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Same-sex marriage and adoption: How Inequalities Affect and Hinder the feeling of European Cultural Citizenship?

Paul-Gilbert Colletaz

Abstract

Even if the EU Charter of Fundamental Rights signed in 2007 guaranteed non-discrimination on the basis of sexual orientation, the question of same-sex marriage and adoption is still controversial and the attitude of the European Union remains dubious. Currently, only six EU member states allow gay marriage and adoption by same-sex couples and 11 have special provisions to recognise homosexual relationships legally – civil unions or registered partnerships.

One can therefore wonder: as ‘official’ second-class citizens – since for most of them their unequal status seems not to be dealt with by the national governments – a does the sexual orientation of homosexuals hinder their capacities to see themselves as Europeans? If so, could a more European approach to those issues benefit the EU by integrating more citizens who would feel more European?

To tackle these questions, I shall first study at which level the decisions about same-sex marriage and adoption are taken and the effects of the lack of European common law by analysing practical examples drawn from the lives of ‘European’ couples. Then I shall separate the member states of the EU into two categories – those which provide for marriage, adoption or civil partnerships and those which do not – thus examining the differences and trends within the EU. Finally, I shall analyse the European bottom-up demand for equality, by examining the relationship between transnational European LGBT (Lesbian, Gay, Bisexual and Transgender) associations and the EU and the civil suits brought before the European Court of Justice or the ECHR by European citizens. Despite the lack of the equality which prevents homosexuals from feeling fully integrated, some attempts have been made to use the European institutions to ask for and get legal equality.

Keywords: Homosexuality, marriage, adoption, European Union, Citizenship

Introduction

Even if the EU Charter of Fundamental Rights signed in 2007 guaranteed non-discrimination on the basis of sexual orientation, the question of same-sex marriage and adoption is still controversial and the attitude of the European Union remains dubious. Currently, only six EU member states allow gay marriage, 11 have special provisions – civil unions or registered partnerships – and 6 allow same-sex adoption. I decided to focus on marriage and adoption to narrow my research and have some more practical and precise information than the one I would have had retrieved if I had chosen to work on homophobia as a whole.

Why marriage? Besides being an important ethical commitment, marriage also ensures a series of economic and social rights which are not fully provided for by the majority of civil-partnerships in many European Union member states. In fact, same-sex couples are often denied the right to go visit the people whom they consider as their family at hospital, the right to obtain ‘family’ health coverage, taxation and inheritance rights or protection in case the relationship ends.¹

Why Adoption? After the glorification in the 1950s of the nuclear family comprising a man, a woman and usually two children as proved in the book *The Way We Really Are*², new types of family have emerged, mainly because of the increase in the number of divorces which have created single parent families, as well as new recomposed and extended families. New adoption laws, which have granted both single parents and recomposed families the possibility to adopt, have also transformed European families and society forcing many EU Member states to deal with the dilemma of how to preserve the meta-reference to the family while taking into account the diversity of behaviours.³

However, according to Anne Cadoret, it was only in the past 10 to 15 years that a new actor appeared on the stage: the homosexual family. Nowadays, in some European countries homosexual couples claim their right for the recognition of the parental position for both members of the couple: this means not only the function of parentality, that is the exercise of the functions implied by the position of parents, but also the proclamation of their (legal) positions as parents.⁴ In fact although they refuse to take their sexuality as “the sole basis of desire, of sexuality, of family ... of alliance and of filiation”, they do not deny “the difference of sexes, and do not deny the differentiated existence of the ‘masculine’ and the ‘feminine’ ”.⁵

In his article entitled *Globalization, National Cultures and Cultural Citizenship*,

¹ Freedom to Marry, Inc. and Freedom to Marry Action, “Marriage 101”, <http://www.freedomtomarry.org/pages/marriage-101#faq1>. (accessed March 6, 2012). See the documentary Freeheld directed by Cynthia Wade in 2007 which follows the battle of a terminally ill woman –Laurel Hester– to ensure that her partner will get her pension after her death, even if it takes place in the United-States of America this case of figure is often problematic in the EU as well.

² Stephanie Coontz, *The Way We Really Are : Coming to Terms With America's Changing Families* (New York : Basic Books, 1998). Though this book deals with American families, one must bear in mind that the changes in American families HAVE affected Europe greatly.

³ Ditch, Barnes, Bradshaw, Commaile and Eardley, *A Synthesis of National Family Policies (York: University of York, 1996)*, 15. Work commissioned by the ‘Observatoire européen des Politiques Familiales’.

⁴ Anne Cadoret, *Des parents comme les autres* (Paris: Odile Jacob, 2002), 39. (translation mine).

As explained by Cadoret in her book page 39 ‘parenté’ and parentality are two different terms. The latter refers to the exercise of the functions implied by the position of parents: education, feeding, support...while the former, Although lacking a proper translation in English, can be roughly associated with the idea of ‘relationship’, ‘kinship’.

⁵ Ibid., 48. (translation mine).

