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Finding the Best Families for Children – Moving Towards Inclusive Adoption

The Legislation and Practice to Eliminate Discrimination
on the Basis of Marital Status and Sexual Orientation

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Abstract

States impose a multitude of limitations on prospective adoptive parents. Some are legitimate, as they fulfil the best interests of the child; but others are arbitrary and result from prejudice. Marriage remains a prerogative for receiving the authorisation to adopt in many countries of the Council of Europe. This differential treatment on the basis of marital status results in discrimination towards single individuals and LGBT+ persons, who are still to a large extent denied the right to marry. International law does not recognise the right to parent and this thesis will not call for it, rather it will demand a consistent and unbiased application of the best interests of the child, which legally speaking should already be the core consideration in the adoption process.

In recent years there have been positive developments, and they will be used as case studies to understand how other member states can achieve inclusive adoption. In depth analysis revolves around the Netherlands, as a forerunner in the legal and practical implementation, alongside with Ireland, as a state that has recently adopted an inclusive policy, and Slovenia, as a country that is currently shifting. The consideration of the different actors of change is combined with those resisting inclusive adoption.

Key words: inclusive adoption, best interests of the child, discrimination, Council of Europe, marital status, sexual orientation, single parents, LGBT+ parents.

List of Abbreviations

BIC	Best Interests of the Child
CRC	Convention on the Rights of the Child
CC	Constitutional Court
CoE	Council of Europe
ECAC	European Convention on the Adoption of Children
ECHR	European Convention on Human Right
ECmHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
LGBT+	Lesbian, Gay, Bisexual, Transgender or any other sexual orientation
MS	Member States
UK	United Kingdom
UN	United Nations
USA	United States of America

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CHAPTER 1

FRAMING THE DEBATE

1.1 Introduction

Children need a loving and nurturing environment to develop and flourish.¹ When the biological parents are unable or unwilling to provide such setting, the state intervenes and fulfils the task of finding the best possible outcome for the child, fulfilling her or his best interests.² It seeks a permanent solution when the children have no prospect of returning in the custody of their biological parents, which usually takes the form of adoption.³ National and international documents legislate on the procedure and the eligible prospective parents.⁴ Still today, heteronormative marriage is often a precondition for adopting.⁵ This thesis proposes a more scrupulous application of the best interests of the child, which does not bar single individuals and LGBT+ persons from applying for the authorisation to adopt.

This thesis will aim to address the question, how can the member states of the Council of Europe move towards a more inclusive adoption system? For the purpose of this investigation inclusive adoption will be understood as the ability to adopt regardless of marital status and sexual orientation. The combination of these two forms of discrimination derives from the central role of marriage in adoption procedures. Indeed adoption is a privilege that is often reserved to married couples only. This automatically implies that single persons are not able to apply for adoption and furthermore it often results in the inability of lesbian, gay, bisexual, transgender persons or those with any other sexual orientation (LGBT+)⁶ from being given that ability, as throughout much of

¹ Hodson 2007, p. 19; Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015); Polikoff 2000, p. 742; Rosenblum 1991, p. 1679.

² Burlison 2009, p. 802; Rosenblum 1991, p. 1665.

³ Brenner 2008; Rosenblum 1991, p. 1668.

⁴ Department of Economic and Social Affairs: Population Division, 2009.

⁵ Mortenson 2011; Rosenblum 1991, p. 1668.

⁶ GLIFAA. *LGBT+ Pride in Foreign Affairs Agencies*. <http://glifaa.org/> (accessed February 30, 2015).

the world they are denied the opportunity to marry.⁷ The debate on same-sex marriage has a plethora of voices on either side;⁸ and given its centrality to limiting LGBT+ and single parent adoption, the question at hand requires some engagement with the topic of marriage. The core focus will remain on the discriminatory effect of family and marriage legislation upon adoption.

The scope of this thesis is centred upon the national legislation of the member states of the Council of Europe (CoE). The CoE is a regional body that emerged in the aftermath of the Second World War with the aim to promote cooperation in greater Europe, indeed it was the first body to breach the gap between the Eastern and Western block.⁹ The means to achieve its goal are the promotion of human rights, democracy and the rule of law.¹⁰ This regional organisation has 47 Member States¹¹ and in 1950 they adopted the Convention for the Protection of Human Rights and Fundamental Freedoms, known as the European Convention on Human Rights (ECHR or thereafter referred to as ‘the Convention’).¹² Thus in addition to the Universal Declaration of Human Rights, European nations committed themselves to the search of a regional consensus and implementation mechanism. The body in charge of the application of the ECHR is the European Court of Human Rights (ECtHR or thereafter referred to as ‘the Court’).¹³ It gives individuals and organisations the ability to file a petition against their state in the case of a human rights violation.¹⁴ These range from a wide variety of topics as the articles within the Convention are near all encompassing. In fact the Court has analysed a series of cases relating to inclusive adoption, of which the most prominent ones are singled-out for their importance. The ECtHR has been a strong voice against

⁷ Government of the Netherlands. *Equal rights for LGBTs*. <http://www.government.nl/issues/gay-rights/equal-rights-for-gays-and-transgenders> (accessed May 22, 2015); ILGA-Europe. *Rainbow Map (Index)*. May 2015. http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_eurpe_index_may_2015_no_crops.pdf (accessed June 5, 2015).

⁸ Bidstrup, Scott. *Saint Aelred the Queer: The Surprising History of Homosexuality and Homophobia*. July 15, 2000. <http://www.bidstrup.com/phobiahistory.htm> (accessed June 25, 2015); Girgis, George and Anderson 2011, pp. 246-287; Lubalin, Eve. *Advocacy and Issues*. 2015.

<http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015); Waaldijk 2001, p. 443.

⁹ Council of Europe 2012, p.3.

¹⁰ Ibidem.

¹¹ Ibidem.

¹² European Convention on Human Rights 1950.

¹³ Council of Europe 2012, p. 5.

¹⁴ Ibidem, p. 6.

discrimination, but there are many avenues for improvement. Therefore this thesis will address how the MS of the CoE can move towards inclusive adoption.

The thesis is structured as follows: the first chapter will frame the existing literature and define the contribution of this examination. It will initially explain the methodology and relevance of this research, further it will outline the central documents and relevant dogmas. It will also provide legal definitions and express the parameters for this thesis. Furthermore the first chapter will question the concept of family as it is presented in modern society, emphasising some of the current biases in favour of heteronormativity.¹⁵ In order to understand the present discrimination towards LGBT+ and single persons, Chapter 2 will more generally question adoption practices. It will demonstrate the desirability of inclusive adoption as well as address the link between marriage and childrearing. In order to assess the impacts of the rulings of the ECtHR, Chapter 3 will provide in-depth analysis of its case law. This will be accompanied by practical examples in Chapter 4, with an investigation of the country that pioneered in inclusive adoption, the Netherlands; an overview of a state that has recently shifted, Ireland, and one that is currently shifting, Slovenia. The country review will combine legal and sociological elements. Chapter 5 will analyse the resistance against inclusive adoption, by exploring the basis for opposition. Lastly, Chapter 6 will encapsulate how the member states have moved towards a more inclusive adoption system, but especially how they can continue to do so.

1.2 Relevance of the Examination and Methodology

Though adoption by LGBT+ persons is a topic that is often discussed in the media, to date there lacks a comprehensive study of the different policies within European states.¹⁶ This thesis frames the debate from a multidisciplinary perspective and assesses the impact of the judgements of the ECtHR as well as civil society organisations and pressure groups. Causal relationships are difficult to infer, but there are trends that cannot be ignored. Have adoptions laws become inclusive because of the promotion of human rights, and particularly of non-discrimination? Have the changes

¹⁵ Dowd 1997, p. 9; Mortenson 2011; Nozawa 2003, p. 71; Polikoff 2000, p. 719; Storrow 2006, p. 305; Waaldijk 2001, p. 443.

¹⁶ To be understood as MS of the CoE, thus the application is wider in scope than the members of the EU.

that took place in the past fifteen years concerning legislations on the rights of LGBT+ persons, regarding civil partnership, marriage and adoption been spurred by judgements of the ECtHR? Is there a spill over effect among nations of the CoE? These questions are not easily answered, yet this thesis explores their ramifications.

The academic perspective on adoption will be addressed in a multi-faceted way, with a specific focus on social science and law. Biological theories will be used to support sociological explanations. In addition the general attitude of citizens towards adoptions by single individuals and LGBT+ persons will be considered. The legal aspect will be most prominent, with the focus on core international human rights instruments, such as the ECHR and the case law of the ECtHR.

Primary sources consist of national and international legislation, the case law of the ECtHR as well as notes from participatory observation. The section on Slovenia is informed by witnessing first hand the developments on the Marriage and Family Law and its consequences. In order to ensure an unbiased portrayal of the manifestation, a series of sources will be used to corroborate the facts mentioned. Primary sources, as well as secondary ones are used to compile maps and tables on the situation of the MS of the CoE.

The topic of single parent adoption is fairly more obscure and general knowledge about it is difficult to come across. Indeed it is rarely discussed outside the scope of discrimination on the basis of sexual orientation. Even the media does not grant it as much attention as it deserves.¹⁷ It is no myth that single-parent households are in constant growth today,¹⁸ yet that is generally through conventional means of family formation and not through adoption.

The choice to focus on single parent and joint same-sex couple adoptions might seem like an unlikely combination. As mentioned before, they both result from the primacy of marriage in adoption applications and therefore they are intrinsically

¹⁷ Kripke, Pamela Gwyn. *It's Better To Be Raised by a Single Mom*. January 3, 2013. http://www.slate.com/articles/double_x/doublex/2013/01/single_moms_are_better_kids_raised_by_single_mothers_are_sturdier.html (accessed July 11, 2015).

¹⁸ Dowd 1997, p.5; Morin, Rich. *The Public Renders a Split Verdict On Changes in Family Structure*. February 16, 2011. <http://www.pewsocialtrends.org/2011/02/16/the-public-renders-a-split-verdict-on-changes-in-family-structure/?src=family-interactive> (accessed July 11, 2015); Schuder, Kirsten. *Understanding Single Parent Families*. <http://family.lovetoknow.com/single-parent-family> (accessed July 11, 2015)

interconnected. In fact there is interplay between them, as the exclusion of single individuals will also result in the exclusion of LGBT+ persons in most cases. Nonetheless the concerns for the upbringing of the child are somewhat different, and thus they will be individually addressed. Some of the arguments presented will only apply to singles, or only to same-sex couples.

LGBT+ parenting is a fairly new concept, with the first recognition for joint adoption in 2001.¹⁹ Admittedly the short time frame is recognised as a potential disadvantage, as legal and social norms require lengthy procedures to shift. To date there is no European consensus on the questions of adoption by single and non-married couples. Nonetheless fifteen years is also a significant amount of time, considering that issues specific to sexual discrimination have come under greater public scrutiny, spurring the debate that then moulds social attitudes and legislations.

1.3 Language

A few considerations about language are worthy of mention and must be kept in mind throughout the thesis. It is difficult to define the parties within adoption in a concise manner without using economic terminology. Referring to countries from which the parents are from or from which the children are from, seem to add to the confusion and does not always satisfy complex sentence structure. In lack of better terminology, at times pecuniary concepts will be utilised. Referring to the demand and supply of children does not mean to disrespect human dignity or to be an attempt to quantify the value of human life. Therefore, the use of economic terms should not be taken to imply a sanctioning of the commodification of children or a reflection of the author's personal opinion. It should rather emphasise the lacuna in our dictionary and encourage the development of more appropriate terminology.

Another note of relevance is the use of 'homosexual', or 'gay', 'lesbian' or any other term related to sexual orientation as an adjective. Rosenblum pointed out that the refraining from using these terms as nouns help to demonstrate that it is only a characteristic of the person rather than a characterisation of who the person is.²⁰ In

¹⁹ Polikoff 2000, p. 729; Vlaardingerbroek 2006, p. 497; Waaldijk 2001, p. 437.

²⁰ Rosenblum 1991, p. 1666.

common language ‘homosexual,’ ‘gay,’ ‘lesbian’ and other words that define non-dominant sexual orientation are often used as nouns, while the term ‘heterosexual’ is hardly ever used in the same manner. This points out to the discriminatory use of language. This thesis will consistently use all terms referring to sexual orientation as adjectives, in order to avoid subconscious discrimination.

Further, at times this thesis will make specific reference to ‘lesbian,’ ‘gay,’ or ‘homosexual’ individuals, leaving out some other sexual minorities. That is not to be interpreted as the desire to exclude bisexual, intersex or trans individuals. In fact the presence of the “+” is a form of inclusive terminology that refers to all other forms of sexual orientation²¹ and will be used throughout this thesis. When referring to non-dominant or non-heteronormative individuals and couples, the arguments refer to all LGBT+ persons, however some of the studies analysed have specific limited scopes. Therefore discrimination in language is the result of the nature of the evidence presented. Legal practices have only recently begun to pay attention to sexual minorities, and so far homosexual individuals are the ones who have gained the most attention and recognition. There is a movement towards greater inclusion of other sexual minorities, but particularly in the case of adoption that is very limited. When thinking about adoption, people and courts implicitly pose this question: “What harm will be done to the child by a person who does not conform to heteronormativity?” This line of thinking presupposes that the applicant must demonstrate that he or she is not harmful to the child. Throughout the years, the case law of the ECtHR has rightfully shifted the burden of proof towards the state.²² Thus it must now be the state to demonstrate that the rearing by homosexual individuals or couples is harmful upon a child. So rather than presupposing that a person’s sexual orientation will have a negative impact on the development of a child, it might be more useful to consider that until proven otherwise, they will have a positive impact. Therefore though there are no studies on intersex parents, this thesis will assume that the child will not be harmed. Indeed when it comes to biological parents, the logic of the state is that a parent must provide childcare unless he or she is unwilling or unable to do so and there is a

²¹ GLIFAA. *LGBT+ Pride in Foreign Affairs Agencies*. <http://glifaa.org/> (accessed February 30, 2015).

²² *E.B. v. France* 2008 (ECtHR), paragraph 58, 74; *Karner v. Austria* 2003 (ECtHR); *X and Others v. Austria* 2013 (ECtHR), paragraph 141.

presupposition of benefit rather than of harm. If the state truly believed that homosexual parents were harmful to development of the child, it would need to remove the child from such a negative influence. To date there is no record of any state removing a child from the biological parent on the basis of the person's sexual orientation. A similar consideration may thus be also applied to adoptive children.

To refer to families with parents or children who are part of the LGBT+ community, this thesis will at times categorise them as 'rainbow families.' This term was inspired by ILGA-Europe's Rainbow Map, in which countries are rated according to their respect of human rights for sexual minorities.²³ In addition, the celebration of International Family Equality Day makes specific reference to 'rainbow families.'²⁴

Interestingly both those favouring and opposing inclusive adoption use the language of human rights. Indeed the attractiveness of human rights seems to carry across political and moral frontiers. Of course the content of human rights as such will greatly vary. Those in favour of inclusive adoption will stress the discriminatory element of the current legislation, while others would counter the assertion by claiming that it does not amount to discrimination, as there are essential differences in the circumstances of married persons and others who wish to adopt. Both proponents of adoption by same-sex partners and single parents, and those who oppose it, at times appeal to the same right. There is a general recognition that the best interests of the child are to be placed at the forefront, yet there is much disagreement on consequences of such approach. In its arguments, the Catholic Church implies that the adoption by a same-sex couple can never fulfil such interest.²⁵ Instead social scientists call for the individual examination based on the specific case, and stress that "sexual orientation is not an indication of parental fitness."²⁶

²³ ILGA-Europe. *Rainbow Map (Index)*. May 2015. http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_eurpe_index_may_2015_no_crops.pdf (accessed June 5, 2015).

²⁴ The International Family Equality Day (IFED) Network 2014, p. 5.

²⁵ Ratzinger 2003, paragraphs 7-8.

²⁶ Polikoff 2000, p. 740.

1.4 Central Documents

This thesis will make continuous reference to documents of international law as well as local adoption legislation. At the core of the discussion are the ECHR,²⁷ the Convention on the Rights of the Child (CRC),²⁸ the Convention on Protection of Children and Co-operation in Respect to Intercountry Adoption (which will be subsequently referred to as the Hague Convention),²⁹ and the European Convention on the Adoption of Children (ECAC).³⁰ Each will be analysed in turn to assess their relevance to the current discussion.

1.4.1 The ECHR

The aforementioned ECHR was adopted in 1950 by the MS of the CoE.³¹ It reaffirms some of the rights granted in the Universal Declaration of Human Rights of 1948, but additionally has two particularities. One of them is the presence of a permanent court in charge of its implementation, the aforementioned ECtHR based in Strasbourg. The Court grants space to individuals and organisations to file petitions, thus making governments accountable to their citizens. The other peculiarity of the Convention is that it is continuously being reinterpreted. Indeed it is to be considered as a “living instrument which must be interpreted in light of present-day conditions.”³² Therefore it is open to discussion regarding same-sex partnerships and adoption, which are precluded by other texts, such as the Universal Declaration of Human Rights.

Directly linked to the present discussion are Article 14, the “prohibition of discrimination”³³ and Article 8, the “right to respect for private and family life.”³⁴ Indeed a peculiarity of Article 14 is that it cannot be used as a stand-alone right, but a right connected only to other conventional rights, thus it must be taken in conjunction

²⁷ ECHR 1950.

²⁸ CRC 1989.

²⁹ the Hague Convention 1993.

³⁰ ECAC 2008.

³¹ Council of Europe 2012, p. 27.

³² E.B. v. France 2008 (ECtHR), paragraph 46; Fretté v. France 2002 (ECtHR), paragraph 34; Johnston and Others v. Ireland 1986 (ECtHR), paragraph 53; Schalk and Kopf v. Austria 2010 (ECtHR), paragraph 46; X and Others v. Austria 2013 (ECtHR), paragraph 139.

³³ ECHR 1950, article 14.

³⁴ Ibidem, article 8.

with another article of the convention. It does not make specific reference to sexual discrimination, however neither does it provide a comprehensive list of grounds for discrimination and recognises the inclusion of any “other status.”³⁵ The ECtHR has indeed applied the prohibition of discrimination on the ground of sexual orientation, such as in the case of *E.B. v. France*.³⁶ In addition in 2000, the CoE has opened for signature an additional protocol enhancing the status of the prohibition of discrimination, rendering it applicable at all times. Protocol No. 12 to the Convention of the Protection of Human Rights and Fundamental Freedoms expands the application of non-discrimination but to this date has only been ratified by 18 MS.³⁷

1.4.2 The CRC

The CRC is the most widely applicable international treaty, with all but three members of the United Nations (UN) having ratified it.³⁸ It was adopted in 1989 by the General Assembly and came into force the following year.³⁹ It recognises the vulnerability of minors, which it addresses by granting them further protection under international law. Article 21 directly refers to adoptions, by calling on state parties to fulfil their role as facilitators in the process.⁴⁰ In addition Article 3 states

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Therefore it enshrines the principle of the BIC, which is central in adoption considerations.

1.4.3 The Hague Convention

The Hague Convention expands the provisions of Article 21 of the CRC.⁴¹ It aims to provide multilateral guidelines for intercountry adoptions, ensuring cooperation

³⁵ Ibidem, article 14.

³⁶ *E.B. v. France* 2008 (ECtHR).

³⁷ Protocol No. 12 to the Convention of the Protection of Human Rights and Fundamental Freedoms 2000.

³⁸ Office of the High Commissioner for Human Rights. *Status of Ratification: Convention on the Rights of the Child*. April 24, 2015. <http://indicators.ohchr.org/> (accessed April 28, 2015).

³⁹ CRC 1989.

⁴⁰ Ibidem, article 21.

⁴¹ the Hague Convention 1993.

among state parties. It does not specifically refer to the characteristics of the prospective parents, rather it places upon the state the responsibility to assess the eligibility.⁴²

1.4.5 The ECAC

The ECAC was first adopted in 1967 and later revised in 2008. It is more detailed than the previous documents, and Article 7 states the conditions for adoption.⁴³ It reads that the law of those adhering must permit a child to be adopted “(a) by two persons of different sex (i) who are married to each other, or (ii) where such an institution exists, have entered into a registered partnership together; (b) by one person.”⁴⁴ Therefore the inclusion of single parent adoption is already enshrined in international law. The document seems to endorse the complete exclusion of same-sex couples, however the Convention grants states the freedom of extension beyond the arranged parameters.⁴⁵ Thus though the inclusion of LGBT+ persons is not required by the ECAC, the theme is introduced by it. Unfortunately only 9 MS of the CoE have signed and ratified the Convention, thus it not widely applicable.

1.5 The Best Interests of the Child (BIC)

All of the documents analysed place the BIC at the forefront. International conventions assert that it “shall be the primary consideration” in all actions concerning children.⁴⁶ This implies that the sexual orientation and marital status of the parent are to be considered as a subsidiary, if at all. In principle, the BIC analyse the individual circumstances of each prospective parent to determine the optimal environment for the child.⁴⁷ In practice, that is not always the case, and thus a situation where a prospective parent is a LGBT+ or single person, the application of the BIC becomes problematic.

This thesis does not agree for a shift in the aforementioned substantive position, which places the BIC at the centre, but rather would question its application. It must be

⁴² Ibidem, article 5.

⁴³ ECAC (Revised) 2008, article 7.

⁴⁴ Ibidem.

⁴⁵ Ibidem.

⁴⁶ CRC 1989, article 3.

⁴⁷ Brenner, Andrea Malkin. *Encyclopedia of Race, Ethnicity, and Society*. April 25, 2008.

<http://knowledge.sagepub.com/view/ethnicity/n5.xml?rskey=ytJzxo&row>

=8 (accessed March 27, 2015); Burlinson 2009, p. 800; Elovitz 1995, p. 209; Horowitz and Maruyama 1994-1995, p. 3; Rosenblum 1991, p. 1665; Vité and Boéchat 2008, p. 7; Vlaardingerbroek 2006, p. 496.

emphasised that adoptions are, and ought to be, principally about the welfare of the child. Children eligible for adoption have suffered through specific traumas such as the loss of or abandonment by one, or both parents.⁴⁸ Most often a child spends at least a transitory period within the custody of social services or state institutions. That justifies the thorough scrutiny to which prospective parents are subjected to prior to receiving the authorisation to adopt. This thesis will not argue that the verification of parenting abilities should be more lax, but rather it questions the indiscriminate exclusion of certain persons. The rejection of an applicant's request for adoption shall not be discriminatory in nature and must have a solid ground.

David M. Rosenblum compares the assessment of custodial disputes and adoption authorisations in the United States of America (USA) in relation to the use and misuse of the BIC.⁴⁹ Though the European context is not exactly the same, they can be compared, as the societal biases at play are similar. Rosenblum identifies courts that deem homosexuality as an indicator for parental unfitness, without providing evidence.⁵⁰ Many studies actually prove that parental capability is not related to sexual orientation and that the development of the child is not negatively impacted by a parent's lifestyle.⁵¹ However courts often rely on irrational prejudice. This prejudice results in the consideration of homosexuality as an absolute bar to child custody, and is usually based on moral considerations.⁵² The application of the BIC requires "a proven 'nexus' between the parent's sexual orientation and an adverse effect on the child."⁵³ This can also be applied to parental marital status, where there is the need to ensure that single parents are a negative influence on the child in order to limit single parent adoption, otherwise it is perpetuating discrimination. So far social science evidence has disproven the existence of such nexus, instead the assessment for the authorisation to adopt is dominated by unfounded fear, misconceptions and prejudice.⁵⁴ In most cases,

⁴⁸ Children Welfare Information Gateway 2013, p. 5.

⁴⁹ Rosenblum 1991.

⁵⁰ Ibidem, pp. 1665, 1666, 1668, 1669, 1670, 1672, 1691.

⁵¹ Ibidem, pp. 1665, 1673, 1691.

⁵² Ibidem, p. 1666.

⁵³ Ibidem, p. 1687.

⁵⁴ Elovitz 1995, p. 210; Farr, Forssell and Patterson 2010, p. 176; Goldberg and Smith 2013, p. 437; Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015); Polikoff 2000, p. 741; Rosenblum 1991, p. 1687; Vlaardingerbroek 2006, p. 509.

such as in the case of *E.B. v. France*, they do not take the form of direct discrimination, thus they are more difficult to detect, but are nonetheless present.

The case law of the ECtHR strongly encourages the application of the BIC test. It very emphasises there is “no right to a child or right to authorisation to adopt one.”⁵⁵ At a legal level, that is equally applicable to individuals within a heteronormative relationship and those outside of it. However at a societal level, there is a “commonly held belief that parents in most intact marriages have a fundamental right to bear and raise children.”⁵⁶ Indeed in relation to assisted reproduction and adoption applications, the majority of governments favour married couples. In many countries across the world, and also within the CoE, marriage is not an option for LGBT+ person and thus their access to assisted reproduction and adoption is limited or inexistent. The ECtHR itself raises marriage above other family bonds, thus influencing adoption cases at a regional level.⁵⁷ This section will not call for the establishment for the right to parent but rather it aims to highlight the informal differences currently present. That is especially relevant to the applicability of the BIC, as societal bias often plays a role in such considerations as well.

1.6 The Legal Categorisation of Adoption

A few distinctions must be made in order to define the scope of this thesis: adoption will be understood as only those “which create a permanent child parent relationship.”⁵⁸ Fostering and other forms of temporary care of children lie outside the scope of this essay as they are legally classified separately and they are not within the consideration of ECAC.⁵⁹ In fact this thesis will only address “full adoptions”, or those that sever legal ties with the family of origin.⁶⁰

Legally speaking, adoptions can be categorised in three manners: single parent adoption, second parent adoption and joint parent adoption. In single parent adoption, an individual becomes the sole legal custodian of the child, to whom he or she has no

⁵⁵ *E.B. v. France* 2008 (ECtHR), paragraph 40.

⁵⁶ Rosenblum 1991, p. 1665.

⁵⁷ Hodson 2007, pp. 18, 26, 31; *Schalk and Kopf v. Austria* 2010 (ECtHR).

⁵⁸ ECAC (Revised) 2008, article 1(2).

⁵⁹ *Ibidem*.

⁶⁰ Vité and Boéchat 2008, p.16; Vlaardingerbroek 2006, p. 496.

biological attachment. In second parent adoption, the child is in the custody of one of the biological parents and acquires a second legal custodian, generally the partner of the biological parent, such as is common for stepparents (in fact they are also known as partner adoptions and stepparent adoption).⁶¹ Joint parent adoption refers to the adoption of a non-related child by a couple.

The category of adoption can be further subdivided among national and international adoptions. That is particularly relevant to this thesis as the majority of adoptions within Europe are international and thus the national policies will be influenced by the stance of the countries of origin of the child. As of 2000, about 95% of European adoptions were international and thus “the European nations have been concerned that countries from which children are adopted would be unwilling to send children to a country where they might be raised by a gay or lesbian couple.”⁶² This fear has placed limitations upon LGBT+ individuals, who are often restricted to national adoptions.⁶³ One must keep in mind that international law clearly identifies international adoption as a subsidiary to national adoption.⁶⁴ That implies that national arrangements are to be prioritised, as state parties recognise that continuity in a child’s upbringing is desirable.⁶⁵ Therefore ethnic, religious, cultural and linguistic backgrounds of the parents and the child are taken into consideration and debate remains on the benefits of inter-racial adoption.

