

Eight years later at the wedding of a cousin (on my father’s side), there was a stirring of anger and latent homophobia at the “nerve” of my stepmother bringing her partner to the wedding. Some felt that she was betraying my father by being a lesbian. I finally had the opportunity to have some tough, honest conversations with relatives about my experience of the oppressive silence, about my beliefs about the concept of family and sexuality. At the wedding, we found ourselves at a table apart from the others: my stepmother and her partner, my brother, sister, future husband and me. We all took turns dancing together and dancing with others. I was proud of ourselves for our collective “coming out” as a family, within the family. It was liberating for everybody.

This was a family defining moment that was honoured.

**LGBT families are not the problem. Society’s reaction to them is. We can choose how we take care of our families in the face of external social forces, and how we act to transform the world around us.**

Our experiences help to shape our life choices. As a teenager I found myself with a strong sense of justice and by the time I was twenty I was a passionate anti-racism activist. My understanding of oppression and my choice to work as a trainer in the field of diversity and anti-discrimination, has been driven by my experiences as child in an LGBT family. As I am an “actor” for social transformation, I am no longer a “victim” of social oppression. Each person has to find their unique talents and contribution in the world.

As parents, we must be responsible for the kind of education that our children receive, both in and out of school. We can lobby for an inclusive curriculum in schools that promotes diversity of all kinds, including families, lifestyles, gender and sexuality. We can provide alternative experiences for our children outside school, and expose them to a wide range of role models, so that they can learn that there are options as they discover their own identity.

### We are not alone

Isolation is one of the most commonly reported experiences of children of LGBT families. While I have always been close to gay and lesbian individuals and couples, I still have not, in fact, met another LGBT child of my generation face-to-face (apart from my younger siblings). Growing up, this contributed enormously to the feeling of being “abnormal” and “ashamed.”

When I first read the materials of COLAGE, especially the vision statement, I wept tears of relief and joy to know, finally, that I was not alone. Here I found a whole association of people who came to the same conclusion as I did, based upon our unique family experience.

# Family planning and every day life challenges



For a long time parenthood and homosexuality seemed to be incompatible even for homosexuals themselves. Nevertheless LGBT families or so called „rainbow families“ (lesbian mothers, gay fathers and their children) are not isolated cases. In Germany at least, thousands of children grow up in rainbow families. These children were mostly conceived in former heterosexual relationships. More and more lesbians and gays choose to become parents after they “came out”.



Still LGBT families are not taken into account by commonly shared family images -neither in science nor in society. Additionally these families are neither legally nor socially fully accepted. In Germany every day life, as well as family planning, raise more difficulties for lesbians and gays than for heterosexual women and men or for homosexual couples in other European countries, e.g. Scandinavia or the Netherlands.

## The project “Regenbogenfamilien” in Germany

For this reason the LSVD – Lesbian and Gay Federation in Germany – has been supporting and lobbying for LGBT families for many years. Since 2002 we have conducted a project named “Regenbogenfamilien” (rainbow families).

The aim of the project – initially promoted by the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth – is to

enhance the personal, social and legal status of LGBT families in Germany via counselling and networking. For example we initiated and maintain a network called ILSE (initiative of lesbian and gay parents), organising local family-groups. Furthermore we installed the so-called “Kid-sChat”, where children of LGBT parents can exchange experiences and views via the internet. In addition we aim to raise awareness for adequate treatment of LGBT families in society and politics.

The range of our services includes a consultant hotline, online and personal counselling for LGBT families and specialists, publications and press relations as well as lectures and conferences. Our activities focus on family planning as well as difficulties of everyday life in LGBT families.

## Gay and lesbian family planning

40% of the counselling issues deal with family planning. That doesn't come as a surprise, as according to a survey 50% of the younger lesbian

and 30% of the gay men envision a life with children. How do lesbian women and gay men become parents after coming-out? Some lesbian women and gay men offer foster and adoptive children a new home. Other lesbians become mothers by donor insemination.

One way or the other, future LGBT parents will face a lot of constraints and challenges, arising from legal discrimination, societal resentment or a lack of information.