Stevenson sees cultural citizenship as a ‘three-layered component’ made up of 1) the emergence of cultural cosmopolitanism, 2) the specific application of rights and duties to both the television and film industries and 3) the importance of the concept of civil society. He argues that, “first, people are increasingly becoming citizens through their ability to be able to purchase goods in a global market; hence citizenship becomes less about formalised rights and duties and more about the consumption of exotic food, Hollywood cinema, Brit pop CDs and Australian wine”.⁶ However, in my view, the three components needed to create a feeling of cultural citizenship do not seem to be enough to make most homosexuals feel part of the European Union. The originality of this paper therefore lies in the fact that it does not propose to study the historical evolution of the rights of the homosexual community but that, from a situation with a very limited time frame – the ‘now’, currently – it draws a link between the legal rights given or refused to the homosexuals and the notion of European cultural citizenship.

One can therefore wonder whether as ‘official’ second-class citizens – since for most of them their unequal status seems not to be dealt with on purpose by national governments – sexual orientation prevents homosexuals from feeling European. If so, could a more European approach to these issues benefit the EU by favouring the integration of a greater number of citizens? In short, how does legal inequality shape the feeling of “being European” amongst the homosexual community?

To tackle these questions, I shall first study at which level the decisions about same-sex marriage and adoption are taken and the effects of the lack of European common law by analysing practical examples drawn from the lives of ‘European’ couples. Then I shall separate the member states of the EU into two categories: those which seem to be going towards more equality and those which do not — thus examining the differences and trends within the EU. Finally, I shall examine the European bottom-up demand for equality, by examining the relationship between transnational European LGBT (Lesbian, Gay, Bisexual and Transgender) lobby groups and the EU. Despite the lack of the equality which prevents homosexuals from feeling fully integrated, some attempts have been made to use the European institutions to ask for and get legal equality.

I. Homosexuality and equality: a European issue?

Firstly, I shall discuss whether and why same-sex marriage should be regulated by a single European law or if national laws should still prevail. After having explained the situation in the European Union, I shall expose the problems resulting from the lack of common European regulation.

1) The Prevalence of National Laws

It is evident that national laws prevail in Europe regarding these issues. The variety of the situation proves this. As I stated before, only 6 EU member states allow same-sex marriage and adoption by homosexual couples. It is important to cite here one of the

⁶ Nick Stevenson, “Globalization, national cultures and cultural citizenship,” *The Sociological Quarterly* 38:1 (1997): 42.

most important principles of the functioning of the European Union: the principle of subsidiarity which regulates the exercise of powers in the EU and was introduced by the Treaty of Maastricht – signed on the 7th February 1992- and further developed in a Protocol on the application of the principle attached to the Treaty of Amsterdam. According to the official website of the European Parliament, the principle of subsidiarity is defined in such terms:

- a. The general aim of the principle of subsidiarity is to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in respect of a central authority. It therefore involves the sharing of powers between several levels of authority, a principle which forms the institutional basis for federal States.
- b. When applied in a Community context, the principle means that the Member States remain responsible for areas which they are capable of managing more effectively themselves, while the Community is given those powers which the Member States cannot discharge satisfactorily.
- c. Under Article 5, second paragraph, ECT there are three preconditions for Community action in accordance with the principle of subsidiarity: the area concerned must not fall within the Community's exclusive competence; the objectives of the proposed action cannot be sufficiently achieved by the Member States; the action can therefore, by reason of its scale or effects, be implemented more successfully by the Community.⁷

In short, the principle of subsidiarity is “intended to determine whether, in an area where there is joint competence, the Union can take action or should leave the matter to the Member States”.⁸ Each law that the EU wants to pass must first be presented in front of many committees to prove that this law would be more efficient at the EU level than at the national – or even local – level. Indeed, for the detractors of an EU-wide recognition of same-sex marriage and adoption, the will on the part of some political groups to enforce a mutual recognition of the official documents issued by national administrations and therefore lead to the recognition of same-sex marriage (and eventually the right of every homosexual European citizen to marry) would “violate severely the principle of subsidiarity” thereby risking to “undermine the sovereignty of the Member States in family law and specifically the definition of marriage in their own country by shifting a definition of marriage from family law – which is an exclusive competence of the Member States – to procedural law”.⁹ Indeed, article 9 of the Charter of Fundamental Rights of the European Union states: “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights”.¹⁰

However, some might also argue that this lack of common European legislation is at odds with the protection of human rights.

2) *Conflicting with the principles of the European Union*

⁷ European Parliament, “Subsidiarity,” *European Parliament Fact Sheets*, http://www.europarl.europa.eu/factsheets/1_2_2_en.htm. (accessed March 6, 2012).

⁸ European Parliament, “Subsidiarity,” *European Industrial Relations Dictionary*, <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/subsidiarity.htm>. (accessed March 6, 2012).