One of the arguments that has been used against adoption by homosexual parents is that a same-sex couple is unable to conceive a child biologically, at the same time a heterosexual couple, where one or both members are sterile, also faces a biological barrier. Children adopted by same-sex couples will visibly stand out for not being genetically related to both parents, but the same argument applies to children with a different ethnic heritage as the parents.⁶⁶ In addition, psychologists specialised in adoption and child development encourage the adoptive family to disclose the reality of

⁶¹ Patterson 1995, p. 191; Vlaardingerbroek 2006, p. 497.

⁶² Polikoff 2000, p. 716.

⁶³ Polikoff 2000, pp. 716, 722; Waaldijk 2001, p. 462.

⁶⁴ Vité and Boéchat 2008, p. 1.

⁶⁵ Ibidem, p. 17.

⁶⁶ Muir, Hugh. *The truth about inter-racial adoption*. November 3, 2010.

<http://www.theguardian.com/society/2010/nov/03/inter-racial-adoption> (accessed June 1, 2015).

adoption to the child.⁶⁷ Even when a child is adopted as a baby, they recommend that the child is conscious of the adoption, as that will explain certain elements of the child's life (such as the lack of knowledge of medical history or the absence of photographs during pregnancy and early life).

1.7 Providing an Understanding of 'Family'

Defining a family is no easy task, yet its relevance within society is often taken for granted. "The family is generally regarded as a major social institution and a locus of much of a person's social activity. It is a social unit created by blood, marriage, or adoption, and can be described as nuclear (parents and children) or extended (encompassing other relatives)."⁶⁸ This distinction would presume that one's nuclear family shifts through time and space, such that a child would consider her or his parents as part of the nuclear family but an adult would consider his or her children instead. Sociologists define this phenomenon as life-cycle.⁶⁹ Further there are several cultural differences upon the conception of family. In certain cultures extended families play a significant role in the development of an individual; while in others that is the primary role of parents and educational facilities. Generally speaking, in Europe parents and educational institutions fulfil the primary role of caregivers; while relatives play a subsidiary role. However there are variations within the continent, for example Italian grandparents play a very active role in the development of their grandchildren, which on average is not as likely in the United Kingdom (UK).⁷⁰ The uncertainty relating to the concept of family is relevant to the present discussion as the ECHR enshrines in Article 8 the "right to respect for private and family life."⁷¹ What family life is limited to is uncertain, but the case law of the ECtHR has interpreted Article 8 to encompass the

⁶⁷ American Academy of Child and Adolescent Psychiatry. *The Adopted Child*. March 2011. http://www.aacap.org/App_Themes/AACAP/docs/facts_for_families/15_the_adopted_child.pdf (accessed March 30, 2015); Vlaardingerbroek 2006, p. 499.

⁶⁸ Nam, Charles B. *The Concept of the Family: Demographic and Genealogical Perspectives*. The North Carolina Sociological Association. Fall 2002. <http://www.ncsociology.org/sociationtoday/v22/family.htm> (accessed March 20, 2015).

⁶⁹ Marshall, Gordon. *Sociology of Family*. January 1998. <http://www.encyclopedia.com/doc/1O88-familysociologyof.html> (accessed March 20, 2015).

⁷⁰ Tomassini, Cecilia, and Karen Glaser. *Unmarried Grandparents Providing Child Care in Italy and England: A Life – Course Approach*. EPC. 2012. <http://epc2012.princeton.edu/papers/120948> (accessed March 27, 2015).

⁷¹ ECHR 1950, art. 8.

cases of persons wishing to adopt, as it considers adoption “an attempt to create a family life with the child being adopted.”⁷²

Throughout history the right of parents over their children have greatly shifted. Indeed Aristotle believed that a child belonged to a parent like “tooth or hair” and the ancient Romans granted parents the right to kill their own children.⁷³ Today that is clearly not the case, and the state intervenes when parents do not act in the BIC, such as in cases of abuse or neglect. Indeed though the relationship between parents and children is cherished and respected, the case law of the ECtHR repeats that there is no legal right to be a parent.⁷⁴ This thesis discloses the present paradox, given that there is a growing recognition of the importance of reproductive rights at a global level.⁷⁵ The discourse on reproductive rights focuses on the choice to be given to parents on the number and spacing of their children, particularly in developing countries where women are often still denied that choice, and international organisations are active in reversing the trend. The wider application of reproductive rights has not created the legal right to parent, at least within international law. The present discussion does not call for the right to parent, but it questions the assumption of society that heterosexual married couples do have this right, while others do not.

A further consideration relating to reproduction is the development of technology. There are multiple means of assisted reproduction available to couples, who would otherwise be unable to conceive. However the state controls the access to such means of reproduction, both in public and private institutions. Persons belonging to sexual minorities are often unable to access such services.⁷⁶ Indeed the development of technology has not shifted the legal and social paradigm related to parenting; and the limitations of access are related to marriage. Another development worthy of mention is the raised profile of surrogacy. The commercial transaction related to the conception of

⁷² E.B. v. France 2008 (ECtHR), paragraph 33.

⁷³ Archard 2015, p. 161.

⁷⁴ Pini and Others v. Romania 2004 (ECtHR), paragraph 140; Rosenblum 1991, p. 1668; Vité and Boéchat 2008, p. 12.

⁷⁵ UNFPA. *Supporting the Constellation of Reproductive Rights*. 2007.

<http://www.unfpa.org/resources/supporting-constellation-reproductive-rights> (accessed March 22, 2015).

⁷⁶ Polikoff 2000, p. 747.

a child is criminalised in Europe, but it is increasingly becoming popular, especially among same-sex couples.⁷⁷

The institution of marriage is closely connected to the establishment of the family and conventional parenting roles. It has received much criticism by feminist scholars, for the gendered division of labour and the domestic burden that it places upon women.⁷⁸ Other forms of criticism derive from the focus that the family places on conjugal life, which may be claimed to repress individuality. In addition the modern nuclear family is a product of industrialisation and critics of capitalism believe that it supports the predominant economic system.⁷⁹ Though society is dynamic and in constant change, the conception of family seems to be crystallised in the 1950s, through the promotion of the ‘happy family’ of mainstream media.⁸⁰ Today there is much discussion of the crisis of the family as the practice of divorce has become more common and there is a growing number of non-conventional families. The stigma of conceiving a child outside of wedlock has diminished and there is an increase in single-parent households as well as “patchwork families.”⁸¹

Nonetheless there is resilience on the part of the state to adjust to the growing reality, and still today marriage is encouraged to a great extent. The state’s endorsement for marriage is supported by research representing it as the ideal environment for children to develop in.⁸² In the USA, it has been estimated that over a thousand benefits are granted to couples upon marriage under federal state laws.⁸³ These benefits range from inheritance tax, to social security, to health care and are most often denied to same-sex couples,⁸⁴ given that marriage is rarely an option for them. Though there certainly are benefits to a stable, legally recognised family household for children to grow up in, the exclusion of same-sex couples is discriminatory. The damaging effects

⁷⁷ de Koenigswarter 2014.

⁷⁸ Marshall, Gordon. *Sociology of Family*. January 1998. <http://www.encyclopedia.com/doc/1O88-familysociologyof.html> (accessed March 20, 2015).

⁷⁹ Ibidem.

⁸⁰ Martins Lamb 2011.

⁸¹ PARSHIP. *Patchwork Families: Single Parents*. 2015. <http://uk.parship.com/advice/single-parents/patchwork-families.htm> (accessed June 22, 2015).

⁸² Wilcox, et al. 2005; pp. 6-7, 9, 32-3.

⁸³ Burleson 2009, p. 194.

⁸⁴ Ibidem.

of viewing non-conventional families as deviant or pathological have also been documented.⁸⁵ Evidence suggests that the children of those families greatly suffer from it. This thesis does not argue for a reduction in the benefits to be granted to married couples, but rather highlights the discrimination that members of sexual minorities face.

1.8 The European Stance on Adoptions and Related Legislation

Kees Waaldijk identifies a progression in favour of rights of sexual minorities applicable to Europe.⁸⁶ Though his theory can be considered somewhat out-dated as it first appeared about fifteen years ago, it is still prominently considered in the literature and often referred to by scholars.⁸⁷ He identifies ‘the law of small change’ upon which the state shifts its position through time, beginning by the decriminalisation of same-sex sexual behaviour. The further step is the equalisation of the age of consent for sexual conduct. Once these two foundations have been fulfilled, the state will outlaw discrimination on the basis of sexual orientation, such as in employment. As of May 2015, the majority of the MS of the CoE (37) are at this stage and have implemented some form of legislation prohibiting discrimination in employment, indeed only Armenia, Azerbaijan, Belarus, Liechtenstein, the Former Yugoslav Republic of Macedonia, Monaco, Russia, San Marino, Turkey and Ukraine still have to do so.⁸⁸

The next step in the progression is the recognition of same-sex partnership, even if it only grants limited rights.⁸⁹ In the context of the CoE, six MS recognise registered partnerships, in Spain this recognition is not at the national level, as only certain territories recognise them.⁹⁰ However Spain does also offer greater recognition at a national level (through same-sex marriage).⁹¹ The next recognition is granting equal rights to marriage and registered partnerships, and it has a greater affluence among the

⁸⁵ Marshall, Gordon. *Sociology of Family*. January 1998. <http://www.encyclopedia.com/doc/1O88-familysociologyof.html> (accessed March 20, 2015).

⁸⁶ Waaldijk 2001.

⁸⁷ Doty 2009, pp. 137-139; Polikoff 2000, p. 713.

⁸⁸ ILGA-Europe. *Rainbow Map (Index)*. May 2015. http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_eurpe_index_may_2015_no_crops.pdf (accessed June 5, 2015).

⁸⁹ Waaldijk 2001, p. 440.

⁹⁰ ILGA-Europe. *Rainbow Map (Index)*. May 2015. http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_eurpe_index_may_2015_no_crops.pdf (accessed June 5, 2015).

⁹¹ *Ibidem*.

MS (twelve).⁹² Therefore a total of sixteen MS recognise civil partnership among same-sex couples (one of the countries, Spain, overlaps and the application is unequal throughout its territory). Waaldijk claims that in the European context, only after the recognition of civil partnerships, will states recognise marriage and further adoption. In terms of marriage, eleven MS of the CoE have granted it full equality to that between a man and a woman.⁹³ They are Belgium, Denmark, France, Iceland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the UK (with the exception of Northern Ireland). In addition, there has been a recent development in the Republic of Ireland, where on 22 May 2015 voters expressed their preference for the expansion of the marriage law in favour of same-sex marriage in a referendum.⁹⁴ The Parliament of the Republic of Slovenia has moved in the same direction, as it approved reforms to the Family and Marriage Law on 3 March 2015.⁹⁵ This measure was met with vocal opposition by a civil society that has requested a referendum on the matter.⁹⁶ However the Constitutional Court (CC) is currently reviewing the situation, as it is uncertain whether a popular vote would be constitutional.⁹⁷

In terms of joint adoption, the states that permit it regardless of the gender of the persons, and thus do not discriminate on sexual orientation are Andorra, Belgium, Denmark, France, Iceland, Ireland, Malta, the Netherlands, Norway, Spain, Sweden and the UK.⁹⁸ They are shown on the map below in green.⁹⁹ Additionally, second parent

⁹² Ibidem.

⁹³ Ibidem.

⁹⁴ Kirshner 2010, p. 3.

⁹⁵ Keating, Dave. *Slovenian parliament backs gay marriage*. March 4, 2015.

<http://www.politico.eu/article/slovenian-parliament-backs-gay-marriage/> (accessed April 20, 2015).

⁹⁶ Dvornik, Marjan. *Rekordnih 48.146 podpisov v štirih dneh*. March 27, 2015.

<http://24kul.si/rekordnih-48146-zbranih-podpisov-v-stirih-dneh>
(accessed June 12, 2015).

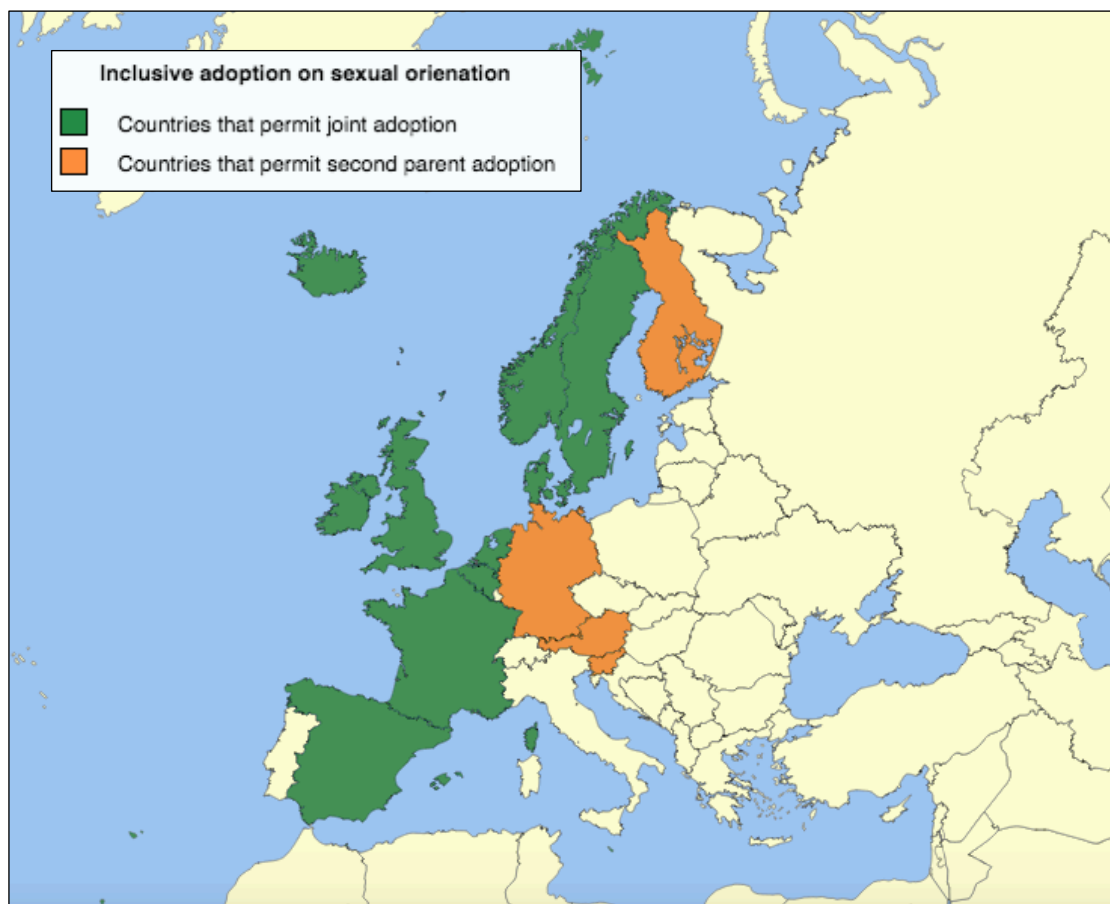
⁹⁷ Lusa, Stefano. *Slovenia, full rights for LGBT couples*. March 20, 2015.

<http://www.balcanicaucaso.org/eng/Regions-and-countries/Slovenia/Slovenia-full-rights-for-LGBT-couples-159955> (accessed April 20, 2015).

⁹⁸ ILGA-Europe. *Rainbow Map (Index)*. May 2015. http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_eurpe_index_may_2015_no_crops.pdf (accessed June 5, 2015).

⁹⁹ The map was composed using information from the most recent rainbow map, thus has a double citation in recognition of the map-making programme as well as the source of information: Archer, Philip, *Interactive Map of Europe*, 6 April 2013, at <http://philarcher.org/diary/2013/euomap/> (consulted on 20 May 2015); ILGA-Europe. *Rainbow Map (Index)*. May 2015. http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_eurpe_index_may_2015_no_crops.pdf (accessed June 5, 2015).

adoption for LGBT+ persons is recognised in Austria, Finland, Germany and Slovenia, as shown in orange.¹⁰⁰ This seems to diverge from Waaldijk's theory, as Austria, Finland, Germany and Malta do not grant same-sex couples the right to marry, but consider the partner of a parent as an eligible stepparent, regardless of sexual orientation. Further Malta permits joint adoption to same-sex couples without granting the right to marry.



There are certain developments regarding adoption that are currently taking place. Second parent adoption for same-sex partners has also been discussed in the Czech Republic, where Parliamentarians proposed amending the *Registered Partnership Act* to render it more inclusive.¹⁰¹ A recent census revealed a large number of children

¹⁰⁰ ILGA-Europe. *Rainbow Map (Index)*. May 2015. http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_eurpe_index_may_2015_no_crops.pdf (accessed June 5, 2015).

¹⁰¹ ILGA-Europe 2015, p. 62.

living in rainbow families,¹⁰² thus to provide them with greater legal protection, the government has been inspired to act. However it failed to examine the proposal so far.¹⁰³ In Portugal, the Parliament submitted a proposal to open second parent adoption to LGBT+ persons, which was however later rejected.¹⁰⁴ Switzerland has also been discussing second parent adoption for registered partners.¹⁰⁵ A proposal is soon to follow in the Federal Parliament.¹⁰⁶

There are some movements countering inclusive adoption, the Russian Federation being the strongest advocate of traditional families.¹⁰⁷ In fact new legislation prohibits the adoption of Russian children by singles, unmarried couples and same-sex couples from foreign nations.¹⁰⁸

Concerning the adoption by single parents, the vast majority of the MS of the CoE grant individuals the possibility to apply for authorisation. The table in the Appendix indicates the stance of each individual member state and it immediately transpires that only in a few countries is adoption completely precluded to single parents. It seems that only Cyprus, the Czech Republic, Iceland, Italy, Liechtenstein, Lithuania, Luxembourg and Montenegro categorically deny single parents the right to adopt. This may nonetheless have concrete implications in terms of non-recognition of bonds approved elsewhere, such as was the case of *Wagner and J. M. W. L. v. Luxembourg*.¹⁰⁹ Besides if countries are indeed committed to the BIC, in some cases that requires the recognition of single-parent adoption.

For the most part Waaldijk seems to have captured the general development for the legalisation of adoption by homosexual couples in Europe.¹¹⁰ In the USA, the jurisprudence has actually moved beyond the legislature; that is by analysing adoptions on a case by case, Courts have circumvented the question of gay marriage. Until 26 June 2015, there were multiple variations among the federal states. It was not

¹⁰² *Ibidem*.

¹⁰³ *Ibidem*.

¹⁰⁴ *Ibidem*, p. 13.

¹⁰⁵ *Ibidem*, p. 159

¹⁰⁶ *Ibidem*.

¹⁰⁷ *Ibidem*.

¹⁰⁸ *Ibidem*, p. 136.

¹⁰⁹ *Wagner and J. M. W. L. v. Luxembourg (ECtHR) 2007*.

¹¹⁰ Doty 2009, pp. 137-139; Polikoff 2000, p. 713.

uncommon for homosexual couples to be able to adopt, while still being denied the right to marry.¹¹¹ As the judiciary has spoken on the constitutional right to marriage, regardless of the gender of the spouse, that is no longer the case.¹¹² The earlier trend could seem illogical, as generally marriage is a precondition for adoption, but it might also be functional to counter the prejudice faced by persons belonging to sexual minorities. Recent rulings by the ECtHR might be a move towards the same direction.

¹¹¹ Polikoff 2000, p. 714.

¹¹² de Vogue, Ariane, and Jeremy Diamond. *Supreme Court rules in favor of same-sex marriage nationwide*. June 27, 2015. <http://edition.cnn.com/2015/06/26/politics/supreme-court-same-sex-marriage-ruling/index.html> (accessed June 27, 2015); Liptak, Adam. *Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide*. June 26, 2015. <http://www.nytimes.com/2015/06/27/us/supreme-court-same-sex-marriage.html> (accessed June 27, 2015).

CHAPTER 2

QUESTIONING ADOPTION PRACTICES

The following chapter takes a normative approach and suggests that inclusive adoption is desirable and thus national legislations should move towards it. The introduction framed the general elements of inclusive adoption. This chapter is not to be taken to understand that adoption should be completely unregulated. Indeed there are multiple limits that governments legitimately place upon adoption, keeping in mind the best interest of the child.

2.1 The Desirability of Inclusive Adoption

When assessing adoption claims, the state is not looking for a suitable solution, but rather the most suitable option for the child. That is what the BIC method was devised for, for placing children in the best possible family.¹¹³ The state is unable to provide the most suitable option for all children, as biological parents are not always the best parents a child could have. However state intervention would require a breach of the parents' personal liberties and a suspension of parental ties. In certain cases, the state does indeed intervene and removes a child from parental custody, but that is only in extreme situations, such as in cases of neglect or abuse.

The previous section highlighted some of the debate topics that are relevant to the discussion of inclusive adoption. It has implied that inclusive adoption is desirable, because it fulfils the BIC. This assumption will now be dissected. Many are sceptical about untraditional families¹¹⁴ and they demand scientific evidence of parental fitness.

¹¹³ Polikoff 2000, p. 716; Vité and Boéchat 2008, p. 3.

¹¹⁴ 24KUL. *Za kulturo zivljenja*. 2014. <http://24kul.si/> (accessed June 10, 2015); Bauman, Michael. *A Non-Religious Case Against Same Sex Marriage*. April 5, 2013. <http://www.theimaginativeconservative.org/2013/04/a-non-religious-case-against-same-sex-marriage.html> (accessed June 14, 2015); Dowd 1997, p. 6; Rosenblum 1991, p. 1668.

In fact both single and LGBT+ parents are eyed with suspicion simply for being different.¹¹⁵

2.1.1 *The Use of Social Science to Counter Inclusive Adoption*

There is some social science data that suggests that same-sex parenting is not positive for the child. The most widely discussed is the *New Family Structures Study*, which is a large-scale collection from American young adults, who are reflecting on their upbringing.¹¹⁶ It aimed to respond to the pre-existing social science research based on the fact that “the overall academic discourse surrounding gay and lesbian parents’ comparative competence has shifted – from slightly-less adept to virtually identical to more adept.”¹¹⁷ The concern with the previous social science data stemmed particularly from the limited sampling pool, indeed many of the studies on same-sex parents are not based on random samples.¹¹⁸ In order to provide a broader picture, those surveyed belonged to a variety of family backgrounds and of particular interests were those whose parent at some point had a same-sex romantic relationship.¹¹⁹ The outcome of the study revealed that “the groups display numerous, notable distinctions, especially when compared with young adults whose biological mother and father remain married.”¹²⁰ The item of comparison is particularly relevant and the study is not unscathed of criticism.

The American Sociological Association (ASA) offered an official response, when the study was to be used in court. It found several flaws, stemming from the fact that the majority of the young adults analysed were born in a heterosexual marriage and witnessed the breakup of their family, before the parent recognised her or his homosexuality.¹²¹ Given the crucial role of stability in a child’s development, this could

¹¹⁵ Child Welfare Information Gateway 2013, p. 13; Dowd 1997, p. 6; Marshall, Gordon. *Sociology of Family*. January 1998 <http://www.encyclopedia.com/doc/1O88-family sociology of.html> (accessed March 20, 2015); Roiphe, Katie. *In Defense of Single Motherhood*. August 11, 2012.

http://www.nytimes.com/2012/08/12/opinion/sunday/in-defense-of-single-motherhood.html?pagewanted=all&_r=1 (accessed July 11, 2015);

¹¹⁶ Regnerus 2012, p. 752.

¹¹⁷ *Ibidem*, p. 754.

¹¹⁸ *Ibidem*.

¹¹⁹ *Ibidem*.

¹²⁰ *Ibidem*, p. 766.

¹²¹ American Sociological Association 2013, p. 16.

account to the differences between the two groups. In fact “mental health problems linked to marital disruption have also been identified among young adults.”¹²² In addition the study compared essentially different groups, as those with a homosexual parent were juxtaposed to those who were raised in a dual parent household, though the children of ‘lesbian mothers’ or ‘gay fathers’ might have been raised in a single parent household. The study also failed to appreciate the time that parents spent with the child and finally the study was solely based on the retrospective analysis of the child. It is possible that the child did not have sufficient knowledge of the sexual activity of the parent. Therefore the ASA concluded that the *New Family Structures Study* failed to weaken the consensus among social scientist on the childrearing capabilities of same-sex couples; and it supports inclusive marriage, as “children raised by same-sex parents are likely to benefit from enhanced stability the institution of marriage would provide their parents and families.”¹²³

2.1.2 The Use of Social Science in Favour of Inclusive Adoption

Though the *New Family Structures Study*, captured some of the issues with the existing literature, it also failed to acknowledge other studies that aimed to bridge the existing gap. Already in 2010, Farr, Forssell and Patterson published a study that acknowledged and deficiencies of previous research.¹²⁴ These include the limited data on children reared by gay fathers; the use of the snowballing technique, thus many studies were not representative; the reliance on self-reported data, the absence of a like-group to compare to, and finally the limited material on the specific issues of adopted families.¹²⁵ The study addressed each of these elements by analysing a large random sample, composed of 106 American families (27 lesbian, 29 gay and 50 heterosexual) from varied geographical locations.¹²⁶ The couples compared were all adopting infants, and thus were in a similar starting position and the external caregivers, the children’s teachers, provided reports to corroborate the parental ones.¹²⁷ Given that behaviour

¹²² Ibidem, p. 24.

¹²³ Ibidem, p. 21.

¹²⁴ Farr, Forssell and Patterson 2010, p. 166.

¹²⁵ Ibidem.

¹²⁶ Ibidem, p. 165.

¹²⁷ Ibidem, p. 166.

problems and gender differences begin to transpire in toddlers,¹²⁸ the study consistently analysed the cases when the children reached the age of three.¹²⁹

The “results suggest that lesbian and gay adults can and do make capable adoptive parents.”¹³⁰ In fact the majority of children was reported to be developing well by both the parents and teachers, regardless of the sexual orientation of the parents.¹³¹ Rather the elements that played a significant role in the child development are “family process variables such as parenting stress, parenting strategies, and couple relationships satisfaction.”¹³² Given the lengthy process of adoption authorisation, adoptive parents tend to fare more positively in each of these categories than biological parents, in addition they tend to be more highly educated and better off financially.¹³³ The “results provide no justification for denying lesbian and gay adults from adopting children.”¹³⁴ Quite on the contrary, it demonstrated that children thrive regardless of the parental sexual orientation thus fulfilling the BIC. Thus it can be safely resumed that inclusive adoption regardless of sexual orientation is desirable.