## Donor insemination – The new way to lesbian or “Queerfamilies”?

An increasing number of lesbians opt for donor insemination. These children are usually born and raised in an established same sex relationship. A lot of choices have to be made: Do the future mothers prefer a known – may be a gay – sperm donor, someone who wishes to take part in parenthood or someone who just wants to donate his sperm? Maybe they decide on a family of two lesbian mothers and one or two gay fathers, a so called “Queerfamily”? Or do they prefer a domestic or foreign fertility centre? That way the procedure is “medically safe” and there is a guarantee, that there will be no interference of a third parental party in the future. Would they rather have an anonymous donor or an identity-release “yes” donor, so that the child can receive information on the sperm donor?

There is no universal ideal way of making this decision. It is always a question of the best fit in the individual case. In Germany there is no official regulation for the use of fertility treatment in lesbian families. All legal regulations concerning fertility treatment focus on marriage and not on “registered partnerships”. For example only married women have a “right to fertility treatment”. Furthermore the German Medical Association prohibits medical support concerning donor insemination for lesbian couples relying on the “guidelines for assisted reproduction”. This way for lesbians to have a child depends highly on finding a gynaecologist who dares to commit an act of civil disobedience.

## What about adoption or giving care to foster children?

In Germany lesbians and gay men are entitled to adopt children only on their own, joint adoption is not permitted for registered partners. In the case of a joint adoption, a child will have two parents, who both are *legally* required to take care of it and youth welfare offices usually prefer married couples as adoptive parents. At the same time same-sex couples are increasingly welcome as foster parents. That might be because in the context of fostering LGBT parents are legally treated as a couple or because of the actual lack of foster parents in general.

If LGBT parents want to adopt a child, they usually have to fall back upon a few foreign countries, which allow single parent’s adoption by foreigners and are beyond the suspicion of child trafficking. Additionally it is hard to find an adoption agency cooperating with one of those countries that accepts same-sex couples as adoptive parents.

## Being “different” – An opportunity and a challenge

LGBT families are one unique form of family among others – like one-parent families, patchwork families and stepfamilies. In contrast to them, lesbian mothers and gay fathers to a large extent lack role models. This lack on the other hand encourages lesbian women and gay men to find

individual ways of shaping their partnership and family life. Children of LGBT parents will more often have the chance to be raised beyond traditional gender roles.

On the other hand lesbian mothers, gay fathers and their children often have to face prejudices and stereotypes. Lesbians and gay parents have to find ways to deal with those stereotypes, not only in order to develop a positive homosexual identity, but also to create a special “family-pride”. Children of LGBT parents, who have learned to cope with prejudices, will find it easier to deal with “normal teasing” that can happen just because you are different in some respect. That’s how a challenge can become an opportunity.

Research shows that children who stand by their homosexual family background self-confidently, are teased less than children who have to keep it secret. This seems to be facilitated, when the parents get involved with LGBT organisations like the LSVD in Germany, the APGL in France or – of course – the ILGA.

On top of problems which affect all families, lesbian mothers, gay fathers and their children have to deal with various challenges based on restrictions imposed by heterosexism and discriminatory regulations. Looking for a new flat can be especially difficult if the family consists of two gay fathers and a child for example. Teachers may tend to focus on the parents sexual orientation as an explanation for the child’s drop in school performance rather than on other reasons e.g. puberty or “boring” teachers.

Prejudices held by specialists as well as those existing in society often arise from a lack of information rather than from homophobia. Spreading research based information about LGBT families is an important means to counterbalance the stereotypes about homosexuality and homosexual parenthood and to enhance an appropriate treatment of LGBT families.

## Second class families – Legal does not mean fair

In Germany and many other countries LGBT families are “second class families”. Especially in the context of financial and tax law as well as the right of custody LGBT families are disadvantaged – above all at the expense of the children.

A lot of clients seeking the advice of the LSVD family-hotline are concerned with issues like alimony and inheritance or guardianship, e.g. in case of the death of the legal parent, or the same-sex second parent adoption, which is permitted in Germany since 2005. By the second parent adoption two mothers or two fathers are legally recognised as parents in a rainbow family for the very first time.

To improve the every day life of LGBT families not tolerance but real acceptance is needed and further legal changes are required. That means equal duties and equal rights – and nothing else.

ELKE JANSEN, PhD

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# From biology to commitment

This article presents the position of the Gay & Lesbian Parents and Future Parents' Association (APGL). Although based on a particular national context, it can contribute to the debate on LGBT family at the European and international level. This approach is not specifically limited to LGBT families but reflects the reality of the diversity of family links.