⁹ European Dignity Watch, “EU aims at recognizing same-sex “marriage” in all 27 Member States,” <http://www.europeandignitywatch.org/it/day-to-day/detail/article/eu-aims-at-recognizing-same-sex-marriage-in-all-27-member-states.html> (November 12, 2010, accessed March 6, 2012).

¹⁰ Eur-Lex, Treaties : “Charter of Fundamental Rights of the European Union,” *Access to European Union Law*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:EN:PDF> (accessed March 7, 2012).

Seen from another point of view, the interdiction for same-sex couples to marry and adopt can be interpreted as a non-respect of human rights since it obviously proves that the same rights are not shared by all the citizens. Indeed, since the ratification of the Treaty of Amsterdam in 1997, the European Union is equipped to take measures against discrimination. More than that: “EU law guarantees equal treatment for all people regardless of their sexual orientation in the context of employment and vocational training.” The treaties of the EU, the EU Charter of Fundamental Rights and the Employment Equality Directive adopted in 2000 guarantee the right to equality and non-discrimination for all LGBT people; in fact they require the EU to be proactive in fighting such discrimination”.¹¹ Indeed, the first point of Article 19 of the *Treaty on the Functioning of the European Union* – ex article 13 TEC – reads: “Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.¹² The first paragraph of article 21 on Non-discrimination of the Charter on Fundamental Rights of the European Union also asserts: “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”¹³

Since preventing discriminations including those based on sexual orientation is written in a Treaty, the European Union is entitled to take actions to reach its goals according to the principle of proportionality laid down in article 5 of the Treaty on the European Union. The principle of proportionality “regulates the exercise of powers by the European Union. It seeks to set actions taken by the institutions of the Union within specified bounds. Under this rule, the involvement of the institutions must be limited to what is necessary to achieve the objectives of the Treaties. In other words, the content and form of the action must be in keeping with the aim pursued”.¹⁴

The European Union seems to have made equality and the removal of discriminations two of its main goals. However, if we take into account what was stated above, those aims seem to be very general and their application still remains very vague.¹⁵

3) *The consequences of this dubious situation*

When the EU’s will to eliminate discriminations based on sexual orientation is not followed by practical actions, European homosexual couples face major problems

¹¹ European Union Agency for Fundamental Rights, “Lesbian, gay, bisexual and transgender rights,” http://fra.europa.eu/fraWebsite/lgbt-rights/lgbt-rights_en.htm (accessed March 10, 2012).

¹² Nigel Foster, *EU Treaties & Legislation 2010-2011* (Oxford, OUP Oxford, 2010). Article 19 of the Treaty on the Functioning of the European Union.

¹³ “*Charter of Fundamental Rights of the European Union*”, Official Journal of the European Communities, http://www.europarl.europa.eu/charter/pdf/text_en.pdf (published on December 18, 2000, accessed March 10, 2012).

¹⁴ Official Website of the European Union, “Proportionality principle”, *Glossary*, http://europa.eu/legislation_summaries/glossary/proportionality_en.htm (accessed March 12, 2012).

¹⁵ However, on the 13th of March 2012, the European Parliament committed itself to LGBT issues after a report on equality between men and women in the EU inciting the Commission and the Member States to elaborate some propositions taking into account the mutual recognition of civil-partnerships and homoparental families throughout Europe.

which prevent them from seeing themselves as ‘European citizens’. As stated above, the laws regarding the LGBT community (Lesbian, gay, Bisexual and Transgender) – often referred to as ‘sexual minorities’ – are considered areas which the Member States “are capable of managing more effectively themselves”. Yet for many couples, the lack of common regulation hinders their lives and leads them to take embarrassing and sometimes hurtful decisions. It can therefore be argued that a decision at EU level would be the most suitable action to prevent discrimination towards same-sex couples regarding the right to marry and adopt. The official website of the European Parliament gives a theoretical example of one of the problems same-sex couples might face because of the lack of common and equal regulation: “Emma, a Belgian national, married Carine, a French national, in Belgium. When Emma had to move to Germany for work, Carine followed her – but they were not regarded as married by the authorities, since same-sex marriage is illegal in Germany”.¹⁶ Indeed, these problems are emphasised when the homosexual couple is also a bicultural couple but apply also to couples whose members come from the same country when they go to another country. In a conference organised by the association “L’autre cercle”, which took place in Strasbourg in November 2011 at the European Court of Human Rights, the issue was clear:

Married heterosexual couples constantly cross national borders within the EU without even a second thought. They are secure in the knowledge that their unions and the legal consequences of these unions are universally recognized. However, such is not the case for same-sex couples. Their right to freedom of movement is constantly ignored. Simply by crossing a national border, such couples may lose all their social and fiscal rights, their children may become orphans, they may even be prevented from obtaining official recognition of their couples or may lose their nationalities of birth.¹⁷

This conference, besides exposing some horrible cases – a Frenchman losing his nationality after marrying a Dutchman in the Netherlands for instance¹⁸ – also showed how these people often felt abandoned by the EU.