Other studies have reached the same conclusion even when recording “modest”¹³⁵ differences between children raised by heterosexual and homosexual parents. Most of these differences appear to be more closely connected to the parental gender rather than sexual orientation and they “cannot be considered deficits from any legitimate public policy perspective.”¹³⁶ In fact the psychological wellbeing and cognitive functions are in line between the children of different and same-sex parents. Consequently, “there is no evidentiary basis for considering parental sexual orientation in decisions about children’s ‘best interest.’”¹³⁷ In fact the main difference observed refers to the gender stereotypical behaviour of children, which is much stronger among children of heterosexual parents.¹³⁸ To what extent this constitutes a drawback is highly

¹²⁸ Ibidem, p. 165.

¹²⁹ Ibidem, p. 164.

¹³⁰ Ibidem, p. 175.

¹³¹ Ibidem, p. 175.

¹³² Ibidem, p. 177.

¹³³ Ibidem, p. 175.

¹³⁴ Ibidem, p. 176.

¹³⁵ Stacey and Biblarz 2001, p. 176.

¹³⁶ Ibidem, p. 177.

¹³⁷ Ibidem, p. 176.

¹³⁸ Ibidem, p. 177.

debatable, in fact feminist theory has long emphasised the dangers of constricting individuals, both male and female, to gender roles.¹³⁹

Despite the advances in sociological research, it is difficult for researchers to reach a complete consensus regarding the nuances of human nature. Nonetheless the overwhelming majority of social science data suggests that parental sexual orientation has no significant impact on the development of the child.¹⁴⁰ Studies have been documenting the effects of LGBT+ parenting on children for over twenty years, so it seems automatic to ask how many studies are needed before the legislature, judiciary, and voting population will recognise that the BIC is not tied to parental sexual orientation. The mere need to provide scientific evidence, while the same is not required of other parents emphasises the discrimination present. Indeed the evidence presented suggests that low parenting stress, well-defined parenting strategies and high couple relationship satisfaction are better indicators for child development than parental sexual orientation or marital status. In fact it “is impermissible to deny an application solely on the basis of the applicant’s age, marital status, or whether children are already present in the home,”¹⁴¹ a holistic approach to adoption applications must be taken.

As already mentioned, children who are eligible for adoption are in a particularly vulnerable position. They tend to have some trust or abandonment issues as the relationship with their biological parents often has a history of abuse, neglect or loss.¹⁴² Children who experienced trauma frequently have attachment difficulties. In these circumstances it is thus possible that children “may experience a higher degree of consistency and emotional safety with single parent than with dual-parent families.”¹⁴³ Indeed when a parent is the sole caregiver of the child, a stronger bond is automatically formed.

Another of the benefits to single parent adoption is the greater certainty of a stable family life. Within a couple there is the perennial risk that tensions between the

¹³⁹ Baylis and Smith 2001.

¹⁴⁰ Elovitz 1995, p. 210; Farr, Forssell and Patterson 2010, p. 176; Goldberg and Smith 2013, p. 437; Horowitz and Maruyama 1994-1995, p. 5; Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015); Polikoff 2000, p. 741; Patterson 1995, p. 205; Roseblum 1991, p. 1687; Vlaardingerbroek 2006, p. 509.

¹⁴¹ Doty 2009, P. 126.

¹⁴² Child Welfare Information Gateway 2013, p. 5.

¹⁴³ *Ibidem*, p. 2.

partners could lead to repercussions in the child. Much documentation on the repercussions of the divorce of parents on child development indicates that it is a trauma that is particularly difficult to recover from, or accept.¹⁴⁴ In the case of adopted children, the state has an interest in preventing the child from suffering further trauma, therefore single parent adoption may be the avenue to achieve that.

Further, the theory of the BIC suggests that “growing up in a family is of primary importance and is essential for the happiness and healthy development of the child.”¹⁴⁵ However it does not define the form that such family must have. Indeed “the concept of family in international human rights law refers to a place that merits special protection because of its capacity to provide us with security, love, happiness, and the most suitable environment in which to raise children.”¹⁴⁶ Whether a single parent can provide security, love, and happiness is not usually called into question, at the same time the last element raises some controversy.

Within a dual-parent family the parents can share the responsibilities both in financial and socio-emotional terms. Parenting is round-the-clock job and having another adult working together on it, helps. In fact some claim that the core role of the second parent is to emotionally and financially support the primary caregiver, rather than providing much care to the child.¹⁴⁷ Child psychologists and single parents themselves recognise the added burden. In *E.B. v. France*, the psychologist claimed that “all the studies on parenthood show that a child needs both its parents.”¹⁴⁸ It is not actually the case. There are a series of studies in favour of single parenting, particularly in the case of adoption, where the prospective parent has undergone a thorough screening, in itself demonstrating strong commitment.¹⁴⁹ Besides, in the given context the statement was out of place, as the French legislation clearly allows single individuals to adopt, nonetheless it is worthy of consideration. The added burden of single parenting may have repercussions on the child, who will feel the parental stress.

¹⁴⁴ Amato 2000, p. 1282; Hess and Camara 1979, pp. 93-96; Hetherington, Cox and Cox 1985, p. 518.

¹⁴⁵ Burleson 2009, p. 801.

¹⁴⁶ Hodson 2007, p. 19.

¹⁴⁷ Dowd 1997, p. 31.

¹⁴⁸ *E.B. v. France* 2008 (ECtHR), paragraphs 11, 86.

¹⁴⁹ Schuder, Kirsten. *Understanding Single Parent Families*. <http://family.lovetoknow.com/single-parent-family> (accessed July 11, 2015).

Whether having one loving parent is better than having none is not widely debated; and that is an argument that is often used by advocates of more inclusive adoption, however that does not fit the BIC practice. The BIC are not simply a better outcome, but rather for the best possible outcome. Is living with a single parent the best outcome? In the case of a child being orphaned and the parents previously designating a single family-member, it can hardly be disputed.

The main concern with single parenting is the emotional and psychological burden on the parent, given that stress transmits to the child. But it must be kept in mind that in the application for the authorisation of adoption, single parents are required to demonstrate that they have a solid support group. This support group is comprised of friends and family and will be able to provide other role models for the child. In addition, the role of the support group is to step in as an alternative caregiver when the parent is unable to get time off work or needs some support.¹⁵⁰ In terms of providing role models, society stresses the benefits of having role models of each sex. This applies equally to single parents and same-sex couples. The countries that legalised single parent adoption have emphasised the importance of having an opposite-sex referent present in the child's life, and made it a requirement for granting the authorisation to adopt.¹⁵¹ Having a close relationship with persons of each sex is valued by society, but this relationship does not necessarily need to be of the parent-child nature.

2.1.3 The Value of Non-Discrimination

Finally inclusive adoption is desirable because it supports the principle of non-discrimination. This principle is in itself valuable and it sends a strong message to society that all forms of families are equally worthy. This is particularly important for the children of LGBT+ persons and single-individuals, whether biological or adoptive. In fact legal recognition and social acceptance of their family situation, is beneficial for children.¹⁵² It is further important for children who do not identify with heterosexuality, as it signals to them that in the future their sexual orientation will not be a bar to their

¹⁵⁰ Children Welfare Information Gateway 2013, p. 3.

¹⁵¹ E.B. v. France 2008 (ECtHR), Fretté v. France 2002 (ECtHR).

¹⁵² Burleson 2009, p. 802; Lubalin, Eve. *Advocacy and Issues*.

<http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015); Polikoff 2000, p. 40; Rosenblum 1991, p. 1696; The International Family Equality Day (IFED) Network 2014, p. 6.

opportunities in life. It also demonstrates that their marital status will not be a determining factor.

2.2 Potential Limitations on Adoption Applications

There are numerous ways in which the state currently places limitations on adoptions. They can be subdivided between formal and informal limitations. Formal limitations are stated, whether explicitly or implicitly in the legislation regulating adoptions, whether that is the Civil Code, a Marriage and Family Act or an Adoption Act (among others).¹⁵³ For example, Article 343-1 of the French Civil Code reads: “adoption may also be applied for by any person over twenty-eight years of age.”¹⁵⁴ The minimum age limit of twenty-eight is part of the formal limitations, and it is explicit. Informal limitations are not actually part of the legislation but rather transpire in the process to grant authorisation. The most common one is the economic capability of prospective parents, in fact in most cases they bear the costs of the assessment carried out by the state¹⁵⁵ and additionally they must certify that they will be able to financially support a child.¹⁵⁶

This thesis is not promoting a complete liberalisation of the adoption process, but differentiates among legitimate and illegitimate limitations. The difference between these does not necessarily align with legislation, rather legitimate will be understood as “able to be defended with logic or justification; valid.”¹⁵⁷ And illegitimate will therefore come to signify the lack of a reasonable justification. Given that the adoptions by both single parents and LGBT+ persons have been deemed desirable, their limitation would be illegitimate, as it fails to be justified on the BIC approach. Thus this thesis deems the exclusion of single parents and LGBT+ persons as amounting to discrimination, which is “the unjust or prejudicial treatment of different categories of people.”¹⁵⁸ At various points, the reason for combining these two marginalised groups, unmarried and LGBT+ persons, has been explained; but a further justification is that they are the most common

¹⁵³ Department of Economic and Social Affairs: Population Division 2009, pp.14-18.

¹⁵⁴ E.B. v. France 2008 (ECtHR), p. 9.

¹⁵⁵ Vlaardingerbroek 2006, p. 501.

¹⁵⁶ Ibidem, p. 510.

¹⁵⁷ Oxford Dictionary of English 2014, ‘legitimate.’

¹⁵⁸ Oxford Dictionary of English 2014, ‘discrimination.’

form of formal limitations and are to a large extent unquestioned. If a state were to formally limit adoptions arbitrarily on other characteristics such as race, or religion, there would be public uproar. Luckily no member state of the CoE has such discriminatory legislation in place,¹⁵⁹ as it would amount to an illegitimate limitation.

2.2.1 The Age of the Adoptive Parent(s)

Common formal limitations also refer to citizenship and residence, in fact national legislation only applies to the nationals of that state or to its inhabitants.¹⁶⁰ This is legitimate because a state cannot be expected to have to take into account the interests of all world citizens. Age limits are another very common formal limitation. In the CoE only Andorra,¹⁶¹ Armenia,¹⁶² Azerbaijan,¹⁶³ Bosnia and Herzegovina,¹⁶⁴ the Czech Republic,¹⁶⁵ Georgia,¹⁶⁶ Poland,¹⁶⁷ and Slovakia¹⁶⁸ do not have formal age limitations. Interestingly there is much variation on the age requirements within the CoE, in fact they range from “16 to 45 years older than the child”¹⁶⁹ in Hungary to “aged 30 and 60 years and at least 21 years older than the child”¹⁷⁰ in Malta. The ECAC aimed at harmonising the practice among the MS, stipulating that

a child may be adopted only if the adopter has attained the minimum age prescribed by law for this purpose, this minimum age being neither less than 18 nor more than 30 years. There shall be an appropriate age difference between the adopter and the child, having regard to the best interests of the child, preferably a difference of at least 16 years.¹⁷¹

However this leaves much variance, as MS are complying with the Convention as long as the minimum age falls within the range of twelve years (18-30). In addition the age limitations are not static through time in fact

¹⁵⁹ Department of Economic and Social Affairs: Population Division 2009.

¹⁶⁰ Ibidem.

¹⁶¹ Ibidem, p. 172.

¹⁶² Ibidem, p. 176.

¹⁶³ Ibidem, p. 179.

¹⁶⁴ Ibidem, p. 190.

¹⁶⁵ Ibidem, p. 214.

¹⁶⁶ Ibidem, p. 233.

¹⁶⁷ Ibidem, p. 306.

¹⁶⁸ Ibidem, p. 326.

¹⁶⁹ Ibidem, p. 245.

¹⁷⁰ Ibidem, p. 276.

¹⁷¹ ECAC (Revised) 2008, article 9.1.

some countries have eased their age requirements over time. In France, for instance, under the Civil Code of 1804, only persons aged 50 or over could adopt. The minimum age requirement for adoptive parents was later lowered to 35 years [...] and is currently 28 years.¹⁷²

The role of adoption has in fact changed greatly in the past two centuries, from being primarily focused on the rights of the parents to those of the child.¹⁷³

One of the grounds to limit the age of parents is that in the various stages of life people have different physical and psychological faculties.¹⁷⁴ That is not to say that younger or older people are categorically unable to raise a child, indeed in many cases grandparents step in when parents are unable to fulfil their role and teenage parents are a growing phenomenon. However on average that is not the ideal outcome and with adoptions, the state aims to place the child in a position where there is a reasonable expectation that the parent will raise them to adulthood. Given that they aim to respect the principle of the BIC, age limitations are legitimate.

In 2007 a Swiss national, Ariane Schwizgebel, complained to the ECtHR that she had been discriminated against, among other things, on grounds of her age in seeking to adopt a second child when forty-seven years old.¹⁷⁵ She claimed that there were biological possibilities of conception at her age, and thus she had suffered from discrimination when the state authorities refused to grant her the authorisation to adopt. The Court agreed with the State over the fact that it “could not have any influence over a woman’s ability or inability to have biological children.”¹⁷⁶ Indeed the danger of biologically based arguments when relating to adoption is something that will be addressed throughout the thesis. They may be used both to favour, such as by Miss Schwizgebel, or limit adoption, such as by those opposing same-sex adoptions (by claiming that they are unnatural).¹⁷⁷ Further biological explanations can be manipulated, as they will provide different results based on what one is wishing to prove. Miss Schwizgebel claimed that in modern day and age it is possible to conceive a child at her

¹⁷² Department of Economic and Social Affairs: Population Division 2009, p. 38.

¹⁷³ Ibidem, pp. 5-21

¹⁷⁴ Ruddick, William. *Parenthood: Three Concepts and a Principle*. 1998.

<http://www.nyu.edu/gsas/dept/philo/faculty/ruddick/papers/parenthoo d.html> (accessed May 23, 2015).

¹⁷⁵ Schwizgebel v. Switzerland 2010 (ECtHR), paragraphs 1-4.

¹⁷⁶ Ibidem, paragraph 83.

¹⁷⁷ Rosenblum 1991, p. 1694.

age. However if one is to consider the average age of mothers, the number is significantly lower. Further biology also demonstrates that after the age of thirty-five, of both biological parents, the risk of chromosomal abnormalities steeply increases.¹⁷⁸ Given that the Swiss authorities took into consideration a series of elements, the BIC is supported by the decision of the ECtHR, which found no violation in the case of Miss Schwizgebel.

Though age limits are legitimate, a critical eye is also important. In France, the legislation requires that an individual be twenty-eight or older in order to adopt singularly or jointly.¹⁷⁹ This age boundary seems rather high, considering that the legal age of maturity is eighteen. Nevertheless the state must also consider the psychological and emotional stability of a person as well as her or his capacity to provide for the child financially. It is more unlikely that a person younger than twenty-eight can fulfil all of the requirements mentioned, and thus the state imposed this age limit. However this limit is nonetheless arbitrary. Why twenty-eight and not twenty-seven? Indeed other countries, such as Slovenia, prefer to maintain a wider margin and the limits are not as clearly defined, they are informal.¹⁸⁰ In fact the authorisation for adoption is granted in a case-by-case basis and the only legal requirement is the age of eighteen.¹⁸¹ Of course this age boundary is also arbitrary, however it is also recognised internationally as the moment of legal passing from childhood into adulthood.¹⁸² Therefore there are different approaches to the way the state should regulate adoption. Certain countries place more clearly defined limitations (formal), while others give a greater role to the institutions granting authorisation (informal). The latter approach is more favourable, as it avoids blanket bans and general discrimination.

2.2.2 Informal Limitations

The vast majority of limitations placed on adoption have an informal character. Though the very nature of these limitations is more flexible than that of formal ones, they may be just as problematic when there is systematic discrimination. For example if

¹⁷⁸ Johnson and Tough 2012.

¹⁷⁹ French Civil Code, article 343 *cited in* E.B. v. France 2008 (ECtHR), paragraph 26.

¹⁸⁰ Law on Marriage and Family Relations, article 137.

¹⁸¹ Law on Marriage and Family Relations, article 137.

¹⁸² CRC 1989, article 1.

all single parents wishing to adopt were denied authorisation, even when there is the formal possibility to adopt, this would amount to discrimination and a de facto formal limitation. In most cases, informal limitations are communicated to parents when they begin the adoption process, or they only form one of the elements of the adoption assessment. As mentioned above, the economic aspect is among them. Again, that does not mean that a child of a low-income household will not be happy, but the state has an interest in placing a child in a family that is economically self-sufficient. A further requirement is the health of the prospective parent, as the state attempts to place children in a permanent home as much as possible. If a terminally ill patient would be granted the possibility to adopt, the child would have a higher probability of being orphaned again and thus suffer through additional trauma. At the same time other types of limitations, such as the ones based on sexual orientation have no rational basis. To reiterate the previous section – social science studies have demonstrated that the upbringing of children by untraditional families has no detrimental impact upon the child's capacities.¹⁸³ Indeed children brought up by heterosexual parents and non-heterosexual parents have similar levels of psychological health, individual gender identity, self-esteem, peer and adult development, intellectual development and happiness among other things.¹⁸⁴ Therefore inclusive adoption, relating to the parents' sexual orientation is desirable, as there is no rational basis for its limitation. The BIC would require a motive in order for its exclusion to be acceptable.

2.3 The Link Between Marriage and Adoption

Marriage is so central to the discussion at hand because in many countries adoption is a privilege restricted to married couples overall or when there are two persons adopting.

¹⁸³ Elovitz 1995, p. 210; Farr, Forssell and Patterson 2010, p. 176; Goldberg and Smith 2013, p. 437; Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015); Polikoff 2000, p. 741; Roseblum 1991, p. 1687; Vlaardingerbroek 2006, p. 509.

¹⁸⁴ Doty 2009, p. 136; Elovitz 1995, pp. 211-215, 224-225; Polikoff 2000, p. 743.

2.3.1 The Conjugal Understanding of Marriage

There is an essential disagreement on what marriage is supposed to signify. According to the conjugal view, “marriage is the union of a man and a woman who make a permanent and exclusive commitment to each other of the type that is naturally (inherently) fulfilled by bearing and rearing children together.”¹⁸⁵ There are two central elements to marriage according to this definition: the couple must be opposite-gender; and the possibility of posterity. Both categorically exclude same-sex relationships, based on the fact that the coitus can only be “organic”¹⁸⁶ between two opposite-sex persons, because “a man and woman coordinate to perform an act of the kind that causes conception.”¹⁸⁷ However it may be argued that the mere presence of homosexual relationships might demonstrate the natural element of that type of sexual relationships. Indeed homosexual relationships have been documented in various societies throughout human history as well as within the animal kingdom.¹⁸⁸ Besides whether homosexuality results from internal (natural) or external (environmental influences) pressure, is beside the point. The demonization and lack of understanding of homosexual relationships seems to be a rather recent development. In the Western world it coincided with the spread of Christianity.¹⁸⁹ Not to mention that sexual acts performed in homosexual relationships are often performed in heterosexual relationships as well.

Regarding the essential element of procreation in marriage, it seems that the infertility of a heterosexual couple would also constitute an obstacle to marriage, for its failure to fulfil the aim of procreation. In the past it has been used as a ground for the annulment of marriage or divorce, but nowadays it is no longer the case in Europe. However even those attesting to the conjugal view argue that “in truth marriage is not a mere means, even to the great good of procreation. It is an end in itself, worthwhile for its sake.”¹⁹⁰ If this weren’t the case, infertile couples (whether because of their age or any other biological limitation) should also be denied the opportunity to marry.

¹⁸⁵ Girgis, George and Anderson 2011, p. 246.

¹⁸⁶ Ibidem, p. 253

¹⁸⁷ Ibidem, p. 254

¹⁸⁸ Sommer and Vasey 2006.

¹⁸⁹ Bidstrup, Scott. *Saint Aelred the Queer: The Surprising History of Homosexuality and Homophobia*. July 15, 2000. <http://www.bidstrup.com/phobiahistory.htm> (accessed June 25, 2015).

¹⁹⁰ Girgis, George and Anderson 2011, p. 267.

Therefore the question arises, what is the state's interest in promoting marriage? Many of the benefits that are granted to married couples are defended on the basis that they are aimed towards the future children of the couple. Rather it may be argued that even a childless marriage may contribute to society, by providing "a good example for others and help to teach the next generation what marriage is and is not"¹⁹¹ because "everyone benefits from a healthy marriage culture."¹⁹² Therefore the link between procreation and marriage is also severed on the basis of the value of marriage in itself.

A further argument that favours the conjugal understanding of marriage relates to the legislative and historical tradition. It is undoubtedly true that the majority of nations and human rights instruments use a gender-specific definition of marriage. Therefore it may be claimed that legally speaking, same-sex marriage has no ground. This legalistic argument fails to take into account that as long as the majority is unchallenged, there is no self-interested incentive in granting equal rights to minorities and thus they have traditionally been oppressed. For the longest time women and ethnic minorities lived outside the public arena. The legalistic argument was then used in favour of discrimination, but modern society recognises that this is no longer acceptable.

2.3.2 The Revisionist Understanding of Marriage

Instead the definition of marriage according to the revisionist view entails that "is the union of two people (whether of the same sex or of opposite sexes) who commit to romantically loving and caring for each other and to sharing the burdens and benefits of domestic life."¹⁹³ This conception of marriage does not categorically exclude persons on the basis of their sexual orientation and at the same time recognises the emotional element of marriage and by referring to a 'romantic' relationship, it implies that there is a sexual element as well. They argue that if marriage were to be expanded beyond heteronormativity, the institution would automatically be weaker. Many have vocalized this fear in the claim that the opening up of marriage to homosexual couples would undermine certain elements, such as monogamy. On monogamy, it can hardly be said

¹⁹¹ Ibidem, p. 268.

¹⁹² Ibidem.

¹⁹³ Ibidem, p. 246.

that it is an unchallenged value within married couples. Indeed extra-marital affairs are among the main causes of the breakup of marriage.¹⁹⁴ Therefore infidelity may be a component of human relationships regardless of sexual orientation.

Finally adoption would permit same-sex couples to raise children, and thus fulfil the childrearing element of marriage. At the same time adoption is often denied to same-sex couples on the basis of their non-married status. Therefore the argument against same-sex marriage and adoption are grounded in a cyclical logic, where each premise fails to uphold individually.

2.3.3 Religion and Same-Sex Marriage

A further argument against the legalisation of same-sex marriage relates to the threat it poses to moral and religious freedom. To phrase it differently, if those who are engaged in the marriage business have a strong stance against same-sex marriage, they will be disproportionately affected by inclusive legislation. Ministers, caterers and bakers will no longer be allowed to refuse to cooperate with same-sex couples, regardless of their religious beliefs. The Belfast County Court reiterated this principle of non-discrimination. To mark the International Day Against Homophobia in May 2014, Gareth Lee ordered a cake with the slogan “Support Gay Marriage” at the Asher’s Baking Company.¹⁹⁵ After an initial agreement, the owners of the bakery refused to comply with the production for their disapproval of the message.¹⁹⁶ They defended their stance on the grounds of their religious beliefs.¹⁹⁷ Nonetheless the Belfast County Court ruled against them because notwithstanding their motivation, the judge found that the Asher Baking Company was engaging in unacceptable discrimination.¹⁹⁸ Therefore a call to freedom of religion cannot result from the desire to limit another’s rights. This applies to the right to get married. In the case of adoption there is no equivalent right on the side of the parent, but discrimination is no more acceptable.

¹⁹⁴ Previti and Amato 2004.

¹⁹⁵ Withnall, Adam. *Gay marriage 'Bert and Ernie' cake bakery found guilty of discrimination in Northern Ireland*. May 19, 2015. <http://www.independent.co.uk/news/uk/home-news/gay-marriage-bert-and-ernie-cake-row-to-hear-ruling-of-judge-in-northern-ireland-10259865.html> (accessed June 27, 2015).

¹⁹⁶ Ibidem.

¹⁹⁷ Ibidem.

¹⁹⁸ Ibidem.

2.3.4 Breaking the Link Between Marriage and Adoption

Does same-sex adoption require same-sex marriage? No, in fact joint adoption may be granted to cohabiting couples, and in places where civil partnerships are open to LGBT+ persons, they are already recognised the possibility to adopt jointly. In spite of this, the European trend seems to suggest that marriage is somewhat of a pre-requisite for parenting, and thus adoption.¹⁹⁹ Furthermore, even if same sex marriage is allowed, it does not follow that child rearing by same-sex couples will be approved. In fact to some extent the “ability to validate lesbian and gay relationship while disapproving of lesbian and gay parenting” remains.²⁰⁰ That trend is contrasted by the developments in the USA, where the judiciary has often circumvented the discussion on same-sex marriage in favour of adoptions by LGBT+ parents.²⁰¹ As the Supreme Court announced a constitutional right to marry regardless of sexual orientation on 26 June 2015 that will no longer be necessary.²⁰²

The right of same-sex couple to marry is a positive move towards the recognition of homosexual relationships, but it may have an adverse effect on adoption claims. It is possible that it may once again strengthen the bond between marriage and childrearing. The risk of that action is that it will increase the “societal disapproval of nonmarital families”²⁰³ because

“courts continue to suggest that the state’s goal in creating and supporting heterosexual marriage is to “discourage unmarried childbearing.” These courts have been concerned with the issue before them—whether denial of the right to marry to same-sex couples violates the state constitution. They probably never envisioned that their decisions might signal that nonmarital families and their children are deviant. Nevertheless, courts must be vigilant and take care not to inadvertently stigmatize nonmarital children.”²⁰⁴

¹⁹⁹ Polikoff 2000, pp. 712-718; Waaldijk 2001, p. 440.

²⁰⁰ Polikoff 2000, p. 719.

²⁰¹ Horowitz and Maruyama 1994-1995, p. 2; Polikoff 2000, pp. 717-718.

²⁰² de Vogue, Ariane, and Jeremy Diamond. *Supreme Court rules in favor of same-sex marriage nationwide*. June 27, 2015. <http://edition.cnn.com/2015/06/26/politics/supreme-court-same-sex-marriage-ruling/index.html> (accessed June 27, 2015); Liptak, Adam. *Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide*. June 26, 2015. <http://www.nytimes.com/2015/06/27/us/supreme-court-same-sex-marriage.html> (accessed June 27, 2015).

²⁰³ Maldonado 2011, p. 393.

²⁰⁴ *Ibidem*.

The stigma is somewhat diminished in the case of adopted children, as they are clearly ‘planned’ but is still present. Indeed the shame attached to children born out of wedlock usually results from first-sight judgment. This type of discourse, which implies that nontraditional families are lacking in some way, directly results in harm to the children of said families.²⁰⁵ Whether the parents are members of the LGBT+ community, or whether they decided to adopt alone, the BIC is to be the primary consideration, not only of state actors, but of society as a whole.

²⁰⁵ Polikoff 2000, p. 745.

