Council of Europe Recognises Trans Parents

article, youth and families

The Parliamentary Assembly of the Council of Europe adopted on 10 October 2018 a resolution on Rainbow Families. It is for the first time that the Parliamentary Assembly addresses the situation of same-sex partnerships and other Rainbow Families.

The resolution and report from Rapporteur Jonas Gunnarson has also important recommendations strengthening rights of trans parents and trans children. The Parliamentary Assembly calls on States to recognise the gender identity of a transgender parents also in the birth certificate of their children. This is to protect the privacy and safety of parents and children against discrimination or unwanted outings.

The right to respect for private and family life is a fundamental right, enshrined in Article 8 of the European Convention on Human Rights. Everyone has a right to enjoy this right without discrimination on grounds of sexual orientation or gender identity.

Rapporteur Jonas Gunnarson addresses the practical problems transgender parents have in case of denied legal recognition: *„ … Serious issues may also arise for trans parents and their children when the former are registered on their children's documents according to the gender assigned to them at birth. For example, in 1997, the Court recognised the family ties between a trans man and his child born through artificial insemination, but refused to grant the man recognition as the child's father. I wish to stress that States have a responsibility to resolve these issues as well, by providing for trans parents' gender identity to be correctly recorded on their children's birth certificates.*" (Explanatory Report)

Further on he explains why legal recognition matters also for trans Rainbow families as „*freedom of movement is in practice denied to families with a transgender parent whose gender is not legally recognised.*„ (paragraph 8, Explantory Report)

The Parliamentary Assembly calls on member States to:

4.6. … ***provide for transgender parents' gender identity to be correctly recorded on their children's birth certificates, and ensure that persons who use legal gender markers other than male or female are able to have their partnerships and their relationships with their children recognised without discrimination****;*

It is the first time that the Council of Europe Parliamentary Assembly addresses the situation of transgender parents so directly.

In many states in Europe sterilisation is not a pre-condition for legal gender recognition any more. As a result, trans men who have been legally recognised as male can still become pregnant and give birth. Similarly, a trans women with a female gender marker might can become a biological parent after having been recognised as female. Still, most states do not recognise the gender identity of the parent on their child's birth certificate.

> **Testimony of a trans father, Germany**
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> *I'm not traveling abroad with my child, especially not by plane. The reason is that there are currently no identity documents with which I can prove my parenting internationally. I gave birth to my child shortly*

before my legal transition. As a result, I am listed in the birth certificate of my child as a mother and with my old female name. In my own personal documents, I am registered as male and with a new, male first name. Since children in Germany have their own passports for some years and are no longer registered in the passport of the parents, the only proof of parenting (and thus to legitimize the transport of the child abroad) is the birth certificate of the child. Since I am not listed there with my new name and civil status, this opportunity is not open to me. In addition, I would have to bring the administrative court decision on my transsexual-Law procedure to prove that I'm the designated mother in the birth certificate. This is written in German and not an internationally recognized document.

Thus, I'm not flying abroad because I'm very worried that I can no longer prove at the latest on the return flight that I'm the parent of my child. The idea of ??being in the presence of my child in a situation in which it is not clear whether I may travel with them and whether I manage to prove my parenting I find unbearable for me as well as for my child.

Swedish courts decided in 2015 that a trans man who gave birth has to be registered according to his legal gender as "father" with his male name. Two trans men had brought complaints, one had given birth before changing his gender marker to male, the other one had given birth after legal gender recognition. Both claimants won.

Cases: Göteborg Administrative Court, Case no. 6186-14, 5 October 2015; Stockholm Administrative Court Case no. 3201-14, 9 July 2015.

For more information see the „Legal Gender Recognition in Europe" (2016) Toolkit (pages 59-60).

Out of the few states that provide for legal recognition beyond male or female, relevant regulations have not been adapted to provide alternative to the binary gendered terms of "motherhood" or "fatherhood". The Assembly text refers to the gender-neutral "parent that has given birth". (Recommendation 4.5.3, Resolution)

The Assembly calls on Council of Europe member States to ensure that Rainbow Families are not discriminated by law or other provisions. The Assembly calls on Member States to protect both parents and children against discrimination:

4.1. ensure that their constitutional, legislative and regulatory provisions and policies governing the rights of partners, parents and children are applied without discrimination on grounds of sexual orientation or gender identity, eliminating all unjustified differences in treatment based on these grounds;

4.5. protect the rights of parents and children in rainbow families without discrimination based on sexual orientation or gender identity,

Also, in regard to parental rights or adoption no discrimination on grounds of sexual orientation or gender identity should occur. The Assembly calls on Member States:

4.5.1. in line with the case-law of the European Court of Human Rights, ensure that all rights regarding parental authority, adoption by single parents and simple or second-parent adoption are granted without discrimination on the grounds of sexual orientation or gender identity;

Some states exclude trans people from accessing medically assisted procreation. The Parliamentary Assembly calls on Member States:

4.5.4. where single women are granted access to medically assisted procreation, ensure that such access is granted without discrimination on the grounds of sexual orientation or gender identity;

The report also recognises that Rainbow families with trans children have their rights restricted:

> **Testimony of a mother of a trans child, United Kigdom**
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> *Where gender recognition procedures for minors are lacking or excessively complex, rainbow families with transgender children often opt against travelling abroad in order to avoid being exposed to discrimination and degrading treatment. This effectively hinders the freedom of movement of these families.* (paragraph 56, Explanatory Report)
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> *Our daughter had an Irish passport in her dead name and with a gender marker of M. Her dad is Irish, so she is eligible for both Irish and British. And with current Brexit discussions we were keen that she keeps the Irish one.*
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> *She is 13. Therefore the Irish Embassy won't change the name and gender marker on an Irish passport unless the person has a Gender Recognition Certificate. We explained she couldn't apply as she is under 18. So the only way we could get a passport in her new name (changed by deed poll) was to cancel the Irish one and apply for a British one. Which she now has, with her new name and a gender marker of F. She is entitled to both passports, but unable to have an Irish one until she has a Gender Recognition Certificate.*

In regard to legal gender recognition for children, the Parliamentary Assembly has already in its previous Resolution 2048(2015) called on States to „ensure that the best interests of the child are a primary consideration in all decisions concerning children" (paragraph 6.2.5.)

Download the resolution and report