Within the European Union, homosexual couples can marry or adopt in only 6 countries and 11 have some legal device that can be gathered under the term ‘civil partnership’. Knowing that so many different situations co-exist difficultly in Europe, it is clear that national laws prevail. However, this lack of European common regulation leads to awkward situations, leaving some homosexual couples in very difficult positions. Moreover, the European Union seems to play a double-game and even if it often asks for equality, it also often affirms inequality via legal means through the absence of case law – most of the cases brought in front of the European Court of Justice and of the European Court of Human Rights are rejected if they are not related to the rights of the child or children – such as this decision taken by the European Court of Justice proved on the 15th of March 2012 advocating that in France there was ‘no discrimination regarding the right to marriage’ and that denying

¹⁶ Official website of the European, “Marriage,” *Family*, http://europa.eu/youreurope/citizens/family/couple/marriage/index_en.htm (Union last updated in December 2011, accessed March 12, 2012).

¹⁷ “Mutual Recognition of Registered Partnerships and Same-Sex Marriages Within the territory of The European Union: A Restriction on the Freedom of Movement of EU Citizens?”, L’Autre Cercle, http://lsvd.de/fileadmin/pics/Dokumente/Termine/International_Conference_in_Strasbourg_ILGA-Europe.pdf (accessed on March 12, 2012).

¹⁸ “Un français perd sa nationalité en raison de son mariage homosexuel,” *France 2*, <http://www.ina.fr/economie-et-societe/vie-sociale/video/3617142001019/un-francais-perd-sa-nationalite-en-raison-de-son-mariage-homosexuel.fr.html> (May 2, 2008 accessed April 5, 2012).

adoption for a homosexual couple was not ‘discriminatory’¹⁹ or the Schalk and Kopf vs. Austria case. The trends within Europe are therefore evolving in a national rather than European context and can be separated into two groups.

II. Several Europes: Two Europes moving in different directions

After having observed the different official reactions towards same-sex marriage and adoption, two trends seemed to appear – though each of them had its own variables. Some countries – most of which already provide for a ‘registered partnership’ or adoption for same-sex couples – seem to be generally going towards equality – though once again with many internal fights. I will study those countries first. I will then focus on the other trend, a more conservative one which questions and sometimes challenges the fight towards more equality.

1) Countries moving towards more equality ...

In the European Union, Belgium, Portugal, Spain, Sweden, Denmark and the Netherlands allow same-sex marriage. Adoption by same-sex couples is allowed in Spain, the United Kingdom, Sweden, the Netherlands, Belgium and Denmark. Civil partnerships – which grant some social and economic rights yet not all the ones a marriage does – are possible for homosexual couples in Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Luxembourg, Slovenia and the United Kingdom. Though being full of internal differences, those countries now seem unable to go back on the choices they made to attain greater equality. However, if one sees things more globally and not focusing on the opposition, it is clear that governments are more and more pressurised to strengthen their actions against discrimination against sexual minorities.

The United- Kingdom – though currently not allowing same-sex couples to marry – is a leading country on this matter. In fact, on the 14th March 2012, a ruling recognised the possibility of having three people legally recognised as parents, thus making things easier for homosexual couples who are already living with a child.²⁰ Moreover, allowing gay and lesbian marriage is currently under discussion in Scotland after a poll revealed that 60% of the Scottish population was for its introduction whilst only 19% was against.²¹ The coalition currently in power in the UK promised to make same-sex marriage legal by 2015 in England and Wales.²²

¹⁹ “Le refus d’adoption pour un couple homosexuel n’est “pas discriminatoire”,” *Têtu*, <http://www.tetu.com/actualites/france/le-refus-dadoption-pour-un-couple-homosexuel-nest-pas-discriminatoire-21222> (last modified March 15, 2012 and accessed the same day).

²⁰ “Three-parent families may be as good as two, judges rule”, *The Telegraph*, <http://www.telegraph.co.uk/family/9143327/Three-parent-families-may-be-as-good-as-two-judges-rule.html> (written on March 14, 2012 and accessed the same day).

²¹ “Scottish government launches gay marriage consultation,” *BBC news Scotland*, <http://www.bbc.co.uk/news/uk-scotland-14764707> (published on September 3, 2011 and accessed on March 14, 2012).

²² “Gay marriage ‘to be made legal in Britain by 2015,” *MailOnline*,

The case of France is also interesting. The recent political campaign for presidency which led to the return of the socialist candidate François Hollande has shown how homosexual rights were used to gain votes and not lose them. Indeed, amongst the 10 candidates: 5 promised to legalise same-sex marriage, one did not speak on the subject and the other 4 are against it. 6 Candidates said they would allow adoption by same-sex couples if they were elected. 4 are against it, all from right-wing parties. Moreover, according to a poll carried out in December 2011, 63% of the French population is for the introduction of gay marriage. It is therefore visible that the candidates against legal equality for homosexual couples will have to change their positions to get some support and to represent the population more fully and not appeal only to a small electorate.