CHAPTER 3

THE CASE LAW OF THE ECtHR

Concerning the rights of LGBT+ persons, there has been an impressive development in last twenty years. Indeed until the 1990s, same-sex relationships were not considered as ‘family life’ according to Article 8 of the ECHR.²⁰⁶ Article 8 differentiates between private and family life and though in their protection these are grouped together, there is a political difference. In addition, in the case of family life, the state has some positive obligations to fulfil.²⁰⁷ Until 1999, the CoE had two bodies dealing with violations of human rights. In addition to the ECtHR, the European Commission of Human Rights (ECmHR or thereafter referred to as ‘the Commission’) played “an intermediary role – that of shielding the Court from frivolous suits.”²⁰⁸ The Commission took charge of decisions concerning same-sex couples and it declared all cases inadmissible. “The Commission’s decisions had the unfortunate consequence of suggesting that such relationships are somehow shameful and rightly kept secretive.”²⁰⁹ However since the abolishment of the Commission and the Court’s responsibility on issues of discrimination on sexual orientation, there has been a shift towards greater protection.

The Commission found that the right to respect for family life, that is Article 8 of the ECHR, presupposed the existence of a family.²¹⁰ It reasoned that the ECHR did not safeguard the aspiration to become a parent and thus declared various cases inadmissible. As the previous section confirmed, it is important to keep in mind that according to international law, “adoption is a privilege, not a right guaranteed by the

²⁰⁶ C. & L. M. v. UK 1989 (ECmHR); Rössli v. Germany 1996 (ECmHR); S. v. UK 1986 (ECmHR); X, Y & Z v. UK 1983 (ECmHR).

²⁰⁷ Hodson 2007, p. 27.

²⁰⁸ Neacşu 2015. *European Human Rights System*. February 4, 2015.

http://library.law.columbia.edu/guides/European_Human_Rights_System#The_European_Human_Rights_System_The_Commission_of_Human_Rights_How_to_Find_a_Report_of_the_Commission (accessed March 17, 2015).

²⁰⁹ Hodson 2007, p. 27.

²¹⁰ C. & L. M. v. UK 1989 (ECmHR); Rössli v. Germany 1996 (ECmHR); S. v. UK 1986 (ECmHR); X, Y & Z v. UK 1983 (ECmHR).

Convention of Human Rights.”²¹¹ The question is not whether adoption is indeed a privilege, but rather whether discrimination would thus be acceptable. More recent cases concerning adoption were analysed by the Court, when pertaining to discrimination.²¹² Indeed though adoption might not be directly protected under Article 8,²¹³ the case law suggests that it can nonetheless be analysed and must be free from discrimination.

There are four core cases concerning the adoption by same-sex couples, which can be divided in single parent adoption and second-parent adoption, these are *Fretté v. France*, *E.B. v. France*, *Gas and Dubois v. France*, and *X and Others v. Austria*.²¹⁴ These cases are remarkable because, though they present multiple similarities, they resulted in a different logic of the ECtHR and thus opposite decisions. They will be paired and directly compared. Though the majority of these cases originate in a claim against France, that is an irrelevant factor, as all ECtHR judgements are binding upon all MS of the CoE, and thus have greater implications than national application and render the originating state not pertinent.

3.1 The case of Fretté v. France

In the first case, Mr Philippe Fretté alleged discrimination on the grounds of sexual orientation in the state’s refusal to grant him authorisation to adopt. His homosexuality was a prominent factor in the decision. When first rejecting his application, the state claimed that the main reasons for refusing the authorisation were the lack of a “stable maternal role model” and the fact that the applicant had “difficulties in envisaging the practical consequences of the upheaval occasioned by the arrival of a child.”²¹⁵ That contrasted much of the evidence gathered by experts during the adoption process, indeed a female friend of Mr Fretté had been designated as the female role model for the future child and he had pondered about adoption for a long time. The social services report credited Mr Fretté as having “undoubted personal qualities and an aptitude for bringing up children” and only raised questions in relation

²¹¹ Doty 2009, p. 134.

²¹² *E.B. v. France* 2008 (ECtHR); *Fretté v. France* 2002 (ECtHR).

²¹³ ECHR 1950, article 8.

²¹⁴ Nozawa 2013, pp.70-74.

²¹⁵ *Fretté v. France* 2002 (ECtHR), paragraph 10.

to his being “a single homosexual man.”²¹⁶ Indeed in further appeals towards the state to reconsider his status, the French government directly specified that the application of Mr Fretté was denied on his “choice of lifestyle.”²¹⁷ The ECtHR recognised the applicant’s homosexuality played a predominant role in the refusal of the application, and declared the case admissible. The admissibility was based on the fact that “by legally entitling single persons to apply for adoption, France went beyond what was required by way of a positive obligation under Article 8 of the Convention. Nonetheless, having granted such a right and established a system of applications for authorisation to adopt, it has a duty to implement the system in such a way that “no unwarranted discrimination is made between single persons on the grounds listed in Article 14 of the Convention.”²¹⁸ As previously mentioned, sexual orientation is not explicitly referred to in Article 14, but it is included as “other.”²¹⁹

In determining whether the applicant suffered from discrimination, the Court used the three-tier test for identifying discrimination. The first element the Court takes into consideration is whether differential treatment occurs among similarly-situated groups, then it questions whether there is an objective and reasonable justification for unequal treatment and finally whether the measures taken by the state are proportionate to achieve a clear-defined goal. The ECtHR found that the lack of consensus among MS and social scientists on the advisability of allowing “a single homosexual man to be entrusted with a child”²²⁰ required the application of a wide margin of appreciation for the state, as it found the refusal to grant the adoption authorisation to fulfil an objective and reasonable justification for unequal treatment.²²¹ Therefore it concluded that there had been “no violation of Article 14 of the Convention taken in conjunction with Article 8.”

²¹⁶ Ibidem, paragraph 13.

²¹⁷ Ibidem, paragraph 11.

²¹⁸ Ibidem, page 33.

²¹⁹ ECHR 1950, article 14.

²²⁰ Fretté v. France 2002 (ECtHR), paragraph 10.

²²¹ Ibidem, paragraph 36.

3.2 The case of E.B. v. France

A mere six years later, the ECtHR analysed a very similar case. The applicant, Miss E.B., a French nursery teacher, filed a petition to adopt as a single individual, though she was cohabiting with her partner Miss R. at the time.²²² In her application, Miss E.B. surfaced as a good candidate for adoption and the psychologist examining her application reflected, “her ideas about child-rearing appear very positive.”²²³ Nonetheless she was denied the authorisation to adopt on two grounds, the absence of a father figure and the lack of commitment from Miss R. in the adoption process. In regards to the admissibility of the case, the ECtHR reasoned in a similar logic than in *Fretté v. France*, by recognising that the state went beyond its basic requirements of the Convention by granting single parent adoption, but that this did not entitle it to engage in discriminatory behaviour. Miss E.B. claimed that the true motive for limiting her authorization was her sexual orientation. The Court recognised that though the state's rationale never referred to her sexual orientation explicitly or her ‘choice of lifestyle,’ Miss E.B. faced indirect discrimination.²²⁴ Rather throughout the application, it transpired that her sexual orientation was a relevant factor.

In assessing the authorisation to adopt by Miss E.B., the Court called for a concurrent consideration of the two main grounds to deny the authorisation, “consequently, the illegitimacy of one of the grounds has the effect of contaminating the entire decision.”²²⁵ The Court found that the first reason to limit the adoption, the lack of a father-figure, ran “the risk of rendering ineffective the right of single persons to apply for authorisation.”²²⁶ Therefore the entire decision was contaminated by the ill-founded ground. Further the Court assessed that “the domestic authorities made a distinction based on considerations regarding her sexual orientation, a distinction which is not acceptable under the Convention.”²²⁷ Therefore, unlike in the case of *Fretté v.*

²²² E.B. v. France 2008 (ECtHR), paragraphs 7-9.

²²³ Ibidem, paragraph 11.

²²⁴ Ibidem, paragraphs 71, 88-89.

²²⁵ Ibidem, paragraph 80.

²²⁶ Ibidem, paragraph 74.

²²⁷ Ibidem, paragraph 96.

France, the Court found the state to be in breach of Article 14, taken in conjunction with Article 8.²²⁸

This case was immediately singled out and was widely discussed in the media and literature.²²⁹ Further though the ECtHR refuses to acknowledge the power of the case of *E.B. v. France* in overturning its previous decision, it is an argument that has been put forward by academics.²³⁰ The Court stressed that the refusal to grant the authorisation was essentially different, as in the first case it fulfilled the BIC, but in the second it undoubtedly did not. However the evidence presented in this thesis demonstrated that the blanket exclusion of homosexual individuals from adopting does not fulfil the BIC, as there is no evidence that a person's sexual orientation is connected to his or her parenting faculties. Therefore the reading of the latter case ought to be considered as a reversal of the previous decision.

3.3 The case of Gas and Dubois v. France

The two following cases concern discrimination within adoption applications on grounds of sexual orientation, in the form of second-parent adoptions. Ms Nathalie Dubois gave birth to A. through anonymous donor insemination, and thereafter registered into civil partnership with Ms Valérie Gas. Though living in the same household as the child, and playing a prominent role, Ms Valérie Gas had no legal bond to the child, and thus filed an application for second-parent adoption (known in French legislation as simple adoption). The application was refused by the French authorities, as it would require the termination of the parental rights of Ms Nathalie Dubois, the child's biological mother. Indeed according to French law, "simple adoption results in all the rights associated with parental responsibility being removed from the child's father or mother in favour of the adoptive parent."²³¹ There is however an exception for married couples, whereby the spouse is entitled to gain parental rights without the fracturing of the legal ties of the other spouse.

²²⁸ Ibidem, page 27.

²²⁹ Baihham 2007, p. 480; Doty 2009, p. 122; Faletti 2011, p. 26; Nozawa 2013, p. 70.

²³⁰ Ibidem.

²³¹ Gas and Dubois v. France 2012 (ECtHR), paragraph 19.

The Court found that there was no violation of Article 14 in conjunction with Article 8 as it found that the “the applicants’ legal situation cannot be said to be comparable to that of a married couple.”²³² Still today marriage is a requirement for couples to adopt, so both single individuals and persons that do not adhere to the heteronormative tradition are arbitrarily excluded. What is it about marriage that confers the authority to adopt? The Courts acceptance of the higher status of marriage fails to consider one important element relating to persons who are not heterosexual: “The Court’s failure to distinguish the situations of individuals who *cannot* marry and individuals who *choose* not to marry in their comparative is a lamentable refrain.”²³³ In comparing married couples to others it claims that they are not similarly situated groups, nevertheless it fails to recognise that in many countries they cannot be. In fact Judge Sir Nicolas Bratza and Judges Fuhrmann and Tulkens state that it is not “for the Court to express preference for any type of family model.”²³⁴ In spite of this, by not emphasizing the presence of discrimination in favour of marriage, the ECtHR is implicitly indicating a preference towards married couples. Given the political sensitivity of the topic, it is understandable that the Court composed such a verdict, however that does not render it justifiable.

3.4 The case of X and Others v. Austria

A few years following the case of *Gas and Dubois v. France*, the Court was once again fronted with a question on second-parent adoption, the first and third applicant being two women living in a stable relationship. The first applicant wished to adopt her partner’s child, without severing the legal ties with the biological mother. The state authorities refused to grant such authorisation to adopt on the grounds that the father of the child “had not consented and that it was not in the child’s interest.”²³⁵ The Court recognised that the state’s arguments in favour of the protection of “the family in the traditional sense is rather abstract and a broad variety of concrete measures may be

²³² Ibidem, paragraph 68.

²³³ Nozawa 2013, p. 74.

²³⁴ Fretté v. France 2002 (ECtHR), p. 36.

²³⁵ X and Others v. Austria 2013 (ECtHR), paragraph 59.

used to implement it.”²³⁶ It further recognised the indirect discrimination within the Austrian legislation concerning same-sex couples, especially in regards to parenting. Therefore the ECtHR found a violation of Article 14, in conjunction with Article 8. Part of the reason for the difference in verdict from the case of *Gas and Dubois v. France* was the fact that in Austria different-sex registered couples were allowed to adopt the child of their partner, therefore similarly situated persons were treated differently. That rendered the differential treatment to amount to discrimination, while given that the possibility of adopting a partner’s child was reserved for married couples in France, the Court had found no violation in the previous case.²³⁷

3.5 Conclusion

In conclusion, recent cases have demonstrated a tendency of the Court to condemn discrimination, however the application remains widely inconsistent. The application of the margin of appreciation in issues relating to sexual orientation suggest that the discrimination is acceptable, simply because it is widespread. The ECtHR plays an important role in ensuring that the rights of the ECHR are respected²³⁸ and it should do so regardless of the applicant’s sexual orientation or marital status. Therefore it is necessary to recognise that the case law of the Court has played an important role in questioning state practices concerning adoption, but it must play an even greater role. In fact the recent cases seem to suggest that unequal treatment of same-sex couples is acceptable when compared to married heterosexual partners. The basis of this differentiation seems to be grounded on socio-historical circumstances rather than rational basis and thus should be called into question, especially when conflicting with the BIC.

3.6 The Effectiveness of the ECtHR

Given the ample importance given to the case law of the ECtHR, a few words on its effectiveness are necessary. Unfortunately there is no infallible and uncontested way to measure the efficacy of the Court, but it must still be pondered upon and it serves to

²³⁶ Ibidem, paragraph 139.

²³⁷ *Gas and Dubois v. France* 2012 (ECtHR), p. 19.

²³⁸ Council of Europe 2012, p. 5.

exemplify the complexity of the task at hand. The mere existence of the Court is a step towards the protection of human rights. It is one of the few bodies worldwide that allows individuals to file an application,²³⁹ and that in itself is a measure favouring human rights.

There are issues with the Court, which might affect its ability to fulfil its aim. One of the main sources of criticism is the disproportionate delay in its judgements.²⁴⁰ That is partially due to the fact that the ECtHR does not have the capacity to deal with all the applications it receives. As of 2012, there was a backlog of about 150,000;²⁴¹ thus even with a system of prioritisation in place, not all urgent cases can be dealt with.²⁴² The current topic of adoption is very dependent upon time, indeed a person may be within the adoptable age range when beginning the process and not fall within it after receiving the decision of the ECtHR, such as was the case for Miss E.B., who filed an application for adoption at the age of thirty-seven and only received the final hearing in Strasbourg nearly 10 years later.²⁴³

Further the official state response is also very relevant to measure the effectiveness. For example in 2002, the ECtHR found a violation of Article 14 in conjunction with Article 8 when a transgender woman was unable to legally change her sex in the UK.²⁴⁴ Christine Goodwin was therefore unable to marry. Two years following the judgement, the British Parliament passed the Gender Recognition Act, which recognised that transgender persons can have an assigned gender.²⁴⁵ This case therefore had a direct consequence in the jurisprudence and the state easily complied with a greater provision of non-discrimination. This can be a measure of effectiveness as well, but it is questionable whether such a simple causal relationship can be inferred.

Another measure of the success of the Court relates to how much knowledge of its functioning the citizens of the MS have. For example the perception of human rights in the UK is very negative as much media coverage describes it as a means for criminals

²³⁹ Council of Europe 2012, p. 3.

²⁴⁰ Open Society Justice Initiative 2012, p. 2.

²⁴¹ *Ibidem*.

²⁴² *Ibidem*.

²⁴³ *E.B. v. France* 2008 (ECtHR).

²⁴⁴ *Christine Goodwin v. UK* 2002 (ECtHR), p. 34.

²⁴⁵ Gender Recognition Act 2004, chapter 7.

to get benefits.²⁴⁶ This discourse influences the response that citizens will have to decisions of the ECtHR. In fact the majority of British citizens wish to leave the ECHR.²⁴⁷ Around Europe many citizens haven't even heard of the ECtHR and the question arises – do citizens need to know about it for it to be effective?

The application of the margin of appreciation receives much criticism, as it may seem as a way for the Court to avoid holding the government accountable. Nozawa analyses the application of the concept and finds inconsistency and the risk of “further deteriorating the protection of fundamental rights” particularly in the application of same-sex adoption.²⁴⁸ In fact the margin of appreciation is applied in the lack of a clear consensus among the MS on the policy to adopt. Controversial topics such as euthanasia, same-sex marriage or abortion, which are generally included in the domain of morality, are to be considered under the state's margin of appreciation. Although within a society there is no uniform conception of morality, the state retains the ability to regulate it. With time, majoritarian views of morality have greatly shifted. Two of the examples in which discrimination is no longer deemed acceptable today are the role of women in society or the case of slavery. Throughout the years, the attitude of the Court towards discrimination based on sexual orientation has greatly shifted, from excluding same-sex relationships from private and family life to denouncing discrimination on the basis of sexual orientation.

²⁴⁶ Jordan, William. *Scepticism about human rights as well as the ECHR*. July 20, 2014. <https://yougov.co.uk/news/2014/07/20/scepticism-about-human-rights-well-echr/> (accessed May 18, 2015).

²⁴⁷ *Ibidem*.

²⁴⁸ Nozawa 2013, p. 66.

CHAPTER 4

THE MOVEMENT TOWARDS INCLUSIVE ADOPTION

This section utilises case studies to demonstrate the shift in favour of inclusive adoption that has occurred in national legislations within the MS of the CoE. The analysis of the legal progression will be combined with the consideration of social attitudes. Their joint understanding is fundamental to assess the status of any social matter, and the question of inclusive adoption at hand. The role of civil society will further be analysed in order to assess its impact upon both legislation and general views of the population, in the form of political and social pressure. Whether laws forge social attitudes or the opposite is a bit of a chicken-and-egg question. Indeed they are undeniably interlinked but the nature of the causal relationship is yet unknown.

4.1 The Netherlands – Inclusive Adoption for LGBT+ Persons

The Netherlands was the first European state to legalise adoption for same-sex couples in 2001.²⁴⁹ Until 1998 the legislation only allowed married couples to have access to adoption services, but it was expanded to include cohabiting and de-facto couples that lived together for at least three years as well as single individuals. Not long after, with the legalisation of marriage for same-sex couples, adoption rights were also expanded.²⁵⁰ The Netherlands is often referred to as the “most gay-tolerant nation” in the world.²⁵¹ In fact surveys of citizens’ attitudes demonstrate that the majority of the Dutch population is in favour of legislation allowing homosexual marriage. In fact 82% of respondents to the questions “homosexual marriages should be allowed throughout Europe” answered that they agreed.²⁵² Concerning adoption by LGBT+ persons, the number is slightly lower, nonetheless it is supported by the majority of the population

²⁴⁹ Polikoff 2000, p. 729; Vlaardingerbroek 2006, p. 497; Waaldijk 2001, p. 437.

²⁵⁰ Ibidem.

²⁵¹ Keuzenkamp 2011, p. 7; Waaldijk 2001, p. 439.

²⁵² Standard Eurobarometer 2006, p. 42.

with a value of 69%. These are by far the highest in the European Union (EU), which has an average of 44% on the question of homosexual marriage and an average of 32% for adoption.²⁵³

Another indicator of the Dutch general openness towards LGBT+ persons is the presence of the Homomonument, the first monument ever built to commemorate all those persecuted for their sexual orientation.²⁵⁴ It was erected in 1987 in memory of those who perished under the Nazi regime and is located in the centre of Amsterdam, near the historic Westerkerk Church and the Anne Frank Museum.²⁵⁵ The vicinity of the Church is particularly interesting, given that as an institution, it is one of the major actors countering the development of inclusive adoption relating to sexual orientation and marital status, for its endorsement of traditional marriage.²⁵⁶ Nonetheless the Netherlands is very secular, and thus also the influence that the church has is limited.

Indeed, some of the characteristics that have been emphasised in the development of the Dutch perspective and legislation include the strong secularism of the society, the great extent of interaction with minorities and the positive role of elites.²⁵⁷ Generally orthodox believers and immigrant communities have the potential of halting the development of legislation in favour of LGBT+ rights.

4.2 Slovenia – Opening the Institution of Marriage

Recent developments in Slovenia suggest that it has the potential of allowing same-sex marriage and consequently adoption soon. On 3 March 2015 the Slovenian Parliament passed a law to utilise gender-neutral language in the *Marriage and Family Relations Act* of 1976, redefining marriage from “a legally regulated living community of a man and a woman” to “a legally regulated living community of two persons.”²⁵⁸ This will have implications for adoption, as the expansion of marriage will entitle same-

²⁵³ Ibidem.

²⁵⁴ Wielinga, GJ. *Homomonument Amsterdam*. 2015. <http://www.homomonument.nl/mijn-monument/ijkpunt-van-de-homoemancipatie.php> (accessed May 22, 2015).

²⁵⁵ Ibidem.

²⁵⁶ Sieczkowski, Cavan. *Pope Francis Against Gay Marriage, Gay Adoption*. March 13, 2013. http://www.huffingtonpost.com/2013/03/13/pope-francis-gay-marriage-anti_n_2869221.html (accessed June 20, 2015).

²⁵⁷ Waaldijk 2001, p. 439.

²⁵⁸ Keating, Dave. *Slovenian parliament backs gay marriage*. March 4, 2015. <http://www.politico.eu/article/slovenian-parliament-backs-gay-marriage/> (accessed April 20, 2015).

sex couples to jointly apply for adoption. At the time of the writing of this thesis, it is uncertain whether the legislation will directly enter into force or whether voters will be called upon a referendum, as the CC is currently analysing if it would be constitutional or not.²⁵⁹ A decision is expected on 10 September 2015.²⁶⁰

The proposed legislation is the second attempt by elected officials to push for reform in family law. Indeed only a few years back the Slovene population rejected such a proposal in a referendum.²⁶¹ In 2012 the government proposed a new *Family Code* to replace the *Law on Marriage and Family Relations Act* of 1976 and the *Same-Sex Civil Partnership Act* of 2005. The new *Family Code* distinguished between two institutions, marriage for heterosexual couples and civil partnership for same-sex partners, but bestowed them equal rights with the exception of joint adoption and artificial insemination. As the new *Family Code* was rejected in the referendum the previous legislation remains in force.

The decision of the CC regarding the recent amendment to the *Law on Marriage and Family Relations Act* of 1976 has the potential of halting the legislation. Of course one wonders whether popular consent is indeed necessary for such reforms to be implemented. Democracy is highly valued for its engagement of the population however “basic civil rights should not be a popularity contest.”²⁶² Some scholars believe that “it often takes the government enforcing basic civil rights to help change public opinion and behaviours. A woman’s right to vote, the integration of the military, and interracial marriage were all unpopular at one time.”²⁶³ On the other side, the success of any legislation is very much dependent on its social acceptance by the population.

Furthermore polls predating the 2012 referendum suggested that the majority of the Slovene population actually supported same-sex unions. On the day of the vote, a

²⁵⁹ Slovenska Tiskovna Agencija. *Odločitev US o referendumu o zakonu o zakonski zvezi verjetno šele jeseni*. July 7, 2015. <https://www.sta.si/2153914/odlocitev-us-o-referendumu-o-zakonu-o-zakonski-zvezi-verjetno-sele-jeseni> (accessed July 10, 2015).

²⁶⁰ *Ibidem*.

²⁶¹ The Slovenia Times. *Family Law Struck Down*. March 26, 2012.

<http://www.sloveniatimes.com/family-law-struck-down> (accessed June 11, 2015).

²⁶² Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015).

²⁶³ *Ibidem*.

different result prevailed and the new *Family Code* was scrapped.²⁶⁴ The surprising outcome partly resulted from the fact that a minority of the population actually participated in the referendum, with only about 30% voter turnout.²⁶⁵ The implication of the referendum was that for the following year no additional reviews of the *Law on Marriage and Family Relations Act* could be proposed.²⁶⁶ As the sufficient time elapsed, the Parliament once again proposed changes. Inferring the causes for said action is no easy task, but there are multiple elements that certainly played a role: the stance of national courts, the case law of international bodies and the activities of civil society.

There have been certain developments that cannot be ignored. The case law of the CC has moved in favour of the rights of sexual minorities. A few decisions related to the application of the 2005 *Registration of a Same-Sex Civil Partnership* found violations of human rights.²⁶⁷ In 2009 the CC issued a decision calling for equal inheritance rights for registered same-sex partners and married couples.²⁶⁸ In 2013 the Court found the *Inheritance Act* to be inconsistent with the Constitution, as it discriminated between unregistered same-sex partners and common-law spouses.²⁶⁹ In addition the Court's decision recognised that "in today's society, there are no more disagreements that same sex couples like heterosexual couples, create loving and long-lasting partnerships."²⁷⁰ Further the Constitution was amended so that "a referendum may not be called on laws eliminating an unconstitutionality in the field of human rights and fundamental freedoms or any other unconstitutionality" according to article 90.²⁷¹

²⁶⁴ The Slovenia Times. *Family Law Struck Down*. March 26, 2012.
<http://www.sloveniatimes.com/family-law-struck-down> (accessed June 11, 2015).

²⁶⁵ Ibidem.

²⁶⁶ Ibidem.

²⁶⁷ van der Laan, Lousewies. *Why attending the Ljubljana pride matters*. June 06, 2015.
<http://metinalista.si/why-attending-the-ljubljana-pride-matters/> (accessed June 21, 2015).

²⁶⁸ Constitutional Court of the Republic of Slovenia 2009, Reasoning paragraph 17.

²⁶⁹ Constitutional Court of the Republic of Slovenia 2013, Reasoning paragraph 4.

²⁷⁰ van der Laan, Lousewies. *Why attending the Ljubljana pride matters*. June 06, 2015.
<http://metinalista.si/why-attending-the-ljubljana-pride-matters/> (accessed June 21, 2015).

²⁷¹ Ibidem.

This would imply that the recent modification of the family law should not be subject to a popular vote, however the Court still needs to confirm that.²⁷²

4.3 Ireland – the Shift in Favour of Single Parent Adoption

Single-parent adoption is not as widely researched, and it seems that in the vast majority of places when adoption was first established, the legislation automatically also allowed single parents to apply. That was the case for the 1850 legislation in the UK.²⁷³ That does not imply that single parents worldwide were facilitated in the adoption process, but rather quite the contrary and only in a few cases were single parents able to adopt. It was not until the 1960s that single parent gained recognition.²⁷⁴ There are however a few examples of countries where single parent adoption has been introduced only recently. Ireland is such a case, where the possibility to adopt was opened to single parents only in 2010, with the implementation of the Hague International Convention. Ironically the document does not actually make any specific reference to the qualities of the applicants.²⁷⁵ Instead it is the ECAC, which states that “the law shall permit a child to be adopted by [...] (b) by one person.”²⁷⁶ This is a document that Ireland had already signed up to in 1968 and thus was in violation of until recently. The change resulted from a comprehensive review of the adoption legislation. Throughout the years multiple Adoption Acts amended the previous provisions. Already in 1952 widows and natural biological parents or relatives were granted the possibility to adopt individually.²⁷⁷ The most recent legislation is not as specific, and thus more comprehensive. The change in legislation is a positive development that should be encouraged in other polities where single parent adoption is not a legal option.

Only a handful of countries maintain the discrimination on the basis of marital status in their adoption system. That is very few countries in the CoE do not formally

²⁷² Slovenska Tiskovna Agencija. *Odločitev US o referendumu o zakonu o zakonski zvezi verjetno šele jeseni*. July 7, 2015. <https://www.sta.si/2153914/odlocitev-us-o-referendumu-o-zakonu-o-zakonski-zvezi-verjetno-sele-jeseni> (accessed July 10, 2015).