Photo by Pernilla Klüff

"Surely, children's rights face this famous question of the "interest of the child". A question which is magical and diabolical since it raises more questions than gives answers: what is good for the child? Who decides? I wonder if this question of the child's interest is not a false "good question" which often reveals the values, beliefs, and presupposition of those who raise this interest"

"[...] men and women committing to equal and permanent rights and duties in respect of children recognised as theirs. This is in my point of view, the principle of responsibility."

"A normal family life without discrimination must be guaranteed to all through measures taken by the State. Doing this progressively would enable the State to show the richness of additional filiations"

**Francoise Tulkens,**

Judge at the European Human Rights Court,  
exceptional professor at Louvain University, Belgium.

Extracts from the opening speech during the 3rd International  
Conference organised by the APGL.

Published in *Homoparentalities: a scientific and political approach*,  
PUF, 2006

According to APGL, ensuring children's rights should include:

- An easier access for the child -as far as possible- to information about his/her origins.
- A stable family filiation<sup>1</sup> for the child i.e. one that cannot be changed at his/her parents' will.
- A protection of the bounds created between the child and those who bring him/her up.

The International Convention on the Rights of the Child does not restrict

the definition of parents as those who are genetically linked to the child. Therefore, national legislation should distinguish three aspects of family filiation:

- a) biological aspect,
- b) legal aspect (based on responsibility and commitment and not only on the biological truth or the truth such as of a recognized procreative act between the parents
- c) social aspect.

The following proposals recognise the diversity of family forms. This implies looking into the reality of filiation where biological, legal and social bonds are not always grouped together in a single person or in the same people.

These proposals are based on two major principles:

- Rights of children must be equally recognised and protected regardless of children's family environment.
- Recognition of equality between all persons without discrimination on the basis of sexual orientation and gender identity or expression

## 1. Equal protection of all children

An equal protection of all children should start with the recognition that family is based on commitment and responsibility. Children should have access to knowledge of their biological origin whilst having the bonds they form with their parents protected. Finally, it is the interest of the child that all family links are recognised.

### • a definition of the Family based on responsibility

Family links should not only be considered on biological facts alone, but also on the basis of responsibility and commitment. A parent is not necessarily the one who gives life to a child, but is the one who commits to be the parent of a child, for ever, through a voluntary and irrevocable act.

Every child has his/her own biological/genetic background and origins. This is the biological aspect. It must be seen as different from the legal filiation, which has consequences in terms of rights and duties. Thirdly, the social aspect tackles the child's environment and daily life. Most of the time, these three filiation aspects coincide. But not always. In the case of recomposed families, adoptive families, LGBT families and families which accessed artificial reproduction, the different aspects of filiation coexist but can be embodied in different people.

### • access to the knowledge of biological origins

The fact that family filiation is based on a commitment does not imply that the knowledge of biological origins should be denied. A child who wants to know his/her biological origins should be able to access this information. Whether the birth took place through a surrogacy delivery or a sperm donation, the history of biological origins belongs to the child. However, this biological origin should not confer automatic legal and social filiation.

• **protecting bonds created between a child and the social parents.**

In cases of separation, the law ensures that a child living in a heterosexual family context can maintain relationships with both parents. Often this does not apply to LGBT families and creates an inequality between children.

When there is only one filiation, adoption should be open to the social parent. In other situations, a status should be established for social parents (step-parents and co-parents). This status would concern: parental authority, a protection of bonds in case of death and separation, maintenance duties, legacy and inheritance.

In France multi-parental families (more than two parents) are legally possible due to the process of "simple adoption." Adopting parents have exclusive parental authority but the link with the biological parents is not erased. Widening this process by adding the possibility of consensual shared parental authority between the legal parent and the social parent would give a child the chance to a consistent family filiation in line with her/his family environment. This would be a precious help for multi-parental LGBT families (for instance when a gay male couple and a lesbian couple have a child together).

• **the interest of the child is to have committed parents**

Adoption aims at providing a family to a child. Why allow only one parent to adopt when two are committed to this role for life? Opening adoption to same-sex couples is a way to secure the protection of the child's relationships with both parents. This is particularly important in the case of death or separation. Nowadays, adoption by same-sex couples is only possible in few European countries.

## 2. Proposals for non-discrimination and equality between all persons

Individuals should be equal before the law when family conflict occurs, when facing adoption procedures, in access to medically assisted procreation and for all sorts of unions, including marriage.

