

European Court rules in favour of the best interest of the child in same-sex custody case

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The European Court of Human rights has ruled that the refusing a mother custody of her youngest child on the grounds of her sexual orientation to be discriminatory and a violation of her right to private and family life.

In a judgement released today on the case of [X. v Poland](#), the European Court of Human rights found the refusing a mother custody of her youngest child on the grounds of her sexual orientation as discriminatory and a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the applicant.

The case concerned custody arrangements of applicant's youngest child following her divorce. The main consideration of the courts was that the applicant, the mother of the child, was in a relationship with another woman. She alleged that the courts had acted in her former husband's favour because of her same-sex relationship.

The Court found that there was "a difference in treatment between the applicant and any other parent wishing to have full custody of his or her child". Moreover, the Court considered that the discriminatory reference to the importance of a male role model for the boy's upbringing, which was one of the decisive factors in the dismissal of the applicant's requests for custody, had outweighed the other arguments: child's young age, strong bond with the applicant and wellbeing while living with his mother. This reliance on the male role model was discriminatory.

Taking into account that throughout court proceedings, applicant's sexual orientation and relationship with another woman had been repeatedly referred to as a ground for refusal, the Court concluded that, in "refusing to grant the applicant full parental rights and custody rights in respect of [the youngest child], the domestic authorities made a distinction based solely or decisively on considerations regarding her sexual orientation, a distinction which is not acceptable under the Convention."

[ILGA-Europe had intervened in this case](#) jointly with the International Court of Justice (ICJ), the International Federation for Human Rights (FIDH) and Network of European LGBTIQ* Families (NELFA).

According to Arpi Avetisyan, ILGA-Europe's Head of Litigation, "Today's judgment confirms the rights of LGBTI parents to their children on an equal footing as everyone else. The best interests of children to receive parental love and be cared for should prevail in custody considerations, irrespective of parents' sexual orientation."

The applicant was awarded EUR 10,000 in respect of non-pecuniary damage.

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