²⁷³ LaPlaca 1983, p. 80.

²⁷⁴ *Ibidem*.

²⁷⁵ Hague Convention 1993.

²⁷⁶ ECAC (Revised) 2008, article 7.

²⁷⁷ Irish Adoption Act 1952.

recognise single persons as prospective adoptive parents. Nonetheless simply because this form of discrimination is not as widespread as the one on the basis of sexual orientation, it does not mean that governments should not focus their efforts on countering it. Rather it suggests that the end to this form of discrimination should require fewer efforts regionally. Indeed given that fewer states need to implement revised legislation, it should be easier to envision a homogenous policy in the near future. It is nonetheless important to note that unfortunately a modification of legislation is only one of the elements that will lead to change. In fact all those who are engaged in adoption services will need to comply with the new legislation and ensure that though the legal barrier to adoption by single parents will no longer exist, no informal ones will be erected.

4.5 The Role of Civil Society

Civil society plays a vital role in pressuring governments to adopt policies in favour of inclusive adoption.

4.5.1 Civil Society in the Netherlands

There are multiple groups that are working on LGBT+ rights in the Netherlands. The *COC* started its advocacy in 1946 and has since gained special consultative status with the UN.²⁷⁸ This gives them access to international fora and the opportunity to officially speak at UN meetings.²⁷⁹ Unfortunately only a handful of organisations dedicated to discrimination on the basis of sexual orientation have been granted special consultative status.²⁸⁰ Among the activities of the *COC* is the promotion of Gay-Straight Alliances in schools, as in order to achieve social change they believe that there is a need for all sections of the population to be involved.²⁸¹ In fact children who are part of a sexual minority are encouraged to discuss means to overcome discrimination with their peers. The *COC* is also part of global networks and shares its challenges and

²⁷⁸ *COC. About COC*. July 6, 2015. <http://www.coc.nl/engels> (accessed July 6, 2015).

²⁷⁹ Evans, Michelle. *UN opens to LGBT voices*. May 31, 2013. <http://www.ishr.ch/news/un-opens-lgbt-voices> (accessed July 6, 2015).

²⁸⁰ *Ibidem*.

²⁸¹ *COC. About COC*. July 6, 2015. <http://www.coc.nl/engels> (accessed July 6, 2015).

accomplishments with partners.²⁸² It also shares a fund with *Amnesty International* to end prosecution on the basis of sexual orientation in the places where the risk of legal consequences and physical harm remains.

Stichting Amsterdam Gay Pride is another non-governmental entity and it organises one of the largest Gay Prides in the world with more than 500,000 participants attending yearly.²⁸³ In 2015, Pride week will take place between 25 July and 2 August and includes more than 178 events throughout the city, ranging from cultural and athletic events to the notorious canal parade.²⁸⁴ Interestingly, another type of Pride is also celebrated in the Netherlands – the *Workplace Pride*.²⁸⁵ This non-profit organisation ensures that there is greater acceptance for sexual minorities in the workplace and organises an annual conference to address issues of discrimination.²⁸⁶

Entertainment for the LGBT+ community is also developed, and “Winq,” a luxury lifestyle magazine for gay men also has a Dutch edition.²⁸⁷ Starting in 2015, the *Rainbow Awards* have been instituted to create additional positive news on the rainbow community and recognise the people and organisations that make an important contribution in the Dutch LGBT+ scene.²⁸⁸ In addition, countless publications on equality rights and their development in the Netherlands have been published throughout the years.²⁸⁹ Many are also government-sponsored and cover both the situation of sexual minorities as well as that of persons wishing to adopt.²⁹⁰ Given that adoption is a public policy, it is not surprising that the government is providing information, yet being one of the few countries with inclusive adoption, it also provides specific guidelines for all prospective parents.

²⁸² Ibidem.

²⁸³ Stichting Amsterdam Gay Pride. *Foundation Amsterdam Gay Pride*. 2015. <http://en.amsterdamgaypride.org/organisatie/stichting-amsterdam-gay-pride> (accessed July 6, 2015).

²⁸⁴ Stichting Amsterdam Gay Pride. *Events Calendar 2015*. 2015. <http://en.amsterdamgaypride.org/events#date-filter:path=default|category-filter:path=default> (accessed July 6, 2015).

²⁸⁵ Workplace Pride. *About Us*. 2015. <http://workplacepride.org/about-us/> (accessed July 6, 2015).

²⁸⁶ Ibidem.

²⁸⁷ Winq. *Luxury Lifestyle for Gay Men*. 2014. <http://www.winq.com/> (accessed July 6, 2015).

²⁸⁸ van Vught, Peter. *Ambassadeur Karin Bloemen opent eerste editie Rainbow Awards*. June 29, 2015. <http://rainbowawards.nl/assets/pdf/ambassadeur-karin-bloemen-opent-eerste-editie-rainbow-awards.pdf> (accessed July 5, 2015).

²⁸⁹ Hekma 2004, Bibliography; Waaldijk 2001.

²⁹⁰ Foundation Adoption Services 2013, pp. 7,13, p. Keuzenkamp 2011, pp. 35-6.

4.5.2 Civil Society in Slovenia

Civil society in Slovenia is very active and there are multiple non-governmental organisations that cover the topic of LGBT+ rights. During the 1980s and 1990s grassroots movements grew and today there are a series of organisations working on the rights of persons belonging to sexual minorities. Already in the 1980s lesbian and gay culture began to express itself openly. Worthy of mention are the *Association for the Integration of Homosexuality (DIH)*,²⁹¹ *ŠKUC LL* and *ŠKUC Magnus* as well as *ŠKUC REM*, which aim for an enlightened, inclusive, solidary and egalitarian society.²⁹² Their activities include discussion groups, camps, counselling, HIV/AIDS prevention projects, media campaigns, as well as general social events and sports. *Legebitra* is another prominent NGO, arguably the largest one currently working on the Slovenian scene.²⁹³ Among its projects are the publishing of the journal “Narobe,” which grants a space for LGBT+ persons that is lacking in traditional media; a counselling centre, programmes to empower LGBT+ youth and the Living Library.²⁹⁴ This last project is particularly interesting for its unique concept of bringing together people of different minorities and letting them speak, giving people a chance to talk to one another and dispel myths.²⁹⁵ There are also new organisations that are emerging, carving out new spaces for LGBT+ advocacy in public space; they include the *HeteroHomo Society for Education, Socialisation and Participation* and the *Appareo Society for Eliminating Social Inequality*.²⁹⁶

Further there are other institutions that have a wider focus on human rights but are concerned with discrimination on the basis of sexual orientation, such as the *Peace Institute*.²⁹⁷ In addition there are a few annual events that engage the society as a whole and combine the promotion of non-discrimination: the Ljubljana Gay and Lesbian Film

²⁹¹ DIH. *zaDIHaj z nami*. 2015. <http://www.dih.si/> (accessed June 12, 2015).

²⁹² ŠKUC LL. *Presentation*. 2015. <http://www.ljudmila.org/lesbo/index.htm> (accessed June 12, 2015); ŠKUC-Magnus. *About Us*. 2015. http://www.magnus.si/en/html/about_us.html (accessed June 12, 2015).

²⁹³ Klančar, Hodnik and Topolinjak 2013, pp. 41, 79

²⁹⁴ *Legebitra* 2015; Klančar, Hodnik and Topolinjak 2013, p. 79

²⁹⁵ *Legebitra* 2015.

²⁹⁶ Klančar, Hodnik and Topolinjak 2013, p. 41

²⁹⁷ The Peace Institute. *Comprehensive analysis confirms systemic discrimination of same-sex partners in Slovenia*. March 23, 2015. <http://www.mirovni-institut.si/en/comprehensive-analysis-confirms-systemic-discrimination-of-same-sex-partners-in-slovenia/> (accessed June 12, 2015).

Festival (also known as the Magnus Festival), which has been recurring since 1984; as well the Pride Parade. Pride Parades are an increasingly popular means for sexual minorities to gain visibility. Indeed though they were originally highly politicised and smaller in scale, they are increasingly seen as an opportunity to party and celebrate diversity. In 2015 the events especially aimed to mobilise the friends and families of LGBT+ persons, in order to demonstrate the value of equality across the board.²⁹⁸ This year's Parade was also only the culminating event of a series of awareness-raising efforts, which included workshops, picnics, roundtables and exhibitions.²⁹⁹ The wide variety of events has raised the profile of LGBT+ rights in the country.

4.5.3 Civil Society in Ireland

Single parents are much more common than LGBT+ parents, in fact some estimate that about 70% of children will experience single parenting at some point in their life.³⁰⁰ Nonetheless given that to a large extent it is not sought after, there are fewer organisations that focus on the specific needs of single parents. However there are some groups that do target single parents, whether at a national or global level. In Ireland, *OPEN*, an “anti-poverty network representing one-parent families,”³⁰¹ is among the most active. Its aim is to build a society in which the each family has equal opportunities, regardless of its structure.³⁰² It cooperates with other organisations with a similar goal, such as *Doras Bui*.³⁰³ The latter is a community centre that grants single parents the opportunity to attend workshops and trainings in order to seek better employment, and counselling is offered to children who are facing difficulties.³⁰⁴ *Treoir* also shares this mission of guidance, which is directed towards all unmarried parents.³⁰⁵ Its activities include campaigning, awareness-raising activities and

²⁹⁸ Ljubljana Pride. *Sporočilo Ljubljana Pride 2015: PRIDEm z družino!* 2015. http://www.ljubljana-pride.org/?page_id=1271 (accessed June 21, 2015).

²⁹⁹ Ibidem.

³⁰⁰ Dowd 1997, p. 5.

³⁰¹ OPEN. *About OPEN*. 2015. <http://www.oneparent.ie/about.html> (accessed July 9, 2015).

³⁰² Ibidem.

³⁰³ Doras Bui. *About Us*. 2015. <http://dorasbui.ie/about-us/> (accessed July 9, 2015).

³⁰⁴ Ibidem.

³⁰⁵ Treoir. *About Treoir*. 2015. <http://www.treoir.ie/about.php> (accessed July 9, 2015).

disseminating specialist information, in order to ensure that the rights of all children, regardless of family structure, are fulfilled.³⁰⁶

Additionally, throughout Europe there are a series of organisations working on reducing the stigma of single parents, such as *Single Parent Action Network* of the UK;³⁰⁷ the Swedish *Makalösa Föräldrar*³⁰⁸ as well as the *Helping Single-Parent Children* organisation from Estonia.³⁰⁹ Further there are international initiatives that take the form of Internet forums or blogs which can provide support for single parents as well as the chance to meet in person.³¹⁰ Therefore there is a vibrant community that supports single parents, along with other untraditional families in the non-governmental sector.

4.6 Global Action Favouring Inclusive Adoption

There are also some global trends in favour of the recognition of diverse families. Though not all initiatives necessarily refer to adoptive parents in particular, the recognition and acceptance of different families has positive implications for children who have been adopted, particularly when they are part of a single-headed household or rainbow family. Starting on 6 May 2012, a series of organisations have joined efforts to celebrate the International Family Equality Day, which was “launched as a sign of solidarity and strength and to promote equality for all families.”³¹¹ Since then it has been a recurring yearly event, in which the first Sunday of May a range of events is held worldwide to celebrate the diversity of family structures.³¹² Ironically it is not the countries with the most inclusive adoption legislation that are taking part in the initiative, as shown by the diagram below, though there is some overlap. Among others,

³⁰⁶ Ibidem.

³⁰⁷ SPAN. *Single Parent Action Network Empowering – Connecting – Campaigning*. 2015. <http://spanuk.org.uk/> (accessed July 9, 2015).

³⁰⁸ Makalösa Föräldrar. *Om Oss*. 2015. <http://www.makalosa.org/om/> (accessed July 9, 2015).

³⁰⁹ NGO Helping Single-Parent Children. *NGO Helping Single-Parent Children “Your donation will help children in single-parent families!”*. 2015. <https://www.armastanaidata.ee/en/donation/children-and-families/ngo-helping-single-parent-children-your-donation-will-help-children-in-single-parent-families> (accessed July 9, 2015).

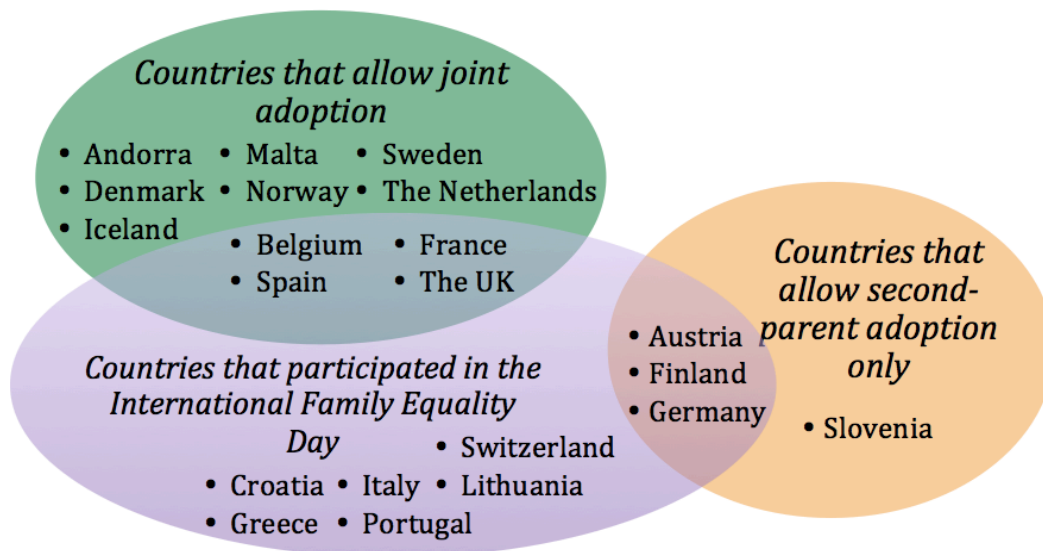
³¹⁰ Parents Without Partners. *Who we are*. 2014.

<http://www.parentswithoutpartners.org/?page=AboutWho> (accessed July 9, 2015); Single Parent Coalition. *Single Parent Coalition Inaugural Newsletter*. 2015. <http://singleparentcoalition.com/single-parent-coalition-inaugural-newsletter> (accessed July 9, 2015).

³¹¹ The International Family Equality Day (IFED) Network 2014, p. 5.

³¹² Ibidem.

several MS of the CoE promoted events in the last few years: Austria, Belgium, Croatia, Finland, France, Germany, Greece, Italy, Lithuania, Portugal, Spain, Switzerland and the UK.³¹³ In order for a country to be represented, an organisation or individual must contact the International Family Equality Day Network and propose an event.³¹⁴ The events range widely in duration and the type of activity offered, but all tend to focus on bonding between parents and children as well as with other families. Football games, picnics and visits interactive museums were just a few initiatives.³¹⁵ The European involvement stems from the actions of the *Network of European LGBT Families Associations (NELFA)*, which is comprised of twenty-three associations representing fifteen European countries.³¹⁶



The importance of families has also been recognised at a global level through the celebration of the International Day of Families on 15 May, sponsored by the UN since 1994.³¹⁷ Each year a new theme is explored in depth, but there is a growing recognition that families are no longer limited to the traditional understanding, as the

³¹³ Ibidem, p. 21.

³¹⁴ Ibidem, p. 17.

³¹⁵ Ibidem, pp. 9-11.

³¹⁶ Ibidem, p. 13.

³¹⁷ United Nations. *International Day of Families*. 2015. <http://www.un.org/en/events/familyday/> (accessed July 7, 2015).

statement of the UN Secretary General on 20th anniversary reflects. His message reminds all that

“support for families is crucial to realizing their full potential. That means factoring their needs into development policies, considering their circumstances in addressing conflicts, and advocating for the equal treatment of all families, regardless of their structure.”³¹⁸

Thus this statement calls upon states to end discrimination towards untraditional families. This strengthens the message of 2006, which focused on “Changing Families: Challenges and Opportunities.”³¹⁹ The explanatory note makes specific reference to single-parent households,³²⁰ thus recognising the decreased stigma that is attached to non-marital children, which is relevant to adoptees.

4.7 The Spill Over Effect

Creating links between each other, civil society organisations might be able to utilise the momentum of change in a society to inspire changes in the neighbouring communities. In fact when a country legalises LGBT+ friendly measures, the media automatically suggests that the others should follow suit. Just a few months ago, Ireland legalised same-sex marriage.³²¹ The changing in policy was remarkable as it was the first country where it resulted wholly from a popular vote, which was particularly surprising given its Catholic heritage.³²² Immediately after the Irish referendum, international newspapers recognised the impetus for change and multiple parties called upon their governments to act. On the European continent, headlines such as “*We’re next says Italy after Irish gay marriage vote*”³²³ and “*Greens call to legalise gay marriage in Germany: After Ireland’s citizens voted overwhelmingly in favour of marriage equality in a historic referendum, member of Germany’s Green party have*

³¹⁸ Ki-moon 2014.

³¹⁹ Olson 2006, p. 1.

³²⁰ Ibidem.

³²¹ Johnston, Chris. *Ireland becomes first country to legalise same-sex marriage by popular vote - as it happened*. May 23, 2015.

<http://www.theguardian.com/global/live/2015/may/23/counting-underway-for-irelands-referendum-on-marriage-equality> (accessed June 20, 2015).

³²² Ibidem.

³²³ Vogt, Andrea. *'We're next' says Italy after Irish gay marriage vote*. May 24, 2015.

<http://www.telegraph.co.uk/news/worldnews/europe/italy/11627693/We-ere-next-says-Italy-after-Irish-gay-marriage-vote.html> (accessed June 20, 2015).

called for the recognition of same-sex marriage in Germany as well.”³²⁴ The public debate was inspired by the recent action also in faraway lands; in fact Australian Liberal Member of Parliament Zed Seslja has also called for a referendum, after the inspiring results of the Irish one.³²⁵ Of course not all of the articles published viewed the development in Ireland positively, but the mere visibility of the situation is remarkable. At least at an informal level, it is doubtless that there is a spill over effect, if only to spur public debate on the topic.

³²⁴ Deutsche Welle. *Greens call to legalize gay marriage in Germany*. May 24, 2015. <http://www.dw.de/greens-call-to-legalize-gay-marriage-in-germany/a-18473008> (accessed June 20, 2015).

³²⁵ Australian Associated Press. *Liberal MP calls for referendum on same-sex marriage after Ireland vote*. May 24, 2015. <http://www.theguardian.com/world/2015/may/24/liberal-mp-calls-for-referendum-on-same-sex-marriage-after-ireland-vote> (accessed June 20, 2015).

CHAPTER 5

THE OPPOSITION TO INCLUSIVE ADOPTION

This chapter will analyse the forces that oppose inclusive adoption, particularly in terms of the expansion of the current legislation. Alongside civil society organisation in favour of inclusive adoption there are many groups against it. The focus remains both on discrimination on the basis of sexual orientation and marital status, as in the previous section. Some of the arguments against single-parent adoption are very similar to those against same-sex adoption as both are seen as an attack on the traditional family. Chapter 1 already demystified this concept of traditional family as a timeless social unit, and identified it as a particular conception that resulted in a specific time period. Indeed if one were to focus on another time period, another ‘traditional family’ might be established. For example, during Roman times the vast majority of people cohabited outside of marriage.³²⁶ As it is already possible to observe in contemporary society, and as the popular sitcom ‘Modern family’ suggests, perhaps in the future the traditional family will include gay adoptive parents and “patchwork” families.³²⁷ Nonetheless there are certain sections of society that strongly oppose inclusive adoption. Overall political conservatives, religious members, and nationalists are among the strongest in these categories. The following section will outline their arguments before identifying the major resisting social groups in the Netherlands as well as in Slovenia and Ireland, which will serve as juxtaposition to the previous chapter, in which the trends in favour of inclusive adoption have been analysed. The resisting factions in these countries are analysed differently as the Dutch government provides detailed survey information while the Slovenian opposing faction manifested its opposition through public manifestation. In the Irish case, the opposition is more indirect, as the disapproval of

³²⁶ Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015).

³²⁷ ABC. *About Modern Family TV Show Series*. 2015. <http://abc.go.com/shows/modern-family/about-the-show> (accessed June 25, 2015).

single parenting transpired during the campaign against same-sex marriage. Given that there was not as strong a negative response, only a few words will be dedicated to it. The comparison of different methods benefits the discussion at hand, by demonstrating the multi-faceted forms of the counteraction to inclusive adoption. General trends in population sections and highly visible events are thus both analysed.

Most state authorities impose tight controls upon the adoption process. Nevertheless that does not entitle the state to arbitrarily impose restrictions upon adoption, as was discussed in the previous chapters. The international framework places the BIC at the forefront, and there have been attempts to standardise the practice, such as through the Hague Convention of 1993³²⁸ and the ECAC.³²⁹ The importance of a comprehensive approach is emphasised in international adoptions, as countries ‘supplying’ children have the power to impose restrictions on the recipient(s).

5.1 Power Struggles Obstructing Adoptions

Within Europe, Russia is among the European countries from which most children to be adopted internationally come from,³³⁰ and within which discrimination on the grounds of sexual orientation remains persistent.³³¹ Some countries, such as Sweden have expressed their concerns “that countries from which children are adopted would be unwilling to send children to a country where they might be raised by a gay or lesbian couple.”³³² Though the Swedish Commission Report found these fears to be to a large extent unfounded,³³³ it is important to keep in mind that the relations among governments are complex.

Even in our increasingly globalised world, the risk of closing the borders of adoptions on arbitrary grounds are there. In 2012, after the Obama administration introduced the Magnitsky Act, which “imposes the U.S. travel and financial restrictions

³²⁸ Hague Convention 1993.

³²⁹ ECAC (Revised) 2008.

³³⁰ Department of Economic and Social Affairs: Population Division 2009, p. xv.

³³¹ ILGA-Europe. *Rainbow Map (Index)*. May 2015. http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_eurpe_index_may_2015_no_crops.pdf (accessed June 5, 2015).

³³² Polikoff 2000, p. 176,

³³³ Ibidem.

on human rights abusers in Russia,” the Russian government retaliated³³⁴ by passing the Dima Yakovlev law³³⁵ to halt the cooperation in intercountry adoptions.³³⁶ This measure counters the principle of the BIC, as it places political interests and reprisal at the forefront. In fact the measure is in stark contrast to international law. The Russian Federation, being a member state of the CoE, is expected to comply with said standards. In fact a number of American families have appealed to the ECtHR, as their procedures for adoption were already in advanced stages and many had already made contact with the prospective adoptive child.³³⁷ The applicants claim that the measure amounts to a disruption of private and family life disproportionate to government’s aims in addition to amounting to discrimination on the nationality of the prospective parent.³³⁸ The case is currently pending judgement, and it part of the list of ‘communicated cases’ of the ECtHR, meaning that the Russian state has been informed about the case.³³⁹ Therefore it has been considered admissible and the state has been called to submit a response to the application. Being a case of importance level 3,³⁴⁰ which is low importance,³⁴¹ it is uncertain when the decision will be issued.

5.2 Religion

Most countries in Europe, in the world, pride themselves to be secular states. Indeed only a handful of states worldwide maintain a religious denomination in their official state name. Despite that, “issues of sexuality are intrinsically linked to issues of morality and religion in Western society”³⁴² Religion no longer has hegemony in directing sexual behaviour, nonetheless it continues to be a powerful voice. Established

³³⁴ CNN Staff. *Russia's Putin signs anti-U.S. adoption bill*. December 29, 2012. <http://edition.cnn.com/2012/12/28/world/europe/russia-us-adoptions/index.html> (accessed June 21, 2015).

³³⁵ Chizhova, Lyubov, Tatyana Voltskaya, and Claire Bigg. *Two Years After Russian Ban, 'Taboo' Hangs Over Children Denied U.S. Adoption*. December 31, 2014. <http://www.rferl.org/content/russia-united-states-adoptions-orphans-taboo-ban/26771310.html> (accessed June 21, 2015); CNN Staff. *Russia's Putin signs anti-U.S. adoption bill*. December 29, 2012. <http://edition.cnn.com/2012/12/28/world/europe/russia-us-adoptions/index.html> (accessed June 21, 2015).

³³⁶ Ibidem.

³³⁷ A. H. and Others and 22 Other applications v. Russia (ECtHR) pending.

³³⁸ Ibidem.

³³⁹ Ibidem, case details.

³⁴⁰ Ibidem.

³⁴¹ European Court of Human Rights 2015, p. 12.

³⁴² Nozawa 2013, p. 69.

religious institutions are strongly opposed to the opening of marriage and parenting for same-sex couples.³⁴³ Christianity remains the main religion in the majority of the MS of the CoE, and its core text is often cited as motivation for limiting same-sex marriage. Indeed, the message towards homosexuality is overwhelmingly negative. The Bible has previously also been used to justify the subjugation of women and racial segregation.³⁴⁴

The Old Testament is common to the three most widely followed religions in the world – Christianity, Islam and Judaism.³⁴⁵ It's potential conservative conception of marriage and family seems somewhat contradictory to some of its content. Indeed the Old Testament contains some forms of marriage that are no longer considered acceptable, such as having a second wife, when the first is unable to provide offspring. That was the case for Abraham and Sarah, who were also genetically related (half-siblings).³⁴⁶ Therefore if religious conservatives argue against same-sex marriage on the basis of the Old Testament, then they should also accept polygamy and incestuous marriages. Orthodox believers continue to cite various passages to maintain that marriage is a sacred bond between a man and a woman.

This section will not compare religions to identify the most tolerant and most intolerant towards sexual minorities among them, as such an endeavour would not benefit this analysis. It is irrelevant to know which religion is the most intolerant since the most religious conservatives, regardless of their denomination, exert some force against the expansion of adoption beyond heteronormative marriage. In fact this limitation applies equally to discrimination on the basis of marital status as well as sexual orientation. Given that the in three countries analysed Catholicism is the majoritarian religion,³⁴⁷ a specific analysis of the stance of the Vatican and its ministers must be taken into consideration.

³⁴³ Bozett and Sussman 1990.

³⁴⁴ Tilson 1958.

³⁴⁵ Peters 2004.

³⁴⁶ Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015).

³⁴⁷ Government Communication Office. *Religion*. 2013.

<http://www.slovenia.si/slovenia/country/people/religion/> (accessed June 6, 2015); Wintle, Michael J. *Netherlands*. 2015. http://www.britannica.com/EBchecked/topic/409956/Netherlands/3584_2/Religion (accessed June 6, 2015).

The Vatican is not an isolated religious institution, but it is very politically engaged, with diplomatic missions throughout much of the world. The words of the Pope, and other religious leaders, from Bishops to local priests, often reflect on current political occurrences. Recently, the Irish polity has been called to vote on the expansion of marriage to same-sex partners. The majority (62%) responded with their support for the legalisation of same-sex marriage.³⁴⁸ Cardinal Pietro Parolin, the Vatican's Secretary of State, responded with his interpretation of the news as a "defeat for humanity."³⁴⁹ Such a statement echoes the Church's dominant stance on homosexuality and its activism against same-sex partnerships, upon which members of the Church were encouraged to vote "no."³⁵⁰

Nowadays the Church is not as outspoken against single parenting, but historically it has frowned upon children conceived outside of wedlock.³⁵¹ Single mothers were often the target of discrimination and judgement. In the case of adoption the stigma attached to single parenting is greatly reduced. Nonetheless by insisting on the need for children to grow up with both a mother and a father, the Church is undermining the respectability and successes of single parents.