The situations of the UK and of France seem to reflect a general trend amongst those countries which already have some laws regarding the recognition of same-sex couples – civil partnership, marriage or adoption. If things seem to get more equal in some member states of the EU, discrimination seems to become more and more explicit in other EU countries.

2) *Worrying changes in other EU member states*

As mentioned before, an argument presented by many countries to prevent changes regarding family law to change in their countries is the fear that granting one right – such as the recognition of same-sex relationships – might lead to further demands from the LGBT community. As a consequence, many countries prefer not to grant any rights to lesbian or gay couples. What is even more disturbing is the move backwards initiated by several states worsened during and surely because of the economic and financial crisis which started in 2008. The example of Italy is striking. One can still remember with a slight embarrassment the former Prime Minister Silvio Berlusconi affirming publicly: “[It is] better to have a passion for beautiful women than being gay.”²³ Though this might appear as a single event, it can also be seen as a general and open reluctance towards homosexuals in Italy, thus making one believe that the legal recognition of same-sex couples will not be achieved soon in this country. Hungary went even further since it legalised the non-legitimacy for same-sex couples to get married, writing in its new constitution –which took effect on the 1st January 2012 – that marriage was an institution between a man and a woman and also not protecting the Hungarian citizens from discrimination on the grounds of age or sexual orientation.²⁴

Slovenia, which despite having legally recognised registered partnerships for same-sex couples in 2006, has surprisingly witnessed the rejection of a gay adoption law after a referendum – around 55% of the voters rejected a law which was to introduce the right for same-sex couples to adopt the biological child or children of their

<http://www.dailymail.co.uk/news/article-2038427/Gay-marriage-legal-Britain-2015.html> (published on September 16, 2011 and accessed on March 14, 2012).

²³ Nick Squires, “Silvio Berlusconi: ‘My passion for women is better than being gay’”, *The Telegraph*, <http://www.telegraph.co.uk/news/worldnews/europe/italy/8105684/Silvio-Berlusconi-My-passion-for-women-is-better-than-being-gay.html> (published November 2, 2010 and accessed March 20, 2012).

²⁴ Stephen Gray, “New Hungarian constitution comes into effect with same-sex marriage ban”, *Pinknews*, <http://www.pinknews.co.uk/2012/01/03/new-hungarian-constitution-comes-into-effect-with-same-sex-marriage-ban/> (published January 3, 2012 and accessed March 20, 2012).

partners.²⁵ It is also interesting to notice that in Spain after the appointment of the new right-wing government on the 31st of January 2012 the minister of education José Wert decided to remove from the school curricula the classes of civic education which dealt with –amongst other themes- the respect of sexual liberties. The EU as a whole remains diffident towards same-sex marriage and same-sex adoption. A poll conducted in 2006 revealed that “on average, only 32% of Europeans feel that homosexual couples should be allowed to adopt children throughout Europe. [...] 14 of the 25 Member States less than a quarter of the public accept adoption by homosexual couples” whilst “44% of EU citizens agree that marriages should be allowed throughout Europe”.²⁶

There are two different trends that seem to be organised geographically, Western Europe seems to grant more and more rights to LGBT people – though by fits and starts – and Eastern and Southern Europe appears to be on a more dangerous ‘conservative’ slope. The situation is also very different for the candidate states to integration into the EU, Iceland is for instance ‘in advance’ compared to most of the EU countries (marriage and adoption are legal). On the other hand, Turkey seems to be unable to accept the idea of legal equality between heterosexuals and homosexuals at the moment. It is also worth mentioning that in countries where same-sex relationships are legally recognised through civil partnership, marriage or the right to adopt, the attitude towards the LGBT community is much more supportive. This proves that once a decision is taken the ethical dilemma often supported by those who are against those changes are not immutable but that, on the contrary, society changes and can be changed and this includes changes in the structure(s) of families. Indeed, the Member States distinguishing themselves from the average EU results regarding support for gay marriage by very high percentage of acceptance- the Netherlands: 82%, Sweden: 71 or Denmark: 69% already have some sort of legal recognition of homosexual couples. As a comparison, in Latvia only 12% of the population supports gay marriage and in Romania this percentage goes down to 11%.²⁷

As I showed in those first two parts, the lack of common European law and, as a consequence, the prevalence of national laws regarding same-sex couples legal recognition and adoption by same-sex couples create many practical problems for many homosexuals Europeans thus preventing them from feeling fully European because they do not enjoy fully the same rights as heterosexual European citizens. Two trends are visible in the development of these issues in the member states: one which leans towards equality and another one which asserts more firmly its homophobia. In my third and last part, I will show that despite those arguments some attempts have been made by homosexual European citizens to attract the attention of the EU thus contradicting my point that European homosexuals might not feel completely included in the ‘cultural identity’ of the European Union.

²⁵ Christopher Brocklebank, “Gay adoption law is rejected in Slovenian referendum,” *pinknews*, <http://www.pinknews.co.uk/2012/03/26/gay-adoption-law-is-rejected-in-slovenian-referendum/> (published March 23, 2012 accessed the same day).