• **equality before the law when a family conflict occurs**

Often judges and experts keep considering homosexuality as a problem for a child's education. Even if no study has ever proved a prejudice, signs of discrimination can still be found in reports. For example: the gay father can see his child "if he keeps him/her away from his private life" or "if the child is not to meet his/her father's companion". Such prejudices against homosexuality adds to a negative view of the relationship between same-sex persons and creates a discrimination that contributes to difficulties for the child to maintain relationships with the homosexual parent.

• **equality in adoption procedures**

Sexual orientation must not matter when it comes to adoption procedures. The review of the Adoption Convention by the Council of Europe should include same sex couples and single-person regardless of their sexual orientation.

• **access to medically assisted procreation**

This includes two aspects: donor insemination and surrogacy.

*I. widening the access to Assisted Medical procreation (artificial insemination with an unknown donor or artificial insemination with a known donor).*

Giving access to artificial reproduction methods to heterosexual couples and refusing it to same sex partners and to single-persons is a discrimination that allows a category of persons to benefit from these techniques when another cannot. Why should the State interfere in the access to these medical

techniques by allowing the access to some and not to others?

Assisted Medical Procreation should be open to any person of procreation age: to lesbian couples and to single-persons on the basis of a 'parental engagement project'. A consistent parental engagement project – meaning one or more adults committing to the child and society – should be the determining criteria. Parenting should not necessarily mimic the biological reality.

*II. legislation and ethical supervision of surrogacy*

Many countries around the world legally supervise surrogacy to guarantee respect and dignity for each of the protagonists. In some other countries surrogacy is possible due to the lack of specific legislation.

This practice, instead of being totally forbidden, which encourages complex transactions, should be legally supervised in order to avoid excesses and any trade developing. It should give to those who ask for such services legal, medical and psychologically appropriate follow-up.

On the 16th September 2005, the Council of Europe examined a report written by Michael Hancock, Member of Parliament, that asks for a legal framework allowing for surrogacy. He wishes debate to take place in all European countries. He claims that allowing surrogacy is legitimate as long as it respects the surrogate mother, the couple and the child's interests. This report underlines the necessity of establishing measures to protect and assist the biological mother, the development of an adapted social and civil legislation and a debate on the child's right to know his/her biological origins.

Surrogacy should be possible for single people, same-sex couples and heterosexual couples who have a parental engagement project.

The "clinical experience" of Mrs Genevieve Delaisi de Parseval in France and Dr Susan Golombock's studies (from London University) for example, seem to conclude that even if the number of such births is unknown and difficult to know, no particular trouble exists in children born with surrogacy.

• **access to marriage and all forms of unions for same sex couples.**

One argument used by opponents to same-sex marriage is based on the idea that marriage is the legal structure allowing to link the child of a woman to a man by mean of the paternity presumption. Paternity presumption commits a man to be the father of children born in the marriage. Instead of this presumption, the link between parents and child should be the commitment.

Furthermore, the reference to the right of men and women to marry in international standards (e.g. article 12 of the European Convention on Human rights) should not be interpreted as restricting marriage between a man and a woman.

## Conclusion

The non-discrimination principle must be applied with no limitations. Nowadays in Europe, the growing number of LGBT families is a reality, they can not be considered as second class citizens. Their children deserve the same rights and protections as all other children.

Legislation should recognise those who give life but also those who take care of and are committed to the child. Children's welfare and security needs consistency between their environment and their legal filiation. It must be based on an ethic of responsibility and not only on the biological aspect.

Free DVD for each reader inside:

# IGNORANCE DIVERSITY LOVE



A documentary about three strong personalities and a project that is entirely unique. Together with this issue of the ILGA-Europe newsletter you have received a copy of the DVD Ignorance, Diversity and Love. This film is a documentary about the EQUAL- Project Normgiving Diversity, which aims to fight prejudice due to sexual orientation in the workplace. In this heart-warming film, we follow the priest Gunilla Lindén, the officer Krister Fahlstedt and the policewoman Irmeli Krans at work as well as in their everyday lives. Ignorance, Diversity and Love is an eye-opener about tacit codes and how to behave to fit in at work. What happens when you break the norm, and does the norm come with the uniform?

**You can watch it at home or show it for your LGBT- organisations members. If you want to use it at a film festival or for television purposes, please contact Mats Brolin [mats.brolin@eframe.se](mailto:mats.brolin@eframe.se).**

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