It is important to note that for the Catholic Church, there is a difference between homosexual sexual orientation and sexual acts. Though paradoxically it frames homosexuality merely as an "objectively disordered" inclination, it labels homosexual acts as "acts of grave depravity."³⁵² Indeed it encourages homosexual individuals to be chaste and calls upon other believers to accept homosexuals with "respect [and] compassion."³⁵³ In fact the main issue that the Church has with homosexual sex acts is the preclusion of procreation. For the Church, one of the aims of sexual activity is generating offspring, which is seen as a result of "a genuine affective and sexual

³⁴⁸ Kirchgaessner, Stephanie. *Vatican says Ireland gay marriage vote is 'defeat for humanity'*. May 26, 2015. <http://www.theguardian.com/world/2015/may/26/vatican-ireland-gay-marriage-referendum-vote-defeat-for-humanity> (accessed June 12, 2015).

³⁴⁹ *Ibidem*.

³⁵⁰ L'Osservatore Romano. *Marriage is more than a relationship*. May 21, 2015.

<http://www.osservatoreromano.va/en/news/marriage-more-relationship> (accessed June 14, 2015).

³⁵¹ Y.

³⁵² Ratzinger 1997, paragraph 2357.

³⁵³ *Ibidem*, paragraph 2358.

complementarity.”³⁵⁴ Given that biologically homosexual relationships cannot lead to children, the relationship is considered doomed from the outset. Of course physical sterility is not unique to homosexual couples, yet in the case of heterosexual couples the Church takes another approach. It encourages infertility treatment and in case of their failure, the spouses “can give expression to their generosity by adopting abandoned children or performing demanding services for others.”³⁵⁵ There is no explanation for such a double standard, other than the fact that in no circumstances could any same-sex relationship lead to the birth of a child, while some heterosexual ones could. However as soon as a specific heterosexual relationship precludes such possibility this argument is no longer valid. Besides, adoption specifically counters such biological impossibility. Thus the Church’s argument seems to function in a circular fashion, upon which same-sex marriage is not desirable for its impossibility to bear children and adoption (an alternative to bearing children) is not allowed outside of marriage.

After the change in the legislation in favour of same-sex marriage and adoption in the Netherlands, LGBT+ activists had the expectation and hope that it would serve as an inspiration for change elsewhere. The Church soon responded with a strong message to curb that trend.³⁵⁶ The Vatican published a document opposing the proposal to give legal recognition to unions between homosexual persons.³⁵⁷ In the fear that an increased number of European countries would encourage same-sex marriage, the then Chief Theological Adviser Cardinal Joseph Ratzinger, and later Pope Benedict XVI, encouraged believers to act against the legal recognition of same-sex marriage.³⁵⁸ Indeed he even specifically addresses the link between homosexual unions and the “possibility of adopting children.”³⁵⁹ The Church uses “biological” reasons to claim that “homosexual unions are totally lacking in the biological and anthropological elements of marriage and family which would be the basis, on the level of reason, for granting

³⁵⁴ Ibidem, paragraph 2357.

³⁵⁵ Ibidem, paragraph 2379.

³⁵⁶ BBC News. *Vatican drive to curb gay marriage*. July 31, 2003.

<http://news.bbc.co.uk/2/hi/europe/3108349.stm> (accessed June 14, 2015).

³⁵⁷ Ratzinger 2003.

³⁵⁸ Ibidem.

³⁵⁹ Ibidem, paragraph 1.

them legal recognition.”³⁶⁰ It further claims that “allowing children to be adopted by persons living in such unions would actually mean doing violence to these children, in the sense that their condition of dependency would be used to place them in an environment that is not conducive to their full human development.”³⁶¹ The last point is not only discriminatory but also misinformed, as Chapter 2 already demonstrated that LGBT+ adoption is desirable.³⁶²

The document culminates with the delineation of the responsibility of “all Catholics,” who are “obliged to oppose the legal recognition of homosexual unions.”³⁶³ This moral obligation is strengthened in the case of politicians, who must vote against “a law so harmful to the common good.”³⁶⁴ Though the document specifically addresses religious believers and politicians, it also claims to be of concern for “all persons committed to promoting and defending the common good of society.”³⁶⁵ This section thus implies that the “common good” cannot be achieved in same-sex relationships, yet it fails to provide a definition of what actually comprises the common good and how believers and others can achieve it.

Ever since the Vatican II, the power of the Catholic Church in Europe has been decreasing, as can be demonstrated by declining membership.³⁶⁶ Ironically, as the focus of society shifts from survival to self-expression, the role of the Church increases.³⁶⁷ That is to say that as a society develops economically and is more politically stable, thus issues of survival are no longer at the forefront, there is an increased attitude of tolerance and acceptance towards non-normative ideas and groups.³⁶⁸ In the case of homosexuality, more citizens develop tolerant ideas. At the same time, the lack of a unified voice on moral matters from the state, gives momentum to religious institutions

³⁶⁰ Ibidem, paragraph 7.

³⁶¹ Ibidem.

³⁶² Doty 2009, p. 136; Elovitz 1995, pp. 210-215, 224-225; Farr, Forssell and Patterson 2010, p. 176; Goldberg and Smith 2013, p. 437; Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015); Polikoff 2000, pp. 741, 743; Roseblum 1991, p. 1687; Vlaardingerbroek 2006, p. 509.

³⁶³ Ratzinger 2003, paragraph 10.

³⁶⁴ Ibidem.

³⁶⁵ Ibidem paragraph 1.

³⁶⁶ Adamczyk and Pitt 2009, p. 349.

³⁶⁷ Ibidem, p. 348.

³⁶⁸ Ibidem, p. 340.

to “direct attitudes.”³⁶⁹ In fact though the Church is no longer the supreme moral authority in matters of morality and sexuality, it still retains powerful. In recent years, the Western world has witnessed radicalisation of the society towards religion, visible in anti-abortion as well as anti-gay movements.³⁷⁰

5.3 Nationalism

Nationalism is also often used as a force to limit the rights of LGBT+ parents, but is not as widely applicable to discrimination on the grounds of marital status. Nationalists may act against inclusive adoption by claiming that an expansion of the family would end the traditional way of life in a specific country.³⁷¹ Of course the same argument could be applied to single parent households, however it is simply not as commonly formulated. Part of this difference derives from the fact that the disruption of a heteronormative marriage, though the decease of one of the spouses or divorce, may transform into single parenting. Instead a homosexual relationship cannot be the by-product of a failed marriage or of social circumstances in the same way.

Nationalism is based on the exclusivity of a collective identity that delineates “who is ‘us’ and who is ‘them’.”³⁷² Traditionally this identity is related to ethnicity, language and religion, however the consideration of sexual orientation cannot be excluded. In fact non-Western persons who are reluctant to apply human rights often claim that they, and specifically LGBT+ rights, are a cultural specificity of the West and cannot and should not be exported elsewhere.

This argument is flawed on many levels. Non-discrimination is a universal principle that has been endorsed by nations belonging to all continents in the form of UN international treaties, conventions and resolutions. Further one of the pioneering countries on LGBT+ rights is South Africa, where same-sex marriage was legalized in 2006, and it can hardly be defined as ‘Western’.³⁷³ The opposite is of course also true, in fact Western countries have been responsible for abuses towards sexual minorities.

³⁶⁹ Ibidem, p. 339.

³⁷⁰ Benson 2009.

³⁷¹ Rankin 2000.

³⁷² Cook-Huffman 2009, p. 19.

³⁷³ Keuzenkamp 2011, p. 153.

The German Nazi regime is only the most blatant example of it.³⁷⁴ In fact homosexuals were not deemed to be fit to be included in the pure Aryan society and were thus exterminated alongside all other ‘social undesirables.’³⁷⁵ It is estimated that 100,000 gay men and lesbian women perished during the Nazi time, in what may be defined as the “Homocaust.”³⁷⁶ Most nationalist claims today would not go to such an extent, but homosexuality is still criminalised in certain places. In fact homosexuality remains to be a criminal offence in 76 countries worldwide and in seven of them it is even punishable with the death penalty.³⁷⁷

Even in countries where homosexuality is widely accepted, nationalist arguments are used to mobilise the population against the expansion of marriage and adoption laws. In fact nationalism builds on the logic that a specific group identity must be placed at the forefront. In the case of any minority, nationalists would claim that they essentially threaten the group identity by simply providing an alternative way of life. In fact this results in a negative outlook towards the presence of minorities, or more commonly known as the ‘minority problem.’³⁷⁸ Academia has focused on the said problem in relation to ethnic and cultural minorities, which have been widely explored in the literature. Central and Eastern Europe has been singled out for the ethnic conflicts that erupted after the breakup of Yugoslavia and that were to a large extent attributed to the presence of ethnic minorities.³⁷⁹ The approach of nationalists towards ‘traditional minorities’ is easily comparable with their approach towards ‘sexual minorities,’ that is persons who have a non-dominant sexual orientation. The nation state is to a great extent based on the unification of a specific polity, which is seen to share essential identity markers such as language, religion and ethnicity, in addition to sexual orientation. Indeed throughout history states have utilised two opposite approaches for the neutralisation of minorities: assimilation and expulsion, which in extreme cases

³⁷⁴ Oswald, Lewis. *Homocaust: The gay victims of the Holocaust*. 2004. <http://www.homocaust.org/> (accessed June 6, 2015).

³⁷⁵ *Ibidem*.

³⁷⁶ *Ibidem*.

³⁷⁷ Government of the Netherlands. *Equal rights for LGBTs*. <http://www.government.nl/issues/gay-rights/equal-rights-for-gays-and-transgenders> (accessed May 22, 2015).

³⁷⁸ Roter 2001, p. 221.

³⁷⁹ *Ibidem*, p. 233.

resulted in genocide.³⁸⁰ Both measures aimed at the homogenisation of society, as diversity was considered to be essentially threatening. That is no longer the case today, in fact diversity is much celebrated, at least at the theoretical level.

5.4 Conservatism

Conservative political movements are by definition averse to change or innovation in order to preserve traditional values.³⁸¹ Along the political spectrum, they lean towards the right wing. In fact overall right-wing politicians tend to be the most vocal advocates against the expansion of marriage and adoption, though with some variety based on the society. Overall conservatives view homosexual behaviour as unnatural and thus political conservatism is a strong predictor against the development of LGBT+ rights in a given society.³⁸² That is not always the case, in fact the in the UK, it was the Coalition government that pushed for more inclusive marriage legislation in 2013.³⁸³ Though the Conservative Party was divided over the measure, its leader, David Cameron, along with about half of the conservative Members of Parliament welcomed inclusive marriage legislation.³⁸⁴ However in general political conservatives tend to engage in a culture war against homosexuality.

5.5 Resisting Forces in the Netherlands

The previous chapter analysed the driving forces behind the open approach of the Netherlands. As already mentioned, the vast majority of the population endorses the legislation on adoption for same-sex couples and has a general tolerant attitude towards homosexuality, however it is not uniform among the population.³⁸⁵ In fact in the last few years the Dutch government has sponsored initiatives to increase and deepen the understanding of sexual minorities. Information gathering was one of the initial actions, which revealed that on average women tend to be more open towards homosexuality.³⁸⁶

³⁸⁰ Ibidem, p. 239.

³⁸¹ Baylis and Smith 2001.

³⁸² Wood and Bartkowski 2004, p. 59.

³⁸³ BBC News. *Gay marriage: MPs back bill despite Conservative backbench opposition*. February 5, 2013. <http://www.bbc.com/news/uk-politics-21346220> (accessed June 22, 2015).

³⁸⁴ Ibidem.

³⁸⁵ Keuzenkamp 2011, .

³⁸⁶ Ibidem, p. 24.

In fact in 2011, social surveys demonstrated that while only 61% of males had a positive attitude towards homosexuality, among women the figure rose to 77%.³⁸⁷ The elderly tend to have a more conservative view, though 12% of the older population has a negative attitude towards homosexuality, this figure compares to 5,6 and 8% of those under 65 years of age.³⁸⁸ It is a significant increase, yet the overall percentage is not particularly high. Rather Keuzenkamp identifies three groups that stand out for their negative response to homosexuality – children under the age of fifteen, immigrants and religious persons (each will be analysed in depth in the next sections).³⁸⁹ Unfortunately disaggregated research on people's view on same-sex adoption is not available, nevertheless much research focuses on general attitudes towards homosexuality. Given that those who are not in favour of adoption by LGBT+ couples generally base their view on the sexual orientation of the person, and the impacts that it will have on the child, these topics are directly interlinked. Overall it can be assumed that those with a negative view towards homosexuality will oppose adoption by gay and lesbian persons. The opposite relationship is slightly more complicated; indeed some of those who claim to have a positive attitude towards persons belonging to sexual minorities might oppose adoption by gay and lesbian couples. That is partially due to the bias and fear on the impacts that it might have upon the child, as was discussed in Chapters 1 and 2. Nonetheless not all sections of the population will have such a high endorsement rate.

5.5.1 Youth

Children are particularly susceptible to their surrounding and thus are heavily influenced by the media, their peers and parents. Generally young kids tend to accept the information that is given to them without thoroughly questioning it and thus often mirror their parents' opinion. It is however curious that where there is general acceptance of sexual minorities, kids would nonetheless have strong positions against it. In fact in a national survey from 2009, 43% of primary schoolchildren responded that they think "it's disgusting if two boys kiss each other."³⁹⁰ The number for two girls is

³⁸⁷ Ibidem, p. 24.

³⁸⁸ Ibidem, p. 24.

³⁸⁹ Ibidem, p. 9.

³⁹⁰ Ibidem, p. 26.

slightly lower, at 40% and the public display of affection of two opposite-sex people is definitely more acceptable, with only 7% of children finding it disgusting.³⁹¹ In fact 69% of primary school pupils completely disagree with the statement “I think it’s disgusting if a boy and a girl kiss each other.”³⁹² Given the general level of acceptance among adults, the media might offer a better explanation. LGBT+ relationships are rarely displayed in mainstream programmes or children’s shows and thus children might be less used to their public display of affection. There are very few children’s books that present homosexual relationships. In addition though the vast majority of the Dutch population reports to have a positive attitude towards homosexuality, “41% find it offensive if two men kiss in public and 28% are offended by two women kissing in public. Some people find kissing in public offensive in any case, but are less troubled by heterosexual couples kissing (13%).”³⁹³ Therefore even among adults when homosexuality becomes visible there is greater resistance. Therefore though young children tend to respond more negatively to homosexuality, their reaction has also been exaggerated. Similarly to older persons, they are not as open to the display of homosexual relationships, but neither is the general population, so this thesis disagrees with Keuzenkamp’s classification of children as a group strongly opposing non-dominant sexual orientation.

5.5.2 Churchgoers

Keuzenkamp identifies members of religious communities as the second group with a negative position towards members of sexual minorities. Indeed of those actively involved in the Church, calculated as attending services weekly or more regularly, 50% have a negative attitude towards homosexuality.³⁹⁴ This is to be compared with 5% of those who never go to Church. Those with positive attitude are also in stark contrast, with only 21% among Churchgoers and 73% among others.³⁹⁵ Political parties with religious affiliations reflect these values, in fact the CDA (Christian Democrats) have the lowest social acceptance of homosexuality, with only 47% of respondents having a

³⁹¹ Ibidem.

³⁹² Ibidem.

³⁹³ Ibidem, p. 19.

³⁹⁴ Ibidem, p. 24.

³⁹⁵ Ibidem.

positive view.³⁹⁶ This demonstrates that the orthodox religious even in the Netherlands maintain a strong position against LGBT+ rights. Nonetheless, the Netherlands being a very secular country, this has a limited impact on state legislation.³⁹⁷

5.5.3 Ethnic Minorities

The data divided according to ethnic groups reveals that there is a strong difference between the native Dutch and members of other ethnic groups. In fact while 95% of the local population believes that “Gay men and lesbians should be free to live their lives as they wish.”³⁹⁸ In contrast only 60% of Turks, 64% of Moroccans, 77% of Antilleans and 88% of Surinamese agree with the statement.³⁹⁹ When concerning legislation on gay marriage, there is an even higher variance from 26% of Turks who think that it is positive that same-sex couples are allowed to marry to 83% of native Dutch city-dwellers.⁴⁰⁰ Nonetheless few parents reported that they would have a problem if the teacher of their child would be of non-dominant sexual orientation: 27% of Turks, 21% of Moroccans, 14% of Antilleans, 11% of Surinamese and 2% of natives.⁴⁰¹ Generational differences within these groups reveal that the first generation tend to oppose homosexuality more strongly and subsequent generations are more tolerant. Further other population characteristics are at play, such as the relatively low average education level and the stronger religious faith.⁴⁰² In fact it has been determined that for those belonging to ethnic minorities, religion plays a greater role than for the average Dutch citizen, and, as already mentioned, religion is strongly correlated with negative attitudes towards homosexuality.

5.5.4 Additional Issues

There are two further elements that have a negative impact on the Netherlands today – acts of violence against LGBT+ persons and discriminatory legislation. Though the legislation in the Netherlands is highly advanced in granting and protecting rights to

³⁹⁶ Ibidem, p. 25.

³⁹⁷ Waaldijk 2001, p. 439.

³⁹⁸ Keuzenkamp 2011, p. 29.

³⁹⁹ Ibidem.

⁴⁰⁰ Ibidem.

⁴⁰¹ Ibidem.

⁴⁰² Ibidem, p. 30.

persons belonging to sexual minorities, men who have sex with men are not allowed to donate blood.⁴⁰³ The government is in the process of changing this legislation, which is a legacy of the HIV/AIDS epidemic. During the 1980s various protective measures were put in place to limit the spread of HIV/AIDS. Documentation revealed gay men as being the most high-risk group and thereafter they were banned from becoming blood donors much around the world. Nowadays many states have repealed such laws, but the Netherlands lags behind in this respect.⁴⁰⁴ Like all blanket bans, it is highly problematic, because it implies that all gay men have contracted the virus. Given that it is a sexually transmitted disease, it also leads to the assumption that all gay men engage in unprotected sex. Further this perpetuates the prejudice on the promiscuity of homosexual men that is already common in society. In any case this legislation is redundant because prior to blood donation, an individual is subject to tests to ascertain that the blood is not infected. Therefore it is of paramount importance that the competent authorities modify such legislation.

Another alarming trend is the continued presence of attacks on the basis on sexual orientation. In 2010, the Dutch authorities registered 487 incidents against LGBT+ persons, of which 182 included physical violence.⁴⁰⁵ Considering that abuse is often underreported this is a matter of concern, particularly given that it took place in “one of the most gay/lesbian-friendly societies and jurisdictions in the world.”⁴⁰⁶ The Dutch government, along with civil society organisations, has sponsored various events in favour of the development of a more tolerant polity; thus it is attempting to tackle the current intolerance visible in the society.

5.5.5 Limitations

The results of surveys on social attitudes cannot be taken as absolute truth. Indeed “what people think (or say they think) is not necessarily the same as how they behave when they encounter gay men and women in practice.”⁴⁰⁷ Part of this

⁴⁰³ Government of the Netherlands. *Equal rights for LGBTs*. <http://www.government.nl/issues/gay-rights/equal-rights-for-gays-and-transgenders> (accessed May 22, 2015).

⁴⁰⁴ *Ibidem*.

⁴⁰⁵ Keuzenkamp 2011, p. 7.

⁴⁰⁶ Waaldijk 2001, p. 439.

⁴⁰⁷ Keuzenkamp 2011, p. 31.

inconsistency has been demonstrated in the comparison between people having a general positive attitude towards homosexuality (with 91% of the Dutch population agreeing with the statement “Gay men and lesbians should be free to live their lives as they wish”)⁴⁰⁸ and the attitude towards public display of affection by same-sex couples (with 35% of the population finding kissing by same-sex individuals offensive).⁴⁰⁹ In addition there is the risk that respondents might provide “socially desirable answers” as opposed to their opinion.⁴¹⁰ Despite these limitations, social surveys are useful in providing the picture of the overall situation and the citizens’ response to homosexuality, which is directly linked with their view on adoption by LGBT+ persons. In the Netherlands, those deeply religious and those of foreign origin are the two groups that have a more negative view on homosexuality, and thus oppose joint adoption by same-sex parents. Though schoolchildren are on average averse to the kissing of same-sex couples, they do not seem to be out of line from the adult population, therefore this thesis calls into question Kreuzenkamp’s inclusion of the youth among the most intolerant groups.

5.6 Resistance in Slovenia

In the case of Slovenia, not as much detailed data is available, however there are certainly indicators of pressure against the recent change in legislation. Like in the Netherlands, religion is a major contributor to the ‘traditional’ understanding of marriage and family. The main difference in that field is the influence that religion has overall, in fact in Slovenia, the majority of the population identified itself as Roman Catholic in the 2002 census, only 10.1% of the population claimed to not be religious, and 3.5% claim to not be affiliated a specific religion.⁴¹¹ Therefore it is to be expected that the Church will have a stronger influence than it would in the Netherlands. Flere recognises that though there is a constitutional separation between the state and the Church, in the 1990s the two institutions were competing for cultural hegemony.⁴¹² The

⁴⁰⁸ Ibidem, p. 10.

⁴⁰⁹ Ibidem, p. 19.

⁴¹⁰ Ibidem, p. 31.

⁴¹¹ Government Communication Office. *Religion*. 2013.

<http://www.slovenia.si/slovenia/country/people/religion/> (accessed June 6, 2015).

⁴¹² Flere 1999, p. 24.

Church has failed to a large extent to fulfil its ambition of political influence nonetheless it does play a key role.⁴¹³

On Tuesday, 3 March 2015 the Slovenian Parliament passed a law on the possibility for homosexual individuals to marry and adopt children.⁴¹⁴ Soon after the legislation change was announced, hundreds of people took to the streets, and a manifestation took place in front of the Parliament.⁴¹⁵ The gathering was peaceful and those attending belonged to very different age groups, from young children to the elderly.⁴¹⁶ They were mobilised by *24KUL*, a non-profit organisation that was formed in 2009 to promote fundamental values including human life, human rights, solidarity, democracy, freedom and active citizenship.⁴¹⁷ Their understanding of human rights is rather orthodox, and excludes the equal rights of persons belonging to sexual minorities. Their primary focus are the rights of children, parents and grandparents. They believe that children have a right to a mother and a father, thus view any alternative family formation as a form of deprivation. The gathering explicitly vocalised the disapproval of same-sex parenting but also implicitly attacked single parenting. It did not call for an abrogation of the current adoption legislation, which allows single individuals to adopt, however it centred its argument on the need of parental figures of both sexes. The members of *24KUL* see the new legislation as essentially challenging the traditional family and thus undermining its value. They fear the expansion of family ties beyond heteronormativity, which they believe to encompass the BIC.

5.6.1 Religion

The Church was not an official sponsor of the manifestation, rather *24KUL* was the face of the manifestation. So was the Coalition “*Za Otroke Gre*”, meaning “for the children,” which have a visible religious component, in fact the gathering culminated with a service in the Ursuline Church in the centre of Ljubljana.⁴¹⁸ The Catholic Church has been involved in many scandals, which have led it to lose some of its influence over

⁴¹³ Ibidem, p. 25.

⁴¹⁴ Keating, Dave. *Slovenian parliament backs gay marriage*. March 4, 2015.

<http://www.politico.eu/article/slovenian-parliament-backs-gay-marriage/> (accessed April 20, 2015).

⁴¹⁵ Pusateri 2015.

⁴¹⁶ Ibidem.

⁴¹⁷ *24KUL. Za kulturo življenja*. 2014. <http://24kul.si/> (accessed June 10, 2015).

⁴¹⁸ Pusateri 2015.

believers. In addition to the worldwide scandals on sexual abuse, the Slovenian case includes scandals relating to property distribution and administration of finances. These have undoubtedly weakened the position of Church in relation to its influence on matters of public policy. Nonetheless it is still a powerful mobilising action, particularly in the protection of marriage and the traditional family. In fact during Sunday services, believers were called upon to sign a petition against the implementation of the new legislation. In just four days, 48,146 signatures in favour of a referendum were collected.⁴¹⁹

5.6.2 Nationalism

The nationalist element of the protest was the most visible, indeed a few of those present were wearing the traditional Slovene costume.⁴²⁰ Further banners and pickets had been prepared bearing nationalist statements, such as ‘Za Slovenijo’ which means ‘for Slovenia.’⁴²¹ These actions imply that there is something un-Slovenian in same-sex families, which is highly problematic in regards to those belonging to the Slovenian population as well as to sexual minorities. It automatically leads to the question, what does it mean to be Slovenian? Does one need to be heterosexual to be able to call oneself Slovene? Any national identity is socially constructed and the breakup of Yugoslavia demonstrated how quickly that identity can be shaped. Until 1991, the people of the six constituent republics identified themselves as Yugoslav citizens, yet in a short period of time politicians encouraged them to distinguish themselves on the basis of geographical belonging, religion and culture. The bloody wars that resulted from the breakup of Yugoslavia serve to demonstrate what a powerful drive national identity can be, particularly in a polity where they were previously forbidden.

A difference between the urban and rural society remains problematic. The strongest opposition to inclusive adoption is concentrated in the countryside, where conservative values and religion still play a decisive role. A stronger civil society presence there might lead to change.

⁴¹⁹ Dvornik, Marjan. *Rekordnih 48.146 podpisov v štirih dneh*. March 27, 2015. <http://24kul.si/rekordnih-48146-zbranih-podpisov-v-stirih-dneh> (accessed June 12, 2015).

⁴²⁰ Pusateri 2015

⁴²¹ *Ibidem*.

Slovenia is a particularly interesting case also for its geopolitical heritage. As a former Yugoslav Republic and a state within Eastern Europe, Slovenia's stance on LGBT+ rights is remarkable. It was the first country in the region to recognise same-sex civil partnerships in 2005.⁴²² The media has given attention to geographical developments, juxtaposing the movement of the rights of persons belonging to sexual minorities in the East to that in the West. "While several nations in Western Europe have made it legal for gay and lesbian couples to wed with broad public support other countries across the continent are overwhelmingly opposed to such laws."⁴²³ In fact Macedonia recently followed Croatia in instituting a constitutional ban on same-sex marriage.⁴²⁴ In the Former Yugoslav Republic of Macedonia, the Parliament voted in favour of the measure with a 72-4 margin at the beginning of 2015.⁴²⁵ The ban has not yet come into effect, as an additional parliamentary vote and presidential approval are pending.⁴²⁶ The Slovakian government attempted to push for a similar measure, and to strengthen the constitutional ban it called voters upon a referendum.⁴²⁷ Given the low turnout, the referendum failed.⁴²⁸ To some extent this movement against LGBT+ rights might have resulted from the "Russian efforts over the past few years to use homophobia to promote an anti-Western ideology,"⁴²⁹ emphasising the dangers of utilising political discourse to limit the rights of sexual minorities.