²⁶ Official website of the European Union, “Eurobarometer 66 p.41,” Official website of the European Union, http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf (published December 2006 and accessed March 20, 2012).

²⁷ European Union Agency for Fundamental Rights, “Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation”, http://fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report_part2_en.pdf (accessed March 20, 2012). P,34.

III. European Homosexuals relating to the EU and Using Its Mechanisms

Several European citizens try to make the recognition of same-sex marriage and adoption of a child or children by same-sex couples a task of the EU in order to prove that they feel concerned by EU matters thus connecting themselves as well with the feeling of European cultural identity – perhaps reluctantly? In fact, just like Juan M. Delgado-Moreira wrote, “Cultural citizenship unlike European Identity, which has to gain public support, comes forward because it is supported by the community”.²⁸

1) *The fight for equality supported by some politicians at EU level...*

The demand for non-discrimination towards the homosexual community regarding marriage and adoption within the EU takes also the form of a political fight at EU level. Indeed, groups like the European Parliament’s Intergroup on LGBT rights use the very mechanism of EU to obtain legal equality. This group defines itself as: “an informal forum for Members of the European Parliament who are committed to upholding the fundamental rights of lesbian, gay, bisexual and transgender (LGBT) people. Members of the Intergroup would usually take a positive stance on LGBT issues when they draft reports or amendments, when they vote in the Parliament, or when they deal with constituency affairs.”²⁹ Made up of 132 members of the European Parliament coming from 22 member states, this group brings about a change in politics and their efforts were notably visible during the debate held on the 7th December 2010 at the European Parliament entitled ‘Discrimination of same-sex married or in civil-partnership couples’.

The courage of individual Parliamentarians such as Mr Cashman (Member of Parliament for the West Midlands constituency since 1999 and belonging to the Labour Party in the UK and as a consequence to the Party of European Socialists in the European Parliament) must be acknowledged and appreciated. In fact, Mr Cashman did not hesitate to say in front of the European Parliament that he is a gay man in an emotional speech:

Like Mr de Jong, I am a gay man in a civil partnership, in a relationship of 27 years that has only been recognised by the state for five years. As was said earlier, if I were to have an accident whilst on holiday in Italy, my partner would not even be given the basic right to decide whether, in such a case, I should be on a life support machine or not. It is these basic elements that are so private and personal of which we are deprived on the sole basis of prejudice. There are those who say that mutual recognition and respect for civil laws and civil rights acquired in another country, and recognised and enforced in another Member State, would undermine a Member State’s competence on marriage. That is absolute nonsense. I am afraid it is an argument proposed by those who wish to have any excuse not to achieve equality.³⁰

²⁸ Juan M Delgado-Moreira, “Cultural Citizenship and the Creation of European Identity,” in *Electronic Journal of Sociology*,

<http://www.sociology.org/content/vol002.003/delgado.html> (accessed March 20, 2012).

²⁹ The European Parliament’s Intergroup on LGBT Rights, “About,”

<http://www.lgbt-ep.eu/about/> (accessed March 25, 2012).

³⁰ European Parliament, “Discrimination of Same-Sex married or in Civil-Partnerships Couples,”

Other homosexual parliamentarians did not hide their sexual orientation despite how it might affect their political career. Amongst them, Cornelis de Jong – mentioned by Mr Cashman earlier – from the Netherlands and belonging to the Party of European Socialists or Ulrike Lunacek an Austrian MEP belonging to the green party.

It is therefore visible that political action is carried out by some homosexual citizens who feel a sense of attachment towards the EU since they dare bring the issues of same-sex marriage and adoption in front of EU institutions. This proves that they are not indifferent towards the European Union and must feel a sense of cultural belonging or one of responsibility and attachment towards the EU. Some homosexual European citizens also turn towards the EU rather than to their national states to ask for equality through associations, newspapers and other sorts of lobby groups.

2) And also by individual citizens, European wide associations, newspapers and other sorts of lobbying

Some LGBT related newspapers intend explicitly to have a European audience rather than a national one. Mainly present on the Internet and without any actual tangible newspapers, those websites create a feeling of cultural belonging for the homosexuals of Europe and make them feel like they share their problems, doubts, victories and information. As a consequence, their role should not be underestimated since it creates a sense of European cultural citizenship in a population that – as I have tried to show before – might be more reluctant to see itself as European. The website www.eurout.org, for instance, aims at appealing to the lesbians of Europe. www.pinknews.co.uk prides itself on being ‘Europe’s largest gay news service’. However, despite a lack of budget, those websites are often only proposed in English.

