
Gay and Lesbian parenthood

On January 2002, the department of European affairs of the French Senate released a study (20 pages) comparing legislations in some European countries regarding the rights of gay and lesbian parents. This is the translation of this report's synthesis. Thank you to Segolene for the translation¹.

On the second anniversary of the “pact of civil solidarity” (the French legal situation voted in 1999 in favor of straight or same sex couples), the concerns regarding lesbian and gay parenting have re-emerged in France. This gave us an opportunity to examine how some European countries have addressed these concerns and whether they have, as **Germany, Belgium, Denmark, the Netherlands and Portugal** introduced similar judicial measures, resembling the “Pact of Civil Solidarity”, or whether like **England, Wales and Spain**, they have not.

Lesbian and gay parenting brings forth three main issues: parental authority, adoption and access to reproductive technologies. This document analyses the following points for each of these countries :

- the adoption by a homosexual couple;
- the adoption by a homosexual of his or her partner's children;
- the sharing of parental authority in homosexual couples;
- the access to reproductive technologies by lesbian couples.

An examination of the current legislation in these seven countries shows that:

- **the Netherlands is the only country in which a homosexual couple can adopt a child;**
- **only the Danish and Dutch have legislation which explicitly allows the adoption of a child by the homosexual partner of the child's mother or father;**
- **the Netherlands, England and Wales and, to a lesser extent Germany, allow homosexual couples to share parental authority;**
- **Germany and Denmark are the only countries in which the law limits access to reproductive technologies to women in a heterosexual relationship.**

¹ Original full French version (20 pages) available on APGL web site at www.apgl.asso.fr

1) The Netherlands is the only country in which a homosexual couple can adopt a child

On April 1st, 2001 it became legal for same-sex couples to adopt children; however the children must be citizens of the Netherlands.

In all the other countries which were studied, only stable heterosexual couples, married or not, can adopt a child together. While homosexual couples cannot adopt a child together, it is legal for a homosexual person to adopt a child.

2) Only the Danish and Dutch have legislature that explicitly allows the adoption of a child by the homosexual partner of the child's biological mother or father

a) In Denmark and in the Netherlands, a homosexual can adopt his or her partner's child

In Denmark, the 1989 Registered Partnership law was modified in 1999, in particular to allow one of the partners to adopt his or her partner's child, even if the child has been previously adopted, unless the child is adopted from a foreign country.

In the Netherlands, since the law on adoption by same-sex couples passed on April 1st, 2001, a child who is a citizen of the Netherlands can be adopted by his or her father's partner or his or her mother's partner regardless of the sexual orientation of the couple or the legal status of the couple.

b) This is impossible in all the other countries that were studied

In Portugal it is explicitly stated that a homosexual cannot adopt his or her partner's children. This impossibility is implicit in Germany, England and Wales, Belgium and Spain.

The Portuguese laws on common-law relationships limit the rights to adopt the child of one of the partners exclusively to heterosexual couples.

On the other hand, in Germany and Belgium, the laws allowing two homosexual to have their union legalized do not specifically mention adoption. In these two countries, as in England and Wales, as well as in Spain, the general rules on adoption do not prevent homosexuals from adopting their partner's children. However, as adoption usually requires a termination of parental rights of the biological family (Germany, England and Wales, Spain) and the procedure in most cases has few chances of success if the petitioner does not hide his or her sexual orientation, the adoption of the partner's children is in fact impossible.

3) The Netherlands, England and Wales and, to a lesser extent Germany, allow homosexual couples to share parental authority

a) The Netherlands has introduced a new concept

In the Netherlands, since January 1st, 1998, it is possible for one of the parents to share the authority with his or her partner, or with the person with whom he or she has signed a registered partnership, even if the partners are the same sex.

This authority is called "joint" and not "parental". It is currently granted on a case-by-case basis. The tribunal can authorize such requests only if only one of the parents exerts the parental authority and the other petitioner has a personal and strong relationship with the child.

After January 1st, 2002, two lesbians living as a couple will be able to share joint authority automatically. In particular, when one of the women has given birth to the child and when the child would not otherwise have a father.

b) In England and in Wales, homosexuals can use the measures that allow the biological father or a third party to exert parental authority

Any person living under the same roof as a child can obtain a joint residence order. Using this act and the parental authority measures, the judge may allow the mother's or father's homosexual partner to exert parental authority, if the judge is convinced that it's in the child's best interest.

c) In Germany, a parents' homosexual partner can exert a limited form of parental authority

In Germany, since August 1st, 2002, the registered partnership law grants same-sex couples all the same rights and obligations that married couples have with the exception of the right to share full parental authority. However, this law does introduce a limited form of parental authority. The partner who is not the parent can take part in the **decisions concerning the child's every day life** and when there is a need, the partner can take any necessary measures.

d) In the other countries, the sharing of the parental authority with a homosexual partner is not allowed

On the other hand, **in all the other countries that were studied, the parental authority cannot be granted to a homosexual couple.**

This is the case, even in Denmark, where one of the parents can share the parental authority with his or her partner, even if neither of the parents is biologically related to the child. However, this only pertains to heterosexual couples.

4) Germany and Denmark are the only countries in which the law limits access to reproductive technologies to women in a heterosexual relationship.

In Germany the Federal Medical Order does not allow single women or lesbians living as a couple to access reproductive technologies. The Danish law on access to reproductive technologies does not allow it either. However, as the law only refers to doctors, a clinic run by a midwife in Copenhagen has specialized in artificial insemination for women who do not meet these criteria.

In England and Wales, as in Spain, the law does not prevent lesbians from accessing reproductive technologies.

In the Netherlands, Belgium and Portugal the legislation does not explicitly address these issues. It is therefore the specialized clinics themselves who decide who can have access to such technologies. They are more liberal in Belgium and in the Netherlands than in Portugal, where such clinics do not allow lesbians access to reproductive technologies.

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The countries that have introduced a judicial measure similar to the “pact of civil solidarity” do not really address demands related to gay and lesbian parenting. The Netherlands addressed all of these concerns when they offered homosexuals access to marriage.