⁴²² The Peace Institute. *Comprehensive analysis confirms systemic discrimination of same-sex partners in Slovenia*. March 23, 2015. <http://www.mirovni-institut.si/en/comprehensive-analysis-confirms-systemic-discrimination-of-same-sex-partners-in-slovenia/> (accessed June 12, 2015).

⁴²³ Lipka, Michael. *Eastern and Western Europe divided over gay marriage, homosexuality*. December 12, 2013. <http://www.pewresearch.org/fact-tank/2013/12/12/eastern-and-western-europe-divided-over-gay-marriage-homosexuality/> (accessed June 21, 2015).

⁴²⁴ Csaky, Zselyke. *The East-West Divide on LGBT Rights in Europe*. September 17, 2014. <https://freedomhouse.org/blog/east-west-divide-lgbt-rights-europe#.VYbfEhOqqkr> (accessed June 21, 2015).

⁴²⁵ The European Parliament's Intergroup on LGBTI Rights. *FYR Macedonia votes to ban same-sex marriage and create constitutional obstacle future civil unions*. January 21, 2015. <http://www.lgbt-ep.eu/press-releases/fyr-macedonia-bans-same-sex-marriage-and-creates-constitutional-obstacle-future-civil-unions/> (accessed July 6, 2015).

⁴²⁶ Ibidem.

⁴²⁷ Williams, Steve. *Despite the Pope's Praise, Slovakia Fails to Ban Marriage Equality*. February 10, 2015. <http://www.care2.com/causes/despite-the-popes-praise-slovakia-fails-to-ban-marriage-equality.html#ixzz3f6HqrO17> (accessed July 6, 2015).

⁴²⁸ Ibidem.

⁴²⁹ The Economist. *Eastern partners*. May 20, 2015. <http://www.economist.com/news/europe/21651689-attitudes-homosexuality-become-staging-ground-countrys-choice-between-west-and> (accessed June 21, 2015).

5.7 The Irish Opposition

Given the high occurrence of single parenting, its opposition is not as fierce. In the twentieth century, the Catholic Church had a strong control of morality. Young women who conceived a child outside of wedlock were confined to institutions to avoid the societal judgement of an unwanted pregnancy.⁴³⁰ In the Magdalene laundries, they gave birth without any anaesthetics and the new-borns were sold to wealthy adopting parents.⁴³¹ They girls were also forced to labour to an extent that even the UN Committee Against Torture asked for an enquiry in 2011, and found the government complicit in the violation of labour laws.⁴³² This is a demonstration of the strong stigma attached to single parenting, though that has subsided in the years. Nonetheless in the recent referendum on same-sex marriage, the organisation *Mandate For Marriage* has strongly campaigned for the traditional family, by claiming that children deserve a “mother and a father role model.”⁴³³ Therefore there still are voices opposing inclusive adoption.

5.8 The International Push Against Inclusive Adoption

International bodies are not necessarily favourable to inclusive conception of the family, consequently they do not always favour inclusive adoption. On 25 June 2014, the United Nations Human Rights Council presented a resolution on the “Protection of the Family.”⁴³⁴

⁴³⁰ Carey, Anna. *Depressing but not surprising: how the Magdalene Laundries got away with it*. July 17, 2013. <http://www.newstatesman.com/religion/2013/07/depressing-not-surprising-how-magdalene-laundries-got-away-it> (accessed July 3, 2015).

⁴³¹ Sixsmith, Martin. *The Catholic church sold my child*. September 19, 2009. <http://www.theguardian.com/lifeandstyle/2009/sep/19/catholic-church-sold-child> (accessed May 25, 2015).

⁴³² Carey, Anna. *Depressing but not surprising: how the Magdalene Laundries got away with it*. July 17, 2013. <http://www.newstatesman.com/religion/2013/07/depressing-not-surprising-how-magdalene-laundries-got-away-it> (accessed July 3, 2015).

⁴³³ Mandate for Marriage. *Doesn't every child deserve a mother and father?* <http://mandateformarriage.org/bad-for-parents-and-children/doesnt-every-child-deserve-a-mother-and-father/> (accessed July 4, 2015).

⁴³⁴ Human Rights Council 2014, p. 1.

Whereas the resolution does not define ‘family’, the reference to a singular ‘family’ could be used as precedent to oppose rights for same-sex couples, single parents, and other forms of families in future UN negotiations.⁴³⁵

Therefore the resolution implicitly discriminated against untraditional families, which include adoptive single and LGBT+ parents. This caused the uproar of LGBT+ civil society organisation worldwide.⁴³⁶ In fact 507 advocacy organisations representing more than one hundred countries worldwide submitted a joint letter in which they called upon the Human Rights Council to “play its part” in the protection of the human rights for all, regardless of sexual orientation and gender identity.⁴³⁷ Therefore though there was an attempt to alienate the families that do not align with the traditional conception, a strong voice was raised to counter such a measure. It was not the only voice to speak, and other organisations, such as the Society for the Protection of Unborn Children, viewed the original Human Rights Council Resolution in a positive light as it did not promote “the false concept of ‘various forms of the family,’ as opposed to the natural family based upon marriage between a man and a woman.”⁴³⁸ Given that the data suggests that only a minority of families today are represented by a married mother and father with a child, the ‘falsehood’ of the latter concept is much more a reflection of reality than vice versa.

⁴³⁵ The European Parliament's Intergroup on LGBT Rights. *UN Human Rights Council adopts non-inclusive ‘Protection of the Family’ resolution*. June 27, 2014. <http://www.lgbt-ep.eu/press-releases/un-human-rights-council-adopts-non-inclusive-protection-of-the-family-resolution/> (accessed July 6, 2015).

⁴³⁶ Article 19. *UN HRC: “Protection of the Family” a thin veil for censorship*. June 27, 2014. <https://www.article19.org/resources.php/resource/37605/en/un-hrc:-%E2%80%9Cprotection-of-the-family%E2%80%9D-a-thin-veil-for-censorship> (accessed July 7, 2015); McCormick, Joseph Patrick. *UN Council adopts resolution to ‘protect the family’*. June 27, 2014. <http://www.pinknews.co.uk/2014/06/27/un-council-adopts-resolution-to-protect-the-family/> (accessed July 7, 2015); Miller, Hayley. *United Nations Adopts Resolution Excluding LGBT Families*. June 30, 2014. <http://www.hrc.org/blog/entry/united-nations-adopts-resolution-excluding-lgbt-families> (accessed July 7, 2015); Potts, Andrew. *UN Human Rights Council passes LGBTI excluding ‘family protection’ resolution*. June 27, 2014. <http://www.gaystarnews.com/article/un-human-rights-council-passes-lgbti-excluding-%E2%80%98family-protection%E2%80%99-resolution270614/> (accessed July 7, 2015); The European Parliament's Intergroup on LGBT Rights. *UN Human Rights Council adopts non-inclusive ‘Protection of the Family’ resolution*. June 27, 2014. <http://www.lgbt-ep.eu/press-releases/un-human-rights-council-adopts-non-inclusive-protection-of-the-family-resolution/> (accessed July 6, 2015).

⁴³⁷ Olebile 2014.

⁴³⁸ Society for the Protection of Unborn Children. *News, UN Human Rights Council passes pro-family resolution*. June 26, 2014. <https://www.spuc.org.uk/news/releases/2014/june26> (accessed July 7, 2015).

5.9 Conclusion

In the countries analysed, there are forces that oppose inclusive adoption, and untraditional families overall. In the Netherlands, the groups that most strongly disagree with rainbow families are religious persons (specifically churchgoers) and immigrant communities, particularly those who have recently joined the Dutch society. The religious negative attitude is also present in Slovenia, where arguments against the expansion of the legislation for marriage and adoption towards the inclusion of sexual minorities also have a nationalist and conservative character. The focus has been primarily on discrimination on the basis of sexual orientation, indeed opposition towards single parent adoption is not as strongly organised, but the Church does not favour single parenting, as shown by the case of Ireland. In addition, some of the arguments by those opposing the upbringing of children by same-sex parents are easily translated to single parent households, given that the conservative conception of family is centred on the figure of a father and a mother. Both forms of inclusive adoption that have been identified essentially challenge the traditional family by claiming that the BIC is not necessarily fulfilled only by a heteronormative family. This claim challenges the status quo and thus faces much resistance. A consciousness of such opposing forces is vital for an understanding of a potential movement towards inclusive adoption.

CHAPTER 6

CONCLUDING REMARKS AND FINAL BALANCE

This thesis set out to answer how the MS of the CoE can move towards inclusive adoption. Inclusive adoption was defined as adoption free from discrimination on the basis of sexual orientation and marital status. The choice of these two categories resulted from their interconnectedness and the core role that marriage plays in adoption legislation and practice. In fact limiting adoption to married couples, results in the exclusion of single individuals and same-sex couples, when marriage is strictly defined as heteronormative. The underlying assumption of the task at hand is that inclusive adoption is desirable. Rather than taking it for granted, this thesis demonstrated that that is indeed the case. In fact social science research suggests that neither marital status nor sexual orientation can determine parental fitness alone. As international law recommends, the BIC is to be the primary consideration in adoption and therefore blanket bans on the application for adoption are to be avoided. Of course that should not be equated by a total lack of control on adoption applications. In most circumstances it is recommended that a committee of experts assess that each individual case be free from prejudice.

Single parent adoption is greatly under-researched, but evidence suggests that it can fulfil the BIC. Social scientists have given more attention to the parenting of LGBT+ persons. Though there are a few dissonant voices, the overwhelming majority documented that in terms of child development, there is no significant difference in comparison with children of heterosexual parents. In fact sexual orientation is not an indicator of parental fitness and hence limits upon adoption should not be based on it.

If the shift towards inclusive adoption were an easy task, there would be no need to research it. The opening of adoption applications to a wider public than married couples should not be envisioned as a radical step, as it merely is the application of a standard that states have already committed to. It is the application of the BIC, which is

enshrined in international law as well as national legislations. Nonetheless there are powerful voices in support of what some believe to be the traditional family and they must be acknowledged. Without engaging with those opposing untraditional families, a shift is near impossible. Their arguments are popular because they are of a moral and emotional character rather than a rational one. Indeed though human beings pride themselves to be rational, emotions still guide much of societies' actions. Yet the time has come to put human rights at the forefront and let equality for all guide society.

In order to best resume the answer to the research question fully, it might be easier tackle it in a reversed fashion, recognising which elements would be insufficient to bring about change. Popular votes are among such options. The opinions of citizens are important drives in democracy, that is, when the majority agrees on a certain policy. Of course one of the dangers of democracy is that the majority does not always recognise the socially desirable outcome. In fact, surveys on social attitudes suggest that only in the Netherlands a majority of the population agrees with adoption by same-sex couples.⁴³⁹ If people were to strictly abide to the BIC, they would instead be voting in favour.

Even when it is presumed that the majority of the population supports a policy, it cannot be excluded that the results will not be surprising. In the case of the 2012 Referendum on the *Law on Marriage and Family Relations Act* in Slovenia, only about 30% of the people voted.⁴⁴⁰ This skewed the results in favour of those protecting traditional families, who mobilised voters to express their opinion against the proposed legislation. Political apathy is a common issue of modern democracies, where citizens are to a large extent disengaged. Indeed when less than a third of the population actually states its opinion, it is unreasonable to suggest that the majority actually agrees with a measure. Nonetheless the mandatory requirement of voting seems equally problematic.

Given that referendums are not the way to go about achieving legal recognition of untraditional families, perhaps impositions by the legislature are a possible way forward. Parliamentarians, being elected officials, have the power to act in representation of the general population. Therefore they are given the power to act in

⁴³⁹ Standard Eurobarometer 2006, p. 43.

⁴⁴⁰ The Slovenia Times. *Family Law Struck Down*. March 26, 2012. <http://www.sloveniatimes.com/family-law-struck-down> (accessed June 11, 2015).

the name of the electorate and bring about social change. Once again, this was attempted in Slovenia, yet there is the risk that it may be halted by popular vote. However at the regional level, there have been very positive developments. The case law of the ECtHR is placing ever-greater emphasis on the BIC. In fact now the concerns of the child have become the primary consideration in adoption reviews, and though the application is not wholly consistent, recent cases suggest that the Court is speaking in favour of “rainbow” families and single-headed households.⁴⁴¹ The remaining concern is that the court is still shy of speaking up against the discrimination that derives from the primacy of heteronormative marriage. Given the interconnectedness of marriage and adoption, that is not acceptable, and there is the need for the Court in Strasbourg to recognise its role in shaping public opinion. As a body of law, it must refrain from granting states a wide margin of appreciation when this results in the denial of human rights.

Further the voice of civil society has been analysed, and its function in shaping public opinion is vital. Not all non-governmental organisations are in favour of inclusive adoption.⁴⁴² They must equally be engaged to open the public space for debate on the benefits of expanding the current system. In fact one must resist the temptation of dismissing their arguments without consideration. The opinions of those in favour of protecting the traditional family must be carefully weighed in order to provide a conclusive response.

Perhaps all of these measures are insufficient by themselves, but in conjunction with each other they may lead to a constellation of different families and inclusive adoption. In fact there is the need to apply pressure both from within and from the outside to change attitudes and legislations. Local and regional civil society must cooperate to share best practices and lessons learned. Practical activities are to be combined with the spreading of knowledge. The crucial role of the BIC cannot be stressed enough. The electorate must be instructed to vote upon this principle and legislators must equally prioritise it. Therefore the shift towards inclusive adoption is

⁴⁴¹ E. B. v. France 2008 (ECtHR); X and Others v. Austria 2013 (ECtHR).

⁴⁴² Dvornik, Marjan. *Rekordnih 48.146 podpisov v štirih dneh*. March 27, 2015. <http://24kul.si/rekordnih-48146-zbranih-podpisov-v-stirih-dneh> (accessed June 12, 2015).

not going to be easy process for the MS of the CoE, but each of them must embark on this journey, and hopefully each small change will contribute to greater inclusiveness.

Finally, how long will social change require? Adoption is not of primary concern to most people, as it only represents a small percentage of family formation. That means that for the general public whether singles and same-sex couples can adopt is not a vital question. It is nonetheless becoming an ever-popular topic for mainstream media and academia. Greater public debate might spur change in the recent future, in fact multiple articles following the Irish shift in favour of same-sex marriage are calling on foreign countries to follow the lead.⁴⁴³ The spill over effect cannot be said to be account for rapid change, but it might serve as a catalyst. In fact when people are given a practical example of a place where a policy succeeded they are more likely to favour it. The Netherlands is an important reminder to the whole of Europe that opening adoption towards greater inclusiveness has not lead to a breakdown of the traditional family. This reminder is much more powerful than any amount of social science evidence. Of course sceptics will still claim that the developments in the Netherlands were guided by certain specific characteristics that do not translate abroad. However as more and more countries follow suit, the culturally specific criticism also weakens. To some degree many states already have accepted other non-conventional forms of family in their legislation, by granting cohabiting couples and to a great extent, single parents the ability to adopt. Thus adoption free from discrimination on the basis of marital status and sexual orientation shall not be seen as a radical step. Waaldijk's law of small change mapped out the "extremely gradual and almost perversely nuanced (but highly successful) process of recognition."⁴⁴⁴ This theory can be said to be somewhat dated, yet to a large extent it correctly identifies the current situation. Changing public opinion

⁴⁴³ Australian Associated Press. *Liberal MP calls for referendum on same-sex marriage after Ireland vote*. May 24, 2015. <http://www.theguardian.com/world/2015/may/24/liberal-mp-calls-for-referendum-on-same-sex-marriage-after-ireland-vote> (accessed June 20, 2015); Deutsche Welle. *Greens call to legalize gay marriage in Germany*. May 24, 2015. <http://www.dw.de/greens-call-to-legalize-gay-marriage-in-germany/a-18473008> (accessed June 20, 2015); Vogt, Andrea. *'We're next' says Italy after Irish gay marriage vote*. May 24, 2015. <http://www.telegraph.co.uk/news/worldnews/europe/italy/11627693/We-re-next-says-Italy-after-Irish-gay-marriage-vote.html> (accessed June 20, 2015).

⁴⁴⁴ Waaldijk 2001, p. 441.

and legislation is an on-going process that must be understood as a path where small steps can bring about long-term change.

BIBLIOGRAPHY

- 24KUL. *Podpišite peticijo proti »Spolni vzgoji za otroke« med 1 in 4 letom starosti!* November 29, 2013. <http://24kul.si/podpisite-peticijo-proti-spolni-vzgoji-za-otroke-med-1-in-4-letom-starosti> (accessed June 12, 2015).
- 24KUL. *Vatikan: Legalizacija homoseksualnih zakonskih zvez na Irskem je »poraz za človeštvo«!* May 28, 2015. <http://24kul.si/vatikan-legalizacija-homoseksualnih-zakonskih-zvez-na-irskem-je-poraz-za-clovestvo> (accessed June 12, 2015).
- 24KUL. *Za kulturo zivljenja.* <http://24kul.si/> (accessed June 10, 2015).
- ABC. *About Modern Family TV Show Series.* <http://abc.go.com/shows/modern-family/about-the-show> (accessed June 25, 2015).
- Adamczyk, Amy, and Cassady Pitt. "Shaping attitudes about homosexuality: The role of religion and cultural context." *Social Science Research* 38 (2009): 338–351.
- ŠKUC LL . *Presentation.* <http://www.ljudmila.org/lesbo/index.htm> (accessed June 12, 2015).
- ŠKUC-Magnus. *About Us.* http://www.magnus.si/en/html/about_us.html (accessed June 12, 2015).
- Amato, Paul R. "The Consequences of Divorce for Adults and Children." *Journal of Marriage and Family* 62, no. 4 (November 2000): 1269–1287.
- American Academy of Child and Adolescent Psychiatry. *The Adopted Child.* March 2011. http://www.aacap.org/App_Themes/AACAP/docs/facts_for_families/15_the_adopted_child.pdf (accessed March 30, 2015).
- American Sociological Association. *In the United States Supreme Court.* Nos. 12-144, 12-307, Washington D.C.: Brief of Amicus Curiae American Sociological Association in Support of Respondent Kristin M. Perry and Respondent Edith Schlan Windsor, 2013.
- Archer, Philip. *Interactive Map of Europe.* April 6, 2013. <http://philarcher.org/diary/2013/euromap/> (accessed May 20, 2015).

- Article 19. *UN HRC: "Protection of the Family" a thin veil for censorship*. June 27, 2014. <https://www.article19.org/resources.php/resource/37605/en/un-hrc:-%E2%80%9Cprotection-of-the-family%E2%80%9D-a-thin-veil-for-censorship> (accessed July 7, 2015).
- Australian Associated Press. *Liberal MP calls for referendum on same-sex marriage after Ireland vote*. May 24, 2015. <http://www.theguardian.com/world/2015/may/24/liberal-mp-calls-for-referendum-on-same-sex-marriage-after-ireland-vote> (accessed June 20, 2015).
- Bauman, Michael. *A Non-Religious Case Against Same Sex Marriage*. April 5, 2013. <http://www.theimaginativeconservative.org/2013/04/a-non-religious-case-against-same-sex-marriage.html> (accessed June 14, 2015).
- Baylis, John, and Steve Smith. *The Globalization of World Politics: an Introduction to International Relations*. Oxford: Oxford University Press, 2001.
- BBC News. *Gay marriage: MPs back bill despite Conservative backbench opposition*. February 5, 2013. <http://www.bbc.com/news/uk-politics-21346220> (accessed June 22, 2015).
- BBC News. *Vatican drive to curb gay marriage*. July 31, 2003. <http://news.bbc.co.uk/2/hi/europe/3108349.stm> (accessed June 14, 2015).
- Benson, Bruce. "Radical Democracy and Radical Christianity." *Political Theology* 10, no. 2 (June 2009): 247-259.
- Bidstrup, Scott. *Saint Aelred the Queer: The Surprising History of Homosexuality and Homophobia*. July 15, 2000. <http://www.bidstrup.com/phobiahistory.htm> (accessed June 25, 2015).
- Bozett, Frederick W., and Marvin B. Sussman, . *Homosexuality and Family Relations*. New York: Hawroth Press, 1990.
- Brenner, Andrea Malkin. *Encyclopedia of Race, Ethnicity, and Society*. April 25, 2008. <http://knowledge.sagepub.com/view/ethnicity/n5.xml?rskey=ytJzxo&row=8> (accessed March 27, 2015).
- Bureau of Consular Affairs, U.S. Department of State. *Bosnia-Herzegovina*. September 1, 2013. <http://travel.state.gov/content/adoptionsabroad/en/country->

- information/learn-about-a-country/bosnia-herzegovina.html (accessed June 3, 2015).
- Bureau of Consular Affairs, U.S. Department of State. *Romania*. March 1, 2014. <http://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/romania.html/> (accessed May 22, 2015).
- Burleson, Elizabeth. "International Human Rights Law, Co-parent Adoption, and the Recognition of Gay and Lesbian Families." *Loyola Law Review* 55 (2009): 791-803.
- Carey, Anna. *Depressing but not surprising: how the Magdalene Laundries got away with it*. July 17, 2013. <http://www.newstatesman.com/religion/2013/07/depressing-not-surprising-how-magdalene-laundries-got-away-it> (accessed July 3, 2015). Child Welfare Information Gateway. *Adopting as a Single Parent*. Factsheet for Families, Washington: Children's Bureau, 2013.
- Chizhova, Lyubov, Tatyana Voltskaya, and Claire Bigg. *Two Years After Russian Ban, 'Taboo' Hangs Over Children Denied U.S. Adoption*. December 31, 2014. <http://www.rferl.org/content/russia-united-states-adoptions-orphans-taboo-ban/26771310.html> (accessed June 21, 2015).
- CNN Staff. *Russia's Putin signs anti-U.S. adoption bill*. December 29, 2012. <http://edition.cnn.com/2012/12/28/world/europe/russia-us-adoptions/index.html> (accessed June 21, 2015).
- COC. *About COC*. July 6, 2015. <http://www.coc.nl/engels> (accessed July 6, 2015).
- Constitutional Court of the Republic of Slovenia. *Decision*. U-I-212/10-15, Request of the District Court in Koper, Ljubljana: Inheritance Act (Official Gazette SRS, Nos. 15/76, 23/78, and Official Gazette RS, No. 67/01), 2013.
- Constitutional Court of the Republic of Slovenia. *Review of constitutionality and legality of regulations and other general acts*. Case Number U-I-425/06, The Registration of a Same-Sex Civil Partnership Act (Official Gazette RS, No. 65/05) (ZRIPS), Art. 22, Ljubljana: Official Gazette RS, No. 55/2009 and OdlUS XVIII, 29, 2009.

- Cook-Huffman, Celia. "The Role of Identity in Conflict." In *Handbook of Conflict Analysis and Resolution*, edited by Dennis J. D. Sandole, Sean Byrne, Ingrid Sandole-Staroste and Jessica Senehi, 19-31. Oxon: Routledge, 2009.
- Council of Europe. *800 Million Europeans*. Strasbourg: Public Relations and Branding Division, 2012.
- Council of Europe. "European Convention on Human Rights." Strasbourg, 1950.
- Council of Europe. "European Convention on the Adoption of Children (Revised)." *CETS No.: 202*. Strasbourg, November 27, 2008.
- Council of Europe. *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms CETS No.: 177*. 11 4, 2000.
<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=&DF=&CL=ENG> (accessed April 28, 2015).
- Csaky, Zselyke. *The East-West Divide on LGBT Rights in Europe*. September 17, 2014.
<https://freedomhouse.org/blog/east-west-divide-lgbt-rights-europe#.VYbfEhOqqkr> (accessed June 21, 2015).
- de Koenigswarter, Julia Eleonore Marie. "Breaking Fertile Ground in the European Union : A Trial for the Regulation of Womb and Child Trade in Surrogacy." Master Thesis, Utrecht, 2014.
- de Vogue, Ariane, and Jeremy Diamond. *Supreme Court rules in favor of same-sex marriage nationwide*. June 27, 2015.
<http://edition.cnn.com/2015/06/26/politics/supreme-court-same-sex-marriage-ruling/index.html> (accessed June 27, 2015).
- Department of Economic and Social Affairs: Population Division. *Child Adoption: Trends and Policies*. New York: United Nations, 2009.
- Deutsche Welle. *Greens call to legalize gay marriage in Germany*. May 24, 2015.
<http://www.dw.de/greens-call-to-legalize-gay-marriage-in-germany/a-18473008> (accessed June 20, 2015).
- DIH. *zaDIHaj z nami*. <http://www.dih.si/> (accessed June 12, 2015).
- Doras Bui. *About Us*. <http://dorasbui.ie/about-us/> (accessed July 9, 2015).

- Doty, Kathleen A. "From Frétté to E.B.: The European Court of Human Rights on Gay and Lesbian Adoption." *Law and Sexuality: Lesbian Gay Bisexual and Legal Issues* 18, no. 121 (2009): 121-141.
- Dowd, Nancy E. *In Defense of Single-Parent Families*. New York: New York University Press, 1997.
- Dvornik, Marjan. *Rekordnih 48.146 podpisov v štirih dneh*. March 27, 2015. <http://24kul.si/rekordnih-48146-zbranih-podpisov-v-stirih-dneh> (accessed June 12, 2015).
- Elovitz, Marc E. "Adoption by Lesbian and Gay People: The Use and Mis-use of Social Science Research." *Duke Journal of Gender Law and Policy* 2, no. 1 (Spring 1995): 207-226.
- European Commission of Human Rights. *Case C. & L. M. v UK*. Application no. 14753/89. Strasbourg: Council of Europe, 9 October 1989.
- European Commission of Human Rights. *Case of Rössli v Germany*. Application no. 28318/95. Strasbourg: Council of Europe, 15 May 1996.
- European Commission of Human Rights. *Case of S. v. the UK*. Application no. 11716/85. Strasbourg: Council of Europe, 14 May 1986.
- European Commission of Human Rights. *Case of X, Y and Z v. the UK*. Application no. 9369/81. Strasbourg: Council of Europe, 3 May 1983.
- European Court of Human Rights. *Case of Christine Goodwin v. the UK*. Application No. 28957/95, Strasbourg: Council of Europe, 2002.
- European Court of Human Rights. *Case of E.B. v. France*. Application No. 43546/02, Strasbourg: Council of Europe, 2008.
- European Court of Human Rights. *Case of Fretté v. France*. Application No. 36515/97, Strasbourg: Council of Europe, 2002.
- European Court of Human Rights. *Case of Gas and Dubois v. France*. Application No. 25951/07, Strasbourg: Council of Europe, 2012.
- European Court of Human Rights. *Case of Schalk and Kopf v. Austria*. Application no. 30141/04, Strasbourg: Council of Europe, 2010.
- European Court of Human Rights. *Case of Schwizgebel v. Switzerland*. Application no. 25762/07, Strasbourg: Council of Europe, 2010.