Other means like petitions circulate on the Internet like the one you can find at www.petitiongay.com/gb/ which aims at collecting one million signatures in order to legalise gay marriage throughout the European Union thanks to the newly introduced Citizens’ Initiative process. The latter allows a petition which gathers enough signatures to go directly to the European Commission so that the issue it deals with can be discussed again or amended. Several European-wide associations have also been established in the past 20 years. The most important is certainly ILGA-Europe the European Region of International Lesbian, Gay, Bisexual, Trans and Intersex Association which “works for equality and human rights for lesbian, gay, bisexual, trans & intersex (LGBTI) people at the European level”.³¹ Several national associations to support same-sex parents recently joined together in the NELFA – the Network of European LGBT Families Associations, which condemns the fact that the “lack of proper recognition of Rainbow Families exposes them and especially their children to all sorts of legal risks. These families live with the thought that if a tragedy touches their life, for instance, the death or accident of the legal parent, the bond of the social parent to the child may not be recognised by the Law and basically their family life can be severely disrupted.”³² Moreover, the conference I spoke about in the first part organised on the 18th and 19th of November 2011 in the European Court of Human Rights – which is

<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100907&secondRef=ITEM-017&language=EN> (accessed April 4, 2012).

³¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association, “What is ILGA-Europe,” http://www.ilga-europe.org/home/about_us/what_is_ilga_europe (accessed April 10, 2012).

³² Network of European LGBT Families Associations, “About Nelfa aisbl,” <http://www.nelfa.org/> (accessed April 20, 2012).

not strictly an institution of the EU – was initiated primarily thanks to the Alsatian LGBT association called ‘Le cercle’. The European Court of Human Rights also legislated on many cases brought by individual citizens such as the case X and others vs. Austria about “the complaint by two women, who live in a stable homosexual relationship, about the Austrian courts’ refusal to grant one of the partners the right to adopt the son of the other partner.”³³

Conclusion

It is clear that homosexual couples do not benefit from the same rights as heterosexual couples in the European Union since national laws prevail and this results in different and often difficult situations for many families. The position of the EU however seems at first glance generally positive, but the behaviour of the Member States regarding same-sex marriage and adoption by same-sex couples can be divided into two different groups. Some countries seem to become more and more ‘conservative’ when others seem to want to further their advance on those matters. The fact that no state stays neutral is due mainly – at the EU level – to some homosexual politicians and lobby groups supporting the rights of the LGBT community which stir the issue trying to remind the EU that it does not grant the same rights to all its citizens as it should and as it claims to do.

Yet, the discrimination experienced by the homosexual community does not seem to prevent them from ‘feeling European’. For a minority of the homosexuals who are able to use legal devices and organise themselves politically as different kinds of lobby groups, it can lead to the contrary. Many homosexual couples tend to look for help from the EU institutions rather than their national ones – thus proving a sense of identification towards the EU directly or indirectly. The rejection of a minority subgroup by another bigger and more powerful group does not only prevent the minority from feeling part of a group but can also strengthen the feeling of belonging to the bigger group or create a link between the subgroup and the group for some people belonging to that subgroup.

However, it is clear that a more inclusive policy conducted by the bigger group to include subgroups notably by giving them the same rights would lead to a greater feeling of belonging to a group amongst the people whom – without that equality – identify themselves as belonging to the subgroup. Therefore, there is evidence that a common regulation regarding same-sex marriage and adoption would foster ‘cultural diversity’ and give the EU more legitimacy in the lives of European homosexuals.

³³ ILGA Europe, “European Court of Human Rights Held Hearing on Stepparent Adoption in Same-Sex Families,” http://www.ilga-europe.org/home/guide/country_by_country/austria/european_court_of_human_rights_held_hearing_on_stepparent_adoption_in_same_sex_families (accessed April 10, 2012).

Bibliography

- Brocklebank, Christopher. "Gay adoption law is rejected in Slovenian referendum." *Pinknews*. <http://www.pinknews.co.uk/2012/03/26/gay-adoption-law-is-rejected-in-slovenian-referendum/> (published March 23, 2012 accessed the same day).
- Cadoret, Anne. *Des parents comme les autres*. Paris: Odile Jacob, 2002.
- "Charter of Fundamental Rights of the European Union." Official Journal of the European Communities. http://www.europarl.europa.eu/charter/pdf/text_en.pdf (published on December 18, 2000, accessed, March 10, 2012).
- Coontz, Stephanie. *The Way We Really Are : Coming to Terms With America's Changing Families*. Basic Books, 1998.
- Delgado-Moreira, Juan. "Cultural Citizenship and the Creation of European Identity." *Electronic Journal of Sociology*, <http://www.sociology.org/content/vol002.003/delgado.html> (accessed March 20, 2012).
- Ditch, J., H.Barnes, J.Bradshaw, J.Commaille and T.Eardley. *A Synthesis of National Family Policies*. York: University of York, 1996.
- European Dignity Watch. "EU aims at recognizing same-sex "marriage" in all 27 Member States." <http://www.europeandignitywatch.org/it/day-to-day/detail/article/eu-aims-at-recognizing-same-sex-marriage-in-all-27-member-states.html> (published November 12, 2010 and accessed March 6, 2012).
- European Parliament. "Discrimination of Same-Sex married or in Civil-Partnerships Couples." <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100907&secondRef=ITEM-017&language=EN> (accessed April 4, 2012).
- European Parliament. "Subsidiarity." European Industrial Relations Dictionary. <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/subsidiarity.htm> (accessed March 6, 2012).
- European Parliament. "Subsidiarity." European Parliament Fact Sheets. http://www.europarl.europa.eu/factsheets/1_2_2_en.htm. (accessed March 6, 2012). European Union Agency for Fundamental Rights. "Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation." http://fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report_part2_en.pdf (accessed March 20, 2012).
- European Union Agency for Fundamental Rights. "Lesbian, gay, bisexual and transgender rights." http://fra.europa.eu/fraWebsite/lgbt-rights/lgbt-rights_en.htm (accessed March 10, 2012).
- Freedom to Marry, Inc. and Freedom to Marry Action, "Marriage 101.", <http://www.freedomtomarry.org/pages/marriage-101#faq1>. (accessed March 6, 2012).
- Foster, Nigel. *EU Treaties & Legislation 2010-2011*. Oxford: OUP Oxford, 2010. (Article 19 of the Treaty on the Functioning of the European Union).
- "Gay marriage 'to be made legal in Britain by 2015.'" *MailOnline*. <http://www.dailymail.co.uk/news/article-2038427/Gay-marriage-legal-Britain-2015.html> (published on September 16, 2011 and accessed on March 14, 2012).
- Gray, Stephen. "New Hungarian constitution comes into effect with same-sex marriage ban." *Pinknews*. <http://www.pinknews.co.uk/2012/01/03/new-hungarian-constitution-comes-into-effect-with-same-sex-marriage-ban/> (published January 3, 2012 and accessed March 20, 2012).

- ILGA Europe. "European Court of Human Rights Held Hearing on Stepparent Adoption in Same-Sex Families." http://www.ilga-europe.org/home/guide/country_by_country/austria/european_court_of_human_rights_held_hearing_on_stepparent_adoption_in_same_sex_families (accessed April 10, 2012). International Lesbian, Gay, Bisexual, Trans and Intersex Association. "What is ILGA-Europe." http://www.ilga-europe.org/home/about_us/what_is_ilga_europe (accessed April 10, 2012).
- "Le refus d'adoption pour un couple homosexuel n'est "pas discriminatoire." *Têtu*. <http://www.tetu.com/actualites/france/le-refus-dadoption-pour-un-couple-homosexuel-nest-pas-discriminatoire-21222> (last modified March 15, 2012 and accessed the same day).
- "Mutual Recognition of Registered Partnerships and Same-Sex Marriages Within the territory of The European Union: A Restriction on the Freedom of Movement of EU Citizens?" *L'Autre Cercle*. http://lsvd.de/fileadmin/pics/Dokumente/Termin/International_Conference_in_Strasbourg_ILGA-Europe.pdf (accessed on March 12, 2012).
- Network of European LGBT Families Associations. "About Nelfa aisbl." <http://www.nelfa.org>(accessed April 20, 2012).
- Official Website of the European Union. "Proportionality principle." *Glossary*. http://europa.eu/legislation_summaries/glossary/proportionality_en.htm (accessed March 12, 2012).
- Official website of the European Union. "Eurobarometer 66 p.41." Official website of the European Union. http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf (published December 2006 and accessed March 20, 2012).
- Official website of the European Union. "Marriage." *Family*. http://europa.eu/youreurope/citizens/family/couple/marriage/index_en.htm (last updated in December 2011, accessed March 12, 2012).
- Official Website of the European Union. "Proportionality principle." *Glossary*. http://europa.eu/legislation_summaries/glossary/proportionality_en.htm (accessed March 12, 2012).
- "Scottish government launches gay marriage consultation" *BBC news Scotland*. <http://www.bbc.co.uk/news/uk-scotland-14764707> (published on September 3, 2011 and accessed on March 14, 2012).
- Squires, Nick. "Silvio Berlusconi: My passion for women is better than being gay." *The Telegraph*. <http://www.telegraph.co.uk/news/worldnews/europe/italy/8105684/Silvio-Berlusconi-My-passion-for-women-is-better-than-being-gay.html> (published November 2, 2010 and accessed March 20, 2012).
- Stevenson, Nick. "Globalization, national cultures and cultural citizenship." *The Sociological Quarterly* 38:1, 1997.
- The European Parliament's Intergroup on LGBT Rights. "About." <http://www.lgbt-ep.eu/about/> (accessed March 25, 2012).
- "Three-parent families may be as good as two, judges rule." *The Telegraph*. <http://www.telegraph.co.uk/family/9143327/Three-parent-families-may-be-as-good-as-two-judges-rule.html> (written on March 14, 2012 and accessed the same day).
- "Un français perd sa nationalité en raison de son mariage homosexuel." *France 2*. <http://www.ina.fr/economie-et-societe/vie-sociale/video/3617142001019/un-francais-perd-sa-nationalite-en-raison-de-son-mariage-homosexuel.fr.html> (May 2, 2008 accessed April 5, 2012).