- European Court of Human Rights. *Case of Wagner and J. M. W. L. v. Luxembourg*. Application No. 76240/01, Strasbourg: Council of Europe, 2007.
- European Court of Human Rights. *Case of X and Others v. Austria*. Application no. 19010/07, Strasbourg: Council of Europe, 2013.
- European Court of Human Rights. *HUDOC User Manual*. Strasbourg: Council of Europe, 2015.
- Evans, Michelle. *UN opens to LGBT voices*. May 31, 2013.
<http://www.ishr.ch/news/un-opens-lgbt-voices> (accessed July 6, 2015).
- Farr, Rachel H., Stephen L. Forssell, and Charlotte J. Patterson. "Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?" *Applied Developmental Science* 14, no. 3 (2010): 164-178.
- Flere, Sergej. "Church-State Relations in Slovenia in the Nineties." *Facta Universitatis: Philosophy and Sociology* 2, no. 6 (1999): 23-26.
- Foundation Adoption Services. *"Adopting a Child"*. Brochure, Utrecht: Dutch Ministries of Security and Justice, 2013.
- Girgis, Sherif, Robert P. George, and Ryan T. Anderson. "What is Marriage?" *Harvard Journal of Law and Public Policy* 34, no. 1 (2011): 245-288.
- Goldberg, Abbie E., and Z. JuliAnna Smith. "Predictors of Psychological Adjustment in Early Placed Adopted Children With Lesbian, Gay, and Heterosexual Parents." *Journal of Family Psychology* 27, no. 3 (2013): 431-442.
- Government Communication Office. *Religion*.
<http://www.slovenia.si/slovenia/country/people/religion/> (accessed June 6, 2015).
- Government of the Netherlands. *Equal rights for LGBTs*.
<http://www.government.nl/issues/gay-rights/equal-rights-for-gays-and-transgenders> (accessed May 22, 2015).
- Hague Conference on Private International Law. *Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption*. The Hague, May 29, 1993.
- Hekma, Gert. *The Netherlands*. Edited by Claude J. Summers. www.glbtc.com/social-sciences/netherlands.html (accessed July 6, 2015).

- Hess, Robert D., and Kathleen A. Camara. "Post-Divorce Family Relationships as Mediating Factors in the Consequences of Divorce for Children." *Journal of Social Issues* 35, no. 4 (1979): 79-96.
- Hetherington, E. Mavis, Martha Cox, and Roger Cox. "Long-Term Effects of Divorce and Remarriage on the Adjustment of Children." *Journal of the American Academy of Child Psychiatry* 24, no. 5 (1985): 518-530.
- Hodson, Loveday. *Different Families, Same Rights? Lesbian, Gay, Bisexual and Transgender Families under International Human Rights Law*. Brussels: The European Region of the International Lesbian and Gay Association, 2007.
- Horowitz, Robert M., and Hiromi Maruyama. *Issues in Gay and Lesbian Adoption*. Special Report, Children Legal Rights, 1994-1995, 2-6.
- Human Rights Council. *Resolution 26/...Protection of the Family*. A/HRC/26/L.20/Rev.1, Geneva: United Nations, 2014.
- ILGA-Europe. *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe*. This Review covers the period of January to December 2014, Brussels: PROGRESS Programme of the European Union, 2015.
- ILGA-Europe. *Families*. <http://www.ilga-europe.org/home/issues/families> (accessed April 28, 2015).
- ILGA-Europe. *ILGA-Europe Map on Legal Situation for LGB people in Europe*. July 2009. http://www.ilga-europe.org/home/publications/reports_and_other_materials/ilga_europe_map_on_legal_situation_for_lgb_people_in_europe_july_2009 (accessed April 28, 2015).
- ILGA-Europe. "Rainbow Map." May 2015. www.ilga-europe.org/rainboweurope (accessed June 29, 2015).
- Johnson, Jo-Ann, and Suzanne Tough. "Delayed Child-Bearing." *Journal of Obstetrics and Gynaecology Canada*, no. 271 (January 2012): 80-93.
- Johnston, Chris. *Ireland becomes first country to legalise same-sex marriage by popular vote - as it happened*. May 23, 2015.

- <http://www.theguardian.com/global/live/2015/may/23/counting-underway-for-irelands-referendum-on-marriage-equality> (accessed June 20, 2015).
- Jordan, William. *Scepticism about human rights as well as the ECHR*. July 20, 2014. <https://yougov.co.uk/news/2014/07/20/scepticism-about-human-rights-well-echr/> (accessed May 18, 2015).
- Kalus, Stanislaw, and Magdalena Habdas. *Family Law in Poland*. Alphen aan den Rijn: Kluwer Law International, 2011.
- Keating, Dave. *Slovenian parliament backs gay marriage*. March 4, 2015. <http://www.politico.eu/article/slovenian-parliament-backs-gay-marriage/> (accessed April 20, 2015).
- Keuzenkamp, Saskia. *Acceptance of homosexuality in the Netherlands 2011: International comparison, trends and current situation*. s c p publication 2011-29, The Hague: The Netherlands Institute for Social Research, 2011.
- Ki-moon, Ban. *Message on the International Day of Families 15 May 2014*. The Secretary-General, New York: United Nations, 2014.
- Kirchgaessner, Stephanie. *Vatican says Ireland gay marriage vote is 'defeat for humanity'*. May 26, 2015. <http://www.theguardian.com/world/2015/may/26/vatican-ireland-gay-marriage-referendum-vote-defeat-for-humanity> (accessed June 12, 2015).
- Kirshner, Jonathan. "The tragedy of offensive realism: Classical realism and the rise of China." *European Journal of International Relations* 18, no. 1 (2010): 53-75.
- Klančar, Tilka, Tanja Hodnik, and Simona Topolinjak, . *Mavrična Ljubljana: Rainbow Ljubljana*. Ljubljana: Health and Social Care Department, 2013.
- Kripke, Pamela Gwyn. *It's Better To Be Raised by a Single Mom*. January 3, 2013. http://www.slate.com/articles/double_x/doublex/2013/01/single_moms_are_better_kids_raised_by_single_mothers_are_sturdier.html (accessed July 11, 2015).
- LaPlaca, Daniel. "Single Parent Adoption: An Idea Whose Time Has Gone?" *The Maryland Law Forum* 9, no. 3 (1983): 79-83.
- Legebitra. *Društvo Kulturno, informacijsko in svetovalno središče Legebitra*. 2015. <http://www.legebitra.si/> (accessed June 10, 2015).

- Lipka, Michael. *Eastern and Western Europe divided over gay marriage, homosexuality*. December 12, 2013. <http://www.pewresearch.org/fact-tank/2013/12/12/eastern-and-western-europe-divided-over-gay-marriage-homosexuality/> (accessed June 21, 2015).
- Liptak, Adam. *Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide*. June 26, 2015. <http://www.nytimes.com/2015/06/27/us/supreme-court-same-sex-marriage.html> (accessed June 27, 2015).
- Ljubljana Pride. *Sporočilo Ljubljana Pride 2015: PRIDEm z družino!* http://www.ljubljana-pride.org/?page_id=1271 (accessed June 21, 2015).
- L'Osservatore Romano. *Marriage is more than a relationship*. May 21, 2015. <http://www.osservatoreromano.va/en/news/marriage-more-relationship> (accessed June 14, 2015).
- Lubalin, Eve. *Advocacy and Issues*. <http://community.pflag.org/page.aspx?pid=552> (accessed May 22, 2015).
- Lusa, Stefano. *Slovenia, full rights for LGBT couples*. March 20, 2015. <http://www.balcanicaucaso.org/eng/Regions-and-countries/Slovenia/Slovenia-full-rights-for-LGBT-couples-159955> (accessed April 20, 2015).
- Makalösa Föräldrar. *Om Oss*. 2015. <http://www.makalosa.org/om/> (accessed July 9, 2015).
- Maldonado, Solangel. "Illegitimate Harm: Law, Stigma, and Discrimination Against Nonmarital Children." *Florida Law Review* 63 (2011): 345-394.
- Mandate for Marriage. *Doesn't every child deserve a mother and father?* <http://mandateformarriage.org/bad-for-parents-and-children/doesnt-every-child-deserve-a-mother-and-father/> (accessed July 4, 2015).
- Marshall, Gordon. *Sociology of Family*. January 1998. <http://www.encyclopedia.com/doc/1O88-familysociologyof.html> (accessed March 20, 2015).
- Martins Lamb, Vanessa. "The 1950's and the 1960's and the American Woman : the transition from the "housewife" to the feminist." Unpublished Thesis, Toulon-Var, 2011.

- McCormick, Joseph Patrick. *UN Council adopts resolution to 'protect the family'*. June 27, 2014. <http://www.pinknews.co.uk/2014/06/27/un-council-adopts-resolution-to-protect-the-family/> (accessed July 7, 2015).
- Miller, Hayley. *United Nations Adopts Resolution Excluding LGBT Families*. June 30, 2014. <http://www.hrc.org/blog/entry/united-nations-adopts-resolution-excluding-lgbt-families> (accessed July 7, 2015).
- Ministry of Labour, Family, Social Affairs and Equal Opportunities. *Law on Marriage and Family Relations*. Ljubljana: Republic of Slovenia, 2004.
- Morin, Rich. *The Public Renders a Split Verdict On Changes in Family Structure*. February 16, 2011. <http://www.pewsocialtrends.org/2011/02/16/the-public-renders-a-split-verdict-on-changes-in-family-structure/?src=family-interactive> (accessed July 11, 2015).
- Mortenson, J. *Lesbian Adoption*. February 23, 2011. <http://knowledge.sagepub.com/view/womentoday/n464.xml?rskey=ytJzxo&row=15> (accessed March 22, 2015).
- Muir, Hugh. *The truth about inter-racial adoption*. November 3, 2010. <http://www.theguardian.com/society/2010/nov/03/inter-racial-adoption> (accessed June 1, 2015).
- Nam, Charles B. *The Concept of the Family: Demographic and Genealogical Perspectives*. The North Carolina Sociological Association. Fall 2002. <http://www.ncsociology.org/sociationtoday/v22/family.htm> (accessed March 20, 2015).
- Neacșu, Dana. *European Human Rights System*. February 4, 2015. http://library.law.columbia.edu/guides/European_Human_Rights_System#The_European_Human_Rights_System._The_Commission_of_Human_Rights._How_to_Find_a_Report_of_the_Commission (accessed March 17, 2015).
- NGO Helping Single-Parent Children. *NGO Helping Single-Parent Children "Your donation will help children in single-parent families!"* <https://www.armastanaidata.ee/en/donation/children-and-families/ngo-helping-single-parent-children-your-donation-will-help-children-in-single-parent-families> (accessed July 9, 2015).

- Nozawa, Junko. "Drawing the Line: Same-sex adoption and the jurisprudence of the ECtHR on the application of the "European consensus" standard under Article 14." *Merkourios: Utrecht Journal of International and European Law* (Igitur Publishing) 29, no. 77 (2013): 66-75.
- Office of the High Commissioner for Human Rights. *Status of Ratification: Convention on the Rights of the Child*. April 24, 2015. <http://indicators.ohchr.org/> (accessed April 28, 2015).
- Olebile, Lame Charmaine. *NGO Joint Statement - Item 8 General Debate*. Geneva: 26th session of the Human Rights Council, June 2014.
- Olson, Eric. *International Day of Families 15 May 2006 "Changing Families: Challenges and Opportunities" Background Note*. Focal Point on the Family, New York: United Nations: Department of Economic and Social Affairs, 2006.
- OPEN. *About OPEN*. <http://www.oneparent.ie/about.html> (accessed July 9, 2015).
- Open Society Justice Initiative. "Q&A: Protecting and Strengthening the ECHR." Briefing Paper, 2012.
- Oswald, Lewis. *Homocaust: The gay victims of the Holocaust*. <http://www.homocaust.org/> (accessed June 6, 2015).
- Oxford Dictionary of English. '*discrimination, noun*'. Version 2.2.1, Cupertino, California: Apple Inc., 2014.
- Oxford Dictionary of English. '*legitimate, noun*'. Version 2.2.1, Cupertino, California: Apple Inc., 2014.
- Parents Without Partners. *Who we are*. <http://www.parentswithoutpartners.org/?page=AboutWho> (accessed July 9, 2015).
- Parliament of the United Kingdom. "Gender Recognition Act." London, 2004.
- PARSHIP. *Patchwork Families: Single Parents*. <http://uk.parship.com/advice/single-parents/patchwork-families.htm> (accessed June 22, 2015).
- Patterson, Charlotte J. "Adoption of Minor Children by Lesbian and Gay Adults: A Social Science Perspective." *Duke Journal of Gender Law and Policy* 2 (1995): 191-205.

- Peters, F. E. *The Children of Abraham: Judaism, Christianity, Islam: A New Edition*. Princeton, New Jersey: Princeton University Press, 2004.
- Polikoff, Nancy D. "Recognizing Parents but Not Partners: Gay and Lesbian Family Law in Europe and the United States." *New York Law School Journal of Human Rights* 17 (2000): 711-750.
- Potts, Andrew. *UN Human Rights Council passes LGBTI excluding 'family protection' resolution*. June 27, 2014. <http://www.gaystarnews.com/article/un-human-rights-council-passes-lgbti-excluding-%E2%80%98family-protection%E2%80%99-resolution270614/> (accessed July 7, 2015).
- Previti, Denise, and Paul R. Amato. "Is Infidelity a Cause or a Consequence of Poor Marital Quality?" *Journal of Social and Personal Relationships* 21, no. 2 (2004): 217-230.
- Public Relations Unit of the Court. *The European Court of Human Rights in Facts and Figures 2014*. Strasbourg: European Court of Human Rights, 2015.
- Pusateri, Costanza. *Participatory Observation Notes*. Ljubljana: Impressions and Interviews of the Gathering of the Family, 3 March 2015, 2015.
- Rankin, Pauline L. "Sexualities and national identities: Re-imagining queer nationalism." *Journal of Canadian Studies* 35, no. 2 (Summer 2000): 176-196.
- Ratzinger, Joseph Cardinal. *Catechism of the Catholic Church*. Citta del Vaticano: Libreria Editrice Vaticana, 1997.
- Ratzinger, Joseph. *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons*. Approved by the Sovereign Pontiff John Paul II, Rome: Congregation for the Doctrine of the Faith, 2003.
- Regnerus, Mark. "How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study." *Social Science Research* 41, no. 4 (July 2012): 752-770.
- Republic of Austria. *Civil Code*. Bundesgesetz: Adoptionsrechts-Änderungsgesetz, Vienna: Allgemeines Bürgerliches Gesetzbuch (ABGB), 2013.
- Republic of Cyprus. *Law to Provide for the Adoption No. 19(1)*. Nicosia: House of Representatives, 1995.
- Republic of Hungary. "Civil Code." Budapest, 2013.

- Republic of Ireland. "Adoption Act." Dublin, 2010.
- Republic of Ireland. "Adoption Act." No. 25, Dublin, 1952.
- Republic of Montenegro. *Family Law*. Podgorica: Ministry of Justice, 2007.
- Republic of Serbia. *Family Act*. NO. 18, Belgrade: Official Herald, 2005.
- Rich, Frank. *What Does Ireland's Same-Sex-Marriage Vote Mean for the U.S.?* May 27, 2015. <http://nymag.com/daily/intelligencer/2015/05/what-irelands-gay-marriage-vote-means-for-us.html> (accessed June 20, 2015).
- Roiphe, Katie. *In Defense of Single Motherhood*. August 11, 2012. http://www.nytimes.com/2012/08/12/opinion/sunday/in-defense-of-single-motherhood.html?pagewanted=all&_r=1 (accessed July 11, 2015).
- Rosenblum, David M. "Custody Rights of Gay and Lesbian Parents." *Villanova Law Review* 36 (1991): 1665-1696.
- Roter, Petra. "Locating the "Minority Problem" in Europe: A Historical Perspective." *Journal of International Relations and Development* 4, no. 3 (2001): 221-249.
- Ruddick, William. *Parenthood: Three Concepts and a Principle*. <http://www.nyu.edu/gsas/dept/philo/faculty/ruddick/papers/parenthood.html> (accessed May 23, 2015).
- Štulhofer, Aleksandar, and Theo Sandfort. *Sexuality and gender in postcommunist Eastern Europe and Russia*. New York: Haworth Press, 2005.
- Schuder, Kirsten. *Understanding Single Parent Families*. <http://family.lovetoknow.com/single-parent-family> (accessed July 11, 2015).
- Sixsmith, Martin. *The Catholic church sold my child*. September 19, 2009. <http://www.theguardian.com/lifeandstyle/2009/sep/19/catholic-church-sold-child> (accessed May 25, 2015)
- Sieczkowski, Cavan. *Pope Francis Against Gay Marriage, Gay Adoption*. March 13, 2013. http://www.huffingtonpost.com/2013/03/13/pope-francis-gay-marriage-anti_n_2869221.html (accessed June 20, 2015).
- Single Parent Coalition. *Single Parent Coalition Inaugural Newsletter*. <http://singleparentcoalition.com/single-parent-coalition-inaugural-newsletter> (accessed July 9, 2015).

- Slovenska Tiskovna Agencija. *Odločitev US o referendumu o zakonu o zakonski zvezi verjetno šele jeseni*. July 7, 2015. <https://www.sta.si/2153914/odlocitev-us-o-referendumu-o-zakonu-o-zakonski-zvezi-verjetno-sele-jeseni> (accessed July 10, 2015).
- Society for the Protection of Unborn Children. *News, UN Human Rights Council passes pro-family resolution*. June 26, 2014. <https://www.spuc.org.uk/news/releases/2014/june26> (accessed July 7, 2015).
- Sommer, Volker, and Paul L. Vasey, . *Homosexual Behaviour in Animals: An Evolutionary Perspective*. Cambridge: Cambridge University Press, 2006.
- SPAN. *Single Parent Action Network Empowering – Connecting – Campaigning*. 2015. <http://spanuk.org.uk/> (accessed July 9, 2015).
- Stacey, Judith, and Timothy J. Biblarz. "Does the Sexual Orientation of Parents Matter?" *American Sociological Review* 66, no. 2 (2001): 159-183.
- Steve Williams. *Despite the Pope's Praise, Slovakia Fails to Ban Marriage Equality*. February 10, 2015. <http://www.care2.com/causes/despite-the-popes-praise-slovakia-fails-to-ban-marriage-equality.html#ixzz3f6HqrOI7> (accessed July 6, 2015).
- Stichting Amsterdam Gay Pride. *Events Calendar 2015*. <http://en.amsterdamgaypride.org/events#date-filter:path=default|category-filter:path=default> (accessed July 6, 2015).
- Stichting Amsterdam Gay Pride. *Foundation Amsterdam Gay Pride*. <http://en.amsterdamgaypride.org/organisatie/stichting-amsterdam-gay-pride> (accessed July 6, 2015).
- Storrow, Richard F. "Rescuing Children from the Marriage Movement: The Case Against Marital Status Discrimination in Adoption and Assisted Reproduction." *U.C. Davis Law Review* (University of California Davis) 39, no. 2 (February 2006): 305-370.
- The Economist. *Eastern partners*. May 20, 2015. <http://www.economist.com/news/europe/21651689-attitudes-homosexuality-become-staging-ground-countrys-choice-between-west-and> (accessed June 21, 2015).

- The European Parliament's Intergroup on LGBT Rigths. *UN Human Rights Council adopts non-inclusive 'Protection of the Family' resolution*. June 27, 2014. <http://www.lgbt-ep.eu/press-releases/un-human-rights-council-adopts-non-inclusive-protection-of-the-family-resolution/> (accessed July 6, 2015).
- The European Parliament's Intergroup on LGBTI Rights. *FYR Macedonia votes to ban same-sex marriage and create constitutional obstacle future civil unions*. January 21, 2015. <http://www.lgbt-ep.eu/press-releases/fyr-macedonia-bans-same-sex-marriage-and-creates-constitutional-obstacle-future-civil-unions/> (accessed July 6, 2015).
- The International Family Equality Day (IFED) Network. *Annual Report 2014. Celebrating the Rainbow of Families in our World, 2014*.
- The Peace Institute. *Comprehensive analysis confirms systemic discrimination of same-sex partners in Slovenia*. March 23, 2015. <http://www.mirovni-institut.si/en/comprehensive-analysis-confirms-systemic-discrimination-of-same-sex-partners-in-slovenia/> (accessed June 12, 2015).
- The Slovenia Times. *Family Law Struck Down*. March 26, 2012. <http://www.sloveniatimes.com/family-law-struck-down> (accessed June 11, 2015).
- Tilson, Everett. *Segregation and the Bible*. New York: Abingdon Press, 1958.
- Tomassini, Cecilia, and Karen Glaser. *Unmarried Grandparents Providing Child Care in Italy and England: A Life – Course Approach*. EPC. 2012. <http://epc2012.princeton.edu/papers/120948> (accessed March 27, 2015).
- Treoir. *About Treoir*. 2015. <http://www.treoir.ie/about.php> (accessed July 9, 2015).
- UNFPA. *Supporting the Constellation of Reproductive Rights*. <http://www.unfpa.org/resources/supporting-constellation-reproductive-rights> (accessed March 22, 2015).
- United Nations General Assembly. "Convention on the Rights of the Child." Resolution 44/25, 1989.
- United Nations. *International Day of Families*. <http://www.un.org/en/events/familyday/> (accessed July 7, 2015).

- Van Der Laan, Lousewies. *Why attending the Ljubljana pride matters*. June 06, 2015. <http://metinalista.si/why-attending-the-ljubljana-pride-matters/> (accessed June 21, 2015).
- van Vught, Peter. *Ambassadeur Karin Bloemen opent eerste editie Rainbow Awards*. June 29, 2015. <http://rainbowawards.nl/assets/pdf/ambassadeur-karin-bloemen-opent-eerste-editie-rainbow-awards.pdf> (accessed July 5, 2015).
- Vité, Sylvain, and Hervé Boéchat. *A Commentary on the United Nations Convention on the Rights of the Child*. Vol. Article 21: Adoption. Leiden: Martinus Nijhoff Publishers, 2008.
- Vlaardingerbroek, Paul. "Trends on (Inter-Country) Adoption by Gay and Lesbian Couples in Western Europe." *St. Thomas Law Review* 18 (2006): 495-510.
- Vogt, Andrea. *'We're next' says Italy after Irish gay marriage vote*. May 24, 2015. <http://www.telegraph.co.uk/news/worldnews/europe/italy/11627693/Were-next-says-Italy-after-Irish-gay-marriage-vote.html> (accessed June 20, 2015).
- Waaldijk, Kees. "Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands." In *Legal Recognition of Same-Sex Partnerships*, edited by Robert Wintemute and Mads Andenaes, 437-464. Oxford: Hart Publishing, 2001.
- Wielinga, GJ. *Homomonument Amsterdam*. <http://www.homomonument.nl/mijn-monument/ijkpunt-van-de-homoemancipatie.php> (accessed May 22, 2015).
- Wilcox, W. Bradford. *The Kids Are Not Really Alright*. July 20, 2012. http://www.slate.com/articles/double_x/doublex/2012/07/single_motherhood_worse_for_children_.html (accessed July 11, 2015).
- Wilcox, W. Bradford, William Doherty, Norval Glenn, and Linda Waite. *Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences*. Report from Family Scholars, New York: Institute for American Values, 2005.
- Williams, Steve. *Despite the Pope's Praise, Slovakia Fails to Ban Marriage Equality*. February 10, 2015. <http://www.care2.com/causes/despite-the-popes-praise-slovakia-fails-to-ban-marriage-equality.html#ixzz3f6HqrO17> (accessed July 6, 2015).
- Winq. *Luxury Lifestyle for Gay Men*. 2014. <http://www.winq.com/> (accessed July 6, 2015).

Wintle, Michael J. *Netherlands*.

<http://www.britannica.com/EBchecked/topic/409956/Netherlands/35842/Religion> (accessed June 6, 2015).

Withnall, Adam. *Gay marriage 'Bert and Ernie' cake bakery found guilty of discrimination in Northern Ireland*. May 19, 2015.

<http://www.independent.co.uk/news/uk/home-news/gay-marriage-bert-and-ernie-cake-row-to-hear-ruling-of-judge-in-northern-ireland-10259865.html> (accessed June 27, 2015).

Wood, Peter B., and John P. Bartkowski. "Attribution Style and Public Policy Attitudes Toward Gay Rights." *Social Science Quarterly* 85, no. 1 (March 2004): 58-74.

Workplace Pride. *About Us*. <http://workplacepride.org/about-us/> (accessed July 6, 2015).

ANNEX

Table: The Policy of the Member States of the Council of Europe on Single Parent Adoption

Member States of the Council of Europe	Is Single Parent Adoption Legal?⁴⁴⁵
Albania	Yes
Andorra	Yes
Armenia	Yes
Austria	Yes ⁴⁴⁶
Azerbaijan	Yes
Belgium	Yes
Bosnia and Herzegovina	Yes, exceptionally ⁴⁴⁷
Bulgaria	Yes
Croatia	Yes
Cyprus	No ⁴⁴⁸
Czech Republic	No
Denmark	Yes
Estonia	Yes
Finland	Yes
France	Yes
Georgia	Yes
Germany	Yes
Greece	Yes
Hungary	Yes ⁴⁴⁹
Iceland	No
Ireland	Yes ⁴⁵⁰
Italy	No
Latvia	Yes
Liechtenstein	No
Lithuania	No
Luxembourg	No
Malta	Yes
Republic of Moldova	Yes
Monaco	Yes

⁴⁴⁵ Unless stated otherwise the information in this column derives from the Department of Economic and Social Affairs: Population Division, 2009.

⁴⁴⁶ Austrian Civil Code 2013, Article 179(1).

⁴⁴⁷ Bureau of Consular Affairs, U.S. Department of State. *Bosnia-Herzegovina*. September 1, 2013. <http://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/bosnia-herzegovina.html> (accessed June 3, 2015).

⁴⁴⁸ Cypriot Law to Provide for the Adoption 1995, No. 19(1) Part II 3.(4).

⁴⁴⁹ Hungarian Civil Code 2013, Act V, Chapter XII, Purposes and Conditions of Adoption, Section 4:121.

⁴⁵⁰ Irish Adoption Act 2010, Chapter 3, article 33(1)(iii).

Montenegro	No ⁴⁵¹
Netherlands	Yes
Norway	Yes
Poland	Yes ⁴⁵²
Portugal	Yes
Romania	Yes ⁴⁵³
Russian Federation	Yes
San Marino	Yes
Serbia	Yes, exceptionally ⁴⁵⁴
Slovak Republic	Yes
Slovenia	Yes
Spain	Yes
Sweden	Yes
Switzerland	Yes
The former Yugoslav Republic of Macedonia	Yes
Turkey	Yes
Ukraine	Yes
United Kingdom	Yes

⁴⁵¹ Montenegrin Family Law 2007, Adoption, articles 132,133.

⁴⁵² Kalus & Habdas 2011, p. 130.

⁴⁵³ Bureau of Consular Affairs, U.S. Department of State. *Romania*. March 1, 2014. <http://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/romania.html/> (accessed May 22, 2015).

⁴⁵⁴ Serbian Family Act 2005, Marital Status of the Adopter, article 101(3).